



U.S. House of Representatives

COMMITTEE ON ETHICS

HOUSE ETHICS MANUAL

2022 PRINT

Find the most current version of the House Ethics Manual online at <https://ethics.house.gov/house-ethics-manual>.

This Print supersedes all prior print editions.

The Gifts and Travel sections of the House Ethics Manual were updated on December 31, 2020, and September 19, 2022. The updated guidance appears at the end of the House Ethics Manual in this document.

The Financial Disclosure instructions are updated annually. Find the most current guidance, including salary thresholds and outside employment requirements, online at <https://ethics.house.gov/financial-disclosure>.

When in Doubt, Call the Committee

Ethics questions are fact-specific, meaning that a slight change in facts could change the outcome of the guidance you receive. When in doubt, please call the Committee. Our Office of Advice and Education is here to help you. Following guidance provided by the Committee can protect you from future investigations.¹ Our phone number is 202-225-7103, and our email address is ethicscommittee@mail.house.gov.

Other Important Contact Information

The Committee is one of a number of entities that oversees actions you may wish to take. These sections reference the Committee on House Administration, the Federal Election Commission (FEC), the Department of State, and the Office of Interparliamentary Affairs. The Committee does not review the security of travel destinations; however, the Office of House Security is available to assist with security concerns.

Should you need to contact an office other than the Committee, here is the contact information.

- Committee on House Administration
 - Democratic Staff: 202-225-2061
 - Republican Staff: 202-225-8281
- FEC's Office of Congressional Affairs
 - Fec.gov, 202-694-1006
- Department of State, Interagency Working Group on U.S.-Government Sponsored International Exchanges and Training
 - 202-632-9306
- Office of Interparliamentary Affairs
 - 202-226-1766
- Office of House Security
 - 202-226-2044

¹ Committee Rule 3(k)-(l).

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GENERAL ETHICAL STANDARDS

Overview

Members, officers, and employees of the House should:

- Conduct themselves at all times in a manner that reflects creditably on the House;
- Abide by the spirit as well as the letter of the House rules; and
- Adhere to the broad ethical standards expressed in the Code of Ethics for Government Service.

They should not in any way use their office for private gain. Nor should they attempt to circumvent any House rule or standard of conduct.

Employees must observe any additional rules, regulations, standards, or practices established by their employing Members.

The Committee on Standards of Official Conduct urges Members, officers, and employees of the House to call or to write the Committee with any questions regarding the propriety of any current or proposed conduct. The Committee's Office of Advice and Education will provide confidential, informal advice over the telephone, and the Committee will provide confidential, formal written opinions to any Member, officer, or employee with a question within its jurisdiction.

General Ethical Standards

Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people.

HENRY CLAY¹

That “public office is a public trust” has long been a guiding principle of government.² To uphold this trust, Congress has bound itself to abide by certain standards of conduct, expressed in the Code of Official Conduct (House Rule 23)³ and the Code of Ethics for Government Service.⁴ These codes provide that Members, officers, and employees are to conduct themselves in a manner that will reflect creditably on the House, work earnestly and thoughtfully for their salary, and that they may not seek to profit by virtue of their public office, allow themselves to be improperly influenced, or discriminate unfairly by the dispensing of special favors. This chapter discusses the overarching principles that inform both codes, the penalties for violating their provisions, and the history and procedures of the Committee on Standards of Official Conduct.

Appropriate standards of conduct enhance the legislative process and build citizen confidence. “Ethics rules, if reasonably drafted and reliably enforced, increase the likelihood that legislators (and other officials) will make decisions and policies on the basis of the merits of issues, rather than on the basis of factors (such as personal gain) that should be irrelevant.”⁵ Members, officers, and employees should, at a minimum, familiarize themselves with the Code of Official Conduct and

¹ Speech at Ashland, Kentucky, March 1829. Henry Clay was Speaker of the House of Representatives during 1811-1814, 1815-1820, and 1823-1825.

² Code of Ethics for Government Service ¶ 10, H. Con. Res. 175, 72 Stat., pt. 2, B12 (adopted July 11, 1958) (contained in the appendices to this Manual). This creed, the motto of the Grover Cleveland administration, has been voiced by such notables as Edmund Burke (*Reflections on the Revolution in France* (1790)), Charles Sumner (speech, U.S. Senate (May 31, 1872)), as well as Henry Clay (*see* note 1, *supra*).

³ House rules are formally referenced by Roman numerals. For ease of reading, this manual uses the more familiar Arabic numerals throughout. All citations are to the House rules for the 110th Congress, unless specifically stated otherwise.

⁴ *See* note 2, *supra*.

⁵ *Congressional Ethics Reform: Hearings Before the Bipartisan Task Force on Ethics, U.S. House of Representatives*, 101st Cong., 1st Sess. 113 (1989) (statement of Dennis F. Thompson, Alfred North Whitehead Professor of Political Philosophy in the Kennedy School of Government and the Department of Government, Harvard University, and Director of the Harvard University Program in Ethics and the Professions).

the Code of Ethics for Government Service. The Code of Official Conduct and the Code of Ethics for Government Service not only state aspirational goals for public officials, but violations of provisions contained therein may also provide the basis for disciplinary action in accordance with House rules.

Violations of Ethical Standards

Violations of ethical standards may lead to various penalties. The U.S. Constitution authorizes each House of Congress to punish its Members for disorderly behavior and, with the concurrence of two thirds, to expel a Member.⁶ The House may also punish a Member by censure, reprimand, condemnation, reduction of seniority, fine, or other sanction determined to be appropriate.⁷

A House rule specifically authorizes the Standards Committee to enforce standards of conduct for Members, officers, and employees; to investigate alleged violations of any law, rule, or regulation pertaining to official conduct; and to make recommendations to the House for further action.⁸ Committee rules reflect the Committee's authority to issue letters of reproof and to take other administrative action.⁹ House rules further provide that either with approval of the House or by an affirmative vote of two-thirds of its Members, the Committee may report substantial evidence of violation by a Member, officer, or employee to the appropriate federal or state authorities.¹⁰

Some standards of conduct derive from criminal law. Violations of these standards may lead to a fine or imprisonment, or both. In some instances, such as conversion of government funds or property to one's own use or false claims concerning expenses or allowances, the Department of Justice may seek restitution.

Among the sanctions that the Committee may recommend be imposed upon a Member in a disciplinary matter is the "[d]enial or limitation of any right, power, privilege, or immunity of the Member if under the Constitution the House may impose such denial or limitation."¹¹ The Committee may also recommend sanctions

⁶ U.S. Const., art. I, § 5, cl. 2.

⁷ *See generally* Joint Comm. on Congressional Operations, House of Representatives Exclusion, Censure, and Expulsion Cases from 1789 to 1973, 93d Cong., 1st Sess. (Comm. Print 1973); Committee Rule 24(e).

⁸ *See* House Rule 10, cl. 1(q); House Rule 11, cl. 3.

⁹ *See* Comm. Rule 24(d) and (e)(6).

¹⁰ *See* House Rule 11, cl. 3(a)(3); Committee Rule 28. *See also* 5 U.S.C. app. 4 § 104(b), authorizing the Committee to refer to the Attorney General – without seeking approval of the House – individuals who have willfully failed to file or falsified information required to be reported on Financial Disclosure Statements.

¹¹ *See* Comm. Rule 24(e)(5).

be imposed by the House against an officer or employee of the House. Such sanctions could include dismissal from employment, reprimand, fine, or other appropriate sanction.¹²

Charges of unethical conduct can be evaluated only on a case-by-case basis. As the Committee has noted, “it was for the very purpose of evaluating particular situations against existing standards, and of weeding out baseless charges from legitimate ones, that this committee was created.”¹³

History of the Committee

The first recorded instance of the House of Representatives attempting to take disciplinary action against a Member occurred in 1798. On January 30, Matthew Lyon (of Vermont) spat upon Roger Griswold (of Connecticut) during a vote. A letter of apology was sent; nevertheless, the Committee of the Whole heard the evidence and recommended expulsion. The vote fell two short of the two-thirds majority necessary to expel a Member.¹⁴

From 1798 until 1967, the House undertook disciplinary action against Members over 40 times, with no standardized approach. The offenses ranged from dueling to inserting obscene material in the *Congressional Record*. Some cases were handled directly on the House floor without Committee action, others through the creation of select investigating committees. In at least one case, the accused Member was not allowed to speak on his own behalf or to present any defense.¹⁵ There were even attempts to punish former Members who had resigned.¹⁶

Beginning in the late 1940s, Senators Wayne Morse and Paul Douglas and Representative Charles Bennett advocated the enactment of an official code of conduct. In 1958, the Code of Ethics for Government Service was approved.¹⁷ In 1964, following the investigation of Bobby Baker, Secretary to the Majority in the Senate, the Senate created a Select Committee on Standards of Conduct.

¹² See Comm. Rule 24(f).

¹³ House Comm. on Standards of Official Conduct, *In the Matter of a Complaint Against Representative Robert L.F. Sikes*, H. Rep. 94-1364, 94th Cong., 2d Sess. 8 (1976).

¹⁴ II A. Hinds, *Hinds' Precedents of the House of Representatives of the United States*, §§ 1642-1643 (1907).

¹⁵ *Id.* at § 1256 (In the Matter of Representative Joshua R. Giddings).

¹⁶ *Id.* at §§ 1239 (In the Matter of Representative John T. Deweese), 1273 (In the Matter of Representative Benjamin F. Whittemore).

¹⁷ See note 2, *supra*.

During the 89th Congress, two different actions prompted the creation of the House Committee on Standards of Official Conduct. In 1965, the Joint Committee on the Organization of Congress held hearings in which considerable testimony addressed the ethical conduct of Members, the need for codes of conduct and financial disclosure regulations, and the need for an ethics committee. In its final report, the Joint Committee's recommendations included the creation of a House Committee on Standards and Conduct.¹⁸

The other action involved an investigation by the Special Subcommittee on Contracts of the Committee on House Administration into the expenditures of the Committee on Education and Labor and the conduct of its chairman, Representative Adam Clayton Powell, Jr., of New York. The Subcommittee's report concluded that the chairman and certain employees had deceived House authorities as to travel expenses and also noted strong evidence that the chairman had directed certain illegal salary payments to his wife.¹⁹ No formal action was taken during the 89th Congress against Representative Powell. In the 90th and 91st Congresses, however, he was removed from his chairmanship, denied his seniority, and fined,²⁰ and an attempt was made to exclude him.²¹

Against this backdrop, a Select Committee on Standards and Conduct was established in the closing days of the 89th Congress. The Select Committee's authority was limited to (1) recommending additional rules or regulations to ensure that Members, officers, and employees of the House adhere to proper standards of conduct in the discharge of their official duties; and (2) reporting violations of any law to the proper federal and state authorities.²²

The Select Committee's term was limited.²³ On April 13, 1967, the House established the Committee on Standards of Official Conduct, to be composed of six members of the majority party and six members of the minority party. The Committee was directed to recommend such changes in laws, rules, and regulations as necessary to establish and to enforce standards of official conduct for Members,

¹⁸ Joint Comm. on the Organization of Congress, *Final Report pursuant to S. Con. Res. 2*, S. Rep. 1414, 89th Cong., 2d Sess. 48 (1966).

¹⁹ H. Rep. 2349, 89th Cong., 2d Sess. 6-7 (1966).

²⁰ See H. Rep. 27, 90th Cong., 1st Sess. (1967); H. Res. 2, 91st Cong., 1st Sess., 115 *Cong. Rec.* H21 (Jan. 3, 1969).

²¹ 113 *Cong. Rec.* 26-27 (Mar. 1, 1967).

²² H.R. 1013; see also House Comm. on Rules, Creating a Select Committee on Standards and Conduct, Report to Accompany H.R. 1013, H. Rep. 2012, 89th Cong., 2d Sess. (1966).

²³ See generally House Select Comm. on Standards of Official Conduct, *Report Under the Authority of H.R. 1013*, H. Rep. 2338, 89th Cong., 2d Sess. (1966).

officers, and employees.²⁴ One year later, the House Rules were amended to include a Code of Conduct (currently codified as House Rule 23) and an annual financial disclosure requirement (currently codified as House Rule 26).²⁵ At the same time, the Committee was made a permanent standing committee with authority to investigate alleged violations of the Code of Conduct and to issue advisory opinions interpreting its provisions.²⁶

Four ad hoc groups have influenced the Committee's work: (1) The Commission on Administrative Review (generally known as the "Obey Commission"); (2) the Select Committee on Ethics; (3) the Bipartisan Task Force on Ethics; and (4) the Ethics Reform Task Force. The work of each group is summarized below.

The Obey Commission was established in July 1976 (95th Congress), in the aftermath of Watergate, and directed to make recommendations to the House concerning ethical practices, financial accountability, and administrative operations of the House. These recommendations were set forth in a report entitled *Financial Ethics*²⁷ and a resolution, H. Res. 287. The House's adoption, on March 2, 1977, of H. Res. 287 changed the House rules governing financial disclosure, outside earned income, acceptance of gifts, unofficial office accounts, franking privileges, and travel. The Commission also recommended the creation of a select committee with legislative jurisdiction over these areas.

Based on the Obey Commission's recommendation, the House established the Select Committee on Ethics in March 1977 to provide guidelines and interpretations concerning House rules currently codified as House Rules 23, 24, 25, and 26, and to report legislation. The Select Committee and the Committee on Standards of Official Conduct operated simultaneously, with different jurisdictions. During the two years of the Select Committee's existence, it issued 13 formal Advisory Opinions interpreting the new House rules and recommended that the House rules pertaining to financial disclosure and franking (current House Rules 24 and 26) be enacted into law, which occurred in 1978.²⁸ When the Select Committee completed its task, it issued a *Final Report*,²⁹ and its records and materials were transferred to the Committee on Standards of Official Conduct to assist the latter in rendering

²⁴ H. Res. 418, 90th Cong., 1st Sess. (1967).

²⁵ H. Res. 1099, 90th Cong., 2d Sess. (1968).

²⁶ *Id.*

²⁷ H. Doc. 95-73, 95th Cong., 1st Sess. (1977).

²⁸ See Ethics in Government Act of 1978, now codified, as amended, at 5 U.S.C. app. 4 §§ 101-111 and 39 U.S.C. §§ 3210-3220.

²⁹ H. Rep. 95-1837, 95th Cong., 2d Sess. (1979).

advisory opinions and interpreting House rules relating to financial ethics and standards of conduct.

On February 2, 1989, the Speaker and the Republican Leader of the 101st Congress appointed a Bipartisan Task Force on Ethics to conduct a comprehensive review of House ethics rules and regulations. Co-chaired by Representatives Vic Fazio and Lynn Martin, the Task Force looked anew at the rules concerning gifts, honoraria, outside earned income, financial disclosure, and the use of official resources, as well as considered issues relating to ethics committee procedures and the compensation of Members and other senior government officials. After four public hearings and much internal study, the Task Force issued a report³⁰ and a bill, H.R. 3660. This bill became the Ethics Reform Act of 1989, Pub. L. 101-194, signed into law on November 30, 1989, and amended with technical corrections by Pub. L. 101-280 on May 4, 1990.

The Ethics Reform Act enacted a total ban on honoraria, revisions to the outside earned income limits, new post-employment restrictions, changes to the gift and travel limits, and financial disclosure revisions. The Ethics Reform Act also contained several provisions affecting the Committee on Standards of Official Conduct. In 1990, an Office of Advice and Education was established within the Committee to provide confidential advice to Members, officers, and employees. A statute of limitations of three terms was enacted for investigations of alleged violations. In 1991, the Committee's membership increased from 12 to 14, and it adopted procedures ensuring that the same members do not both recommend charges and sit in judgment of those charges.

In February 1997, following the resolution of a Committee investigation of the Speaker of the House,³¹ the House of Representatives established the Ethics Reform Task Force, chaired by Representatives Robert L. Livingston and Benjamin L. Cardin. The task force was directed to review procedures governing the ethics process and to recommend appropriate reforms. On September 18, 1997, the House adopted the recommendations of the Ethics Reform Task Force with amendments (H.R. 168). The recommended changes to the House ethics rules proposed by the Ethics Reform Task Force were designed to "improve the trust and confidence that the Members, and the American people, have in the House standards process." The recommendations adopted by the House included a requirement that Standards Committee staff be nonpartisan, professional, and available as a resource to all Members of the Committee. Other recommendations adopted by the House

³⁰ 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 (daily ed. Nov. 21, 1989).

³¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Newt Gingrich*, H. Rep. 105-1, 105th Cong., 1st Sess. (Jan. 17, 1997).

included reducing the size of the Committee from 14 to 10 Members, expanding due process for respondents, and establishing a pool of 20 members (10 from each party) to be available to serve on an investigative subcommittee as needed by the Committee.³²

Committee Procedures

The Rules of the Committee on Standards of Official Conduct³³ have been periodically revised since the Committee was established to reflect changes in Committee structure and procedures implemented by the House. Current rules also reflect changes necessitated following experience under prior rules. The current rules provide for an Office of Advice and Education within the Committee and the bifurcation of the Committee investigatory and disciplinary process. The rules also govern the issuance of advisory opinions, the receipt of complaints, and the conduct of Committee investigations.

Committee rules now set forth the following requirements for complaints filed with the Committee:³⁴

- A complaint must be in writing, dated, and properly verified.³⁵
- A complaint must set forth the following in simple, concise, and direct statements: the name and legal address of the party filing the complaint; the name and position or title of the respondent; the nature of the alleged violation of the Code of Official Conduct or of other law, rule, regulation, or other standard of conduct applicable to the performance of duties or discharge of responsibilities; and the facts alleged to give rise to the violation.
- A complaint shall not contain innuendo, speculative assertions, or conclusory statements.³⁶
- Information offered as a complaint by a Member of the House of Representatives may be transmitted directly to the Committee; however,

³² *Report of the Ethics Reform Task Force on H. Res. 168*, 105th Cong., 1st Sess. (Comm. Print June 17, 1997).

³³ House Comm. on Standards of Official Conduct, Rules, 110th Cong., 1st Sess. (Comm. Print 2007) (hereinafter “Comm. Rule(s)”), *reprinted in* 153 *Cong. Rec.* H7331-37 (June 27, 2007). The Committee’s rules are also available on the Committee’s website.

³⁴ *See generally* Comm. Rule 15.

³⁵ Committee Rule 15(a) provides that a document will be considered properly verified when a notary executes it with the language, “Signed and sworn to (or affirmed) before me on (date) by (the name of the person).”

³⁶ *See* House Comm. on Standards of Official Conduct *Summary of Activities for the One Hundred Eighth Congress*, H. Rep. 108-806, 2d Sess. (Jan. 3, 2005) at 21 (concerning content of complaint filed by Representative Chris Bell).

information offered as a complaint by an individual not a Member of the House may be transmitted to the Committee, provided that a Member of the House certifies in writing that he or she believes the information is submitted in good faith and warrants the review and consideration of the Committee.

- A complaint must be accompanied by a certification, which may be unsworn, that the complainant has provided an exact copy of the filed complaint and all attachments to the respondent.
- The Committee shall not accept, and shall return to the complainant, any complaint submitted within the 60 days prior to an election in which the subject of the complaint is a candidate.
- The Committee shall not consider a complaint, nor shall any investigation be undertaken by the Committee, of any alleged violation which occurred before the third previous Congress unless the Committee determines that the alleged violation is directly related to an alleged violation which occurred in a more recent Congress.

Committee rules also contain requirements and procedures that follow the filing of a complaint. Initially, a determination is made by the Chairman and Ranking Minority Member of the Committee as to whether a complaint is in compliance with House and Committee rules.³⁷ If it is determined that the complaint submitted meets the requirements for what constitutes a complaint, Committee rules provide for notification of that determination to the respondent, and for an opportunity for the respondent to provide a response.³⁸ The Chairman and Ranking Minority Member may establish an investigative subcommittee or make recommendations to the full Committee as to the disposition of the complaint.³⁹ The recommendations that the Chairman and Ranking Minority Member of the Committee may make include recommending that the Committee dismiss the complaint or any portion thereof, or that it establish an investigative subcommittee.⁴⁰ The rules permit the Chairman and Ranking Minority Member to jointly gather additional information concerning alleged conduct which is the basis for a complaint until the Committee has established an investigative subcommittee or placed the issue of establishing an investigative subcommittee on the agenda of Committee meeting.⁴¹

³⁷ Comm. Rule 16(a).

³⁸ Comm. Rule 17(a) and (b).

³⁹ Comm. Rule 16(b).

⁴⁰ *Id.*

⁴¹ Comm. Rule 17(c).

The rules also permit, notwithstanding the absence of a filed complaint, the Committee to consider any information in its possession indicating that a Member, officer, or employee may have committed a violation of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his or her duties or the discharge of his or her responsibilities.⁴² Further, the Chairman and Ranking Minority Member may jointly gather additional information concerning such an alleged violation unless and until an investigative subcommittee has been established.⁴³

If an investigative subcommittee is established, the Chairman and Ranking Minority Member designate four Members of the House (with equal representation from the majority and minority parties) to serve on the subcommittee. One of the Members of the investigative subcommittee is designated by the Chairman of the Committee to serve as Chairman of the investigative subcommittee. The Ranking Minority Member of the Committee designates one Member of the investigative subcommittee to be its Ranking Minority Member.⁴⁴

Once appointed, the investigative subcommittee gathers evidence relating to the matter under investigation. Any evidence relevant to the inquiry is admissible unless it is privileged under House rules.⁴⁵ The investigative subcommittee may, by a majority vote of its Members, compel by subpoena the attendance and testimony of witnesses and the production of documents it deems necessary to conduct its inquiry.⁴⁶ In addition, investigative subcommittee staff may interview witnesses and examine documents, among other investigative measures.⁴⁷ The proceedings of the investigative subcommittee, including the taking of witness testimony, are conducted in executive session.⁴⁸ All witnesses and the respondent in an inquiry may be represented by counsel.⁴⁹

At the conclusion of its inquiry, the investigative subcommittee may “adopt a Statement of Alleged Violation if it determines that there is substantial reason to believe that a violation . . . has occurred.”⁵⁰ The Statement of Alleged Violation

⁴² Comm. Rule 18(a).

⁴³ *Id.*

⁴⁴ Comm. Rule 19(a).

⁴⁵ Comm. Rule 19(c)(1).

⁴⁶ Comm. Rule 19(b)(5).

⁴⁷ Comm. Rule 19(b)(4).

⁴⁸ Comm. Rule 19(b)(1).

⁴⁹ Comm. Rules 19(b)(2), 26(c), and 26(m).

⁵⁰ Comm. Rule 19(f).

must contain a plain and concise statement of facts and a reference to the particular standard of conduct violated by the respondent.⁵¹ Prior to adopting the Statement of Alleged Violation, the investigative subcommittee must make exculpatory information received by the investigative subcommittee available to the respondent.⁵² The rules permit a respondent to submit an answer, in writing and under oath, to the Statement of Alleged Violation, as well as to file a Motion for a Bill of Particulars and a Motion to Dismiss.⁵³ If an investigative subcommittee does not adopt a Statement of Alleged Violation, it shall transmit a report to the Committee that contains a summary of the information received during the inquiry along with the conclusions and recommendations, if any, of the investigative subcommittee.⁵⁴

Unless otherwise resolved under Committee and House rules, the next step of the disciplinary process requires the allegations in the Statement of Alleged Violation to be put before an adjudicatory subcommittee that consists of all Members of the Committee who did not serve on the investigative subcommittee.⁵⁵ In a public adjudicatory hearing to determine whether the alleged violations have been proven by clear and convincing evidence, both the respondent and Committee counsel may present evidence.⁵⁶ The burden of proof rests on Committee counsel to establish the facts alleged in the Statement of Alleged Violation by clear and convincing evidence.⁵⁷

If a majority of the members of an adjudicatory subcommittee find that any count of in a Statement of Alleged Violation has been proven by clear and convincing evidence, a public sanction hearing is held before all of the members of the Standards Committee to determine the appropriate sanction to adopt or to recommend to the House.⁵⁸

As noted, the Committee may recommend one or more of several different sanctions to the House of Representatives, including expulsion from the House of Representatives, censure, or reprimand.⁵⁹ The Committee may also send a Letter of

⁵¹ *Id.*

⁵² Comm. Rule 25.

⁵³ Comm. Rule 22(a), (b), and (c).

⁵⁴ Comm. Rule 19(g).

⁵⁵ Comm. Rule 23(a).

⁵⁶ Comm. Rule 23(j).

⁵⁷ Comm. Rule 23(n).

⁵⁸ Comm. Rule 24(b).

⁵⁹ Comm. Rule 24(e).

Reproval to a respondent without recommending further action by the full House.⁶⁰ A Letter of Reproval is “intended to be a rebuke of a Member’s conduct issued by a body of that Member’s peers acting, as the Standards Committee, on behalf of the House of Representatives.”⁶¹

In the entire history of the House of Representatives, five Members have been expelled. Of the five Members, three of them were expelled for conduct traitorous to the Union in the Civil War era. Michael J. Myers was expelled from the House in 1980 following his conviction for bribery in connection with the ABSCAM scandal.⁶² James A. Traficant, Jr., was expelled from the House in 2002, following his trial and conviction for conspiring to violate the bribery statute (18 U.S.C. § 201), acceptance of gratuities, obstruction of justice, conspiracy to defraud the United States, filing false federal income tax returns, and racketeering.⁶³ Since the establishment of this Committee, four Members have been censured by the House after Committee investigations, and seven have been reprimanded. In addition, the Committee has issued five public letters of reproval, without recommending action by the full House, and has publicly admonished several other Members for their conduct. Ten Members left the House after charges were brought by the Committee or court convictions were returned but before House action could be concluded.

Conduct Reflecting Creditably on the House

A Member, Delegate, Resident Commissioner, officer, or employee of the House shall conduct himself at all times in a manner that shall reflect creditably on the House. [House Rule 23, clause 1.]

Members, officers, and employees of the House must observe the broad ethical standards articulated in the Code of Official Conduct (Rule 23) of the Rules of the House of Representatives. The most comprehensive provision, Clause 1, states that a “Member, Delegate, Resident Commissioner, officer, or employee of the House shall conduct himself at all times in a manner that shall reflect creditably on the House.”

⁶⁰ Comm. Rule 24(d).

⁶¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative E.G. “Bud” Shuster*, H. Rep. 106-979, 106th Cong., 2d Sess. (Oct. 16, 2000) at 113; *see also* House Comm. on Standards of Official Conduct, *In the Matter of Representative Earl F. Hilliard*, H. Rep. 107-130, 107th Cong., 1st Sess. (July 10, 2001) at xi-xii.

⁶² House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. 96-1387, 96th Cong., 2d Sess. (Sept. 24, 1980).

⁶³ House Comm. on Standards of Official Conduct, *In the Matter of Representative James A. Traficant, Jr.*, H. Rep. 107-594, 107th Cong., 2d Sess., Vols. I-VI (July 19, 2002).

In interpreting Clause 1 of the Code when first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that this standard was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁶⁴ During floor debate preceding the adoption of the Code, however, Representative Price of Illinois, Chairman of the Select Committee on Standards of Official Conduct, rejected the notion that violations of law are simultaneous violations of the Code:

The committee endeavored to draft a code that would have a deterrent effect against improper conduct and at the same time be capable of enforcement if violated. Initially the committee considered making violations of law simultaneous violations of the code, but such a direct tie-in eventually was ruled out for the reason that it might open the door to stampedes for investigation of every minor complaint or purely personal accusation made against a Member. At the same time there was a need for retaining the ability to deal with any given act or accumulation of acts which, in the judgment of the committee, are severe enough to reflect discredit on the Congress. Stated purposefully in subjective language, this standard [clause 1] provides both assurances.⁶⁵

Later in the floor discussion, another member of the Select Committee, Representative Arends of Illinois, emphasized that the committee intended the proposed rules to focus on official, rather than personal, conduct:

[T]he Congress has the constitutional right to determine its own rules. And this right, too, has its limitations. The rules are applicable only in connection with the operation of the Congress itself. Somehow a line must be drawn as between what is personal conduct and what is official conduct.⁶⁶

During the 110th Congress, the House adopted House Resolution 451,⁶⁷ which provided that

⁶⁴ House Comm. on Standards of Official Conduct, *Report under the Authority of H. Res. 418*, H. Rep. 1176, 90th Cong., 2d Sess. 17 (1968).

⁶⁵ 114 *Cong. Rec.* 8778 (Apr. 3, 1968).

⁶⁶ 114 *Cong. Rec.* 8785 (Apr. 3, 1968).

⁶⁷ 153 *Cong. Rec.* 7331 (June 27, 2007).

[W]henever a Member of the House of Representatives, including a Delegate or Resident Commission to the Congress, is indicted or otherwise informally charged with criminal conduct in a court of the United States or any State, the Committee on Standards of Official Conduct shall, not later than 30 days after the date of such indictment or charge—

(1) empanel an investigative subcommittee to review the allegations; or

(2) if the Committee does not empanel an investigative subcommittee to review the allegations, submit a report to the House describing its reasons for not empanelling such an investigative subcommittee, together with the actions, if any, the Committee has taken in response to the allegations.

The resolution mandates some action by the Committee (either a report to the House or the empanelment of an investigative subcommittee) whenever a Member is charged with criminal conduct, and does not distinguish between felony and misdemeanor criminal charges.

To date, the Committee or the House has invoked Rule 23, clause 1, in investigating or disciplining Members for:

- Failure to report campaign contributions⁶⁸ and making false statements to the Committee⁶⁹ in connection with the Korean Influence Investigation;⁷⁰
- Criminal convictions for bribery⁷¹ or accepting illegal gratuities;⁷²

⁶⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); House Comm. on Standards of Official Conduct, *In the Matter of Representative Edward R. Roybal*, H. Rep. 95-1743, 95th Cong., 2d Sess. 2-3 (1978) (Count 1).

⁶⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. 95-1743, *supra* note 66, at 3-4 (Counts 3-4).

⁷⁰ See 124 *Cong. Rec.* 36976-84, 37005-17 (Oct. 13, 1978) (House reprimand).

⁷¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); House Comm. on Standards of Official Conduct, *In the Matter of Representative Raymond F. Lederer*, H. Rep. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion); H. Rep. 96-1387, *supra* note 61, at 2, 5 (vote of expulsion). In another case, the Committee issued a
(con't next page)

- Criminal convictions for conspiring to violate the federal bribery statute, acceptance of gratuities, obstruction of justice, conspiracy to defraud the United States, filing false federal income tax returns, and racketeering;⁷³
- Inflating the salaries of congressional employees in order to enable them to pay the Member's personal, political, or congressional expenses;⁷⁴
- Accepting gifts from persons with interest in legislation in violation of the gift rule (Rule 43, clause 4);⁷⁵
- Engaging in sexual relationships with House pages;⁷⁶
- Making improper sexual advances to a Peace Corps volunteer;⁷⁷
- Writing a misleading memorandum that could have influenced a personal associate's probation and arranging for the improper administrative dismissal of parking tickets;⁷⁸
- Engaging in a pattern and practice of conduct in which campaign funds were converted to personal use;⁷⁹

Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (House Comm. on Standards of Official Conduct, *In the Matter of Representative Daniel J. Flood*, H. Rep. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁷² House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending); H. Rep. 107-594, *supra* note 63 (vote of expulsion).

⁷³ H. Rep. 107-594, *supra* note 63.

⁷⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles C. Diggs, Jr.*, H. Rep. 96-351, 96th Cong., 1st Sess. (1979); *see* 125 *Cong. Rec.* 21584-92 (July 31, 1979) (Member censured and required to make restitution); *see also* House Comm. on Standards of Official Conduct, *Summary of Activities, 100th Cong.*, H. Rep. 100-1125, 100th Cong., 2d Sess. 15-16 (1989) (*In the Matter of Delegate Fofa I.F. Sunia*) (Member and aide pleaded guilty to conspiracy to defraud the government and resigned).

⁷⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. 96-930, 96th Cong. 2d Sess. 4-5 (1980); *see* 126 *Cong. Rec.* 13801-20 (June 10, 1980) (vote of censure); former House Rule 43 cl. 4.

⁷⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Gerry E. Studds*, H. Rep. 98-295, 98th Cong., 1st Sess. (1983); House Comm. on Standards of Official Conduct, *In the Matter of Representative Daniel B. Crane*, H. Rep. 98-296, 98th Cong., 1st Sess. (1983); *see* 129 *Cong. Rec.* H5280-95 (daily ed. July 20, 1983) (Committee recommended reprimand; House voted censure).

⁷⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Gus Savage*, H. Rep. 101-397, 101st Cong., 2d Sess. 14 (1990) (Committee publicly disapproved conduct; no House action).

⁷⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative Barney Frank*, H. Rep. 101-610, 101st Cong., 2d Sess. (1990) (Member reprimanded by House).

- Violations of the House gift rule, the performance of campaign work in an official congressional office by congressional employees on official time, and the failure to maintain adequate records to verify the legitimacy of expenditures of campaign funds;⁸⁰ and
- Making statements that impugned the reputation of the House, failing to cooperate fully with fact-finding being undertaken by the Chairman and Ranking Minority Member of the Committee on Standards of Official Conduct, threatening to retaliate against a fellow Member because of the Member's vote on particular legislation, and offering a political endorsement for a relative of a Member in exchange for vote by the Member in favor of particular legislation.⁸¹

A review of these cases indicates that the Committee has historically viewed clause 1 as encompassing violations of law and abuses of one's official position.⁸²

The Spirit and the Letter of the Rules

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 and to the rules of duly constituted committees thereof. [House Rule 23, clause 2.]

House Rule 23, clause 2, provides that Members, officers, and employees shall adhere to the spirit and the letter of House and committee rules. The Select Committee on Standards of Official Conduct of the 90th Congress recommended this provision in part to emphasize "the importance of the precedents of decorum and consideration that have evolved in the House over the years."⁸³

⁷⁹ H. Rep. 107-130, *supra* note 61, at 3-9 (Member's conduct was also found to violate provision of Code of Official Conduct prohibiting conversion of campaign funds to personal use and prohibiting expenditure of campaign funds that are not attributable to bona fide campaign or political purposes. *See* House Rule 23, clause 6).

⁸⁰ H. Rep. 106-979, *supra* note 61, at 6-7.

⁸¹ House Comm. on Standards of Official Conduct, *Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, H. Rep. 108-722, 108th Cong., 2d Sess. (Oct. 4, 2004).

⁸² In one other case, the Committee never reached a determination as to whether what is now codified as Rule 23, clause 1 would encompass a criminal conviction for contributing to the unruliness of a minor and allegations of improper sexual advances to a congressional employee because the Member resigned prior to the conclusion of the Preliminary Inquiry. *See* Staff of House Comm. on Standards of Official Conduct, *In the Matter of Representative Donald E. Lukens*, 101st Cong., 2d Sess. (Comm. Print 1990).

⁸³ H. Rep. 1176, *supra* note 64, at 17.

Beyond this genteel goal, however, the drafters did assume that the rule would provide a basis for congressional discipline. As summarized by Chairman Price:

This standard was drafted also in general terms rather than attempting to deal more specifically with such things as unfair and dilatory legislative tactics. It did not appear practicable to the committee to attempt to regulate these areas more closely. This standard should provide the House the means to deal with infractions that rise to trouble it without burdening it with defining specific charges that would be difficult to state with precision.⁸⁴

The practical effect of Clause 2 of the Code has been to provide a device for construing other provisions of the Code and House rules. It has been interpreted to mean that Members, officers, and employees may not do indirectly what they would be barred from doing directly. Individuals should thus read House rules broadly. The Select Committee on Ethics of the 95th Congress cited this provision to show that a narrow technical reading of a House rule should not overcome its “spirit” and the intent of the House in adopting that and other rules of conduct.⁸⁵

In addition to using Clause 2 as an aid to interpreting other House rules, this Committee cited its violation in recommending expulsion for two Members convicted in separate cases of bribery in the 96th and 97th Congresses, one Member convicted of accepting illegal gratuities in the 100th Congress,⁸⁶ and one Member convicted during the 107th Congress of conspiring to violate the bribery statute (18 U.S.C. § 201), accepting gratuities, obstructing justice, conspiring to defraud the United States, filing false federal income tax returns, and racketeering.⁸⁷

Refraining From Legislative Activity After Conviction

On April 16, 1975, the House adopted an amendment to the Code of Official Conduct pertaining to convictions. That provision, now clause 10 of Rule 23, states that

A Member, Delegate, or Resident Commissioner who has been convicted by a court of record for the commission of a crime for which a

⁸⁴ 114 *Cong. Rec.* 8778 (Apr. 3, 1968); *see also* 114 *Cong. Rec.* 8799 (statement of Representative Teague, member of the House Comm. on Standards of Official Conduct, 90th Cong.).

⁸⁵ *See* House Select Comm. on Ethics, *Advisory Opinion No. 4*, included as an appendix to H. Rep. 95-1837, *supra* note 29, at 61, and in the appendices of this Manual.

⁸⁶ H. Rep. 96-1387, *supra* note 62, at 5; H. Rep. 97-110, *supra* note 71, at 16 n.8; H. Rep. 100-506, *supra* note 72, at 7.

⁸⁷ H. Rep. 107-594, *supra* note 63.

sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which he is a member, and a Member should refrain from voting on any question at a meeting of the House or of the Committee of the Whole House on the state of the Union, unless or until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is reelected to the House after the date of such conviction

The Committee cited this rule in 2002 in a publicly-released letter to former Representative James A. Traficant, Jr., following Representative Traficant's conviction in a federal district court of ten felony counts related to public corruption. Citing House Rule 23, clause 10, Representative Traficant was admonished by the Committee that if he violated this provision he would risk disciplinary action by the Committee and the House. The Committee advised Representative Traficant that such disciplinary action would be in addition to any proceedings initiated in connection with his criminal convictions. The *Congressional Record* confirmed that other than during a vote on the House floor to postpone a vote on a resolution to expel him from the House, Representative Traficant did not vote in the House after the date of his criminal convictions.

This Committee's report on the measure noted that the Committee will not, as a rule, take action on a complaint of a statutory violation by a Member while the authorities charged with the statute's enforcement are pursuing the case. However, where the case raises allegations of abuse of official position or where law enforcement authorities do not appear to be acting "expeditiously," the Committee may choose not to defer:

[W]here an allegation is that one has abused his direct representational or legislative position — or his "official conduct" has been questioned — the committee concerns itself forthwith, because there is no other immediate avenue of remedy. But where an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters — rather, it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases.⁸⁸

⁸⁸ House Comm. on Standards of Official Conduct, *Policy of the House of Representatives with respect to Actions by Members Convicted of Certain Crimes*, H. Rep. 94-76, 94th Cong., 1st Sess. 2 (1975).

Even if the judicial process has not entirely run its course, such as when appeals are pending, the House may take notice of guilty pleas or verdicts against a Member, since the Member cannot at that point claim the presumption of innocence. As the Committee report noted:

For the House to withhold any action whatever until ultimate disposition of a judicial proceeding could mean, in effect, the barring of any legislative branch action, since the appeals processes often do, or can be made to, extend over a period longer than the two-year term of the Member.

Since Members of Congress are not subject to recall . . . public opinion could well interpret inaction as indifference on the part of the House.

The Committee recognizes a very distinguishable link in the chain of due process — that is, the point at which the defendant no longer has claim to the presumption of innocence. This point is reached in a criminal prosecution upon a plea of guilty or upon conviction by a jury or by a judge (or judges) if jury trial is waived. It is to this condition, and only to this condition, that the proposed resolution is directed.⁸⁹

Where the gravamen of the charges is abuse of official position, the full House may choose to take disciplinary action against a Member even though all appeals in the criminal process have not been exhausted.⁹⁰ Thus, while a Committee rule compels the Committee to undertake an inquiry “with regard to any felony conviction of a Member, officer, or employee of the House of Representatives in a Federal, State, or local court who has been sentenced,”⁹¹ under the same rule, the Committee has the discretion to initiate an inquiry at any time prior to conviction or sentencing.⁹²

⁸⁹ *Id.*

⁹⁰ See H. Rep. 96-351, *supra* note 74; H. Rep. 96-1387, *supra* note 62. In several other cases, Members resigned after conviction but before the House could act. See H. Rep. 96-1537, *supra* note 71; H. Rep. 97-110, *supra* note 71; H. Rep. 100-506, *supra* note 72; House Comm. on Standards of Official Conduct, *Summary of Activities, 101st Cong.*, H. Rep. 101-995, *101st Cong.*, 2d Sess. 12-13 (1990) (*In the Matter of Representative Robert Garcia*); see also H. Rep. 107-594, *supra* note 63.

⁹¹ Comm. Rule 18(e).

⁹² *Id.*

Code of Ethics for Government Service

The Code of Ethics for Government Service articulates broad ethical guidelines for “all Government employees, including officeholders.” The 85th Congress adopted this Code in 1958.⁹³ Among other things, the Code stresses that any person in government service should:

- Adhere to the highest moral principles;
- Give a full day’s labor for a full day’s pay;
- Never discriminate unfairly by dispensing special favors;
- Never accept favors or benefits that might be construed as influencing the performance of governmental duties;
- Make no private promises binding on the duties of office;
- Engage in no business with the Government inconsistent with the performance of governmental duties;
- Never use information received confidentially in the performance of governmental duties for making private profit; and
- Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.

The Code of Ethics for Government Service was adopted as a concurrent resolution expressing the “sense of Congress,”⁹⁴ rather than as a statute. This Committee has concluded, however, that the ethical precepts set forth in this code “represent continuing traditional standards of ethical conduct to be observed by Members of the House at all times.”⁹⁵

Formal charges may be brought against Members of the House for violating this code. Among the violations charged against former Representative Traficant during the disciplinary proceedings that led to his expulsion was that he violated the requirement of the Code of Ethics for Government Service that Members uphold the laws of the United States and never be a party to the evasion of those laws.⁹⁶ In another instance, the House reprimanded a Member based on charges concerning his use of his official position for pecuniary gain and receipt of benefits under circumstances that might have been construed as influencing official duties. There

⁹³ See note 2, *supra*.

⁹⁴ L. Deschler & W. Brown, *Procedure in the U.S. House of Representatives*, 97th Cong., 2d Sess. 373, ch. 24, § 1.3 (4th ed. 1982).

⁹⁵ H. Rep. 94-1364, *supra* note 13, at 3.

⁹⁶ H. Rep. 107-594, *supra* note 63; see also Code of Ethics for Government Service, *supra* note 2, at ¶ 2.

the Member took official actions that enhanced the value of his personal financial holdings.⁹⁷ In another matter, the House reprimanded a Member found responsible for permitting official resources to be diverted to his former law partner (by allowing him use of government furniture, photocopy services, supplies, and long distance telephone service over a nine-year period) in violation of paragraph 5 of the Code of Ethics for Government Service and 31 U.S.C. § 1301(a) (“[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law”).⁹⁸

Rules of Members, Officers, Supervisors, and Committees

The standards enforced by this Committee constitute a “floor” of minimally acceptable behavior. Individual Members or supervisors may set more rigorous standards in their own offices. Therefore, employees of the House should ensure that their behavior complies with any additional rules, regulations, or practices that apply to the specific office or unit where they work.

Advisory Opinions

The Committee on Standards of Official Conduct urges individuals to call or to write with any questions regarding the appropriateness of contemplated activity. House rules authorize the Committee “to give consideration to the request of any Member, officer, or employee of the House for an advisory opinion with respect to the general propriety of any current or proposed conduct of such Member, officer, or employee.”⁹⁹ The Ethics Reform Act of 1989 guarantees that no one may be put in jeopardy by making such a request. Anyone who acts in good faith in accordance with a written advisory opinion from the Committee may not then be investigated by the Committee based on the conduct addressed in the opinion,¹⁰⁰ and courts may consider reliance on such an opinion a defense to prosecution by the Justice Department.¹⁰¹ All such inquiries and their responses will be kept confidential by the Committee.

⁹⁷ H. Rep. 94-1364, *supra* note 13, at 3; *see also* Code of Ethics for Government Service at ¶ 5.

⁹⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representatives Austin J. Murphy*, H. Rep. 100-485, 100th Cong., 1st Sess. (1987).

⁹⁹ House Rule 10, cl. 4(e)(1)(D).

¹⁰⁰ 2 U.S.C. § 29d(i)(4); 5 U.S.C. app. 4 § 504(b); Comm. Rule 3(j)-(k).

¹⁰¹ *See United States v. Hedges*, 912 F.2d 1397, 1404-06 (11th Cir. 1990); 5 U.S.C. app. 4 § 504(b).

GIFTS

The Gifts section of the House Ethics Manual (pages 23-86) was updated on December 31, 2020, and September 19, 2022. The updated guidance appears at the end of the House Ethics Manual in this document.

TRAVEL

The Travel section of the House Ethics Manual (pages 87-120) was updated on December 31, 2020, and September 19, 2022. The updated guidance appears at the end of the House Ethics Manual in this document.

CAMPAIGN ACTIVITY

Overview

- House Members and staff engaging in campaign or political activity are subject to a wide variety of laws, rules, and standards of conduct, including:
- The Federal Election Campaign Act, as amended (2 U.S.C. §§ 431-455) (“FECA”), with regard to campaigns for federal office;
- Provisions of the Rules of the House of Representatives, including rules that **require** that campaign funds be used only for campaign or political purposes, and **prohibit** their use for either personal or official House purposes, with limited exceptions;
- Rules of the Committee on House Administration requiring that House funds and official House resources be used for official House purposes, and precluding their use for campaign or political purposes; and

Other provisions of the U.S. Code, including provisions of the criminal code that concern, among other things, the solicitation and receipt of contributions, and abuse of one’s office for political gain.

Members or staff who are seeking state or local office are not subject to FECA in that undertaking, but they likely are subject to a comparable set of state laws and rules.

This chapter addresses the laws, rules, and standards on four major subjects relating to campaign and political activity, as follows:

- The general prohibition against using official House resources for campaign or political purposes;
- Campaign work by House employees, which must be done on their own time and outside the congressional office, and without the use of any House resources;
- The solicitation, receipt, and acceptance of campaign contributions, and the general prohibition against taking actions in one’s official capacity on the basis of political considerations; and
- The proper use of campaign funds.

Four other, more specific subjects are addressed in the last section of this chapter: (1) The rules on campaign letterhead, (2) the provisions of the House gift rule that apply to campaign or political activity, (3) Member involvement with

independent redistricting funds, and (4) provisions of the federal criminal code that apply to campaign or political activity.

While FECA establishes an extensive set of regulations on contributions and expenditures for campaigns for federal offices, this chapter, with one exception, does **not** address the provisions of FECA. FECA is enforced primarily by the Federal Election Commission (“FEC”), and House Members and their campaign staff should refer to the explanatory materials and advisory opinions issued by the FEC. One provision of FECA that this chapter does address, albeit briefly, is that on the proper use of campaign funds. As noted above, the House Rules also include a provision on this matter, and thus this chapter addresses the similarities and differences between the House rule and the statute.

With regard to the applicable provisions of the House rules, Members and staff should bear in mind that under House Rule 23, clause 2 they are obligated to adhere to not only the letter, but also the spirit of those rules. This provision has been interpreted to mean that Members and staff may not do indirectly what they are barred from doing directly. Chapter 1 on general ethical standards includes further discussion on this point.

While FECA and other statutes on campaign activity are not rules of the House, Members and employees must also bear in mind that the House Rules require that they conduct themselves “at all times in a manner that shall reflect creditably on the House” (House Rule 23, clause 1). In addition, the Code of Ethics for Government Service, which applies to House Members and staff, provides in ¶ 2 that government officials should “[u]phold the Constitution, laws and legal regulations of the United States and of all governments therein and never be a party to their evasion.” Accordingly, in violating FECA or another provision of statutory law, a Member or employee may also violate these provisions of the House rules and standards of conduct.¹ In addition, acceptance of an unlawful campaign contribution may also violate the House gift rule (House Rule 25, clause 5).

¹ In the 105th Congress, an investigative subcommittee of the Standards Committee adopted a Statement of Alleged Violation against a Member charging violations of the predecessor of House Rule 23, clause 1, based in part on the allegation that in his campaign for the House, the Member had (1) caused illegal in-kind contributions to be made to his campaign by a corporation he owned, (2) received and accepted an illegal contribution from a foreign national, and (3) received and accepted an illegal contribution from another corporation. The Member had previously pled guilty in federal court to criminal charges that had been brought against him on these matters. The Standards Committee took no further action in this case because as of the time that the investigative subcommittee completed its work, the Member was about to depart the House. *See* House Comm. on Standards of Official Conduct, *In the Matter of Rep. Jay Kim*, H. Rep. 105-797, 105th Cong., 2d Sess. (1998).

Moreover, under these rules, a Member or employee must take reasonable steps to ensure that any outside organization over which he or she exercises control – including the individual’s own authorized campaign committee or, for example, a “leadership PAC” – operates in compliance with applicable law. Depending on the circumstances, consultation with private counsel may be necessary.

In this regard, in a case handled by the Committee on Standards of Official Conduct in the 104th Congress, a Member admitted to a Statement of Alleged Violation that charged a violation of the predecessor of House Rule 23, clause 1 (requiring conduct that reflects creditably on the House). One of the bases of that charge was that the Member had failed to seek and follow legal advice for the purpose of ensuring that certain activities he undertook through tax-exempt organizations complied with provisions of the Internal Revenue Code governing such organizations, including those that generally prohibit such organizations from engaging in political activity. The House subsequently approved a Committee recommendation that the Member be reprimanded and required to reimburse the House the sum of \$300,000.²

General Prohibition Against Using Official Resources for Campaign or Political Purposes

As detailed below, official resources of the House must, as a general rule, be used for the performance of official business of the House, and hence those resources may **not** be used for campaign or political purposes. The laws and rules referenced in this section reflect “the basic principle that government funds should not be spent to help incumbents gain reelection.”³

What are the “official resources” to which this basic rule applies? Certainly the funds appropriated for Member, committee, and other House offices are official resources, as are the goods and services purchased with those funds. Accordingly, among the resources that generally may not be used for campaign or political purposes are congressional office equipment (including the computers, telephones, and fax machines), office supplies (including official stationery and envelopes), and congressional staff time.

² House Select Comm. on Ethics, *In the Matter of Rep. Newt Gingrich*, H. Rep. 105-1, 105th Cong., 1st Sess. 7-8 (1997). See also House Comm. on Standards of Official Conduct, *In the Matter of Rep. George V. Hansen*, H. Rep. 98-891, 98th Cong., 2d Sess., 3 (1989) (To establish the defense that a Member justifiably relied on the legal advice of counsel, the Member must show that the advice had been “sought in good faith, all material facts must [have been] given to the attorney and the person seeking advice must then follow the advice given.”).

³ *Common Cause v. Bolger*, 574 F. Supp. 672, 683 (D.D.C. 1982), *aff’d*, 461 U.S. 911 (1983).

Among the specific activities that clearly may **not** be undertaken in a congressional office or using House resources (including official staff time) are the solicitation of contributions; the drafting of campaign speeches, statements, press releases or literature; the completion of FEC reports; the creation or issuance of a campaign mailing; and the holding of a meeting on campaign business. The same prohibition applies to any activity that is funded to any extent with campaign funds, even if the activity is not overtly political in nature. The latter point is addressed further below under the headings “Use for Bona Fide Campaign or Political Purposes” and “Use of Campaign Funds or Resources for Official House Purposes.”

The misuse of the funds and other resources that the House of Representatives entrusts to Members for the conduct of official House business is a very serious matter. Depending on the circumstances, such conduct may result in not only disciplinary action by the House, but also criminal prosecution. Moreover, while any House employee who makes improper use of House resources is subject to disciplinary action by the Standards Committee, each Member should be aware that he or she may be held responsible for any improper use of resources that occurs in the Member’s office. The Standards Committee has long taken the position that each Member is responsible for assuring that the Member’s employees are aware of and adhere to the rules, and for assuring that House resources are used for proper purposes.⁴

Specific laws and rules that prohibit the use of official resources for campaign or political purposes are summarized in the remainder of this section. The effect of these laws and rules is generally to preclude campaign or political activity from taking place in congressional offices. However, the Standards Committee has long recognized that there are certain **limited** activities in a congressional office that, while related to a Member’s campaign, are permissible. Those activities are described in this section.

Members and staff should be aware that the general prohibition against campaign or political use of official resources applies not only to any Member campaign for re-election, but rather to **any** campaign or political undertaking. Thus the prohibition applies to, for example, campaigns for the Presidency, the U.S. Senate, or a state or local office, and it applies to such campaigns whether the Member is a candidate or is merely seeking to support or assist (or oppose) a candidate in such a campaign.

⁴ House Comm. on Standards of Official Conduct, *In the Matter of Rep. E.G. “Bud” Shuster*, H. Rep. 106-979, 106th Cong., 2d Sess. 31 (2000); House Comm. on Standards of Official Conduct, *Statement Regarding Complaints Against Rep. Newt Gingrich*, 101st Cong., 2d Sess. 60, 165-66 (1990); House Comm. on Standards of Official Conduct, *In the Matter of Rep. Austin J. Murphy*, H. Rep. 100-485, 100th Cong., 1st Sess. 4 (1987).

Example 1. A Member wishes to issue a press release announcing that he is endorsing a candidate for President. The Member may not issue the release out of his House office or use any House resources (including his official press release letterhead) in making the announcement. Likewise, a Member may not refer to or discuss his endorsement in letters sent on official stationery, including letters sent in response to constituent inquiries.

As noted below, many of the applicable rules here are statutorily based rules that were issued by either the Committee on House Administration or the House Franking Commission (formally known as the House Commission on Congressional Mailing Standards). Definitive explanation of those rules is available from the Committee on House Administration, the Franking Commission, and their staffs.

Laws and Rules on Proper Use of Official Resources

Goods and Services Paid for With the Members' Representational Allowance or House Committee Funds. All expenditures by a Member from his or her Members' Representational Allowance ("MRA") – including expenditures for staff, travel, and communications – must comply with regulations issued by the Committee on House Administration. Those regulations are set forth in the *Members' Handbook* issued by that Committee. The *Handbook* provides that "[o]nly expenses the primary purpose of which [is] official and representational" are reimbursable from the MRA, and that the MRA may **not** pay for campaign expenses or political expenses (or any personal expenses).

Similarly, all House committees, in spending their official funds, must comply with the regulations set forth in the *Committees' Handbook* issued by the Committee on House Administration.⁵ The *Committees' Handbook* provides that only expenses "the primary purpose of which [is] official" are reimbursable from the official funds provided to a committee, and that committee funds may **not** be used to pay any "political or campaign-related expenses" (or any personal expenses). The regulations governing committee expenditures as well as those governing Member expenditures derive in large part from both 31 U.S.C. § 1301(a), which provides that official funds are to be used only for the purposes for which appropriated, and the statutory authorizations for the allowances.⁶

⁵ See Comm. on House Admin., U.S. House of Representatives, *Members' Congressional Handbook* (hereinafter "*Members' Handbook*") and *Committees' Congressional Handbook* (hereinafter "*Committee's Handbook*"). Both publications are available on the Committee on House Administration website.

⁶ See, e.g., 2 U.S.C. § 57b, and *Principles of Federal Appropriations Law* (3d ed.), issued by the U.S. General Accountability Office.

As detailed below, it is permissible for House employees to do campaign work, but **only** outside of congressional space, without the use of any House resources, and on their own time (as opposed to “official” time for which they are compensated by the House). Accordingly, any House employee who does campaign work must ensure that the work – including any telephone conversations or other communications concerning campaign business – is performed strictly in compliance with these limitations.

A provision of the *Members’ Handbook* permits the incidental personal use of House equipment and supplies “when such use is negligible in nature, frequency, time consumed, and expense.” However, this policy applies only to incidental **personal** use of those resources, and **not** to their use for campaign or political purposes.

The rules on proper use of official House funds and resources were implicated in a case handled by the Standards Committee in the 104th Congress. That case, which was initiated by a complaint filed with the Committee, concerned a Member’s use of his office fax machine and official letterhead to send out a press release that severely criticized the record of a prospective campaign opponent on Medicare issues. The Committee resolved that case by sending that Member a letter – which the Committee released publicly – stating (1) its finding that the Member had, in issuing that release, violated applicable rules and regulations on the use of official resources, and (2) the Committee’s expectation that he would comply with applicable rules in the future.⁷

Moreover, Members must regularly certify that all official funds have been properly spent. A false certification may bring criminal penalties, and the government may recover any amount improperly paid.⁸ Misuse of official House

⁷ House Comm. on Standards of Official Conduct, *Summary of Activities, One Hundred Fourth Congress*, H. Rep. 104-886, 104th Cong., 2d Sess. 22 (1997). The matter of use of House staff to perform campaign work for the employing Member was at issue in another disciplinary case before the Standards Committee in the 104th Congress. In that case, an investigative subcommittee adopted a Statement of Alleged Violation against a Member, one count of which alleged a misuse of official resources on the basis that congressional employees of the Member regularly performed work for the Member’s campaign while on official time. The campaign work, some of which was performed in the congressional office, included collecting and depositing campaign checks and maintaining campaign financial records. No further action was taken in the case, however, because as of the time the investigative subcommittee completed its work, the Member was about to depart the House. *In the Matter of Rep. Barbara-Rose Collins*, H. Rep. 104-876, 104th Cong., 2d Sess. (1997).

⁸ Federal law (18 U.S.C. § 1001) provides a criminal penalty for submitting a false statement to the government; the False Claims Act, 31 U.S.C. §§ 3729-3731, permits assessment of a penalty of up to three times the amount wrongly claimed. For further information on this matter, see Chapter 9 (on false claims and fraud).

resources for campaign purposes may violate other criminal laws as well. For example, in 1993 a former House employee pleaded guilty to a charge of theft of government property for receiving a House salary and expenses for time when, despite his claim that he was conducting official business, he was in fact doing campaign work.⁹ In addition, in 1979 a former Member pleaded guilty to charges of mail fraud and income tax evasion based on claims that persons on his congressional payroll were paid not for the performance of official duties, but instead for staffing and operating various campaign headquarters in his re-election campaign.¹⁰

House Buildings, and House Rooms and Offices. The House buildings, and House rooms and offices – including district offices – are supported with official funds and hence are considered official resources. Accordingly, as a general rule, they may not be used for the conduct of campaign or political activities.

Thus, for example, a Member may not film a campaign commercial or have campaign photos taken in a congressional office. For rules on filming and taking of photos on grounds near the Capitol, the office of the Sergeant at Arms should be contacted.

In addition, House rooms and offices are not to be used for events that are campaign or political in nature, such as a meeting on campaign strategy, or a reception for campaign contributors.¹¹ However, under long-standing Committee policy, when a Member is sworn in, the Member may hold a “swearing-in” reception in a House office building that is paid for with campaign funds.¹² A criminal statute that prohibits the solicitation of campaign contributions in any House building, room, or office is discussed below in this chapter, in the section on solicitation of contributions.

⁹ *United States v. Bresnahan*, Crim. No. 93-0409 (D.D.C. 1993); see Senate Comm. on Rules and Administration, *Senate Election Law Guidebook* 2006, S. Doc. 109-10, 109th Cong., 1st Sess. 266.

¹⁰ *United States v. Clark*, Crim. No. 78-207 (W.D. Pa. 1978); see S. Doc. 109-10, *supra* note 9, at 265-66.

¹¹ The Speaker’s office has issued a set of rules for use of the meeting rooms under the Speaker’s jurisdiction, and those rules prohibit use of those rooms for, among other things, political purposes. In addition, as noted in the text, a provision of the criminal code, 18 U.S.C. § 607 generally prohibits the solicitation or receipt of campaign contributions in federal offices, including the House office buildings and district offices, in connection with a federal, state, or local election.

¹² In addition, there are events that, while not campaign or political events, may properly be paid for with campaign funds (*e.g.*, a reception for visiting constituents). An event of this nature may be held in a House building, even though it is paid for with campaign funds. This and other matters are discussed later in this chapter.

Coverage of House Floor and Committee Proceedings. Broadcast coverage and recordings of House floor proceedings may not be used for any political purpose under House Rule 5, clause 2(c)(1). In addition, under House Rule 11, clause 4(b), radio and television tapes and film of any coverage of House committee proceedings may not be used, or made available for use, as partisan political campaign material to promote or oppose the candidacy of any person for public office.

Internal Office Files. As discussed below, a congressional office may provide campaign personnel with copies of its press releases and other materials that were distributed publicly. However, the internal office files, such as research files on legislation, may not be used for campaign or political purposes.

Example 2. A Member's campaign wishes to make commercials featuring testimonials by individuals whom the office has assisted on casework matters. The office casework files may not be reviewed to obtain names of individuals whom the office has assisted. Likewise, the office files may not be reviewed to obtain names of individuals to solicit for campaign contributions.

Official Mailing Lists. The *Members' Handbook* issued by the Committee on House Administration provides that official funds may be used to purchase and produce mailing lists, provided that, among other things, "the list does not contain any campaign, campaign related, or political party information." The *Handbook* further provides that a Member may not use official funds to purchase mailing lists from the Member's campaign "unless the lists are available on the same terms to other entities through an arms length marketplace transaction." (Note that subject to the same conditions, a Member also has the option of purchasing a mailing list from his or her campaign with personal funds and then making that list available for use by the congressional office.)

The *Members' Handbook* also provides that, "[o]fficial mailing lists may not be shared with a Member's campaign committee, any other campaign entity, or otherwise be used for campaign purposes."

Letters, News Releases, Other Printed Materials, and E-mails. Under regulations issued by the Committee on House Administration, neither a letter nor any other kind of document (including a news release) may be printed on official House stationery unless the content of the document complies with the Franking Regulations. House Administration Committee regulations further provide that any advertisement paid for by a congressional office, as well as any printed materials produced by an office, must be frankable in content. E-mails sent by a congressional office must likewise comply with the Franking Regulations.

The Franking Regulations are issued by the House Franking Commission, and they govern use of the frank under 39 U.S.C. § 3210 and related statutes.¹³ Statutory law provides that it is Congress' intent that the frank **not** be used for, among other things,

mail matter which specifically solicits political support for the sender or any other person or any political party, or a vote or financial assistance for any candidate for any political office. [39 U.S.C. § 3210(a)(5)(C).]

The Franking Regulations elaborate on this provision by prohibiting, among other things, "specific references to past or future campaigns or elections, including election or re-election announcements and schedules of campaign related events," the use of materials "used in campaign literature as well as specific campaign pledges or promises," and "excessive use of party labels." The Franking Regulations further provide that when a Member submits a sample of a mass mailing to the Franking Commission for an advisory opinion on frankability, the office must also submit a signed Franking Certification Form that represents that the mailing does not and will not –

contain any logo, masthead design, slogan, or photograph which is a facsimile of any matter contained in the Member's campaign literature.

Any questions on the Franking Regulations should be directed to the staff of the Franking Commission.

While the Franking Regulations prohibit congressional offices from sending letters or issuing press releases that are campaign or political in nature, the Standards Committee understands that the Regulations do **not** necessarily preclude congressional offices from issuing statements on **legislative issues** that are raised in the course of a campaign. Provided that such statements are confined to discussion of legislative issues, they may satisfy the Franking Regulations, and hence may be drafted by congressional staff using the internal office files and other official resources. However, before commencing work on any such statement, a congressional office should consult with Franking Commission staff to ensure that the planned statement will comply with the Regulations.

The 90-Day Ban on Unsolicited Mass Communications. Under statutory law and Committee on House Administration regulations, a Member is prohibited from

¹³ The regulations themselves are set out in a publication of the Franking Commission, *Regulations on the Use of the Congressional Frank by Members of the House of Representatives*, the current issue of which is dated June 1998. The regulations are also available on the Committee on House Administration's website.

spending official funds to make any unsolicited mass communication within 90 days of any election in which the Member's name is on the ballot.¹⁴ The regulations define "unsolicited mass communication" as "any unsolicited communication of substantially identical content to 500 or more persons in a session of Congress."

The official expenditures that are subject to the prohibition include those for mass mailings, advertisements, certain electronic messages and mailings, and the production and distribution of video and audio services. On the other hand, a Member's direct response to an individual communication, such as an incoming letter initiated by a constituent, is not an unsolicited communication in that the constituent is soliciting the Member's response. Such a response is therefore not subject to the prohibition, even if the total number of individual responses is 500 or more.

In addition, according to the *Members' Handbook*, House offices may consider an individual who subscribed to a Member's electronic communication or newsletter to be a "soliciting" a response by the office. As a result, a communication to that individual would not be subject to the 90-day communications ban that applies to unsolicited communications. Although there is no requirement that a Member seek an advisory opinion from the Franking Commission before transmitting an electronic communication or newsletter, the content of the communication is subject to Franking regulations. Questions relating to electronic messages and mailings communications should be directed to the Committee on House Administration and Franking, as appropriate.

Note that the ban applies to communications paid for with official funds. Thus the ban does not prohibit a Member who is within the 90-day "cut-off" from, for example, accepting the invitation of a charitable organization to tape a bona fide public service announcement using facilities provided by the organization. In addition, at times a Member is asked to appear at and lend his or her name to an event of an outside organization (*see* Chapter 10 on official and outside organizations). Materials that the organization typically prints or publishes regarding such an event would not be subject to the ban.

Questions on the applicability of the ban to communications proposed to be made using official funds should be directed to the Committee on House Administration. However, occasionally questions have arisen on whether a Member who is in his or her cut-off period can make a mass communication that is official in nature using nonofficial resources (for example, the services of a state or local government entity). Questions of that nature are within the jurisdiction of the Standards Committee, and the Committee has taken the position that such an

¹⁴ Statutory law (39 U.S.C. § 3210(a)(6)) applies the ban to mass mailings, and the regulations extend the ban to other forms of communication.

undertaking would not be permissible in that it would be inconsistent with the spirit of the ban on unsolicited mass communications.

Member and Committee Websites. Under rules issued by the Committee on House Administration set forth in the *Members' Handbook* and the *Committees' Handbook*, Member and Committee websites –

- May **not** include personal, political, or campaign information; and
- May **not** be directly linked or refer to websites created or operated by a campaign or any campaign-related entity, including political parties and campaign committees.

Further information on the rules governing Member and Committee websites is available from the Committee on House Administration.

As to Member **campaign** websites, the Standards Committee has advised that –

- Such a site may **not** include a link to the Member's House website; and
- The Member's House website may not be advertised on his or her campaign website or in materials issued by the campaign.

This matter is also addressed at the end of this chapter.

Travel. Member and staff travel, including to one's district, may be paid with official funds only if the **primary purpose** of the trip is the conduct of **official business**. As a general matter, a Member or staff person, while on official travel, may engage in incidental campaign or political activity, provided that no additional travel expenses are incurred as a result. However, when the primary purpose of a trip is in fact the conduct of campaign or political activity, then the travel expenses must be paid with campaign funds and cannot be paid with official funds.¹⁵

The *Members' Handbook* and the *Committees' Handbook* issued by the Committee on House Administration include provisions on campaign activity in the course of travel paid for with House funds. Thus when a Member or staff person wishes to engage in any such activity in the course of an official trip, he or she

¹⁵ In the 104th Congress an investigative subcommittee of the Standards Committee adopted a Statement of Alleged Violation against a Member, one count of which alleged a misuse of official resources on the basis that official funds had been used to pay travel expenses of a staff member for a trip the primary purpose of which was to attend a campaign fundraising event for the Member. No further action was taken in the case, however, because as of the time the investigative subcommittee completed its work, the Member was about to depart the House. See H. Rep. 104-876, *supra* note 7.

should first review the section of the appropriate *Handbook* on travel and consult with the Committee on House Administration staff as necessary.

Redistricting. Prior to May 2001, both the Standards Committee and the Committee on House Administration had taken the position that the use of House resources for redistricting purposes was absolutely prohibited. That policy was based on the view that redistricting is an inherently political activity. However, in a joint Dear Colleague letter of May 24, 2001, the two committees advised that House resources **may** be used for redistricting-related activities – such as responding to constituent inquiries, and Member meetings and briefings – that are merely incidental to each day’s official business, and that are minimal in nature, frequency, time consumed, and use of resources. A copy of that joint Dear Colleague letter is reprinted in the appendices to this Manual.

The matter of Member involvement with independent redistricting funds is discussed at the end of this chapter.

Limited Campaign-Related Activities That May Take Place in a Congressional Office

The purpose and effect of the laws and rules enumerated above are generally to preclude campaign or political activity from taking place in a congressional office. However, the Standards Committee has recognized that there are certain limited activities that, while related to a Member’s campaign, may properly take place in a congressional office. The Committee’s view has been that it would be impractical and unnecessary to attempt to prohibit these specific activities. In this regard, the Committee has long advised that the following activities are permissible:

Coordination of the Member’s Schedule. The individual in the congressional office who handles the Member’s schedule may coordinate with those in the campaign office who schedule the Member’s campaign appearances. Obviously, a Member can be in only one place at any one time, and thus it is necessary for schedulers to communicate. The congressional office scheduler may also maintain an integrated schedule that reflects the Member’s political as well as official activities, but that schedule is for the internal use of the Member and staff only.

While coordination between schedulers is permissible, as a general matter, the congressional office scheduler should not make travel arrangements for the Member’s campaign trips either in the congressional office or while on official time. However, a member of the congressional staff who wishes to perform those duties may do so on his or her own time and outside of congressional space, such as at the office of one of the congressional campaign committees. The matter of campaign work by House employees on their own time and outside of congressional office space is discussed in detail below.

The Press Secretary. 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, the press secretary should not give an interview that is substantially devoted to the campaign, or initiate any call that is campaign-related. A press secretary wishing to do either of those things should do so outside of the congressional office, and on his or her own time (*see below*).

Example 3. In the course of a lengthy interview in the congressional office on how the Member plans to vote on a controversial issue coming before the House, a reporter asks the press secretary how the Member perceives that her vote will affect her upcoming re-election. The press secretary may answer the question. However, if the reporter continues to ask questions on the campaign, the press secretary should terminate the interview. If the press secretary wishes to do so, she may resume the interview outside of congressional space (such as at the office of one of the congressional campaign committees) and on her own time.

Campaign/Congressional Office Referrals. 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.

Example 4. A congressional office receives a call from a constituent who wishes to do volunteer work for the Member's campaign. The staff person may provide the constituent with the address and telephone number of the campaign headquarters.

All such referrals should be done at the expense of the campaign, including the cost of any long-distance telephone calls. It may be desirable for the congressional office to have a supply of campaign envelopes and stamps for use in referring written materials. Those stamps and envelopes can also be used to send to the campaign any unsolicited campaign contributions that are received in the congressional office (*see discussion below on "No Solicitation in House Offices, Rooms, or Buildings"*).

Providing Published Materials to the Campaign. A congressional office may provide a campaign office with a copy of any materials that the congressional office has issued publicly, such as press releases, speeches, and newsletters. In stating that such activity is permissible, the Standards Committee assumes that only a minimal amount of congressional staff time will be consumed in responding to campaign requests for materials of this nature. However, in no event should the

congressional office provide the campaign with a quantity of any such item for distribution by the campaign.

Example 5. In the past year the Member has been very active on the gun issue. The campaign wishes to issue a brochure on the issue, and a campaign worker asks the congressional office for a copy of all the statements and releases the Member issued on guns. The congressional office may provide one copy of the requested material to the campaign.

Other materials in the congressional office files – including, for example, back-up memoranda on issues – are **not** to be shared with the campaign or otherwise used for campaign purposes. Those materials are to be used for official purposes only. Congressional staff members should not do research on behalf of the campaign or write campaign speeches or other materials while on official time or using official resources.

A separate question that arises at times is whether a Member's campaign, having received a copy of an item that the congressional office issued publicly – such as a press release or *Congressional Record* statement – may then reproduce and distribute that item at campaign expense. The Standards Committee addressed this matter in its *Advisory Opinion No. 6*, which was issued on September 14, 1982, and is reprinted in updated form in the appendices. A Member's campaign is free to reproduce and distribute, for campaign purposes, materials that were originally prepared by the congressional office, provided that the following requirements are satisfied:

- The materials were prepared by the congressional office for a bona fide official purpose, and the official use of the materials has been exhausted;
- All the expenses associated with reproducing and distributing the materials are paid from campaign funds; and
- The materials themselves or the context in which they are presented clearly establishes their campaign or political purposes and hence their nonofficial use, so that there is no appearance that private funds are supplementing official allowances.

In reproducing such materials, the campaign must remove all official indicia, such as the official letterhead from a press release that the congressional office had issued, and any references to the address or telephone number of the congressional office. The name of any congressional staff contact that appeared in the material as issued originally must also be deleted. Subject to the same requirements, such materials may also be posted on the Member's campaign website.

A question may arise as to when the official use of an item has been "exhausted" as that term is used here. As a general matter, the official use of the normal press release is exhausted once it has been disseminated and the media

have had an opportunity to utilize its contents. Thus usually a campaign will be able to reproduce the contents of congressional office press releases a few days after their original issuance, provided that the other requirements set forth above are satisfied. On the other hand, when a congressional office posts a statement setting out the Member's views on the major issues on its official website, the Member's campaign is not free to reproduce that statement so long as it remains on the official website. So long as a statement of that nature remains posted on the official site, its official use is not exhausted.

Responding to Questionnaires on Legislative Issues. Congressional offices frequently receive questionnaires from outside organizations, and often those organizations use the responses to the questionnaires in deciding whether to endorse the Member for re-election. When a questionnaire is limited to legislative issues and the content of the response would comply with the Franking Regulations, the response may be prepared by congressional staff on official time. Otherwise, the response should be prepared by campaign staff.

Nonpartisan Voter Registration Materials. A Member may make nonpartisan voter registration information available in a congressional office, but may not actually register people to vote there. In addition, the franking statute (39 U.S.C. § 3210(a)(3)(H)) provides that nonpartisan voting registration or election information is frankable.

Except as outlined above, the Standards Committee expects Members to enforce the general rule that any campaign-related activities done by staff members will be done on their own time, outside of congressional space, and without the use of any official House resources.

Campaign Work by House Employees Outside the Congressional Office and on Their Own Time

Once House employees have completed their official duties, they are free to engage in campaign activities on their own time, as volunteers or for pay, as long as they do not do so in congressional offices or facilities, or otherwise use official resources. Executive branch personnel are subject to restrictions on partisan political activity by the Hatch Act (5 U.S.C. § 7321 *et seq.*), but those restrictions do not apply to congressional employees.¹⁶

It should be stressed that although House employees are free to engage in campaign activities on their own time, in no event may a Member or office compel a House employee to do campaign work. To do so would result in an impermissible

¹⁶ The restrictions on executive branch personnel were considerably eased in a 1993 enactment, the Hatch Act Reform Amendment, Pub. L. 103-94, 107 Stat. 1001 (1993).

official subsidy of the Member's campaign.¹⁷ The prohibition against coercing staff or requiring staff members to do campaign work is quite broad. It forbids Members and senior staff from not only threatening or attempting to intimidate employees regarding doing campaign work, but also from directing or otherwise pressuring them to do such work.

What Is an Employee's "Own Time"?

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. However, a Member may not adjust the work requirements of the congressional office, or add unpaid interns during the campaign, in order to create more "free" time for staff to do campaign work. To help ensure compliance with the rules, office policies on employee leave and other free time should be in writing and distributed to all employees.

The Standards Committee has recognized that the hours that constitute a staff member's "own time" will not always correspond to evenings and weekends:

[D]ue to the irregular time frames in which the Congress operates, it is unrealistic to impose conventional work hours and rules on congressional employees. At some times, these employees may work more than double the usual work week — at others, some less. Thus employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods. If, during the periods he is free, he voluntarily engages in campaign activity, there is no bar to this.¹⁸

In addition to engaging in campaign activity while on annual leave or during other free time, employees may do so by —

- Reducing their employment in the congressional office to part-time status, with a corresponding reduction in salary; or

¹⁷ Depending on the circumstances, compelling a House employee to do campaign work may also violate a provision of the federal criminal code, 18 U.S.C. § 606. That statute covers intimidation to secure not only monetary contributions for a political purpose, but anything of value, apparently including services.

¹⁸ House Comm. on Standards of Official Conduct, *Advisory Opinion No. 2* (July 11, 1973). However, the professional staff members of House committees should note clause 9(b)(1)(A) of House Rule 10, which provides that such staff members "may not engage in any work other than committee business during congressional working hours."

- Going on Leave Without Pay (“LWOP”) status for the purpose of working on the campaign.

However, prior to going on LWOP status, an employee should carefully review the requirements for that status that are set out in the *Members’ Handbook* and the *Committees’ Handbook* issued by the Committee on House Administration and should consult with staff of that committee as necessary.

Employees who do campaign work while remaining on the House payroll should keep careful records of the time they spend on official activities and, separately, on campaign activities, and demonstrate that campaign work was not done on official time. There is no set format for maintaining such time records.

The rules governing campaign work by House employees were implicated in a Standards Committee disciplinary case that was completed in the 106th Congress.¹⁹ In that case the Committee determined that a Member had violated the House Code of Official Conduct in that his staff members worked for his campaign during regular office hours without taking annual leave or going on Leave Without Pay status, or taking any other steps to ensure that those services were rendered during time that was properly deemed the employee’s “own time.”²⁰ The employees in that office took “administrative leave” whenever they performed campaign work. However, they were paid their full congressional salary while on “administrative leave,” and the office had no system in place to ensure that time spent in that status was recorded and was either made up at alternate times or charged as vacation time.²¹

Need To Comply With Laws and Rules Applicable to House Employees While Doing Campaign Work

All House employees who do campaign work should bear in mind that they continue to be bound by the laws and rules applicable to House employees. This applies to employees who go to part-time status, and it applies as well to employees on LWOP status, who continue to be employees of the House (and continue to be eligible for certain employee benefits) even though they are not receiving compensation from the House. House employees should take particular note of the following.

The Prohibition Against Making a Contribution to One’s Employing Member. A provision of the federal criminal code, 18 U.S.C. § 603, makes it unlawful for any

¹⁹ H. Rep. 106-979, *supra* note 4

²⁰ *Id.* at 3G, 3I, 6-7, 51-64.

²¹ *Id.* at 54.

federal officer or employee to make certain campaign contributions to “the employer or employing authority of the person making the contribution.” Accordingly, an employee of a Member office is prohibited from making a “contribution” as that term is used in the statute (*see* below) to his or her employing Member. Regarding the employees of a House committee, the legislative history of the statute provides as follows:

An individual employed by a congressional committee cannot contribute to the chairman of that particular committee. If the individual is employed by the minority that individual cannot contribute to the ranking minority member of the committee or the chairman of the committee.²²

The contributions to which the statute applies are those made to influence a federal election – that is, the term contribution is defined in the statute by reference to the definition of that term stated in the Federal Election Campaign Act (“FECA”) (2 U.S.C. § 431(8)). The statute goes on to provide that a contribution to an “authorized committee” as defined in the Act (*id.* § 432(e)(1)) is considered a contribution to the individual who authorized the committee.

The prohibition against an employee making such a contribution to the individual’s employing Member is absolute. A House employee may not make such a contribution even if the contribution was entirely unsolicited and the employee genuinely wishes to make the contribution. As a result of this statute, a House employee may not purchase a ticket to a campaign fundraising event for the employing Member.²³

The definition of the term contribution in the FECA is quite detailed, setting out a number of items that either do or do not constitute a contribution for purposes of the Act.²⁴ The definition is elaborated upon in the implementing regulations issued by the Federal Election Commission (“FEC”).²⁵ Staff members who do

²² Comm. on House Admin., *Federal Election Campaign Act Amendments of 1979*, H. Rep. 96-422, 96th Cong., 1st Sess. 26 (1979).

²³ Regarding the circumstances in which a House employee may accept a free ticket to a campaign fundraising event, see discussion below on “Gift Rule Provisions Applicable to Campaign Activity.”

²⁴ 2 U.S.C. § 431(8). The statute provides that among the items that do **not** constitute a contribution for purposes of FECA is “the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee.” *Id.* § 431(8)(B)(i). Thus a House employee does **not** make an impermissible contribution to his or her employing Member by doing volunteer work for the Member’s campaign.

²⁵ 11 C.F.R. § 100.51 *et seq.*

campaign work need to be familiar with those provisions so as to avoid making a prohibited contribution to their employing Member.

In particular, staff members should be aware that under FEC regulations, most **outlays** that an individual makes on behalf of a campaign are deemed to be a **contribution** to that campaign from that individual.²⁶ **This is so even if it is intended that the campaign will reimburse the individual promptly.** The major **exception** to this rule is for outlays that an individual makes to cover expenses that he or she incurs in **traveling** on behalf of a campaign.²⁷

Accordingly, a House employee should **not** make **any** outlay on behalf of the employing Member's campaign, other than outlays for the employee's personal travel expenses that are consistent with the FEC regulations, or for another purpose that is deemed not to constitute a contribution under FECA or the regulations.²⁸

Example 6. A Member's campaign wishes to purchase some souvenirs from the House gift store to give as gifts to the Member's supporters. An employee of the Member's congressional office may not purchase the items with her own money or a personal credit card, even if the campaign makes arrangements to reimburse her promptly. However, the Member may purchase the souvenirs with his personal funds and receive reimbursement from the campaign.

Thus when a House employee undertakes to do campaign work – on the employee's own time and outside of congressional space, in accordance with the rules summarized above – the individual should make appropriate arrangements with the campaign to ensure that he or she will not be called upon to make any improper outlays. The arrangements may include, for example, providing the individual, in advance, with any funds that might be needed to cover anticipated campaign expenses, or providing the individual with use of a campaign credit card.

²⁶ *Id.* § 116.5(b).

²⁷ Outlays for one's own travel will not be deemed a contribution if either (1) the campaign provides reimbursement within 60 days after the expenses are incurred if payment was made by credit card, or within 30 days in all other cases (*id.* § 116.5(b)(1), (2)), or (2) the individual's outlays for transportation do not exceed \$1,000 with respect to a single election, regardless of whether the campaign reimburses the outlays (*id.* § 100.79(a)).

²⁸ One set of provisions that may be applicable here is that which excludes from the definition of "contribution" an expenditure by an individual of up to \$1,000 per election for food, beverages, and invitations for a campaign event held in the individual's home or in a church or community center. *See* 2 U.S.C. § 431(8)(B)(ii) and 11 C.F.R. §100.75-.77. Another provision excludes from the definition of "contribution" the use of computer equipment in connection with internet activities for the purpose of influencing a federal election. 11 C.F.R. § 100.94.

While the law prohibits House employees from making campaign contributions to their employing Member, the law does **not** prohibit them from making a campaign contribution to any other candidate, including another House Member. In addition, the law does not prohibit House employees from making contributions to multicandidate political committees, such as a PAC or the Democratic or Republican Congressional Campaign Committees, even though some of the proceeds received by such committees may eventually be spent for the benefit of the contributor's employee. In making such a contribution, however, an employee should not earmark it for use in the campaign of the employing Member, because that could be deemed a contribution from the employee to the Member.²⁹

With regard to those contributions from House employees that are not prohibited by 18 U.S.C. § 603, both Members and staff should bear in mind that a separate provision of the federal criminal code, 18 U.S.C. § 606, prohibits the use of intimidation to secure such contributions. Specifically, that statute makes it unlawful for a Senator, Representative, or federal officer or employee to discharge, demote, or promote another federal officer or employee, or to threaten or promise to do so, for making or failing to make "any contribution of money or other valuable thing for any political purpose."

Requirement That Each Employee Perform Duties Commensurate With Compensation. Under House Rule 23, clause 8 a Member is always responsible for ensuring that each of his or her employees performs **official** duties that are commensurate with the compensation that the employee receives from the House. Thus when it is anticipated that an employee will be assuming significant campaign duties, it may be necessary for the employing Member to make an appropriate reduction in the employee's House pay.

Certainly an appropriate reduction in salary is necessary when a full-time employee goes to part-time status in the congressional office in order to do campaign work. Members and staff should also bear in mind that bonuses, including "lump sum" payments, are for the performance of official duties only, and they are **not** to serve as compensation or a reward for campaign work.³⁰

The Gift Rule. The provisions of the gift rule (House Rule 25, clause 5) that apply with regard to campaign and political activity are summarized below at the end of this chapter. Members as well as staff are subject to those provisions of the gift rule when engaging in campaign or political activity. A full explanation of the gift rule is found in Chapter 2 on gifts.

²⁹ See 11 C.F.R. § 110.6.

³⁰ For guidance on "lump sum" payments, see Chapter 7 on staff rights and duties.

Prohibition Against Representing Others Before Federal Agencies. Provisions of the federal criminal code (18 U.S.C. §§ 203, 205) generally prohibit House employees from representing anyone before any government agency, department, court or officer in any matter in which the United States is a party or has an interest. The latter statute applies whether or not the House employee is compensated for his or her services.

These statutes would appear to prohibit a House employee from, for example, representing a campaign committee in a matter before the FEC. However, it also appears that these statutes do not prohibit a House employee from completing and signing contribution and expenditure reports to be filed with the FEC³¹ (although such work would have to be done outside of congressional space and on the employee's own time, in accordance with the rules summarized above). Further information on these statutes is contained in Chapter 5 on outside employment and income.

For "Senior Staff," the Annual Limitation on Outside Earned Income and the Outside Employment Restrictions. House employees who are paid at or above the "senior staff" level for more than 90 days in a calendar year are subject both to an annual limitation on their outside earned income and to a set of restrictions on their outside employment.³² (House Members and officers are subject to these same provisions.) As a general matter, the limit and restrictions apply to senior staff who do campaign or political work on a compensated basis.

The "senior staff" pay level is determined on a calendar year basis, and during calendar year 2008, it is an annual rate of \$114,468. Accordingly, any House employee who is paid at or above that rate for more than 90 days during calendar year 2008 is subject to the outside earned income limitation and the outside employment restrictions. The pay threshold for other years is available from the Standards Committee staff.

The dollar amount of the outside earned income limitation is also determined on a calendar year basis, and for calendar year 2008, the limitation is \$25,830. Thus when a House senior staff member works part-time for a campaign, he or she may not receive compensation for campaign services rendered in calendar year 2008 that exceeds \$25,830. The annual limitation applicable to other years is available from the Standards Committee staff.

³¹ See U.S. Office of Government Ethics ("OGE") Advisory Opinions 85 x 3 and 81 x 21, regarding the applicability of 18 U.S.C. §§ 203, 205 to a federal employee preparing income tax returns for others. Copies of OGE advisory opinions are available through OGE's website.

³² House Rule 25, clauses 1, 4; 5 U.S.C. app. 4 §§ 501-505.

However, the Standards Committee has determined that the outside earned income limitation does **not** apply to the campaign salary received by a senior staff member who is on Leave Without Pay status.

Example 7. A senior staff member is paid a total of \$30,000 by her employing Member's campaign for work done during calendar year 2008. Of that amount, \$15,000 was paid for campaign services provided while the staff member was on LWOP status. The staff member has not violated the outside earned income limitation, because the amount paid for work done while on LWOP status does not count toward the annual limitation.

Further information on the outside earned income limitation is found in Chapter 5 on outside employment and income.

The outside employment restrictions define certain activities for which senior staff (as well as House Members and officers) may **not** receive **any** compensation **whatsoever**. The restrictions prohibit senior staff from, among other things, (1) receiving compensation for practicing any profession that involves a fiduciary relationship, including, for example, law or accounting, and (2) serving for compensation as an officer or director of any entity.

Accordingly, a senior staff member, as defined above, may not receive any compensation for either providing legal services to a political organization, or for serving as an officer (such as treasurer) of such an organization. Further information on the employment restrictions applicable to Members, officers, and employees is found in Chapter 5.

Candidacy of a House Employee for Elective Office

At times a House employee wishes to run for an elective office while continuing as an employee. There is no absolute prohibition against a staff member becoming a candidate for a state or local elective office, but such activity is subject to a number of restrictions. Most importantly, the individual's employing Member must consent to the candidacy, and the employee must comply with the rules and requirements on performing campaign activity that are summarized above. Those requirements include that the employee perform congressional duties that are commensurate with the compensation he or she receives from the House – and thus that compensation be reduced proportionately with any reduction in the employee's time in the congressional office – and that any campaign activity be performed on the individual's own time, and outside of congressional space. Further guidance on the matter of staff candidacy for local office is provided in Chapter 5. An employee considering a candidacy for elective office should contact the Committee for specific advice.

However, different considerations apply when a Member is departing office, and one of the Member's employees wishes to become a candidate to succeed the Member. In that circumstance, the Committee has taken the position that the staff member must terminate his or her employment in the congressional office upon becoming a candidate.³³ Among the considerations on which this Committee determination is based are the significant time demands of a congressional candidacy, and the strong potential for conflict of interest when an employee is seeking to succeed the employee's employing Member.

The Committee has also determined that, subject to certain restrictions, a staff member contemplating becoming a candidate to succeed the individual's employing Member may engage in pre-candidacy, "testing the waters" activities without terminating his or her congressional employment. The restrictions include that the individual may do so only if his or her employing Member consents, the employee complies with the rules and regulations that are generally applicable to campaign activity by employees, and the employee's activities do not go beyond "testing the waters" as defined by the FEC. The permissible "testing the waters" activities are described in the FEC publication, *Campaign Guide for Congressional Candidates and Committees*. Among the activities that are prohibited under that advice are any that indicate that the individual has in fact become a candidate, such as the use of general public political advertising, or the raising of funds beyond those reasonably necessary to determine whether one should become a candidate.

Campaign Contributions and Contributors

This section addresses the laws, rules, and standards of conduct on three subjects related to campaign or political contributions:

- The solicitation of contributions;
- The receipt and acceptance of contributions; and
- The general prohibition against taking actions in one's official capacity on the basis of political considerations.

Soliciting Campaign and Political Contributions

While the federal gift statute (5 U.S.C. § 7353) broadly restricts the ability of House Members and staff to **solicit** things of value from virtually anyone, even when no personal benefit to the solicitor is involved, legislative materials concerning the

³³ The same requirement will usually apply when an employee runs for the House in a newly created district resulting from reapportionment, and that district includes part of his or her employing Member's district. Any employee considering running for the House in these circumstances should contact the Committee for specific advice.

statute state that it does **not** apply to the solicitation of political contributions.³⁴ Consistent with those materials, the Standards Committee has long taken the position that the restrictions on solicitation set forth in that statute do not apply to political solicitations. However, in soliciting campaign or political contributions, Members and staff are subject to a number of other restrictions, as follows.

No Knowing Solicitation of Federal Employees. A provision of the federal criminal code, 18 U.S.C. § 602, prohibits Members of Congress and staff (as well as candidates for Congress and other federal employees) from knowingly soliciting any contribution from any other federal officer or employee.

The contributions to which this statute applies are those made to influence a federal election. That is, the term contribution is defined in this statute by reference to the definition stated in the Federal Election Campaign Act (“FECA”) (2 U.S.C. § 431(8)). (As discussed above, “contribution” is defined in the same manner in the statute prohibiting federal employees from making a contribution to their employer, 18 U.S.C. § 603.)

The statute prohibits the “**knowing**” soliciting of contributions from federal employees. Accordingly, an inadvertent solicitation of a federal employee, such as may occur in a general fundraising campaign aimed at the public at large, would not violate the statute.³⁵ In addition, the statute does **not** prohibit the **receipt** of unsolicited contributions from House or other federal employees (although, as previously noted, a separate statute prohibits those employees from making a contribution to their employer).

It is clear both from the terms of 18 U.S.C. § 602 and from its legislative history³⁶ that the solicitation of contributions by House Members from **other Members** does **not** violate the statute. It is also permissible under the statute for House and other federal employees to solicit contributions from Members.

No Solicitation in House Offices, Rooms, or Buildings. The prohibition against House Members or employees soliciting campaign or political contributions in or from House offices, rooms, or buildings is very broad. With one minor exception that is discussed below, the prohibition applies to **all** forms of solicitations – solicitations made in person, over the telephone, or through the mail – and it applies to solicitations of **any** kind of campaign or political contribution, including

³⁴ 136 *Cong. Rec.* H1647 (daily ed. April 24, 1990) (regarding technical corrections to the Ethics Reform Act of 1989).

³⁵ See 113 *Cong. Rec.* 25,703 (Sept. 11, 1973), and H. Rep. 96-422, *supra* note 22, at 25.

³⁶ 125 *Cong. Rec.* 36,754 (1979) (statement of Sen. Hatfield).

contributions subject to FECA, and contributions for a state or local campaign, and so-called “soft money” contributions.

A telephone solicitation from a House office or building would **not** be permissible merely because the call is billed to a credit card of a political organization or to an outside telephone number, or because it is made using a cell phone in the hallway. Similarly, when a House Member or employee makes solicitation calls somewhere else, such as at one of the campaign committee offices, and has to leave a message, the individual should **not** leave his or her House office telephone number for the return call. In addition, a fundraising mailing should not be either prepared or assembled in a House room or office, even if no House equipment or supplies are used in the process.

These prohibitions derive from both a provision of the federal criminal code, 18 U.S.C. § 607,³⁷ as well as from rules and standards of conduct of the House. The criminal statute makes it unlawful “to solicit or receive a donation of money or other things of value in connection with a Federal, State, or local election from a person who is located in a room or building occupied in the discharge of official duties.” The statute prohibits the solicitation or receipt of contributions, including “soft money” contributions, by federal officials and from anyone who is located in a federal building occupied by federal officials or employees used to discharge official duties. (The provisions of this statute regarding the receipt of such contributions in those rooms and buildings are discussed below.) The statute by its terms applies to the House office buildings, the Capitol, and district offices.

In addition, the rules issued by the House Office Building Commission concerning the use of the House office buildings prohibit the soliciting of contributions in the buildings other than for certain charitable purposes.³⁸ Moreover, as discussed above, the House rooms, offices, and buildings are considered official resources, and as such, they are **not** be used for the conduct of **any** campaign or political activity, including the solicitation of contributions.

However, with one exception,³⁹ the rules and standards of conduct enforced by the Standards Committee do **not** prohibit **Members** from soliciting (or receiving) campaign or political contributions **from other Members** in the House buildings.

³⁷ The statute was amended by § 302 of the Bipartisan Campaign Reform Act of 2002, Pub. L. 107-155, 116 Stat. 96 (March 27, 2002).

³⁸ Rules of the House Office Building Commission were last revised in February 1999 (available from the Speaker’s office).

³⁹ See House Rule 4, cl. 7 (“A Member, . . . officer, or employee of the House, or any other person entitled to admission to the Hall of the House or rooms leading thereto by this rule, may not knowingly distribute a political campaign contribution in the Hall of the House or rooms leading thereto.”).

Long ago the House took the position that Member-to-Member solicitation is permissible, notwithstanding a criminal statute (predecessor to current 18 U.S.C. § 607) that generally barred political solicitations in federal buildings.⁴⁰ The Standards Committee has reiterated that position in a number of advisory memoranda it has issued to the House, the first of which was dated November 21, 1985.

Several points regarding Member-to-Member solicitation in the House buildings should be noted:

- This guidance applies **only** to Member-to-Member solicitations. Staff solicitation of Members in House buildings, even when done at the direction of a Member, or when done from telephones located in a campaign office, is **not** permissible.
- Members may solicit other Members in person, over the telephone, or through the mail, but the use of official stationery in making written solicitations is **not** permissible.
- While the Justice Department has responsibility for enforcing the criminal statute in this area, 18 U.S.C. § 607, so far as the Standards Committee is aware, the Department's assent to the position of the House on Member-to-Member solicitation, as summarized above, has never been sought.

No Use of Other Official Resources. The laws, rules, and standards of conduct discussed above that generally prohibit the use of official House resources for campaign or political activity certainly prohibit their use in soliciting campaign or political contributions. The resources subject to this prohibition include office equipment, such as the computers, telephones and fax machines, office supplies, official stationery, and congressional staff time. House employees may be involved in soliciting campaign contributions only on their own time and outside of congressional space, as discussed above.

No Use of a Facsimile of Official Stationery. Later in this chapter, the rules on letterhead used for campaign purposes are discussed. Those rules clearly apply to any letter that solicits campaign or political contributions.

No Link With an Official Action or Special Access. The chapter on gifts makes the point that a House Member or employee should never accept any gift that is linked to any official action that he or she has taken or is being asked to take, and it includes a discussion on the criminal bribery and illegal gratuities

⁴⁰ 6 *Cannon's Precedents of the House of Representatives* § 401 (1936), concerning a resolution on this matter that was approved by the House in 1913.

statutes. Similarly, no solicitation of a campaign or political contribution may be linked to an action taken or to be taken by a Member or employee in his or her official capacity. An early work on congressional ethics addresses this subject as follows:

It is probably not wrong for the campaign managers of a legislator . . . to request contributions from those for whom the legislator has done appreciable favors, but this should never be presented as a payment for the services rendered. Moreover, the possibility of such a contribution should never be suggested by the legislator or his staff at the time the favor is done. Furthermore, a decent interval of time should be allowed to lapse so that neither party will feel that there is a close connection between the two acts. Finally, not the slightest pressure should be put upon the recipients of the favors in regard to the campaign.⁴¹

The Standards Committee has long advised Members and staff that they should always exercise caution to avoid even the appearance that solicitations of campaign contributions are connected in any way with an action taken or to be taken in their official capacity.

Example 8. A House staff member is working with representatives of a corporation on legislation supported by that corporation. The staff member may do campaign work consistent with the rules set out above, including soliciting contributions. However, at least while the staff member is doing that legislative work, and for a reasonable period thereafter, he should not solicit contributions from the representatives of that corporation.

Example 9. As part of its decision-making process on whether to continue to fund a particular Defense Department procurement, a committee sponsors an official fact-finding trip to the facilities of the manufacturer. Company officials propose to hold a campaign fundraiser for a participating Member while he is in town. The Member should decline the suggestion. (If such a trip were instead sponsored and paid for by the manufacturer, Member attendance at a fundraiser during the course of the trip may be precluded in any event by FEC rules. See Chapter 3 on travel.)

Furthermore, a Member should not sponsor or participate in any solicitation that offers donors any special access to the Member in the Member's official capacity. In this regard, in 1987 a Senate Committee Chairman invited lobbyists and PAC directors to join a "Chairman's Council," the members of which would

⁴¹ Paul H. Douglas, *Ethics in Government* 89-90 (1952).

donate \$10,000 to his campaign and have breakfast with him once a month, at which legislative matters could be discussed.⁴² While the Senator dissolved the club soon after it was publicized,⁴³ later in the year the Senate Ethics Committee issued a ruling on whether Senators may offer membership in policy discussion groups in return for campaign contributions. In discussing the matter, the Senate Committee observed:

Offering campaign contributors access to those discussions [of policy and legislative issues] in direct return for campaign contributions creates the appearance that contributors receive special access to the Members, and thereby exercise undue influence on the legislative process.

The Senate Committee's ruling was as follows:

While solicitations offering access to policy discussion groups may violate no law or Senate rule, they nonetheless affect public confidence in the Senate. Therefore, Senators should not make solicitations which may create the appearance that, because of a campaign contribution, a contributor will receive or is entitled to either special treatment or special access to the Senator.⁴⁴

House Members should adhere to the same rule with regard to official access.

Do Not Direct Contributions to a House Office. A solicitation for campaign or political contributions should not in any way request or suggest that the recipient mail or deliver a contribution to a House office. As explained immediately below, federal law allows the receipt of a contribution in a congressional office, but only if the contribution arrives there unexpectedly. Accordingly, for example, a written solicitation should not include any House office address. (For that matter, a House office address or telephone number should not be included on **any** political communication.) Likewise, oral solicitations should not contain any suggestion that response may be made to the congressional office.

Receipt and Acceptance of Contributions

The gift rule (House 25, clause 5) prohibits House Members and staff from accepting any gift except as specifically provided in the rule. One of the gifts that Members and staff may accept under a provision of the rule (clause 5(a)(3)(B)) is:

⁴² *Wash. Post*, Feb. 3, 1987, at A1.

⁴³ *Id.*, Feb. 7, 1987, at A1.

⁴⁴ Senate Select Comm. on Ethics, *Interpretative Ruling No. 427* (Sept. 25, 1987).

[a] contribution, as defined in section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) that is lawfully made under that Act, [and] a lawful contribution for election to a State or local government office.

Accordingly, acceptance of an unlawful contribution under either FECA or applicable state law may violate the House gift rule as well.

Receipt of a Contribution in a House Office. As indicated above, a provision of the federal criminal code, 18 U.S.C. § 607, generally prohibits the receipt of federal campaign contributions “in a room or building occupied in the discharge of official duties by an officer or employee of the United States.” However, the statute includes, in subsection (b), an exception stating that the prohibition does not apply to contributions received by congressional staff, provided that two requirements are satisfied:

- “such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any [federal] room, building, or other facility,” and
- “such contributions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.”

Accordingly, receipt of a contribution in a House office is permissible under the statute only if the contribution arrives there unexpectedly. Thus, as stated above, a solicitation should never request or suggest that a contribution be sent or delivered to a House office, and furthermore, Members and employees may not assent in advance to the sending or delivery of a contribution to a House office.

Example 10. In a conversation with an individual who will be visiting the Member in the congressional office, a staff person learns that the individual intends to give the Member a campaign contribution during the visit. The staff person should tell the individual that the Member will not be able to accept the contribution in the office and that an alternative means of tendering the contribution will have to be used.

However, merely because a contribution does not violate 18 U.S.C. § 607 in that it was presented or received in the office unexpectedly does **not** necessarily mean that the contribution may be accepted. A contribution that is linked with an official action that a Member or employee has taken or is being asked to take may not be accepted. This would occur, for example, if a purpose of an individual’s visit to the office, in addition to presenting a contribution, is to urge the Member to support a particular piece of legislation. This point is further discussed below.

The requirement of 18 U.S.C. § 607 that a contribution be transferred to the campaign within seven days must be satisfied without use of any official resources. Campaign envelopes and stamps may be used to forward such contributions, and thus it may be desirable for a congressional office to have a supply of those envelopes and stamps for use in forwarding both contributions and campaign-related inquiries that are received in the office.

A Contribution Linked to an Official Action May Not Be Accepted. As discussed above, no solicitation of a campaign or political contribution may be linked to any action taken or to be taken by a Member or employee in his or her official capacity.

In a similar vein, a Member or employee may not accept any contribution that the donor links to any official action that the Member or employee has taken, or is being asked to take. In this respect, a campaign or political contribution is treated like any other gift, and acceptance of a contribution in these circumstances may implicate a provision of the federal gift statute (5 U.S.C. § 7353) or the criminal statutes on bribery and illegal gratuities.

Further information on this subject is available in Chapter 2 on gifts. Please note, however, that while certain token gifts of appreciation (such as candy or flowers) for an official action may be acceptable, no campaign contribution that is linked to an official action is ever acceptable.

Example 11. An office receives a letter from a constituent requesting casework assistance. A check made out to the Member's campaign is enclosed with the letter, but the letter makes no reference to the check. While the office may assist the constituent, the check must be returned to the constituent. Because the check was sent with a request for assistance, it is impermissibly linked with an official action.

Prohibition Against Linking Official Actions to Partisan or Political Considerations

As detailed above, a solicitation for campaign or political contributions may not be linked with an official action taken or to be taken by a House Member or employee, and a Member may not accept any contribution that is linked with an action that the Member has taken or is being asked to take. A corollary of these rules is that Members and staff are not to take or withhold any official action on the basis of the campaign contributions or support of the involved individuals, or their partisan affiliation. Members and staff are likewise prohibited from threatening punitive action on the basis of such considerations.

Questions in this area have arisen most frequently on the matter of casework, and on this subject, the Standards Committee has long advised Members

and staff that they are **not** to give preferential treatment to casework requests made by the Member's supporters or contributors. Instead, **all** requests for casework assistance are to be handled according to their merits. *Advisory Opinion No. 1* of the Standards Committee, which was issued in 1970, states that one of the basic standards of conduct regarding casework is the following:

A Member's responsibility in this area is to all his constituents equally and should be pursued with diligence irrespective of political or other considerations.⁴⁵

Essentially the same point was made in a report issued by the Senate Select Committee on Ethics in connection with the "Keating Five" case:

The cardinal principle governing Senators' conduct in this area is that a Senator and a Senator's office should make decisions about whether to intervene with the executive branch or independent agencies on behalf of an individual without regard to whether the individual has contributed, or promised to contribute, to the Senator's campaigns or other causes in which he or she has a financial, political or personal interest.⁴⁶

While the guidance set forth above is specifically addressed to the handling of casework matters, that guidance is applicable to **all** official actions taken by Members and staff, including with regard to legislation. In this regard, one of the key provisions of the Code of Ethics for Government Service states, in ¶ 5, that government officials should "[n]ever discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not." The Code further provides, in ¶ 10, that "public office is a public trust," and thus the public has a right to expect House Members and staff to exercise impartial judgment in performing their duties.

More generally, one of the ultimate purposes of the ethics rules is to help ensure that each governmental action is taken on the merits of the particular question, rather than any extraneous factors. On this point, one scholar on government ethics has stated: "Ethics rules, if reasonably drafted and reliably enforced, increase the likelihood that legislators (and other officials) will make decisions and policies on the basis of the merits of issues, rather than on the basis of factors (such as personal gain) that should be irrelevant."⁴⁷

⁴⁵ The full text of *Advisory Opinion No. 1* is reprinted in the appendices to this Manual.

⁴⁶ Senate Select Comm. on Ethics, *Investigation of Sen. Alan Cranston*, S. Rep. 102-223, 102d Cong., 1st Sess. 11-12 (1991) (footnote omitted).

⁴⁷ Congressional Ethics Reform: Hearings Before the Bipartisan Task Force on Ethics, U.S. House of Representatives, 101st Cong., 1st Sess. 113 (1989) (statement of Dennis F. Thompson).

Proper Use of Campaign Funds and Resources

The first section of this chapter summarizes the rules to which House Members and staff are subject in their use of **official** House resources, and in particular the prohibition against using those resources for campaign or political purposes. **Campaign** resources – campaign funds, as well as the goods and services acquired with campaign funds – are an entirely separate set of resources available to Members. This section addresses the rules to which House Members and their campaign staff are subject in their use of campaign resources.

As detailed in this section, **both** the House Rules **and** the Federal Election Campaign Act (“FECA”) include provisions regulating the use of campaign funds and resources. The provisions of the House rules apply to **any** campaign funds under a Member’s control, including those for elections to state or local office, whereas the provisions of FECA apply only to campaign funds for federal office. A Member’s use of campaign funds for federal office is permissible only if it complies with the provisions of **both** the House Rules **and** FECA.

The major provision of the House rules on proper use of campaign funds is found in the House Code of Official Conduct, which is set forth in House Rule 23. House Rule 23, clause 6 provides as follows:

A Member, Delegate, or Resident Commissioner –

(a) shall keep his campaign funds separate from his personal funds;

(b) may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures; and

(c) except as provided in clause 1(b) of rule XXIV, may not expend funds from his campaign account that are not attributable to bona fide campaign or political purposes.

In addition, use of campaign funds for official House purposes is limited by provisions of both the House rules and statutory law, including House Rule 24, clause 1 and 2 U.S.C. § 59e(d)(1). At the beginning of the 109th Congress, the House rules were amended to permit the use of funds from the principal campaign account to pay for certain, limited types of official expenses. The purpose of the amendment was to conform House rules to current law (*see* section 105, Pub. L. 108-83, 117 Stat. 1018 (2003)), and the amendment mirrored the Senate rules that took effect in 2002.⁴⁸

⁴⁸ *See* H. Res. 5, 109th Cong., 1st Sess. (151 *Cong. Rec.* H13 (daily ed. Jan. 4, 2005)).

Thus, briefly stated a Member of the House –

- May spend campaign funds for “**bona fide campaign or political purposes**” only (with limited exceptions described below);
- May **not** convert campaign funds or resources to **personal use**, and must be able to verify that campaign resources have not been so misused; and
- May **not** use campaign funds or resources for **official House purposes**, with limited exceptions.

The rules generally preclude personal or official use of not only campaign funds, but also certain equipment, goods, or services acquired with campaign funds – including, for example, equipment such as a fax machine or computer, and the services of paid campaign staff. However, as discussed later in this chapter, a Member may use campaign funds to pay for a cell phone or “personal digital assistant” and use such devices for official and campaign purposes.

Further elaboration is provided below. In addition, reference is made to the provision of FECA on proper use of campaign funds (2 U.S.C. § 439a), and to the regulations and advisory opinions issued by the Federal Election Commission (“FEC”) on that subject. In 2002, through the Bipartisan Campaign Reform Act (Pub. L. 107-155, 116 Stat. 81) (“BCRA”) (also popularly referred to as “Shays-Meehan” or its predecessor measure “McCain-Feingold”), which became effective on November 6, 2002, Congress retained the ban on personal use of campaign funds and codified for the most part the FEC’s previously issued regulations on personal use. On December 13, 2002, the FEC published new regulations, which are found in 11 C.F.R. Part 113, retaining its pre-BCRA personal use regulations, with certain exceptions (discussed below).⁴⁹

Members and staff should contact the FEC with questions regarding that agency’s rules. Two points on those rules that are particularly noteworthy.

First, in addition to consulting the FEC regulations on the matter of impermissible **personal** use of campaign funds, the FEC has issued numerous advisory opinions and they constitute an important body of law in this area.⁵⁰

Second, while FECA allows the use of campaign funds to pay expenses incurred in connection with one’s duties as a federal officeholder, House rules, as noted above, only permit the use of campaign funds for certain **limited** purposes. Accordingly, House Members should not rely on FEC materials that refer to or are

⁴⁹ See 67 *Fed. Reg.* 76962 (Dec. 13, 2002).

⁵⁰ But see 67 *Fed. Reg.* 76972 (noting that FEC Advisory Opinion 1999-1 (banning the use of campaign funds to pay candidate salaries) has been superseded by BCRA).

based on the FECA's provision allowing the use of campaign funds to pay federal officeholder expenses.⁵¹ However, as explained immediately below, because of the broad manner in which "political purposes" is defined for purposes of the House rules, particular uses of campaign funds that the FEC approves as federal officeholder expenses may be permissible under the House rules as "political" expenses.

Use for Bona Fide Campaign or Political Purposes

In General. While House rules provide that campaign funds may be used for "bona fide campaign or political purposes" only, the rules do not include a definition of that term. The Standards Committee has long advised that each Member has wide discretion to determine whether any particular expenditure would serve such purposes, provided that the Member does not convert campaign funds to personal or official uses.

Put another way, the rule is **not** interpreted "to limit the use of campaign funds strictly to a Member's reelection campaign," but instead is interpreted "broadly to encompass the traditional politically-related activities of Members of Congress."⁵² Thus,

if a Member determines, for example, that advertisements in publications of civic organizations, the mailing of holiday greetings to constituents, or travel to meetings with local party officials, would constitute a political expenditure, as so defined, or are otherwise politically-related, then he may use campaign funds for that purpose.⁵³

Accordingly, a Member may use campaign funds to pay for activities that are not overtly political in nature – such as mailing birthday or holiday greetings to constituents – if (1) the Member determines that the activity serves a political purpose, and (2) the activity does not involve a use of campaign funds for any personal purpose. However, as detailed earlier in this chapter, Members and staff must bear in mind that **no** official House resources may be used in support of **any** campaign-funded activity. Thus, for example, holiday greeting cards that are purchased with campaign funds may not be addressed either in the congressional office or by congressional staff while on official time. The same applies to U.S. Capitol Historical Society calendars that are purchased with campaign funds.

⁵¹ See, in this regard, House Comm. on Standards of Official Conduct, *Advisory Opinion No. 6*, which is reprinted in the appendices, for a further discussion.

⁵² House Select Comm. on Ethics, *Final Report*, H. Rep. 95-1837, 95th Cong., 2d Sess. 16 (1979).

⁵³ *Id.*

Example 12. As noted in the text, a Member may use campaign funds to mail holiday greetings to his or her volunteers and contributors. However, a Member may not use campaign funds to send such greetings to family members or personal friends (other than those who are also volunteers or contributors), as to do so would constitute a personal use of campaign funds.

Examples of specific uses of campaign funds on which the Standards Committee has received inquiries are set forth below. By and large, these activities may, under House rules, be paid for with campaign funds, provided that the Member determines that the activity would serve a bona fide political purpose and raises no concern about personal use.

The discussion below also notes the applicable FEC advisory opinions that have been issued to date. When a Member wishes to use campaign funds for a purpose on which the Standards Committee has taken a position but the FEC has not, the Member should consult with the FEC before proceeding.

Charitable or Community Service Projects. As a general matter, campaign funds and resources may be used to establish or support a bona fide charitable or community service project in the Member's district. On this point, FEC Advisory Opinion 1999-34 is instructive.⁵⁴ In that opinion, the FEC approved a Member's use of campaign funds to support a fundraising event for elementary schools in the Member's district. Other participants in the event were local businesses, schools, PTAs, and volunteers. The Member's campaign funds were to be used for printing and postage costs for promotional materials, as well as to match donations made by individuals dollar-for-dollar, up to a maximum donation by the campaign of \$60,000.

One factor in the FEC's decision was that no campaign activity on the Member's behalf would occur at the event or in the promotion or other arrangements for the event. For example, no campaigning would occur at the event, whether by way of speeches, distribution of campaign material, or otherwise, and the campaign would not attempt to use any information on the event's donors for campaign purposes. The opinion indicates that if such campaign activity were planned, then the donations for the event made by individuals and organizations might be deemed campaign contributions to the Member under FECA, and hence subject to the limitations and prohibitions of FECA.

⁵⁴ Copies of this and all other FEC Advisory Opinions are available through the FEC's website at www.fec.gov. The FEC issues written advisory opinions in response to specific written requests, and both the requests and the advisory opinions are publicly available. See 2 U.S.C. § 437f; 11 C.F.R. Part 112.

That Advisory Opinion addresses only the requirements of FECA on proper use of campaign funds, and it does not address the applicable provisions of the House rules. However, in the view of the Standards Committee, a Member may properly determine that expenditures for the purposes and in the circumstances described in that opinion serve a bona fide political purpose and hence are permissible under House rules.⁵⁵

Also relevant here are the facts that FECA generally allows Members to donate campaign funds to a charitable organization, *i.e.*, an organization described in §170(c) of the Internal Revenue Code, and such donations are likewise permissible under the House Rules.⁵⁶

Example 13. A Member wishes to establish a “Books for Kids” program in his district, in which donations of books for use in local libraries are solicited, and the donated books are collected and then made available to libraries. The program may be operated by campaign staff, and campaign funds may be used to pay program costs such as for printing. However, prior to soliciting for books, the Member must obtain the permission of the Standards Committee to make the solicitation (see Chapter 10 for a discussion of the restrictions and limitations on solicitations). In addition, the program must be conducted in compliance with FEC requirements, and no official House resources may be used in furtherance of the program.

In Advisory Opinion 2000-37, the FEC advised a House Member that he could use campaign funds to purchase replica “Liberty Medals” from a private company and award them to veterans in his district who had participated in the D-Day landings in France during World War II. The FEC characterized this undertaking by the Member as “a form of community service.” Significantly, the FEC characterized the cost of the particular medals (about \$13 to \$17 each) as “relatively low,” and went on to caution that the undertaking would be problematic under FEC rules if it entailed the use of campaign funds to confer a “significant personal benefit” upon the recipient veterans.

Payment of Certain Legal Expenses. The Standards Committee has determined that it is generally permissible under House Rules for a Member to use campaign funds to defend legal actions arising out of his or her campaign, election,

⁵⁵ Another FEC Advisory Opinion, 1996-45, approves a Member’s use of campaign funds to pay the expenses of consultants to travel to her district for the purpose of leading a seminar that the Member was sponsoring on racial and ethnic relations. The proposed seminar was to be held after the election and was to include representatives of nonprofit organizations and city agencies in the Member’s district.

⁵⁶ *Final Report*, H. Rep. 95-1837, *supra* note 52, at 16-17.

or the performance of official duties. The basis of this determination is that the protection of a Member's presumption of innocence in such actions is a valid political purpose. Use of campaign funds to pay the legal expenses incurred in other kinds of legal actions may also be permissible. However, campaign funds may not be used when the action is primarily personal in nature, such as a matrimonial action, or could result in a direct personal benefit for the Member.

Before using campaign funds to pay any legal expenses, a Member should consult with the Standards Committee to ensure that the legal services are ones that the Member may properly pay with campaign funds. A Member should also consult with the FEC before using campaign funds for this purpose. In this regard, under the FEC regulations on proper use of campaign funds, payment of legal expenses is among the uses for which the FEC makes determinations on impermissible personal use on a case-by-case basis.⁵⁷ However, the FEC has issued a number of Advisory Opinions on use of campaign funds to pay legal expenses, and an understanding of the approach that the FEC takes on this subject can be obtained through a review of those opinions.⁵⁸

In addition (or alternatively), a Member, officer, or employee may choose to set up a "legal expense fund," independent of any campaign fund, for the purpose of paying the expenses of certain legal actions. The requirements for the establishment of a legal expense fund are described in Chapter 2 on gifts.

In Advisory Opinion 2000-40, the FEC advised that House Members could donate campaign funds to a legal expense fund that had been established by another House Member. However, one of the specific bases of the FEC's decision was the nature of the litigation for which the legal expense fund had been established, and thus the opinion should not be read to grant a blanket approval of the donation of campaign funds to any Member legal expense fund. Any Member considering donating campaign funds to a legal expense fund should consult with both the FEC and the Standards Committee.

Payment of Certain Travel Expenses. Under House Rules, campaign funds may be used to pay travel expenses when the **primary purpose** of the trip is activity that serves a bona fide campaign or political purpose, provided that the outlays are limited to the expenses that are necessarily incurred in engaging in that activity. Thus, quite clearly, campaign funds may be used to pay the expenses of a trip the primary purpose of which is to attend a campaign or political event, or to engage in other campaign activity. The general prohibition on the use of campaign funds for

⁵⁷ 11 C.F.R. § 113.1(g)(1)(ii)(A).

⁵⁸ See, e.g., FEC Advisory Opinions 2006-35, 2005-11, 2003-17, 2003-15, 1998-1, 1997-27, 1997-12, 1996-24, and 1995-23.

personal travel is discussed in the next section of this chapter. The use of campaign funds for official travel is also discussed below.

Notwithstanding the general permissibility of using campaign funds for campaign travel, an amendment to the House Rules enacted during the 110th Congress⁵⁹ generally prohibits House Members from using campaign funds (as well as official funds and personal funds) for travel on a non-commercial aircraft. *See* House Rule 23, clause 15. The prohibition applies to travel on an aircraft unless one of the exceptions to the rule applies, including one that permits the use of campaign funds for a flight when “the aircraft is operated by an air carrier or commercial operator certificated by the Federal Aviation Administration and the flight is required to be conducted under air carrier safety rules.” In other words, campaign funds generally may be used only for commercially scheduled flights and flights provided by a commercial charter service, and may not be used for travel on corporate or other privately-operated aircraft. This prohibition applies to the use of funds from any campaign committee, including funds from a political action committee. Further guidance on the use of non-commercial aircraft is found in the Chapter 3 on travel.

There are circumstances in which campaign funds may properly be used to pay travel expenses of not only a Member, but also his or her immediate family members. For example, when the primary purpose of a trip taken by the spouse of a Member is to accompany the Member at a political event – such as one of the annual party fundraising dinners in Washington – campaign funds may be used to pay the spouse’s travel expenses.

Campaign funds may also be used to pay spouse travel expenses when the primary purpose of the trip is to accompany the Member at certain non-political events that the Member attends in his or her capacity as a Member. For example, the Standards Committee approved the use of campaign funds to pay the travel expenses of spouses and minor children of Members in attending the bipartisan congressional retreats in Hershey, Pennsylvania, and in other locations. The FEC also approved the use of campaign funds to pay the Hershey travel expenses in a 1997 advisory opinion.⁶⁰

In several other advisory opinions as well, the FEC approved the use of campaign funds to pay travel and related expenses of a Member’s spouse and minor children.⁶¹ Another FEC advisory opinion approves the use of campaign funds to

⁵⁹ H. Res. 363, 110th Cong., 1st Sess. (May 2, 2007). This resolution amended in its entirety an earlier provision contained in H. Res. 6, 110th Cong. 1st Sess. (Jan. 4, 2007).

⁶⁰ FEC Advisory Opinion 1997-2.

⁶¹ *E.g.*, FEC Advisory Opinions 2005-09 (travel expenses for minor children accompanying Senator and spouse from district to Washington when parents traveling to participate in function
(*con’t next page*)

pay for child care expenses incurred as a result of a need for the Member's wife to accompany him to certain campaign-related events.⁶² However, the approvals granted in all of those opinions were based on the specific circumstances presented in the underlying advisory opinion request, and thus a Member should not rely on any of those opinions without first carefully reviewing them. Another FEC advisory opinion, which is discussed in footnote 55 above, addresses the payment of travel expenses of consultants to attend a seminar sponsored by a Member, and another (1996-20) approves the use of campaign funds to pay the travel expenses of a Member's staff member to attend a national party convention.

The Standards Committee has determined that a Member may, under House Rules, use campaign funds to pay the Member's travel expenses to attend the funeral of a retired Member, or a colleague's immediate family member.⁶³ (Member travel to the funeral of a Member who dies while in office is generally arranged by the House.)

Payment of Certain Meal Expenses. Campaign funds may be used to pay for a meal in a number of circumstances, including, for example, a meal that constitutes a bona fide campaign fund-raising event, and a meal incident to a bona fide meeting on campaign business. Campaign funds may also be used to pay the meal expenses incurred when a Member or campaign worker is traveling on campaign business. Campaign funds may also be used to pay meal expenses when a Member has a social meal with constituents (other than personal friends or relatives of the Member) who are visiting Washington.

Outlays for meal expenses can, in certain circumstances, raise questions of impermissible personal use of campaign funds. The applicability of the prohibition against personal use of campaign funds to the payment of such expenses is addressed later in this chapter.

Receptions and Related Activities for Visiting Constituents. Occasionally when a group of constituents visits Washington, whether to tour or to lobby on legislation, the Member wishes to hold a reception or similar event for the participants.

directly connected to Senator's bona fide official responsibilities); 1996-34 (spouse travel to national party convention, and spouse and child travel to accompany the Member on a campaign trip through his district); 1996-19 (spouse and child travel to national party convention); 1995-47 (spouse travel to national party convention); and 1995-20 (child accompanying parents in travel between Washington and the Member's district for campaign purposes).

⁶² FEC Advisory Opinion 1995-42.

⁶³ The FEC has not issued a formal advisory opinion on this point and should be consulted before campaign funds are used for such a purpose.

Under rules of the Committee on House Administration, official Member and committee funds may be used to pay for food and beverages only when those expenses are incidental to an “official” meeting that includes individuals who are not House Members or staff, such as a meeting with constituents to discuss a legislative issue. Official House funds may **not** be used to pay food or beverage expenses related to social activities or social events, including the receptions held by Members in connection with their swearing-in, or on Inauguration Day. However, Members **may** use their campaign funds to pay the costs of such events.

A separate question is whether events of this nature, when paid for with campaign funds, may be held in a House room or office. Prior to the end of the 105th Congress, the policy of the Standards Committee was that with only one exception, campaign-funded events may **not** take place in House rooms or offices. That exception was for the receptions held in honor of an individual’s swearing-in as a Member of Congress.

However, at the end of the 105th Congress, the Standards Committee changed the policy so as to allow Members to use campaign funds to pay not only for swearing-in receptions held in a House room or office, but also for other events that are social in nature, including Inauguration Day receptions, and social events with constituents. Members and staff should bear in mind, however, that as stated above, House rooms and offices are **not** to be used for any events that are political in nature, such as a meeting on campaign business, or a reception for the contributors to one’s campaign. This is so even if monies other than campaign funds are used to pay the event’s costs, or there is no cost to the event.

Letters, Mailings, and Other Communications That Are Not Frankable in Content. At times Members wish to send letters or mailings, or make other communications, that are not frankable in content under the House Franking Regulations, and hence may not be created or sent using official House resources. Examples of such communications include messages to constituents that are not official in nature, such as birthday greetings, holiday greetings, and letters of condolence. In addition, while letters of congratulations for a public distinction are frankable, other letters of congratulation, such as for years of service at a business, or retirement, are not. Under House rules, a Member **may** use campaign funds and resources to create and send cards, letters, and certificates of these types to constituents.

However, such materials may **not** be produced in or sent from any House office, and may **not** be produced or sent using any other House resource, including office equipment or staff while on official time.

Example 14. Congressman A wishes to create a “Congressman A Award of Merit” certificate that he will present to constituents who

perform meritorious acts or services. The certificates may be printed with campaign funds, but their content must comply with the same restrictions that apply to campaign letterhead (*see* discussion below on “Laws and Rules on Campaign Letterhead”). In addition, official House resources may not be used to promote the certificates, or in connection with their presentation.

Occasionally Members wish to send a letter or mailing endorsing a particular candidate for elective office, or commenting on a labor union organizing campaign or some other kind of labor dispute in their district. As a general matter, campaign funds and resources may likewise be used to create and send letters of this type. However, the letterhead used on such mailings should comply with the guidance on campaign letterhead found near the end of this chapter and may not resemble official letterhead.

Letters, Mailings, and Events for House Leadership Elections. As a general matter, a Member may use campaign funds to pay for activities in furtherance of a campaign for one of the House leadership offices. For example, a Member may use campaign funds to pay for a reception to promote one’s candidacy for one of those offices, and generally such an event may be held in a House room or office. Similarly, a Member may use campaign funds or resources to send a mailing regarding a leadership race.

A Member wishing to use any official House resource in furtherance of a campaign for a House leadership office – such as official stationery, the Inside Mail, or official staff time – should consult with the Committee on House Administration or the Franking Commission, as well as with the Standards Committee, on the extent to which those resources may be used for this purpose. However, when a particular activity related to a leadership race is supported with campaign resources, no official House resources may be devoted to that activity except to the extent noted above.

Example 15. A Member who is sending a mailing on a leadership race decides to pay the printing and mailing expenses with campaign funds. No official staff time or any other House resources may be used in furtherance of the mailing.

Special Events for the Member’s House or Campaign Staff. Under House rules, campaign funds may be used to pay the costs of special events for the Member’s House or campaign staff that are social in nature. Examples would include a holiday lunch or a farewell party for a departing staff member. A Member may also use campaign funds to pay for food and beverages for staff in other unusual circumstances, such as when the House is in session late or on a weekend. However, the use of campaign funds to pay for food or beverages for staff in other

than special or unusual circumstances may constitute an impermissible use of funds for personal purposes.

Member Moving Expenses To or From Washington, DC. Both the Standards Committee and the FEC have long advised that a newly elected Member may use campaign funds to pay the expenses incurred in moving to Washington, D.C.⁶⁴ Such expenses are deemed to be campaign-related in that they are a direct result of winning an election.

In addition, in 1996 the FEC advised a departing House Member that he could use campaign funds to pay the expenses of moving both his congressional office furnishings and his personal household furnishings and effects back to his home state.⁶⁵ The Standards Committee has similarly advised that House Rules allow a departing Member to use campaign funds for this purpose. It should be noted, however, that the Standards Committee's advice on this matter is applicable only to the extent that such moving expenses are paid prior to the time that the Member leaves office, at which time the Committee loses jurisdiction over the Member.

As a related matter, FEC regulations provide that campaign funds may be used to defray the costs of winding down the office of a former federal officeholder for a period of six months after he or she leaves office. 11 C.F.R. § 113.2(a)(2).

Gifts and Donations. The FEC regulations on use of campaign funds provide that campaign funds may be used for “[g]ifts of nominal value and donations of a nominal amount made on a special occasion such as a holiday, graduation, marriage, retirement, or death.”⁶⁶ Such gifts may include the relatively inexpensive House or Capitol souvenir items sold by the House gift store or the U.S. Capitol Historical Society, and thus a Member may use campaign funds to purchase such nominal-value gifts for the Member's supporters or contributors. Use of campaign funds for a gift or donation is permissible only if the outlay serves a bona fide campaign or political purpose, and in this regard, the regulation specifies that a Member may not use campaign funds to make a gift or donation to a family member. In addition, as noted below in the section of this chapter on the use of campaign funds for official purposes, campaign funds may also be used to purchase a gift for visiting foreign dignitaries.

⁶⁴ Regarding the FEC, *see* Advisory Opinion 1980-138.

⁶⁵ FEC Advisory Opinion 1996-14; *see also* Advisory Opinion 1996-44.

⁶⁶ 11 C.F.R. § 113.1(g)(4). Regarding the limitation to “nominal value” gifts, *see* FEC Advisory Opinion 2000-37.

Other Permissible Uses of Campaign Funds. As noted above, FECA generally allows Members to donate campaign funds to any entity of the kinds described in § 170(c) of the Internal Revenue Code – including a charitable or educational organization, or a governmental entity – provided that there is no conversion to personal use through the donation. In one advisory opinion, the FEC concluded that committee campaign funds, and funds from a nonconnected multicandidate committee, could be used for a portrait of a committee chairman to be donated to the House of Representatives for display, because the House of Representatives is an organization qualified under § 170(c).⁶⁷ FECA also allows the transfer of campaign funds “without limitation to any national, State, or local committee of any political party.” Thus if otherwise lawful, campaign funds may be transferred to another candidate, or invested for use in a future political campaign, provided, again, that there is no conversion of funds to personal use. Campaign funds may also be used for certain funeral expenses.

No Personal Use of Campaign Funds or Resources, and the Related Verification Requirement

As noted above, prohibitions against the use of campaign funds for personal purposes are found in **both** the House rules **and** the Federal Election Campaign Act (“FECA”). The manner in which these prohibitions have been implemented by the Standards Committee and the Federal Election Commission (“FEC”) is discussed below.

House Rules. The key provision of the House rules barring use of campaign funds for personal purposes is House Rule 23, clause 6(b) which provides that a Member

may not convert campaign funds to personal use in excess of an amount representing reimbursement for **legitimate** and **verifiable** campaign expenditures. [Emphasis added.]

Two other provisions are pertinent here as well. First, House Rule 23, clause 6(a) provides that each Member “shall keep his campaign funds separate from his personal funds.” Second, House Rule 23, clause 7 provides that a Member “shall treat as campaign contributions all proceeds from testimonial dinners or other fund-raising events.”

In addition, the provision of the rule **prohibiting** the use of campaign funds for personal purposes is, of course, directly related to another provision of the rule, discussed above, **requiring** the use of those funds for bona fide campaign or political purposes. The Standards Committee has taken the position that Members, in

⁶⁷ FEC Advisory Opinion 2007-18.

making expenditures of their campaign funds, must observe these provisions strictly:

[A] bona fide campaign purpose is not established merely because the use of campaign money *might* result in a campaign benefit as an incident to benefits personally realized by the recipient of such funds⁶⁸

The Committee has explained its reasons for taking this position in the following manner:

[T]he Committee believes that any other interpretation . . . would open the door to a potentially wide range of abuse and could result in situations where campaign moneys were expended for personal enjoyment, entertainment, or economic well-being of an individual without any clear nexus that the funds so expended achieved any political benefit⁶⁹

The Standards Committee has reiterated this position a number of times,⁷⁰ and it was incorporated as well into the 1989 Report of the House Bipartisan Task Force on Ethics.⁷¹

The rule by its terms requires that each campaign outlay made by a Member be not only “legitimate,” but also capable of being verified as such. This requirement that the proper purpose of each outlay be “verifiable” is a common-sense requirement. With the huge number of outlays that Members’ campaigns typically make, often on a nearly continuous basis, the propriety of particular outlays may not be subject to review for months or years after the fact, when recollections as to the circumstances or specific purposes of an outlay may well have faded. Absent a requirement for verification, the prohibition against converting campaign funds to personal use would be nullified in substantial part. Furthermore, the verification requirement should serve to cause Members and their

⁶⁸ House Comm. on Standards of Official Conduct, *Investigation of Financial Transactions of Rep. James Weaver with His Campaign Organization*, H. Rep. 99-933, 99th Cong., 2d Sess. 13 (1986) (emphasis in original).

⁶⁹ *Id.*

⁷⁰ *E.g.*, House Comm. on Standards of Official Conduct, *In the Matter of Rep. Richard H. Stallings*, H. Rep. 100-382, 100th Cong., 1st Sess. 3-4 (1987); House Comm. on Standards of Official Conduct, *In the Matter of Rep. Charles G. Rose III*, H. Rep. 100-526, 100th Cong., 2d Sess. 23 (1988).

⁷¹ *Report on H.R. 3660*, 101st Cong., 1st Sess. (Comm. Print, Comm. on Rules 1989), *reprinted in* 135 *Cong. Rec.* 30740, 30751 (1989).

campaign staffs to exercise caution in spending campaign funds, and to ensure that no outlay is for an impermissible personal purpose.

Members and their campaign staffs should bear in mind that the verification requirement imposed by the House rules is separate from, and in addition to, whatever recordkeeping requirements are imposed by the Federal Election Commission on federal candidates generally (or, with regard to Members who are candidates for a state or local office, the requirements imposed by applicable state or local law).

Application of the House Rules. The Standards Committee has found that Members violated the House rules on proper use of campaign funds in several disciplinary cases. One case involved, among other things, transfers from the Member's campaign account that were made to repay personal loans of the Member and to cover outstanding obligations against his personal checking account.⁷² That case resulted in a censure of the Member by the House.⁷³

The rule's verification requirement was implicated in a Standards Committee disciplinary case that was completed in the 106th Congress.⁷⁴ In that case the Committee determined that a Member had, through his campaign committee, engaged in significant misconduct by failing to keep records adequate to verify the legitimacy of the expenditures that had been made by his campaign for meals, including numerous meals in the Washington, D.C. area, and for private airplane travel, particularly between Washington and the Member's district.⁷⁵ According to the reports that his committee had filed with the FEC, the expenditures for those purposes were extraordinarily high in number as well as dollar amount,⁷⁶ but the Investigative Subcommittee found that the campaign committee had not made "even the most minimal effort to document or verify that the expenditures were related to legitimate campaign activity."⁷⁷

⁷² House Comm. on Standards of Official Conduct, *In the Matter of Rep. Charles H. Wilson*, H. Rep. 96-930, 96th Cong., 2d Sess. 5-6, 7-10 (1980).

⁷³ In addition, in the 104th Congress an investigative subcommittee of the Standards Committee adopted a Statement of Alleged Violation against a Member, two counts of which alleged a misuse of campaign resources, including the use of campaign funds to purchase appliances for the Member and to pay for cleaning of the Member's personal residence. No further action was taken in the case, however, because as of the time the investigative subcommittee completed its work, the Member was about to depart the House. See H. Rep. 104-876, *supra* note 7.

⁷⁴ H. Rep. 106-979, *supra* note 4.

⁷⁵ *Id.* at 3G-3H.

⁷⁶ *Id.* at 6-7, 64-79, 170-212.

⁷⁷ *Id.* at 78.

Impermissible personal use of campaign funds can arise in a variety of circumstances.

Example 16. A book written by a Member on his legislative agenda has been published. The Member's campaign may **not** purchase copies of the book to give as gifts to contributors if the Member would receive royalties or any other personal benefit from the campaign's purchase of those copies.⁷⁸

In this regard, the prohibition is against the use of campaign funds for personal purposes not only of the Member, but rather of **anyone**. Thus, in one of the cases decided by the Standards Committee, a loan made by a Member's campaign to one of the Member's congressional employees for the employee's personal purposes was found to violate the rule.⁷⁹ In another case, a Member admitted to violating the rule in that he had authorized the making of loans of his campaign funds to three individuals (each of whom was an employee of his congressional office, his campaign, or one of his private businesses) for their personal purposes.⁸⁰

In that case, the Member also admitted to violating the rule in certain expenditures of his campaign funds that were made to, or otherwise benefited, businesses that were owned and controlled by the Member and members of his family. They included (1) expenditures for salary and benefits to individuals who worked for the campaign, when in fact a portion of the compensation that the campaign paid to them was for services that they rendered those businesses, and (2) expenditures for the utility expenses of those businesses.⁸¹ With regard to the improper expenditures for utility expenses, the Member's campaign office was located in a building owned by a corporation that was in turn owned by the Member and his family, and in which other such businesses had offices. Yet, for a significant period of time, the Member's campaign paid for all of the expenses incurred by the building's tenants for electricity, gas, water, and telephone – rather than only the pro rata share of the campaign office.⁸²

⁷⁸ Regarding purchase of a Member's book by his or her campaign committee, *see* FEC Advisory Opinions 2006-18, 2004-18, and 2001-8.

⁷⁹ H. Rep. 100-382, *supra* note 70, at 2-3. FECA (2 U.S.C. §439a(b)(1)) is to the same effect, as it provides that campaign funds may not be converted "by **any** person to any personal use." (Emphasis added).

⁸⁰ House Comm. on Standards of Official Conduct, *In the Matter of Rep. Earl F. Hilliard*, H. Rep. 107-130, 107th Cong., 1st Sess. 13-17 (2001).

⁸¹ *Id.* at 17-25, 58-66.

⁸² *Id.* at 58-66.

Notwithstanding the variety of circumstances in which impermissible personal use of campaign funds can arise, questions in this area have arisen most frequently regarding certain kinds of campaign outlays, specifically –

- Borrowing of campaign funds;
- Expenditures for travel;
- Expenditures for meals; and
- Expenditures for the purchase of goods or services, or the rental of property, from the Member or a member of his or her family.

As detailed below, it is now well established that borrowing of money from one's campaign is a serious violation of the House Rules. As to outlays for travel or meals – as well as outlays for the acquisition of goods or services from themselves or their family members – Members must exercise great care, because such outlays by their nature raise a concern of personal use. The kinds of records that should be maintained with regard to these kinds of outlays are also addressed below.

Borrowing Campaign Funds Is Impermissible. In four cases the Standards Committee determined that Members had violated the rules on proper use of campaign funds by borrowing money from his campaign.⁸³ The Committee has clearly stated that this practice is impermissible:

The Committee feels that there is no circumstance in which a Member could borrow from his campaign and satisfy the requirement that the use of the funds would exclusively and solely benefit the campaign. Therefore, the Committee takes the firm position that a Member may not borrow funds from his campaign. The act of borrowing shall be construed as a violation of [current House Rule 23, clause 6], which requires that all campaign expenditures must be for a bona fide campaign expense.⁸⁴

In one of these cases, the Member claimed that the withdrawals he had made from his campaign were repayments of loans he had made to the campaign previously. The Committee rejected that claim, however, because no loan agreements had been executed at the time the Member assertedly made the loans to his campaign, and the reports that the campaign filed with the FEC did not show the amounts in question as outstanding obligations to the Member.⁸⁵ In that case,

⁸³ H. Rep. 99-933, *supra* note 68; H. Rep. 100-382, *supra* note. 70; H. Rep. 100-526, *supra* n. 70; H. Rep. 104-886, *supra* note 7, at 19-20

⁸⁴ H. Rep. 100-526, *supra* note 70, at 23.

⁸⁵ *Id.* at 24.

the Committee also found a separate violation of the rules in that the Member had used a certificate of deposit belonging to his campaign as collateral on a personal loan.⁸⁶

In another case, a loan to a Member from his campaign was found to be improper when its purpose was to enable the Member to purchase an automobile that the Member intended to use for both personal and campaign purposes in his district.⁸⁷ Another of the loan cases decided by the Standards Committee had been initiated as a result of a transmittal of information from the FEC. The information on the Member's receipt of personal loans from his campaign had been developed by the FEC in the course of investigating allegations that his campaign had failed to report certain disbursements and receipts.⁸⁸

In addition, as noted above, in two cases the Committee found a violation of the rule when a Member's campaign funds were used to make loans to other individuals for personal purposes.⁸⁹

In view of the Committee's decisions in the above-noted cases, all of which were publicly announced at the time they were issued, the Committee believes that all Members are on notice that they may not borrow from their campaigns, and their campaign funds may not be used to make a loan to anyone for a personal purpose.

Expenditures for Travel. As explained in the preceding section, campaign funds may be used to pay airfare or similar transportation expenses when the "primary purpose" of the trip is campaign or political in nature. As explained in the following section, campaign funds also may be used for certain official or officially-connected travel. However, when the primary purpose of a trip is personal in nature, the airfare of that trip may **not** be paid with campaign funds, and must be paid with personal funds.⁹⁰ While each Member has the responsibility to determine the "primary purpose" of any trip the Member takes, that determination must be made in a **reasonable** manner, taking into account all of the activities in which the Member intends to engage during the course of the trip.⁹¹

⁸⁶ *Id.* at 24-25.

⁸⁷ H. Rep. 100-382, *supra* note 70, at 3, 4.

⁸⁸ H. Rep. 104-886, *supra* note 7, at 19-20.

⁸⁹ H. Rep. 100-382, *supra* note 67; H. Rep. 107-130, *supra* n. 77.

⁹⁰ *See* Chapter 3 on travel.

⁹¹ *Id.*

Example 17. A Member takes his family on a post-election vacation trip. Even though the trip is made so that the family can rest after the campaign, campaign funds may **not** be used to pay any of the trip expenses.

Example 18. A Member is taking a one-week trip that has a recreational purpose, except that during the trip, she will attend a party fund-raising dinner. Campaign funds may **not** be used to pay the airfare for the trip, and may be used solely to pay the additional meal or lodging expenses (if any) that the Member necessarily incurs in attending that dinner.

As noted above, a Member's campaign must be able to verify that there was a proper campaign purpose for any trip that is paid for with campaign funds. To this end, the Standards Committee strongly advises that campaign committees maintain records that specify the politically related activities in which the Member (or other trip participants) engaged during each campaign-funded trip (for example, "attended party meeting at [date/time], attended reception for campaign donors at [date/time]"). When campaign outlays for travel are frequent and extensive, the need to maintain specific, written records is paramount.⁹²

Members and their campaign staffs should also refer to the provisions of the FEC "personal use" regulations regarding use of campaign funds for travel, and should consult with the FEC as well when a proposed outlay for travel expenses may raise a concern of personal use. The FEC regulations are briefly noted later in this chapter, and under them, payment of travel expenses is one of the uses for which the FEC makes determinations on impermissible personal use on a case-by-case basis. A number of FEC advisory opinions on the permissibility of using campaign funds to pay travel expenses in various circumstances are noted in the preceding section of this chapter.

Expenditures for Meals. Circumstances in which campaign funds may be used to pay meal expenses are also addressed in the preceding section of this chapter. However, use of campaign funds to pay for any meal when the only individuals present are a Member and the Member's personal friends or relatives inherently raises concerns of conversion of campaign funds to personal use. The only circumstance in which payment for such a meal with campaign funds may be permissible is if the other attendees actively work in the Member's campaign, and if the meal is merely incident to a meeting having a clear, specific agenda of campaign business.

⁹² In this regard, *see* H. Rep. 106-979, *supra* n. 4, at 3G-3H, 6-7, 64-79, 170-212.

In order to be able to verify that there was a proper campaign purpose for meal outlays, the Standards Committee strongly advises that campaign committees maintain records that note both the individuals who were present at each meal, and the specific campaign or political purpose served by the outlay. When the attendees include only friends or relatives, and the above-stated requirements for campaign payment for such a meal are satisfied, the maintenance of specific, written records is essential. In these circumstances, the records should specifically describe the campaign agenda of the meal. As with campaign outlays for travel, when the outlays for meals are frequent and extensive, the need to maintain specific, written records is paramount.⁹³

Purchase or Other Acquisition From the Member or a Member of His or Her Family. At times a Member (or a member of his or her family) has office space or other property that the person wishes to lease to the Member's campaign. Similarly, at times a family member of a Member wishes to sell certain goods or services to the Member's campaign.

Such a transaction is permissible under the House Rules only if (1) there is a bona fide campaign need for the goods, services, or space, and (2) the campaign does not pay more than fair market value in the transaction. Whenever a Member's campaign is considering entering into a transaction with either the Member or one of his or her family members, it is advisable for the Member to seek a written advisory opinion on the transaction from the Standards Committee.

If a Member's campaign does enter into such a transaction with the Member or a member of his or her family, the campaign's records must include information that establishes both the campaign's need for and actual use of the particular goods, services or space, and the efforts made to establish fair market value for the transaction.

In a Standards Committee disciplinary case that was completed in the 107th Congress, a Member admitted to violating the prohibition against personal use of campaign funds in leasing space for his campaign office from a building owned by a corporation that was in turn owned and controlled by him and his family. In that case, the Investigative Subcommittee had determined, on the basis of two appraisals done by professionals that it had engaged, that the rent paid by the Member's campaign for that space was substantially in excess of fair market value.⁹⁴ In addition, as noted above, the Member admitted to a separate violation of the personal use prohibition in that his campaign had paid not only its own utility

⁹³ *Id.*

⁹⁴ H. Rep. 107-130, *supra* note 80, at 34-58.

expenses in that building, but also the utility expenses of various family-owned and controlled businesses that were housed in that building as well.⁹⁵

Yet another violation of the personal use prohibition that the Member admitted to in that case concerned lease payments that his campaign had made for certain other office space. That space had previously been leased by a business that was owned in substantial part by the Member and members of his family, and under that lease, the Member was personally liable for the lease payments. Thus every lease payment that the campaign made for that space relieved the Member and his business of their obligation to make that payment. Earlier in the case claims were made on behalf of the Member that the campaign actually used that office space during the period that it paid the rent, but no credible evidence establishing campaign use of the space was produced, *i.e.*, the verification requirement of the rule was not satisfied.⁹⁶

A Member and the Member's campaign staff should also review the FEC regulations on campaign transactions with a candidate or a family member of the candidate before entering into any such transaction.⁹⁷ The FEC regulations also essentially preclude a Member's campaign from paying for use of any space in the personal residence of the Member or a member of his or her family. The rules issued by the FEC that define impermissible personal use of campaign funds are addressed generally in the following section.

The FEC Personal Use Regulations. As noted above, FECA, as amended in 2002 by BCRA, provides that a contribution or donation accepted by a candidate or the holder of a federal office may not be "converted by any person to any personal use." 2 U.S.C. § 439a(b)(1). Congress codified for the most part the FEC's previously issued regulations on personal use and retained the ban on personal use of campaign funds. Since BCRA's passage, the FEC has published new regulations that, like their predecessor regulations, both (1) provide a general definition of the term "personal use" and (2) determine that certain uses of campaign funds constitute personal use and hence are prohibited.

The general definition in the regulations provides that an impermissible "personal use" of campaign funds is use to pay an expense of any person that would be incurred even in the absence of the candidacy for office:

⁹⁵ *Id.* at 58-66.

⁹⁶ *Id.* at 25-34.

⁹⁷ 11 C.F.R. § 113.1(g)(1)(i)(E), (H); regarding the hiring of a Member's relative as a consultant to the Member's campaign committee, *see* FEC Advisory Opinion 2001-10.

Personal use means any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign [11 C.F.R. § 113.1(g).]

Among the particular uses of campaign funds that are specified in the FEC regulations as constituting an impermissible personal use are payments for the following:

- Household food items or supplies, or clothing;
- Mortgage, rent or utility payments for any part of any personal residence of the candidate or a family member;
- Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign activity;
- Dues, fees or gratuities at a country club, health club, recreational facility or other non-political organization, unless part of the costs of a specific fundraising event; and
- Tuition payments, other than for the training of campaign staff.⁹⁸

11 C.F.R. § 113.1(g)(1)(i). In addition, payments to the candidate or to a member of the candidate's family for real or personal property owned by any of those individuals, or for bona fide services to the campaign, constitute impermissible personal use of campaign funds to the extent the payments are in an amount that exceeds fair market value. *Id.*, § 113.1(g)(1)(i)(E)(2), (H).

As noted previously, the donation of campaign funds to charitable and similar organizations is generally permissible under FECA. However, the FEC personal use regulations prohibit a donation to such an organization if the Member making the donation "receives compensation from the organization before the organization has expended the entire amount donated for purposes unrelated to his or her personal benefit." *Id.* § 113.1(g)(2).

As to other possible uses of campaign funds – including for meal expenses, travel expenses, vehicle expenses, and legal expenses – the FEC regulations provide that the Commission will make a determination as to personal use on a "case by case basis." *Id.* § 113.1(g)(1)(ii). The regulations also address two "mixed use" situations:

⁹⁸ However, in Advisory Opinion 1997-11, the FEC approved of a Member's proposed use of campaign funds to cover the costs of a Spanish immersion class that she wished to take for the purpose of enabling her to better communicate with her constituents. The Member had represented that her district includes a large number of constituents who spoke little or no English.

- Campaign-funded **travel** that includes both campaign-related activities and personal activities; and
- Use of a **campaign vehicle** for personal purposes in an amount that is more than *de minimis*.

In both of those situations, the person(s) benefiting from the personal use must reimburse the campaign in an appropriate amount within 30 days. *Id.* § 113.1(g)(1)(ii)(C), (D). (Regarding use of a campaign vehicle for non-campaign purposes, *see* below.)

Any questions on these rules should be directed to the FEC. In addition, as noted above, the FEC will provide a written advisory opinion in response to a specific, written advisory opinion request on an activity that the requesting person is undertaking or plans to undertake. 11 C.F.R. pt. 112. Both advisory opinion requests to the FEC and the opinions themselves are matters of public record.

In summary, under House rules, except for certain permitted official uses discussed in the following section, campaign funds are to be used for bona fide campaign or political purposes only. Campaign funds are **not** to be used to enhance a Member's lifestyle, or to pay a Member's personal obligations. Members have wide discretion in determining what constitutes a bona fide campaign or political purpose to which campaign funds and resources may be devoted, but Members have **no** discretion whatsoever to convert campaign funds to personal use. Furthermore, House rules require that Members be able to verify that campaign funds have not been used for personal purposes.

Use of Campaign Funds or Resources for Official House Purposes

In addition to prohibiting the use of campaign funds and resources for **personal** purposes, House rules generally restrict their use for **official House purposes**. As discussed below, the use of campaign funds is specifically prohibited for certain types of official expenses. However, federal law and House rules permit the use of campaign funds in certain circumstances for other official House purposes, which are detailed below. In addition, there are certain activities that a Member may, at his or her discretion, designate as **either** official **or** political. When the Member designates an activity as political, the Member may, subject to certain requirements, pay for the activity with campaign funds, but may not use any official funds. When the Member designates an activity as official, the Member may support the event with campaign funds subject to the limitations below.

Restrictions on Official Use of Campaign Funds. Since 1977 the House rules have prohibited Members from maintaining an “unofficial office account,” or having such an account maintained for their use. This prohibition is now set forth in

House Rule 24, clause 1. The purpose of the 1977 amendments was to create a “wall” between campaign funds and official allowances, with “campaign funds used only for politically related expenses on one side, and official allowances used only for official purposes on the other.”⁹⁹ The prohibition against using campaign funds for official purposes was enacted into statutory law in 1990, and is found at 2 U.S.C. § 59e(d).

In 2003, § 59e(d) was amended to narrow the prohibition on the use of campaign funds for official purposes to certain categories of expenses. Section 59e(d) now provides that no Member of the House “may maintain or use, directly or indirectly, an unofficial office account or defray official expenses for franked mail, employee salaries, office space, furniture, or equipment and any associated information technology services (excluding handheld communication devices)” from –

(1) funds received from a political committee or derived from a contribution or expenditure (as such terms are defined in [the Federal Election Campaign Act]);

(2) funds received as reimbursement for expenses incurred by the Senator or Member in connection with personal services provided by the Senator or Member to the person making the reimbursement; or

(3) any other funds that are not specifically appropriated for official expenses. [Emphasis added.]

Clause 1 of House Rule 24 was amended at the beginning of the 109th Congress to conform to current law. The effect of these changes, as described more fully below, was to allow the use of campaign funds for official purposes in certain circumstances to eliminate some inconveniences to Members under the previous rules. The following is a description of the congressional expenses that **may** be paid with funds of the Member’s principal campaign committee.

Expenses of a Motor Vehicle That Is Used for Official House Travel. It is permissible for a Member to lease or purchase a motor vehicle with campaign funds and to use that vehicle on an unlimited basis for travel for *both* campaign *and* official House purposes. Campaign funds may also be used to pay the expenses incurred in operating the vehicle, such as insurance, maintenance and repair, registration fees, and any property tax.

⁹⁹ House Comm’n on Admin. Review, *Financial Ethics*, H. Doc. 95-73, 95th Cong., 1st Sess. 17, 18 (1977).

However, when a vehicle that is paid for with campaign funds is used for **personal** purposes – *i.e.*, for driving to and from one’s official or campaign office – it is necessary to reimburse the Member’s campaign committee in an appropriate amount with personal funds. Members should consult with the FEC on how the amount of reimbursement should be determined. FEC regulations provide that reimbursement should be made within 30 days of the personal use, and thus it appears that reimbursement for regular personal use must be made on a monthly basis.

Example 19. A Member has three events scheduled in his district in one day. The first and last are political events, and the second is an official event. He may use the car leased by his campaign to travel to all three events.

Example 20. A Member wishes to use a vehicle leased by the campaign for regular commuting – *i.e.*, for driving to or from the Member’s official or campaign office. Such use would be a permissible use for which reimbursement must be made from the Member’s personal funds.

Expenses of a Cell Phone or BlackBerry That Is Used for Official House Business. It is permissible for a Member to acquire a “handheld communications device” (*e.g.*, a cell phone, a BlackBerry, or a combination cell phone/BlackBerry device, and associated communications services) with campaign funds, and to use the device on an unlimited basis on both campaign matters and official House matters. Members should contact the Committee on House Administration for information on connecting any handheld communications device to the House infrastructure.

These amendments discussed above did **not** change the general restrictions on engaging in campaign or political activity in House rooms or offices, or the rules that generally prohibit using congressional office resources for campaign or political purposes. In particular, Members and staff should be aware of the following:

- A Member or staff person may **not** use a campaign-funded communications device to download data or information residing in the House infrastructure (*e.g.*, a correspondence management service (CMS) database, the global address book, or a Listserv database) and then use that data or information for campaign purposes;
- Even though a cellphone or BlackBerry is paid for with campaign funds, it may **not** be used to make or answer campaign-related calls, or to send or respond to e-mails on campaign matters, while the user is in a House room or office;

- Criminal law (18 U.S.C. § 607) prohibits soliciting campaign contributions in federal rooms and buildings and, thus, Members and staff are prohibited from using one of these devices to solicit a campaign contribution while in the Capitol, a House office building, or a district office; and
- Although it is permissible to use a campaign-funded BlackBerry to send or respond to campaign or political e-mails when the user is not in a House room or office, **the use of one's office desktop computer (including one's "mail.house.gov" e-mail address) to send or receive such communications continues to be prohibited.**

Expenses of Official or Officially-Related Travel. A Member may use campaign funds to pay official or officially-related travel expenses. This authority is especially useful for travel that is official in nature, but the expenses of which may not be payable from official allowances (including those for a congressional office job applicant, an unpaid congressional office intern while on official business, and a speaker or guest at an official House event). It is also permissible to use campaign funds for travel expenses associated with a proper officially-connected trip when the sponsor is not able to cover all of the expenses.

Expenses in Connection With Official House Events. In a Committee Advisory memoranda of May 8, 2002, the Committee announced a policy allowing Members to use funds of their principal campaign committee to pay for food and beverage expenses at official House events, such as town hall meetings, briefings, caucus events, conferences, and other events sponsored by their Member office, whether in their congressional district or on Capitol Hill. The amendment to House Rule 24 in the 109th Congress affirmed this previous Committee guidance on food and beverage expenses, and also permits Members to pay certain other expenses of such an event with campaign funds, such as room rental, rental of a sound system, and as noted above, the travel expenses of a guest speaker or other participant.

Gifts for Foreign Dignitaries. It is permissible for a Member to use campaign funds to purchase a gift for a visiting foreign government official as a mark of courtesy.

Cautionary Points. Several points should be kept in mind in considering whether to use campaign funds to pay for congressional expenses:

- The **only** campaign funds that a Member may use to pay for congressional expenses are funds of his or her **principal campaign committee** – **not** the funds of a leadership PAC or a multicandidate committee.
- There has been **no** change in the rules insofar as they generally prohibit other private organizations or individuals from subsidizing any congressional office or activity, whether on a cash or an in-kind basis.
- Congressional Member Organizations ("CMOs") are official House entities that have no independent funding, and campaign funds may not be used to

provide funding for, or otherwise directly support such organizations (other than food and beverage expenses at meetings). However, Member or staff involvement in CMOs may be supported with the use of campaign funds, subject to the limitations above (*e.g.*, a campaign-paid cell phone may be used to make CMO-related phone calls). Similarly, campaign funds may not be used to directly subsidize the expenses of a House committee.

- Neither a Member nor anyone working on his or her behalf may either solicit campaign contributions for the payment of congressional expenses or accept campaign contributions that are in any way **earmarked** for the payment of such expenses.
- While it appears that the use of campaign funds as described here is permissible under FECA, Members should nevertheless consult with the FEC on any questions that arise under FECA, including any questions on how payment of any congressional expense is to be disclosed on the reports that a Member's campaign committee files with the FEC.

Congressional Expenses That *May Not* Be Paid With Campaign Funds.

House Rule 24 sets forth five categories of congressional expenses that may **not** be paid using campaign funds. They are: office space, furniture, equipment and associated information technology services (except for handheld communication devices), mail or other communications, and compensation for services. As a general matter, expenses in these categories **must** be paid with official House funds under regulations issued by the Committee on House Administration. The first three of these categories are generally self-explanatory, while the other two require further explanation.

Use of campaign funds to pay any expenses of **congressional mail** is prohibited. While the prohibition against use of campaign funds clearly applies to payment of the expenses of franked mail, the rules also prohibit a Member from using campaign funds to pay the expenses of preparing or sending any non-franked mail from his or her congressional office.¹⁰⁰

As a general matter, the forms of congressional "communications" that may not be paid with campaign funds are those set out in the regulations issued by the Committee on House Administration on use of official allowances to pay for

¹⁰⁰ In addition to the limitation in House Rule 24, clause 1, the use of campaign funds (or other non-appropriated funds) to pay official mailing expenses is specifically prohibited by certain other provisions of statutory law and the House Rules. One of these, 2 U.S.C. §59e(c), requires that official mail expenses be paid only from funds specifically appropriated for that purpose and precludes their supplementation by funds from any other source, public or private. Under other provisions, a mass mailing may not be sent under the frank unless the cost of preparing and printing the mailing are paid exclusively from appropriated funds. *See* 39 U.S.C. § 3210(f); House Rule 24, clause 6.

communications (*e.g.*, advertisements of a town meeting or other House events, the congressional office website, official stationery, and official audio and video recordings and materials).

As noted above, the limitation on the use of campaign funds extends to goods and services that are acquired with campaign funds. In the context of communications, the Standards Committee has long advised that no brochures or any other materials printed using campaign funds may include the address or telephone number of the congressional office.

Example 21. A Member's office begins to receive a large amount of mail on a legislative issue that is before the House, and the Member wants the letters to be answered promptly. The Member may **not** refer any of the letters to his campaign staff for response. The only communications that a congressional office may refer to the campaign staff are those relating to the campaign.

With regard to websites, the Standards Committee has advised as follows:

- A Member's campaign website may **not** include a link to the congressional office site; and
- A congressional office site may **not** be advertised on the Member's campaign website or on materials issued by the Member's campaign.

The rules issued by the Committee on House Administration regarding official Member and committee websites are summarized above. Those rules include prohibitions against those sites linking or referring to any site created or operated by a campaign or campaign-related entity.

A Member may not use campaign funds to pay any compensation for **the performance of official duties or for services to his or her congressional office**. Thus, for example, a Member may not use campaign funds to pay an individual to assist the Member in the performance of his or her official duties, even if the work was performed outside the congressional office.

Activities That May Be Either "Official" or "Political" at the Member's Option. While, as described above, Members are restricted in using campaign funds to pay official House expenses, there are a number of activities that may be either "official" or "political" at the Member's option. The major examples are events sponsored by a Member on legislative or other governmental topics, such as town hall meetings and conferences; statements or releases issued by a Member on a legislative or other governmental issue; and activities relating to a race for a House leadership office. However, the Standards Committee has stated:

[O]nce the Member makes his determination [on whether an activity is to be official or political], he is bound by it. A single event cannot, for purposes of the House rules, be treated as *both* political and official.

This rule was originally enunciated by the Standards Committee in *Advisory Opinion No. 6*, which was issued on September 14, 1982 and is reprinted in updated form in the appendices. That opinion addressed a Member's inquiry on whether he could use campaign funds to promote a town meeting in areas added to his district by reapportionment after his congressional office had mailed notice of the meeting to his current district under the frank. The Committee advised the Member that he could not do so. The Member could have designated the event as a political (campaign) one or as an official (representative) one. By sending announcements of the meeting under the frank, which can be used only in the conduct of official business, the Member defined the event as an official one. Accordingly, the Member was prohibited from subsequently using campaign funds (or any other private funds) to advertise or to conduct the meeting.

Conversely, if a Member designates an event (or any other activity) as political by using campaign funds for it, no official resources may then be used. This means that congressional staff should not make arrangements for such an event, invitations to it may not go out under the frank, and the congressional telephone number may not be designated for RSVPs.

Of course, in using official House funds or, alternatively, campaign funds, to pay the expenses of any such activity, a Member must comply with any requirements or restrictions imposed by, respectively, the Committee on House Administration and the Franking Commission, or the Federal Election Commission.

Other Applicable Laws, Rules, and Standards of Conduct

Laws and Rules on Campaign Letterhead

Letterhead and envelopes that a Member uses for campaign or political purposes, including the solicitation of funds, are subject to at least three authorities.

First, the "facsimile rule," which is set forth in House Rule 23, clause 11 prohibits a Member from –

authoriz[ing] or otherwise allow[ing] an individual, group, or organization not under the direction and control of the House to use the words 'Congress of the United States,' 'House of Representatives,'

or ‘Official Business,’ or any combination of words thereof, on any letterhead or envelope.

A Member’s campaign committee is a group or organization “not under the control and direction of the House” and hence is subject to the restrictions of this rule, *i.e.*, the letterheads and envelopes that a Member uses for campaign or political purposes may not include the institutional names cited in the rule or otherwise violate the provisions of the rule. Since it is reasonable to expect, however, that campaign letterhead and envelopes adequately describe the office for which the candidate is running, institutional names may be used if clearly in that context. In other words, letterhead and envelopes may use phrases such as “Smith for Congress,” “Smith for House of Representatives,” or “Reelect Representative Smith to Congress of the United States.” Campaign letterhead and envelopes should not in other respects (such as font or layout) resemble official stationery.

Second, a provision of the federal criminal code, 18 U.S.C. § 713, prohibits the use of certain governmental seals on, among other things, stationery, “for the purpose of conveying . . . a false impression of sponsorship or approval by the Government of the United States or by any department, agency, or instrumentality thereof.” As amended in 1997, the statute applies to not only the Great Seal of the United States, but also the Seal of the House of Representatives and the Seal of the United States Congress.

Third, the Deceptive Mailings Prevention Act provides that any solicitation by a nongovernmental entity that reasonably could be interpreted as implying any federal government connection, approval or endorsement must carry a disclaimer, both on the internal documents and on the envelope, conspicuously stating that it is not an official mailing.¹⁰¹ Among the features that may, under the statute, raise an implication of governmental approval is the use of a seal or insignia, or citation to a federal statute or the name of a federal program. In addition, such a solicitation may not include a false representation stating or implying that federal government benefits or services will be affected by any contribution or failure to contribute.

In summary, a letter sent by a Member on behalf of either the Member’s campaign or another political organization may **not** have, in the letterhead or on the envelope, either –

- The **institutional names** “Congress of the United States” or “House of Representatives,” unless clearly in the context describing the office for which the candidate is running, as discussed above;
- The term “Official Business;” or

¹⁰¹ 39 U.S.C. § 3001(h), (i).

- Any likeness of any official **seal**, including the Seal of the United States, or the Seal of the House or the Congress.

Accordingly, such a letter may **not** be sent on a letterhead that resembles official stationery, even if the stationery was not printed at government expense and bears a disclaimer to that effect.

However, the letterhead and envelope of a campaign or political letter **may** use –

- Personal titles such as “Member of Congress,” “Representative,” “Congressman,” or “Congresswoman;”
- A Member’s title as a chair or ranking member of a full committee, or as a member of the House leadership, as those are considered personal titles as well;
- The district served by the Member, and the Member’s committee assignments; and
- A likeness of the Capitol Dome; the Dome is in the public domain and is therefore not protected in the same manner as official seals.

At times the Standards Committee receives inquiries regarding the stationery that is sold in the House stationery store that bears an embossed seal or “House of Representatives” in the letterhead. In accordance with the advice set forth above, even when that stationery is purchased with the Member’s personal funds or with campaign funds, it should not be used to solicit campaign support or contributions. (However, it is permissible for a Member to use this stationery, purchased with personal or campaign funds, to send personal thank you notes for contributions or campaign assistance.)

In certain circumstances, FECA and implementing regulations issued by the FEC require that letters sent on behalf of a federal campaign include a campaign disclaimer.¹⁰² Any questions on those rules should be directed to the FEC.

Finally, for reasons set forth above, the letterhead of stationery printed with campaign funds – and in particular any letterhead used for soliciting contributions – may not include any address or telephone number of any House office.

¹⁰² 2 U.S.C. § 441d; 11 C.F.R. § 110.11.

Gift Rule Provisions Applicable to Campaign Activity

Members and staff are fully subject to the provisions of the House gift rule (House Rule 25, clause 5) while engaging in campaign activity. This includes staff persons who go to part-time status or Leave Without Pay status for the purpose of doing campaign work. A full explanation of the gift rule is found in Chapter 2. Several provisions of the rule apply specifically with regard to campaign and political activity, and those provisions are noted briefly here.

First, the rule provides that among the gifts that a Member or employee may accept is a contribution that is lawfully made under the Federal Election Campaign Act, or a lawful contribution for election to a state or local government office (House Rule 25, clause 5(a)(3)(B)). *See* the discussion on “No Link with an Official Action or Special Access.”

Second, a Member or employee may accept “[f]ood, refreshments, lodging, transportation, and other benefits . . . provided by a political organization . . . in connection with a fundraising or campaign event sponsored by such organization.” (clause 5(a)(3)(G)(iii)). The political organizations to which this provision refers are those described in § 527(e) of the Internal Revenue Code, which encompasses entities organized and operated primarily for the purpose of accepting contributions or making expenditures for the purpose of influencing the election of any individual to a public or political office.

In order to qualify as a fundraising event under this provision, the **primary purpose** of the event must be to raise campaign funds. Thus, Members and employees may participate in a golf tournament or attend a show or other event sponsored by a political organization only if the event is a bona fide fundraising event. In other words, it would **not** be permissible to play a round of golf at third party expense and then for the third party to separately make a donation to a political organization that is not the event organizer.

This provision allows the acceptance of a ticket to a political fundraising or campaign event only from the political organization that is sponsoring the event. It does not allow the acceptance of a ticket from a person that simply donated money or purchased tickets to the event. However, it is possible that a ticket from someone other than the sponsoring political organization may be acceptable under one of the other provisions of the gift rule. For example, a Member or employee may accept a ticket that has a value of less than \$50, provided that the donor is not a registered lobbyist, foreign agent, or entity that employs or retains such a person, and that the gift does not exceed the annual, per-source gift limitation of less than \$100 (clause 5(a)(1)(B)). Under longstanding policy, a ticket to a political fundraising dinner (as well as a charity fundraising dinner) is valued at the cost of the dinner, rather than the face value of the ticket. Thus, depending on the circumstances, it is possible for

a ticket to a fundraising dinner to be acceptable under the less-than-\$50 provision of the gift rule even though the ticket has a face value of greater than \$50.

As more fully described in Chapter 2 on gifts, during the days of the national political party conventions, a Member may not participate in an event held in the Member's honor paid for by a registered lobbyist or an entity that employs or retains such a person. House Rule 25, clause 8.

The gift rule also allows Members and staff to accept travel expenses from a private source to participate in a fact-finding trip or appear for a speaking engagement. Occasionally a question arises as to whether a Member or staff person, while on such a trip, may engage in incidental campaign activity, such as attending a campaign fundraiser. The Standards Committee understands that FEC rules limit the ability of Members and staff to engage in federal campaign activity in the course of privately paid travel. Before undertaking such a trip that would include campaign activity, a Member or staff person should consult with the FEC on the applicability of those rules.

Member Involvement With an Independent Redistricting Fund

Members are often interested in supporting organizations dedicated to influencing the redistricting process that can arise out of the once in-a-decade census. A Member may associate with and raise money for such a fund only in accordance with the guidance on the solicitation of funds contained in Chapter 10, on involvement with outside organizations. Because such organizations typically are neither political organizations under § 527 of the Internal Revenue Code, nor qualified under § 170(c) of the Code, written Committee authorization to solicit on behalf of such an organization is generally required.

In addition, the Committee understands that the Bipartisan Campaign Reform Act imposed certain limitations on the ability of federal officeholders, including House Members, to solicit on behalf of outside organizations. FEC guidance on the status under FECA of organizations dedicated to influencing the redistricting process is currently unclear,¹⁰³ and it is therefore advisable for any Member wishing to raise funds on behalf of such an organization to also contact the FEC.

Other Provisions of the Federal Criminal Code Applicable to Campaign Activity

A number of the provisions of the federal criminal code that apply to campaign activity are discussed in the preceding sections of this chapter. There are other provisions of the code that House Members and employees should be aware of as well. Under those provisions, a Member or employee may **not** –

¹⁰³ See alternate unapproved drafts of FEC Advisory Opinion 2003-38. See also FEC Advisory Opinions 1990-23, 1982-37, and 1982-14.

- Promise to use support or influence to obtain federal employment for anyone in return for a political contribution (18 U.S.C. § 211);
- Deprive, attempt to deprive, or threaten to deprive anyone of employment or any other benefit provided for or made possible by an Act of Congress appropriating relief funds because of that person's political affiliation (18 U.S.C. § 246);
- Pay or offer to pay any person to vote or to withhold a vote or to vote for or against any candidate in a federal election (18 U.S.C. § 597);
- Solicit, accept, or receive an expenditure in consideration of a vote or the withholding of a vote in a federal election (18 U.S.C. § 597);
- Use any appropriation by Congress for work relief or for increasing employment, or exercise any authority conferred by any appropriations act, for the purpose of interfering with, restraining, or coercing any individual in the exercise of the right to vote (18 U.S.C. § 598);
- As a candidate, directly or indirectly promise to appoint any person to any public or private position for the purpose of procuring support for that candidacy (18 U.S.C. § 599);
- Promise employment or any other benefit provided for or made possible by any Act of Congress as a reward for political activity or support (18 U.S.C. § 600);
- Cause or attempt to cause anyone to make a political contribution by denying or threatening to deny any government employment, or benefit provided for or made possible, in whole or in part, by any Act of Congress (18 U.S.C. § 601);
- Solicit or receive political contributions from persons known to be entitled to or to be receiving relief payment under any Act of Congress (18 U.S.C. § 604);
- Furnish, disclose, or receive for political purposes the names of persons receiving relief payments under any Act of Congress (18 U.S.C. § 605);
- Intimidate any federal officer or employee to secure political contributions (18 U.S.C. § 606).

Elaboration on certain of these provisions is found in a publication of the U.S. Department of Justice, *Federal Prosecution of Election Offenses*, Seventh Edition, May 2007.

OUTSIDE EMPLOYMENT AND INCOME

Overview

House Members and employees are subject to various laws, rules, and standards of conduct concerning their outside employment activities. For example, a key provision of the House Code of Official Conduct (House Rule 23, clause 3) generally prohibits a Member, officer, or employee from using his or her official position for personal gain. Another provision (House Rule 25, clause 1(a)(2)) limits (and in some cases absolutely prohibits) the receipt of honoraria. Furthermore, provisions of the federal criminal code (18 U.S.C. §§ 203, 205) generally prohibit Members, officers, and employees from privately representing others before the federal government. The laws, rules, and standards of conduct applicable to all House Members and employees are discussed in the first part of this chapter.

Members and certain highly compensated staff (referred to as “senior staff” or “very senior staff”) are subject to additional restrictions on the types of paid outside employment they may engage in, as well as an annual limit on the amount of earned income they may receive from their outside employment. In addition, Members and “senior staff” must seek and receive prior Committee approval before engaging in paid teaching or publishing a book. Furthermore, Members and “very senior staff” must notify the Committee on Standards of Official Conduct within three business days after the commencement of any negotiation or agreement for future employment or compensation with a private entity (House Rule 27, clause 1). These individuals are also subject to certain post-employment restrictions after they leave the House (18 U.S.C. § 207(e), (f)). Additional restrictions apply only to Members themselves. For example, a Member who requests an “earmark” or limited tax or tariff benefit must certify that neither the Member nor the Member’s spouse has a financial interest in the provision being requested. Also addressed are the rules on voting by Members in matters involving a personal financial interest. The provisions applicable to Member and highly compensated staff are discussed later in this chapter. The outside of employment considerations for the spouses of Members and staff are discussed at the end of this chapter.

Laws, Rules, and Standards of Conduct Governing the Outside Employment of Members and All Staff

While staff members who are paid below the senior staff rate are not subject to the specific limitations set out later in this chapter, they are subject to a number of other restrictions on their outside employment. Those restrictions are summarized in this section.

The restrictions set out here are also applicable to the outside employment of Members and senior staff. Thus, when a Member or senior staff person is considering undertaking outside employment, the individual must ensure that the employment complies with both the specific limitations and the following restrictions.

Prohibition Against Use of One's Position With the House for Personal Gain

It is fundamental that a Member, officer, or employee of the House may not use his or her official position for personal gain, including any gain that would accrue to the individual in the form of compensation for outside employment activities. A key provision of the House Code of Official Conduct (House Rule 23, cl. 3) provides that a House Member, officer, or employee

may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in Congress.

As noted in the debate preceding adoption of this rule, an individual violates this provision if he uses "his political influence, the influence of his position . . . to make pecuniary gains."¹ Members and staff, when considering the applicability of this provision to any activity they are considering undertaking, must also bear in mind that under a separate provision of the Code of Official Conduct (House Rule 23, cl. 2), they are required to adhere to the spirit as well as the letter of the Rules of the House. In any event, the Standards Committee routinely advises Members and staff to avoid situations in which even an inference might be drawn suggesting improper conduct.

In addition, the Code of Ethics for Government Service, which applies to House Members, officers, and employees, provides (at ¶ 5) that a federal official should never accept "benefits under circumstances which might be construed by reasonable persons as influencing the performance" of official duties. The Committee found that this standard was violated, for example, when a Member persuaded the organizers of a privately held bank to sell him stock while he was using his congressional position to promote authorization for the establishment of the bank.² The Member also sponsored legislation to remove restrictions on the development of property in which he had a personal financial interest. Thus, the Member was found to have wrongly used his official position for personal benefit.

¹ 114 *Cong. Rec.* 8807 (Apr. 3, 1968) (statement of Rep. Price).

² *In the Matter of a Complaint Against Rep. Robert L.F. Sikes*, H. Rep. 94-1364, 94th Cong., 2d Sess. 3-4 (1976).

In the same vein, the Code of Ethics for Government Service affirms (in ¶¶ 8 and 10) that “public office is a public trust,” and provides that a federal official should “[n]ever use any information coming to him confidentially in the performance of governmental duties for making private profit.”

One of the purposes of these rules and standards is to preclude conflicts of interest. Although the term “conflict of interest” may be subject to various interpretations in general usage, under federal law and regulation, this term “is limited in meaning; it denotes a situation in which an official’s conduct of his office conflicts with his private economic affairs.”³ The ultimate concern “is risk of impairment of impartial judgment, a risk which arises whenever there is a temptation to serve personal interests.”⁴

These rules and standards are applicable in a wide range of circumstances relating to outside employment. When there is a potential for a conflict of interest to arise in connection with one’s outside employment or other activities, it would be advisable to consult with the Standards Committee before accepting the position. For example, a conflict of interest may arise when the prospective outside employer is an entity with interests before Congress. In no event may a Member, officer, or employee participate in lobbying or advising on lobbying of either Congress or the Executive Branch on behalf of any private organization or individual, even on an uncompensated basis, as that would conflict with a Member’s general obligation to the public.⁵ Other circumstances that implicate these rules and standards of conduct are discussed below, regarding receipt of excessive compensation, Member official activities on matters affecting their personal interests, outside employment of one’s spouse, conflict-of-interest concerns for staff members, and seeking future employment.

With regard to the outside employment of a staff person, it may be possible for conflict-of-interest concerns to be alleviated through a requirement that the staff person have no involvement in any matter coming before the congressional office that would be of interest to his or her outside employer. However, in some circumstances, such a requirement either is not feasible or would not be sufficient to satisfy the applicable rules and standards. In those circumstances, there may be no alternative to the staff person declining or terminating the outside employment.

³ Robert S. Getz, *Congressional Ethics* 3 (1967); see also Bayless Manning, *Federal Conflict of Interest Laws* 2-5 (1964); *Black’s Law Dictionary* 319 (8th ed. 2004).

⁴ Association of the Bar of the City of New York Special Comm. on Congressional Ethics, *Congress and the Public Trust* 39 (1970).

⁵ The statutory prohibition against representing others before federal agencies is discussed later in this chapter.

Example 1. A newly-hired legislative assistant in a Member's office who had worked for a consulting and lobbying firm in Washington wishes to continue to work for that firm on a part-time basis. His congressional pay is below the senior staff rate. The federal issues on which he would work for the firm are different from those for which he has responsibility in the congressional office, and he would not engage in any lobbying for the firm. Notwithstanding the proposed limitations on his work for the firm, he may not accept any part-time employment with that firm, as it would violate the general principle that Members and staff are not permitted to lobby Congress.

Example 2. A Member is considering hiring an individual who is a professional grant writer to research and handle constituent grant requests in his district office. The individual would like to continue to operate her grant-writing business on a part-time basis. Because there would likely be, at a minimum, an appearance of use of her official position for personal gain in such circumstances, she must discontinue her outside business upon accepting employment in the congressional office.

Example 3. An outside organization that operates a congressional internship program offers a congressional staff member part-time employment as director of that program. Because such a position would likely require use of contacts and information gained through the individual's employment with the House, the offer must be declined.

At times a Member or staff person wishes to engage in outside employment that involves the selling of goods or services. On the basis of the rules and standards of conduct set out above, a Member should not undertake any outside employment that would involve the Member personally in the selling or endorsement of any goods or services. On the same basis, at a minimum, any staff person who engages in sales may not solicit purchases from either (1) any non-congressional person with whom the employee came into contact through the congressional office or who has interests before the congressional office, or (2) any subordinate staff in his or her congressional office. In addition, in soliciting sales, House employees may not, directly or indirectly, identify themselves as congressional staff, refer to their congressional duties, or otherwise make use of their status as a congressional employee.

The Standards Committee is available to advise Members, officers, and employees on the applicability of the rules and standards of conduct in other specific circumstances.

Rules on Receipt of Honoraria

Under House Rules, Members, as well as House officers and employees who are paid above the “senior staff” rate, are prohibited from receiving any honoraria.⁶ An honorarium, as defined in the rules, is “a payment of money or a thing of value for an appearance, speech, or article” (House Rule 25, cl. 4(b)). The House Rules further provide that an officer or employee who is paid **below** the senior rate may accept an honorarium, unless any one of three circumstances is present:

- The subject matter of the speech, article, or appearance is directly related to the official duties of the individual;
- The payment is made because of the status of the individual with the House;
or
- The person offering the honorarium has interests that may be substantially affected by the performance or nonperformance of the official duties of the individual (House Rule 25, cl. 1(a)(2)).

A comprehensive ban on honoraria was originally enacted as part of the Ethics Reform Act of 1989 and took effect on January 1, 1991.⁷ The reasons for changing the law on honoraria then in effect – under which Members and staff were generally free to accept honoraria of up to \$2,000 per speech, appearance, or article – were explained by the Bipartisan Task Force on Ethics Reform as follows:

Significant increases in honoraria income in recent years have heightened the public perception that honoraria [are] a way for special interests to try to gain influence or buy access to Members of Congress, particularly since interest groups most often give honoraria to Members who serve on committees which have jurisdiction over their legislative interests.

* * *

There is growing concern that the practice of acceptance of honoraria by Members, particularly from interest groups with important stakes in legislation, creates serious conflict of interest problems and threatens to undermine the institutional integrity of Congress.⁸

⁶ House Rule 23, cl. 5; House Rule 25, cl. 1(a)(2).

⁷ Pub. L. 101-194, §§ 601 and 804, 103 Stat. at 1760, 1776-78.

⁸ House Bipartisan Task Force on Ethics, *Report on H.R. 3660*, 101st Cong., 1st Sess. 13-14 (Comm. Print, Comm. on Rules 1989), reprinted in 135 *Cong. Rec.* H9253, H9256 (daily ed. Nov. 21, 1989) (hereinafter “*Bipartisan Task Force Report*”).

In the Ethics Reform Act of 1989, the honoraria ban was both enacted as statutory law (applicable to the executive branch as well as the legislative branch) and incorporated into the House Rules.⁹ However, in a case brought on behalf of certain executive branch personnel, the Supreme Court held in 1995 that the statutory honoraria ban violated the First Amendment rights of those personnel.¹⁰ Subsequently, the U.S. Department of Justice determined that the statutory prohibition could not be enforced against any federal employee.¹¹ The provisions of the House Rules on honoraria were not affected by those actions, however, and thus **House Members, officers, and employees remain subject to those provisions.**¹²

As noted above, for Members, as well as for officers and employees paid at or above the senior staff rate, the ban is absolute. It encompasses **every** appearance, speech, or article, regardless of its subject matter or relationship to official duties, and the Standards Committee has no authority to grant waivers under any circumstances.¹³ Through 1998 the honoraria ban was likewise absolute for officers and employees paid below the senior staff rate. However, at the beginning of the 106th Congress in 1999, the honoraria ban was modified for staff paid below the senior staff rate. Since then, staff members paid below that rate have been allowed to accept honoraria that, under the criteria specified above, are entirely unrelated to either their official duties or their position with the House.¹⁴

Example 4. A teacher's union offers a staff member who works on education issues \$2,000 to write an article for the union newsletter on legislative initiatives to improve the quality of public education. The employee may write the article, but regardless of her House salary level, she may **not** accept any payment.

⁹ 5 U.S.C. app. 4 § 501(b); House Rule 43, cl. 5 (currently numbered as House Rule 23, cl. 5); House Rule 47, cl. 1(a)(1)(B)) (currently numbered as House Rule 25, cl. 1(a)(2)).

¹⁰ *United States v. Nat'l Treasury Employees Union*, 513 U.S. 454, 470 (1995).

¹¹ *Legality of Government Honoraria Ban Following U.S. v. National Treasury Employees Union*, Memorandum from Walter Dellinger, Ass't Att'y Gen., U.S. Department of Justice Office of Legal Counsel, to Attorney General (Feb. 26, 1996) (available on the Office of Legal Counsel website, www.usdoj.gov/olc).

¹² The Senate rules prohibiting the receipt of honoraria likewise continue in effect for Members, officers, and employees of the Senate.

¹³ It should be noted that because the rules define honorarium as a payment "for an appearance, speech or article . . . by a Member . . . officer or employee," the Committee does **not** construe the rules to prohibit payments for services rendered before an individual became a Member, officer, or employee of the House. See House Rule 25, cl. 4(b) (emphasis added).

¹⁴ For a further explanation of this rules change, see 145 *Cong. Rec.* H197-98 (daily ed. Jan. 6, 1999) (statement of Rep. Hansen).

Example 5. A staff member writes an article on rare butterflies for a nature magazine. He writes the article in his spare time, using his home computer. The subject of the article has nothing to do with his official duties or status, and the magazine has no interests that could be substantially affected by the performance of his official duties. If the employee's House pay is below the senior staff rate, the honorarium rules do not prohibit him from accepting an otherwise permissible payment for the article from the magazine. However, if his House pay is at or above the senior staff rate, he may not accept any payment for the article.

Definitions. The Committee defines the terms "speech," "appearance," and "article" as follows:

- A **speech** means an address, oration, talk, lecture, or other form of oral presentation, whether delivered in person, transmitted electronically, recorded, or broadcast over the media, but does not include teaching in an established educational program that conforms to teaching criteria established by the Committee (see section on "Requirement for Prior Committee Approval of Compensation for Teaching," below).
- An **appearance** means attendance at a public or private conference, convention, meeting, social event, or similar gathering, possibly but not necessarily involving incidental conversation, discussion, or remarks.
- An **article** means a writing that has been or is intended to be published, for which a payment, if made, would be other than a royalty received from an established publisher pursuant to usual and customary contractual terms. The term includes an article that is to be published in the name of another person (*i.e.*, a "ghost-written" article).

Occasionally House employees are invited to participate in a **focus group** and are offered a fee if they agree to participate. When the invitation is extended because of the individual's position with the House – and it must be assumed that any such invitation that is received in the congressional office is extended on that basis – the employee may **not** accept the fee, regardless of the level of his or her House pay. Participation in the focus group would constitute an appearance for purposes of the honoraria rules, and acceptance of payment for that appearance would therefore be prohibited.

The term "honorarium," as noted above, is defined as a payment of money or thing of value for an appearance, speech, or article (House Rule 25, cl. 4(b)). However, explicitly excluded from the definition of this term is "any actual and necessary travel expenses incurred by [a] Member . . . officer, or employee (and one relative)" in connection with the appearance, speech, or article "to the extent that such expenses are paid or reimbursed by any other person." The rule further

provides that for purposes of the rules, the amount of any honorarium is to be reduced by the amount of any such expenses to the extent that they have not been paid or reimbursed by anyone else.

Exclusions. Speaking, appearing, and writing are integral to many jobs. Most jobs require the employee to “appear” at the work site in order to perform. The honoraria rules clearly do not preclude outside employment merely because the employee must show up to do the work. The Committee has determined that the following types of compensation are **not** honoraria. However, Members, officers, and employees who are paid at or above the senior staff rate should bear in mind that any such compensation that they receive is subject to the outside earned income limitation discussed later in this chapter.

- Compensation for activities **when speaking, appearing, or writing is only an incidental part** of the work for which payment is made (*e.g.*, conducting research) is not an honorarium.
- **Bona fide awards and gifts** generally are not honoraria. If a Member, officer, or employee is presented with an award, memento, or gift at an event, the Committee does not consider the object to be an honorarium, unless it is specifically given in consideration of the speech or appearance. Similarly, an individual may accept an award for artistic, literary, or oratorical achievement made on a competitive basis under established criteria. Of course, either such item must otherwise be acceptable under the gift rule.
- Paid engagements to perform or to provide entertainment when the **artistic, musical, or athletic talent** of the individual is the reason for the employment, rather than the person’s status as a Member or employee of Congress are not honoraria.
- **Witness and juror fees** by a court or other governmental authority are not honoraria. However, under a Committee on House Administration rule that implements statutory law (2 U.S.C. § 130b), a House employee must remit to the House Finance Office any fee that he or she receives for service as either a juror in a United States or District of Columbia court or as a witness on behalf of the United States or the District of Columbia.
- Fees to a qualified individual for conducting **worship services or religious ceremonies** (but not for delivering speeches or invocations at religious conventions) are not honoraria.
- Payments for works of **fiction, poetry, lyrics, or script**, when the payment is not offered because of the author’s congressional status are not honoraria.
- **Salary or wages** pursuant to an employer’s usual employee compensation plan when paid by the employer for services on a continuing basis that involve appearing, speaking, or writing are not honoraria. Any Member, officer, or employee considering entering into such an arrangement should

first contact the Standards Committee for guidance. This exclusion does **not** apply to any arrangement with an agent, speakers bureau, or similar entity that facilitates appearances or speaking or writing opportunities.

Thus, not all jobs that involve speaking, appearing, or writing are barred. Conducting religious ceremonies plainly involves speaking, yet qualified Members and staff may still accept compensation for these services. The fact that a speech is made before a religious group or at a religious convention, however, will not suffice to remove it from the ban. Similarly, a Member may not accept a fee merely for offering an invocation at the beginning of an event.

Writers, too, may continue to ply their craft in many ways. If the writing is not for publication, or the writing is an incidental part of a job, payment may still be permitted. Congressional authors of fiction, poetry, lyrics, or scripts may accept compensation.

Prior to 1999, House Members and staff were, in certain circumstances, allowed to accept a **stipend**, defined as payment for a **series** of at least three appearances, speeches, or articles. Under the rules then in effect, such a payment was acceptable unless either the subject matter of the appearances, speeches, or articles was directly related to the individual's official duties, or the payment was made because of his or her status with the House.¹⁵ However, an amendment to the House Rules adopted at the beginning of the 106th Congress abolished the exclusion for such "stipends." That amendment expanded the definition of the term "honorarium" in the rules to include any payment for any "series of appearances, speeches, or articles" (House Rule 25, cl. 4(b)).

Example 6. A staff member has an outside part-time job with a local university, the duties of which include research and analysis on subjects unrelated to her official duties. In order to inform her faculty supervisor of her findings, she must write them up. Since the writing is incidental to her primary responsibilities, her acceptance of compensation for her services is not prohibited by the honoraria rules.

Example 7. A staff member was a music major in college and is an accomplished violinist. He is occasionally invited to play with the local symphony orchestra at evening and weekend concerts and is compensated at the same rate as other musicians of his caliber in the community. Provided that he is hired based on his talent and not his status as a congressional employee, his acceptance of compensation for these performances is not prohibited by the honoraria rules.

¹⁵ See 5 U.S.C. app. 4 § 505(3), as amended by the Legislative Branch Appropriations Act, 1992, § 314(b), 105 Stat. 447, 469 (1991).

Example 8. A staff member works part-time in evenings and on weekends playing the piano. In the course of lobbying her on some legislation, a lobbyist learns of her avocation and, without knowing anything about her musical abilities, offers to hire her to play at his firm's Christmas party. He offers to pay her twice the going rate for such an engagement. The staff member must decline the offer.

Example 9. A staff member writes a fictional story that is published by a children's magazine. Since it is a work of fiction, his acceptance of payment for the article is not prohibited by the honoraria rules.

Example 10. A Member who is a retired professional athlete is invited to appear at a sports-related event to sign autographs. The contract provides that he must sign 500 autographs and for doing so will be paid a fee of \$2,000. Because the payment is explicitly based on the number of autographs to be signed, the Member's acceptance of the fee is not prohibited by the honorarium rules.

Example 11. A philatelic magazine requests that a staff member who is paid at the senior staff rate write a series of articles on stamp collecting. Even though stamp collecting is unrelated to the staff member's official duties and status, and the magazine has no interests that could be affected by her performance of her official duties, the staff member may **not**, under the current honoraria rules, accept the payment for the series, because as senior staff she is subject to the absolute ban.

Donations to Charity. Under House rules, the sponsor of a speech, appearance, or article may make a payment in lieu of an honorarium to a charitable organization on behalf of a Member, officer, or employee (House Rule 25, cl. 1(c)). The sponsor may make a donation of up to \$2,000 per speech, appearance, or article, as long as the sponsor makes the payment directly to the charitable organization. Even if the sponsor makes the check payable to the charity, the Member or staff person may **not** accept the check and personally forward it to the charity.

The Member or staff person may suggest a particular charitable organization to receive the donation, within the following limits. The term "charitable organization" as used in the rule means an organization described in § 170(c) of the Internal Revenue Code.¹⁶ The individual may not receive any tax benefit from the

¹⁶ House Rule 25, cl. 4(e). Section 170(c) defines contributions that are tax deductible. It includes contributions to the United States; the District of Columbia; any state or possession, or a political subdivision thereof if made for exclusively public purposes; religious, charitable, scientific, literary, or educational organizations; and organizations to foster amateur sports competition or for the prevention of cruelty to children or animals. These organizations may not be operated for profit, (con't next page)

donation. Accordingly, the individual may neither add the donation to income nor deduct it for income tax purposes (26 U.S.C. § 7701(k)). The charity may not be one from which the individual or his or her immediate family (parent, sibling, spouse, child, or dependent relative) derives any financial benefit (House Rule 25, cl. 1(c)). The Task Force construed this restriction narrowly:

The task force intends that a financial benefit for purposes of this rule would be a direct benefit to the individual or a family member that is separate from any general benefit that the institution would derive. For example, this provision would not prohibit a payment to a university at which the Member's child is a student, or to a health care facility at which a family member is a patient.¹⁷

Thus, when the Member, staff person, or family member draws a direct financial benefit (such as a salary) from a particular charity, the Member or staff person may **not** designate that charity to receive payments in lieu of honoraria. In the case of a national or international charity, however, the fact that a family member works for a local unit would not preclude a Member or staff person from designating the parent organization. Any remote benefit to the family member from the donation in that situation would be too indirect to fall within the statute's prohibition.

Example 12. Member A gives a speech to a trade association in New Orleans. The Committee approves the association paying the Member's travel, food, and lodging expenses. In connection with the event, the association sends a check for \$2,000 to the Boy Scouts with a note saying: "In lieu of an honorarium, Member A has asked us to make this donation to the Boy Scouts in honor of his speech to our association." The donation on behalf of the Member is permissible under the rules.

Example 13. A Member gives a speech to a political club in Chicago. The following week, she receives a check for \$1,500, payable to her, with a note from the club saying: "Thank you for addressing our club. We do not know which charities you support, so we are sending you this check, knowing that you will pass it along to some worthy organization." The Member may **not** accept the check, even if she

nor may they attempt to influence legislation or participate in political campaigns for public office. 26 U.S.C. § 170(c). Since an organization's tax status is determined by the Internal Revenue Service, a Member or staff person who wishes to designate a particular organization to receive payments in lieu of honoraria should verify with the organization that the IRS has granted it tax deductible status under § 170(c).

¹⁷ *Bipartisan Task Force Report*, *supra* note 8, at 15, 135 *Cong. Rec.* at H9257.

intends to endorse it over to a charity immediately. She must return the check to the club. If she wishes, she may suggest that the club donate the money to a specific charity of her choice or to any charity of the club's choice that is qualified under § 170(c) of the tax code.

Example 14. A Member gives a speech at an executives' roundtable in Kansas City. In honor of the event, the executives' group presents the Member with a check for \$1,000, made out to his favorite charity. He may **not** send the check on to the charity. The Member must return the check to the executives, who may then forward it to the charity themselves.

Example 15. A staff member writes an article that is accepted for publication by a magazine. The magazine normally would pay \$500 for a comparable article and asks the staff member if he would like that amount to be donated to a charity. His favorite charity is a homeless shelter in his hometown at which his sister works for pay as a counselor. Since his sister receives a direct financial benefit from the shelter (her salary), the staff member may **not** designate the shelter to receive the payment from the magazine. He may designate another charity.

Example 16. A staff member writes an article that is accepted for publication by a magazine that offers to donate \$500 to the charity of her choice. The staff member's husband is a lab technician at the local Red Cross blood bank. Nevertheless, she **may**, if she chooses, designate the national or international Red Cross to receive the payment in lieu of honoraria.

At times Members cooperate with or help organize charitable foundations, which they designate to receive payments in lieu of honoraria and supplement with independent solicitations. Typically, these foundations attempt to address particular needs in the Member's district (such as scholarship funds) or national problems of particular concern to the Member. A Member may designate such a foundation to receive payments in lieu of honoraria **if** the foundation is qualified under § 170(c) of the tax code.

Gift Rule Applicability to Compensation and Other Things of Value Received From an Outside Employer

The House gift rule defines the term "gift" in an extremely broad manner.¹⁸ The rule would be implicated if a Member, officer, or employee were to accept

¹⁸ See House Rule 25, cl. 5(a)(2)(A); see also Chapter 2 on gifts.

compensation for outside employment in an amount that exceeds the fair market value of the services that he or she renders. Among the relevant factors in determining that value are the specific nature of the services rendered by the individual, the amount of time that he or she devotes to the outside employment, the amount of compensation customarily paid for such services, and the individual's qualifications to render the particular services.

In addition, a specific provision of the gift rule addresses the acceptability of “[f]ood, refreshments, lodging, transportation, and other benefits” that result from the outside business or employment activities of a Member, officer, or employee (House Rule 25, cl. 5(a)(G)(i)). Under that provision, such a benefit is acceptable only if two requirements are satisfied: (1) The benefit has not been offered or enhanced because of the official position of the Member or staff person, and (2) it is one that is “customarily provided to others in similar circumstances.”

Prohibition Against Use of Congressional Office Resources

Pursuant to federal statute (18 U.S.C. § 1301(a)), official funds may be used only for the purposes appropriated. Thus, House resources acquired with such funds – including the office telephones, computers fax machines and other equipment, office supplies, office space, and staff while on official time – are to be used for the conduct of official House business. Those resources may not be used to perform or in furtherance of any outside employment of any Member, officer, or employee. A provision of the rules issued by the House Administration Committee allows minor, incidental personal use of House equipment and supplies. However, the Standards Committee understands that this provision allows such use of those resources for personal purposes only, and does **not** allow their use for outside employment or business purposes.

Practice of Law

Although the paid practice of law by Members and senior staff has been severely curtailed since 1991, those individuals generally may still practice without compensation, and non-senior employees may practice for compensation, within the following parameters.

No public official should take on a private obligation that conflicts with the individual's primary duty to serve the public interest. The lawyer's duty of undivided loyalty to clients¹⁹ makes the practice of law particularly susceptible to conflicts with the wide-ranging responsibilities of Members and staff.

¹⁹ See, e.g., ABA, *Model Rules of Professional Conduct*, Rule 1.7 (2007).

Congressional lawyers who wish to maintain a private practice should also consult their local bar associations with respect to professional restrictions on them.

Federal law prohibits Members from practicing in the United States Court of Federal Claims or the United States Court of Appeals for the Federal Circuit (18 U.S.C. § 204). In addition, Members and employees may not privately represent others before federal agencies, as described below.

Prohibition Against Representing Others Before Agencies or in Court Cases in Which the Government Is a Party or Has an Interest

Federal criminal law generally prohibits Members, officers, and employees from privately representing others before the federal government. One provision bars these individuals from seeking or receiving compensation (other than as provided by law) for “representational services” before any federal government agency, department, court, or officer in any matter or proceeding in which the United States is a party or has an interest (18 U.S.C. § 203).

A second provision forbids any officer or employee from acting “as agent or attorney for anyone” (other than in the proper discharge of official duties) before any federal government entity in any particular matter in which the federal government has an interest, **whether or not the individual is compensated** (18 U.S.C. § 205). The individual need not actually be an attorney or have a strict common law agency relationship with another in order to be restricted by the statute.²⁰ While House officers and employees are covered by this provision, Members are not.

In addition, a provision of the House Rules states that a person “may not be an officer or employee of the House, or continue in its employment, if he acts as an agent for the prosecution of a claim against the Government or if he is interested in such claim, except as an original claimant or in the proper discharge of official duties” (House Rule 25, cl. 6).

Under 18 U.S.C. § 203, a Member, officer, or employee of the House may not receive compensation, other than congressional salary, for any dealings with an administrative agency on behalf of a constituent or any other person or organization. Even if contacting a federal agency on behalf of a private individual or organization is within the scope of official duties, an individual who accepts additional compensation for such services has violated the law.²¹ In this sense, Section 203 supplements the law against illegal gratuities discussed in Chapter 2.

²⁰ *United States v. Sweig*, 316 F. Supp. 1148, 1157 (S.D.N.Y. 1970).

²¹ *May v. United States*, 175 F.2d 994, 1005 (D.C. Cir.), *cert. denied*, 338 U.S. 830 (1949).

Section 203 prohibits the receipt of compensation “directly or indirectly” for services before federal agencies. Therefore, if a Member or staff person, whether through participation in a partnership arrangement or otherwise, shares in fees from services rendered before federal agencies, a violation of this provision may occur even if the individual did not personally perform the services.²² This same opinion notes, however, that the Office of Government Ethics has interpreted § 203 not to apply to a person who receives a fixed salary as an employee of a firm (as opposed to someone who shares in the firm’s profits), even though some of the firm’s overall income may be attributable to service covered by § 203.”²³ This provision can apply to a law firm retiree when the retiree’s pension is based on a percentage of law firm profits if any of those profits are derived from representation activities before the federal government.

Both sections 203 and 205 carry the same possible penalties: Imprisonment for up to one year (or five years if the violation is willful); a civil fine of up to \$50,000 per violation or the amount received or offered for the prohibited conduct (whichever is greater); or a court order prohibiting the offensive conduct (18 U.S.C. § 216). In one case, a federal court held a former Member of Congress liable for repayment of compensation unlawfully received. The court ruled that a violation of § 203

unquestionably demonstrates a breach of trust, for in order to fall within its prohibition, a member of Congress must shed the duty of disinterested advocacy owed the government and his constituents in favor of championing private interests potentially inconsistent with this charge.²⁴

Sections 203 and 205 exempt certain activities. Individuals may represent themselves before the federal government. They may also represent their spouse, parent, child, or any person for whom they serve as guardian, trustee, or personal fiduciary (18 U.S.C. §§ 203(d), 205(e)). Even on behalf of these people, however, the individual must refrain if the matter at issue is one in which he or she participated personally and substantially on behalf of the government or one that falls within his

²² See U.S. Office of Government Ethics (“OGE”) Advisory Opinion 99 x 24 (Dec. 14, 1999); see also OGE Advisory Opinion 88 x 3 (Mar. 2, 1988) (same).

²³ OGE Advisory Opinion 99 x 24, *supra* note 22; see also OGE Advisory Opinion 99 x 25 (Dec. 22, 1999) (permitting federal employee to accept compensation from firm that represented clients before federal entities where employee’s compensation was not derived from or contingent on those services).

²⁴ *United States v. Podell*, 436 F. Supp. 1039, 1042 (S.D.N.Y. 1977), *aff’d*, 572 F.2d 31 (2d Cir. 1978); see also *United States v. Eilberg*, 507 F. Supp. 267, 271 (E.D. Pa. 1980) (stating that the “purpose of the remedy is . . . to provide a means of enforcing the loyalty of [government] agents”).

or her official responsibilities. The statutes also provide that a staff person who wishes to engage in excepted representational activities must have the approval of his or her employing Member. In addition, one may, without compensation, represent anyone in a disciplinary or personnel proceeding (18 U.S.C. § 205(d)).

Example 17. A staff member is a caseworker, and because of his experience in dealing with federal government agencies, his brother asks him to represent him in an FCC hearing at which the brother is contesting the agency's denial of his license application. The staff member must decline, even if he does not receive compensation for his services.

Example 18. A staff member's parents have a dispute with the Social Security Administration. The staff member **may** represent them at their hearing if her employing Member approves.

Example 19. A staff member is a tax lawyer. His college roommate has a dispute with the IRS and asks the staff member to accompany him and to assist him at the hearing. The staff member may **not** do so, even if he receives no compensation.

Example 20. A Member who is an attorney wishes to represent in state court, on a *pro bono* (unpaid) basis, union members who were charged with state law violations while picketing their employer. The Member's uncompensated representation would not violate 18 U.S.C. §§ 203 or 205.

Contracting With the Federal Government

Paragraph 7 of the Code of Ethics for Government Service cautions all government officials not to engage in any business with the federal government, "either directly or indirectly which is inconsistent with the conscientious performance" of governmental duties. To do so would raise the appearance of undue influence or breach of the public trust.

Under the federal criminal code, a Member of Congress may not enter into a contract or agreement with the United States government. Any such contract is deemed void, and both the Member and the officer or employee who makes the contract on behalf of the federal government may be fined (18 U.S.C. §§ 431, 432). In addition, public contracting law provides that "no Member of Congress shall be

admitted to any share or part of any contract or agreement with” the United States, “or to any benefit to arise thereupon” (41 U.S.C. § 22).²⁵

The criminal law precludes Members from “directly or indirectly” holding, executing, undertaking, or enjoying “in whole or in part” any contract with the federal government. The Attorney General has interpreted this language to prohibit a general or limited partnership that includes a Member of Congress from entering into a contract with the federal government.²⁶ In addition, it is possible that a Member of Congress who receives compensation under an independent organization’s government contract – for example, compensation in the form of a salary from the organization, or through a subcontract with it – may be deemed to be improperly benefiting from that contract.

Unlike a partnership, a corporation with a relationship to a Member of Congress **may** enter into a contract with the federal government for the general benefit of the corporation (18 U.S.C. § 433). Thus, a Member of Congress may be a stockholder, even a principal stockholder, or an officer of a corporation that holds a federal government contract without incurring criminal liability.²⁷ Similarly, the spouse of a Member may enter into a contract with the federal government. Incorporating for the obvious purpose of circumventing the statute’s prohibition, however, would disqualify an entity from the § 433 exception.²⁸ It would appear that the statutory exception in the criminal law for contracts with corporations would likewise apply to the contract law provision of 41 U.S.C. § 22, since all the provisions discussed, and the exceptions to them, were originally passed as part of the same act.²⁹

²⁵ The criminal statute specifically exempts contracts entered into under the Agricultural Adjustment Act, the Federal Farm Loan Act, the Farm Credit Act of 1933, the Home Owners Loan Act of 1933, the Bankhead-Jones Farm Tenant Act, crop insurance agreements, and contracts that the Secretary of Agriculture enters into with farmers (18 U.S.C. § 433). In addition, contracts under the Federal Farm Mortgage Corporation Act are exempt from 41 U.S.C. § 22, as are contracts that the State Department makes in foreign countries (22 U.S.C. § 1472(a)(2)). The public contracting clause must appear, however, in contracts for the acquisition of land pursuant to flood control laws (33 U.S.C. § 702m).

²⁶ See 22 Op. Off. Legal Counsel 33 (1988). *But see* 4 Op. Att’y Gen. 47 (1842) (permitting company in which Member was a partner to enter sales contract with U.S. Navy, where Member disclaimed any benefit from the contract).

²⁷ See 39 Op. Att’y Gen. 165 (1938) (Member held 30% of corporation’s stock and was president of company); *see also* 33 Op. Att’y Gen. 44 (1921) (allowing corporations to accept loan from War Finance Corporation, secured by promissory note of company in which Member was a stockholder).

²⁸ 22 Op. Off. Legal Counsel 33, *supra* note 26.

²⁹ Revised Statutes §§ 3739-3741, 2 Stat. 484, ch. 48 (Apr. 21, 1808).

When a Member or an entity in which a Member has an ownership interest (other than a publicly held corporation) is considering entering into a contract or agreement with a federal government agency, the Member should first consult with the agency on the possible applicability of these statutes. Similarly, a newly elected Member who has such a contract should immediately consult with the contracting agency on this point.

While these statutes do not apply to House officers and employees, the matter of government contracts with federal employees is addressed in the Federal Acquisition Regulations. The regulations provide that a contract may not knowingly be awarded to a federal employee (including an officer or employee of the House), or a firm substantially owned or controlled by one or more federal employees, except “if there is a most compelling reason to do so, such as when the government’s needs cannot reasonably be otherwise met.”³⁰

Example 21. A federal agency is holding an auction of properties. A House Member may **not** purchase anything at the auction because the contract of sale would be a contract with the government.

Example 22. A Member is invited to speak at a conference sponsored by an executive branch agency. Although private sector speakers at this conference are paid a speaker’s fee, the Member may **not** accept payment. (Note that such a payment also would constitute a prohibition honorarium).

Comparable prohibitions on the use of Member office and committee funds are set out in rules issued by the House Administration Committee. The *Member’s Handbook* issued by that Committee provides that “no Member, relative of the Member, or anyone with whom the Member has a professional or legal relationship may directly benefit from the expenditure of the MRA [Member’s Representational Allowance],” unless “specifically authorized by an applicable provision of federal law, House Rules, or [House Administration] Committee Regulations.” The *Committees’ Handbook* provides that, subject to the same exception, “no Member of the committee, relative of a committee Member, or anyone with whom a committee Member has a professional or legal relationship may directly benefit from the expenditure of committee funds.” While the application of these rules is within the jurisdiction of the House Administration Committee, it appears that these rules preclude a Member or committee from contracting with a staff member for the acquisition of goods, or of any services outside of the employment context.

³⁰ 48 C.F.R. §§ 3.601-3.603.

Dual Federal Government Employment

A provision of the Constitution (Article I, Section 6, clause 2) generally prohibits Members of the House (as well as the Senate) from holding any other federal office:

[N]o Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Decisions of the House and the House Judiciary Committee applying this provision to particular federal offices and in various circumstances are summarized in the *House Rules and Manual* issued by the House Parliamentarian.³¹

House staff persons are not absolutely prohibited from holding a non-House federal job, but a provision of statutory law severely restricts their ability to do so. Under that provision, a House employee may not hold a non-House government job if the annual pay of the two positions combined exceeds a limitation that is calculated at the beginning of each year (5 U.S.C. § 5533(c)(1)). In 2007 this combined limitation was \$30,826.³² A “position” means “a civilian office or position (including a temporary, part-time, or intermittent position), appointive or elective, in the legislative, executive, or judicial branch of the Government” (*id.*, § 5531(2)). The dual employment bar does not apply when the positions involved are expert or consultant positions and pay is received on a “when-actually-employed” basis for different days (*id.*, § 5533(c)(4)).

The statute further provides that an individual may hold two or more House jobs, provided that the combined salary does not exceed the maximum annual rate of pay authorized to be paid out of a Member’s clerk hire allowance (*id.*, § 5533(c)(2)).³³ Thus, the law allows House employees to work part-time in a House office and allows House offices to share an employee, as long as the employee performs duties for each office that are commensurate with the compensation the employee receives from that office, and the employee’s combined House salaries do not exceed the cap.

³¹ See, e.g., John V. Sullivan, Parliamentarian, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives, One Hundred Tenth Congress*, H. Doc. 109-157, 109th Cong., 2d Sess. (2007), §§ 97-101 (hereinafter “*House Rules and Manual*”).

³² The cited amount is the \$7,724 limit provided by the statute, as adjusted by the House Chief Administrative Officer in accordance with authority contained in 2 U.S.C. § 60a-2. As of the printing of this Manual, the 2008 maximum has not been set.

³³ The maximum annual rates of pay for various House positions are set each year in the Speaker’s Pay Order.

Holding Local Office

At times House employees wish to hold an elected or appointed local government office. While no statutory provision or House rule absolutely prohibits a House employee from holding a local office while remaining on the House payroll, the applicable provisions of state or local law on eligibility for office must be consulted. In addition, House employees must take care to avoid any undertaking that is inconsistent with congressional responsibilities.

The holding of a local office by a House employee is subject to all of the restrictions and limitations on outside employment set out in this chapter. For employees who are paid at or above the senior staff rate, the limitations include the outside earned income limitation and all of the “fiduciary relationship” restrictions. As a result, a senior staff person is generally prohibited from receiving compensation for service as an elected or appointed government official. In addition, regardless of their rate of pay, all House employees must adhere to the prohibition against using any House resources to perform the duties of their local office, the requirements that those duties be performed outside the congressional office and on their own time, and the prohibition against representing anyone else – including the local government by which they are employed – before federal agencies.

Furthermore, in making public comment on issues or otherwise dealing with the public, an employee who serves in a local office should always make clear in which capacity the employee is acting. In addition, the employee is prohibited from providing any special treatment to constituents in a congressional capacity and should discourage any suggestion that they will receive preferential treatment from the employee’s congressional office.

A staff member considering running for or serving in a local office should first consult with his or her employing Member on the matter, and should refrain from doing so if the Member objects. When the demands of the local office are such that it is impossible as a practical matter for the employee to maintain an absolute separation of the two positions – or when the employing Member concludes that the two positions are incompatible – then the employee will have no alternative but to decline or terminate service in the local office, or to terminate congressional employment.

The laws, rules, and regulations governing campaign activity are discussed in detail in Chapter 4 on Campaign Activity. In particular, employees should be cognizant of restrictions that prohibit performing local elective service or any campaign activity for local office in House office space (including district offices), using House resources, or on official time. In addition, both federal statute and regulations of the House Building Commission prohibit any political solicitation –

including one for local office – from being conducted in a House office space.³⁴ It is also unlawful to solicit funds from other federal employees.³⁵

For a number of reasons – including the full-time nature of the position that a House Member assumes, and provisions of the laws of various states on eligibility to hold office – questions regarding the possibility of a Member holding a local office rarely arise. While the Constitution does not prohibit House Members from simultaneously holding state or local office, the House has determined that “a high state office is incompatible with congressional membership, due to the manifest inconsistency of the respective duties of the positions.”³⁶ Any House Member considering holding a state or local office should first consult with the Standards Committee and, when there may be a question of whether the office involved is a “high state office,” the House Parliamentarian.

Prohibition Against Receiving Compensation from a Foreign Government

The Constitution prohibits any Member or employee of the House (as well as any other federal official) from receiving an “emolument” of “any kind whatever” from a foreign government or a representative of a foreign state, without the consent of the Congress (Article I, Section 9, clause 8). As the Comptroller General has noted, “it seems clear from the wording of the Constitutional provision that the drafters intended the prohibition to have the broadest possible scope and applicability.”³⁷ Thus, an “emolument” has been defined as any “profit, gain, or compensation received for services rendered.”³⁸

Although Congress has consented, in the Foreign Gifts and Decorations Act, to the acceptance by federal officers of certain **gifts**, no statute grants a general consent for the receipt of emoluments or other **compensation** from foreign governments.³⁹ The Comptroller General has ruled that transportation or expenses for travel **gratuitously** given by a foreign government would fall within regulations promulgated on the receipt of foreign gifts (see Chapter 2 on gifts). However, if the travel was offered by a foreign government **in return for or in connection with some**

³⁴ See 18 U.S.C. § 602 and House Office Building Comm’n, *Rules and Regulations Governing the House Office Buildings, House Garages and the Capitol Power Plant* (Feb. 1999), at ¶ 4 (available from the Speaker’s Office).

³⁵ See 18 U.S.C. § 602.

³⁶ 2 *Deschler’s Precedents of the U.S. House of Representatives*, ch. 7, § 13, at 125.

³⁷ 49 Comp. Gen. 819, 821 (1970).

³⁸ As used here, the term “local government office” includes not only offices in a county, municipal, or town government, but also membership in a state legislative body.

³⁹ 5 U.S.C. § 7342. But see 37 U.S.C. § 908 (consenting to the civilian employment of retired military and military reserve members by foreign governments, when approved by the relevant Cabinet Secretaries).

service that a Member or employee would provide, such as making a speech, then such expenses could be deemed “compensation” and thus be an “emolument.”⁴⁰ Note the difference between this Constitutional provision and the honoraria rules: The honoraria rules generally permit one to accept necessary travel expenses to deliver a speech; the Constitution, however, prohibits the acceptance of such expenses **from a foreign government**.

Members and employees may **not** therefore receive any payment for services rendered to official foreign interests, such as ambassadors, embassies, or agencies of a foreign government.⁴¹ Caution should thus be exercised in accepting expenses or other compensation from any foreign organization (such as a foundation) that receives sponsorship, funding, or licensing from a foreign government, because it could be considered an official arm or an instrumentality of the government. The Comptroller General has ruled, for example, that a Member of Congress could not accept a fee from the British Broadcasting Corporation for participation in a television program to discuss the American Presidency.⁴² The BBC, because of its funding relationship with and regulation by the British government, was considered an instrumentality of the British government, and thus a “foreign state” under the constitutional ban.

Regardless of compensation, a public official may not act as an agent or attorney for either (1) a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, that is, generally, those individuals engaged in lobbying, political, or propaganda activities,⁴³ or (2) a lobbyist required to register under the Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity (18 U.S.C. § 219).

Additional Considerations Applicable to Staff Outside Employment

Proper Performance of Congressional Duties. A House staff member who engages in outside employment may not do so to the neglect of official congressional duties, nor on “official time” for which he or she is compensated with public funds. The House Code of Official Conduct specifically provides that a Member “may not retain an employee who does not perform duties for the offices of the employing

⁴⁰ Opinion of the Comptroller General B-180472 (May 9, 1974) (copy on file with the Standards Committee).

⁴¹ *See, e.g.*, Memorandum of Walter Dellinger, Ass’t Att’y Gen., Office of Legal Counsel, Dep’t of Justice, to Gary J. Edles, General Counsel, Administrative Conference of the U.S. (Oct. 28, 1993) (Emoluments Clause prohibits government employees from accepting a law firm partnership distribution that may include some income received from foreign government clients) (available on the Office of Legal Counsel website, www.usdoj.gov/olc).

⁴² Comp. Gen. Op. B-180472, *supra* note 40.

⁴³ *See* Foreign Agents Registration Act, 22 U.S.C. §§ 611-621.

authority commensurate with the compensation he receives” (House Rule 23, cl. 8). Additionally, ¶ 3 of the Code of Ethics for Government Service instructs government employees to “[g]ive a full day’s labor for a full day’s pay.” A House employee is hired and paid from the United States Treasury for the performance of official duties. Any outside employment that would detract from the performance of, or full time and attention to, one’s government job would be contrary to these standards. When the demands of a staff person’s outside employment result in a reduction of the amount of time that he or she devotes to congressional duties, a commensurate reduction in the individual’s congressional pay is required.

Conversely, the provisions of the House Rules prohibiting unofficial office accounts generally preclude Members from accepting privately financed or unpaid services (as well as other in-kind support) for the performance of official House business (House Rule 24, cl. 1). Accordingly, a staff person should not perform congressional duties during time for which the individual is being compensated by a private outside employer, and should not use any resources of a private outside employer for the performance of congressional duties. Particularly where a staff person devotes a significant amount of time to outside employment, or engages in outside employment activities during the regular business day, he or she should keep careful time records for both positions in order to be able to demonstrate compliance with the applicable rules.

In addition, because a staff person’s specific duties and terms of employment are within the discretion of his or her employing Member, the Member’s perspective on a staff person’s outside employment – and particularly whether any specific outside employment may impair the individual’s ability to perform his or her congressional duties or would otherwise be inappropriate – is most important. For that reason, a staff person should consult with his or her employing Member or supervisor before undertaking any outside employment.

The considerations applicable to the performance of campaign work by House staff are detailed in Chapter 4 of this Manual.

Outside Employment of Professional Committee Staff. A provision of the House Rules states that the professional staff members of each standing committee “may not engage in any work other than committee business during congressional working hours” (House Rule 10, cl. 9(b)(1)(A)). The legislative history of the provision states that its intent is to confirm that the House Rules on professional committee staff “[do] not prohibit such staff from outside employment on their own time.”⁴⁴

⁴⁴ *Bipartisan Task Force Report*, *supra* note 8, at 34, 135 *Cong. Rec.* H9262.

Staff Who File Financial Disclosure Statements. A provision of the House Code of Official Conduct that was added by the Ethics Reform Act of 1989 restricts the **official** activities of employees who file financial disclosure forms (House Rule 23, cl. 12). These staff persons may not contact other government agencies with respect to non-legislative matters affecting their own significant financial interests. An employing Member may waive this disqualification by notifying the Standards Committee, in writing, that the Member is aware of the employee's financial interest, but deems this person's participation in the matter to be necessary.

Example 23. Staff person A, who is the banking expert on a Member's staff, is part owner of a bank in the Member's district. A new banking regulation will adversely affect all the banks in that district, and the Member wishes A to contact the banking regulators on his behalf to urge reconsideration. The Member writes to the Standards Committee stating: "I authorize my staff member, A, to contact banking authorities concerning Regulation 123. I understand that A, as part owner of Central Bank, may benefit if the Regulation is withdrawn. Nonetheless, I waive the application of House Rule 23, clause (12)(a) because A's expertise in this area makes her participation necessary." Upon receipt of the Member's letter by the Committee, A is free to contact the agency.

Negotiating for Future Employment

The Committee's general guidance regarding negotiating for non-congressional employment is that House Members and employees are free to pursue future employment while still employed by the House, subject to certain ethical constraints. However, House Rule 27, which was enacted during the 110th Congress,⁴⁵ established an additional restriction for House Members. Pursuant to House Rule 27, clause 1, a Member may not "directly negotiate or have any agreement of future employment until after his or her successor has been elected" ***unless*** the Member discloses those negotiations as required by the rule. House Rule 27 also requires officers, very senior staff, and those Members who are subject to the rule to disclose to the Standards Committee any job negotiations made with a private employer while the individual is still employed by the House, as well as any recusal from official matters that is necessitated by those negotiations.

The term "negotiation" is not defined in the legislation or House rule. In its past guidance, the Committee has given deference to court decisions interpreting a related federal criminal statute. That statute (18 U.S.C. § 208) bars executive branch employees from participating in matters affecting the financial interests of

⁴⁵ House Rule 27 was created by the Honest Leadership and Open Government Act of 2007 ("HLOGA"), Pub. L. 110-81, § 105, 121 Stat. 735, 741 (Sept. 14, 2007).

an entity with which the employee is “negotiating or has any arrangement” concerning future employment. Those decisions found that the term “negotiation” should be construed broadly.⁴⁶ However, the Committee makes a distinction between “negotiations,” which trigger the rule, and “[p]reliminary or exploratory talks,” which do not. “Negotiations” connotes “a communication between two parties with a view toward reaching an agreement” and in which there is “active interest on both sides.”⁴⁷ Thus, merely sending a copy of one’s résumé to a private entity is not considered “negotiating” for future employment.

The general guidance applicable to **all** Members and House employees – regardless of salary level – who wish to engage in negotiations for future employment is as follows. First and foremost, a Member or House employee may not permit the prospect of future employment to influence the official actions of the Member or employee, or the employing office of the employee. Some Members and employees may determine to use an agent (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.

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.⁴⁸ Paragraph 5 of 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. Federal criminal law prohibits a federal official from soliciting or accepting a “bribe” – *i.e.*, something of value given in exchange for being influenced in an official act.⁴⁹ 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.⁵⁰

⁴⁶ See, e.g., *United States v. Schaltenbrand*, 930 F.2d 1554, 1559 (11th Cir. 1991), *cert. denied*, 502 U.S. 1005 (1991) and *United States v. Conlon*, 628 F.2d 150, 155 (D.C. Cir. 1980), *cert. denied*, 454 U.S. 1149 (1982).

⁴⁷ *United States v. Hedges*, 912 F.2d 1397, 1403 n.2 (11th Cir. 1990) (quoting jury instruction); see also *Schaltenbrand*, *supra* note 46, at 1559 n.2.

⁴⁸ House Rule 23, cl. 3.

⁴⁹ 18 U.S.C. § 201(b)(2)(A).

⁵⁰ *Id.* § 201(c)(1)(B).

In light of these restrictions, Members and employees should be particularly careful in negotiating for future employment, especially when negotiating with any individual or entity that could be substantially affected by the performance of official duties. It may be prudent for the Member or 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. Members and those employees who will be subject to the post-employment restrictions⁵¹ 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 or employee is subject to post-employment restrictions, which should be briefly outlined.⁵² Former Members and employees who are lawyers should consult their local bar association concerning the application of rules governing their involvement in matters in which they participated personally and substantially during their time with the House.⁵³ In addition, as addressed more fully below, Members, officers, and very senior staff must disclose the employment negotiations to the Standards Committee.

Provided that Members and 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.

Notification Requirements. Pursuant to House Rule 27, Members, officers, and very senior staff must notify the Committee on Standards of Official Conduct within three (3) business days after the commencement of any negotiation or agreement for future employment or compensation with a private entity. The notification requirement applies to all job negotiations commenced, and employment or compensation agreements entered into, on or after the effective date

⁵¹ The post-employment restrictions are discussed in detail in a pair of advisory memoranda – one for Members and officers and another for employees – issued annually by the Committee. Copies of the memoranda are available on the Standards Committee website.

⁵² 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 in securing official action from any federal official during that year. House officers and employees may neither contact the individual's former congressional office or committee members on official business for one year after leaving House employment, nor assist any foreign government in securing official action from any federal official during that year. Detailed guidance on the restrictions is contained in the memoranda referenced in note 51 above.

⁵³ 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 Advisory Opinion 99 x 24, *supra* n. 22.

of the rule (September 14, 2007).⁵⁴ For 2008, very senior staff are those House employees who are paid at an annual rate of \$126,975 for at least 60 days during their last twelve months of House employment.⁵⁵

In addition, officers, very senior staff, and those Members subject to the notification requirement 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 Standards Committee in writing of such recusal.⁵⁶ Members who make such a recusal also must file their negotiation notification with the Clerk for public disclosure. The subject of Member recusal from voting is addressed in more detail later in this chapter. Forms to be used for these notification requirements are available on the Committee website (www.house.gov/ethics).

Other provisions of the rules relevant to future employment of Members and staff include the following. For Members and for staff persons required to file a termination Financial Disclosure Statement, any agreement they reach on future employment, whether oral or written, before termination of their service with the House must be disclosed on Schedule IX of that form. The gift rule provides that a Member, officer or employee may accept “[f]ood, refreshments, lodging, transportation, and other benefits . . . customarily provided by a prospective employer in connection with bona fide employment discussions” (House Rule 25, cl. 5(a)(3)(G)(ii)). More information on this provision is provided in Chapter 2 of this volume. If an individual accepts travel exceeding \$335 in value from a prospective employer in connection with employment negotiations, that travel must be disclosed on Schedule VII of the individual’s Financial Disclosure Statement.

Background on the Restrictions on Outside Employment and Income

At times a newly elected House Member or a new House employee wishes to continue, in some limited form, the private or other outside employment in which he

⁵⁴ A Member, Delegate, or Resident Commissioner is not subject to this requirement if his or her successor has been elected.

⁵⁵ For employees of “other legislative offices,” the salary triggering the post-employment restrictions is level IV of the Executive Schedule. *See* 18 U.S.C. § 207(e)(7)(B). For 2008, that amount is \$149,000. “[O]ther legislative offices” include 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 Legal Counsel, and Chief Administrative Officer. *See* 18 U.S.C. § 207(e)(9)(G).

⁵⁶ House Rule 27, cl. 4.

or she had been engaged. Also, a House Member, officer, or employee may wish to accept a part-time job or a position with an outside entity or otherwise commence outside employment simultaneously with their service in the House.

As detailed in the remainder of this chapter, federal law and House rules include restrictions on the types of outside employment and a limit on the amount of outside earned income that Members, officers, and employees of the House may accept. “Earned” income is income that constitutes compensation for services. The fundamental purpose of the restrictions and limit is to ensure that Members and staff do not use the influence or prestige of their position with the House for personal gain, and to preclude conflicts of interest.

While certain laws, rules, and standards of conduct apply to **all** House Members and staff (as discussed previously in this chapter), other, more specific restrictions on outside earned income and employment apply only to Members and certain highly paid staff, who are referred to in this chapter as “senior staff,” “senior employees,” or individuals “paid at the senior staff rate.” As detailed below, the salary rate at which a House officer or employee becomes subject to these specific limitations is determined for each calendar year by a formula established in both federal law and House rules. In calendar year 2008 the “senior staff rate” is an annual rate of **\$114,468**. The senior staff rate for other years is available from the staff of the Standards Committee.

The restrictions on the outside earned income of House Members and senior staff are far more detailed and extensive than those applicable to so-called “unearned” income – that is, income that constitutes a return on capital. The House approved the establishment of an annual limitation on outside earned income in 1977 at the recommendation of the House Commission on Administrative Review, and the Commission’s report explains the basic reasons that outside earned income presents significantly greater ethical concerns:

Earned income creates a variety of more serious potential conflicts of interest than does investment income, ranging from overt attempts to curry favor by private groups to subtle distortions in the judgment of Members on particular issues. . . . The Member who has stock holdings can transfer his holdings at any time to another company, and, thus, is not as subject to the same degree of potential conflict as a Member whose . . . salary [from a private company] could be cut off arbitrarily.

Outside earned income also presents a “time conflict” between the Member’s private interest and the public interest. Supplementing salary with outside earned income can detract from a Member’s full

time and attention to his official duties and creates subtle distortions in judgment as to how Members should use their time. . . .

Moreover, many citizens perceive outside earned income as providing Members with an opportunity to “cash in” on their positions of influence. Even if there is no actual impropriety, such sources of income give the appearance of impropriety and, in so doing, further undermine public confidence and trust in government officials.⁵⁷

Twelve years later, in 1989, the House approved additional, significant restrictions on outside employment and earned income of Members and senior staff upon the recommendation of the House Bipartisan Task Force on Ethics. The report of the Task Force explained the purposes of the limitations then in effect as follows:

The current limitations on outside earned income and honoraria were prompted by three major considerations: First, substantial payments to a Member of Congress for rendering personal services to outside organizations presents a significant and avoidable potential for conflict of interest; second, substantial earnings from other employment is inconsistent with the concept that being a Member of Congress is a full-time job; and third, substantial outside earned income creates at least the appearance of impropriety and thereby undermines public confidence in the integrity of government officials.

* * *

The earned income limitation was intended to assure the public that (1) Members are not using their positions of influence for personal gain or being affected by the prospects of outside income; and (2) outside activities are not detracting from a Member’s full-time attention to his or her official duties.⁵⁸

Restrictions on Outside Employment Applicable to Members and Senior Staff

A Member . . . [or an] officer, or employee of the House [paid at or above the “senior staff” rate], may not –

(a) receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity that

⁵⁷ Comm’n on Admin. Review, *Financial Ethics*, H. Doc. 95-73, 95th Cong., 1st Sess. 10 (1977).

⁵⁸ *Bipartisan Task Force Report*, *supra* note 8, at 12, 135 *Cong. Rec.* at H9256.

provides professional services involving a fiduciary relationship, except for the practice of medicine;

(b) permit his name to be used by such a firm, partnership, association, corporation, or other entity;

(c) receive compensation for practicing a profession that involves a fiduciary relationship, except for the practice of medicine;

(d) serve for compensation as an officer or member of the board of an association, corporation, or other entity; or

(e) receive compensation for teaching, without the prior notification and approval of the Committee on Standards of Official Conduct. [House Rule 25, clause 2. *See also* 5 U.S.C. app. 4 § 502(a).]

Who Is a “Senior Staff” Person for Purposes of the Restrictions on Outside Employment and Outside Earned Income Limitations?

The Ethics Reform Act of 1989 enacted significant limitations on the outside employment and earned income of House Members – primarily with respect to compensation from the practice of any profession and the receipt of honoraria – and also extended those limitations to highly paid staff. The officers and employees to whom those limitations are applicable are those paid, for **more than 90 days in a calendar year**, at a rate equal to or exceeding 120% of the minimum rate of basic pay for GS-15 of the executive branch’s General Schedule (House Rule 25, cl. 4(a)(1)). These limitations do **not** apply to any officer or employee who is paid at or above that rate for 90 days or less in a calendar year.

In calendar year 2008, the GS-15 rate of basic pay is \$95,390 (locality pay is not considered in making this determination). Accordingly, in calendar year 2008, the outside employment and earned income limitations apply to House staff paid at or above the rate of **\$114,468**. As noted above, this chapter refers to the officers and employees paid at or above this rate as “senior staff,” “senior employees,” or individuals “paid at the senior staff rate.” The senior staff rate for other years is available from the staff of the Standards Committee.

Under federal law and House rules, the outside earned income of House Members and senior staff is subject to an overall annual limitation, which is explained in more detail later in this chapter. In calendar year 2008, that limitation is **\$25,830**. In addition, the provisions of law and rules enacted by the Ethics Reform Act of 1989 restrict, and in some cases prohibit, compensation for certain **types** of services, regardless of whether the individual’s income has reached the cap, as follows.

Prohibition Against Receipt of Compensation for the Practice of Law or Other Professions, and Related Prohibitions

Under the Ethics Reform Act, Members and senior staff are prohibited from engaging in professions that provide services involving a fiduciary relationship,

including the practice of law and the sale of insurance or real estate. There were essentially two reasons for the establishment of the fiduciary relationship prohibitions. First, these professional activities were believed to pose a particular risk of conflict of interest:

There is also concern that receipt of legal fees and other compensation for professional services, and directors' fees from serving on boards of corporations, associations, nonprofit organizations, and other entities, creates at least the appearance of impropriety and the potential for conflicts of interest. Based on the fundamental principle that a public office is a public trust, all officials of the government are expected to act in the interests of the beneficiaries of that trust, that is, the general public.

When certain private positions and employment create for the Member or public official a fiduciary or a representational responsibility to a private client or a limited number of private parties, then such outside activities create the potential for a serious conflict of interest. The conflict occurs in the clash of those responsibilities and the divergence of public and private interests on a particular governmental matter or in general government policy.⁵⁹

Second, there was a desire to ensure that honoraria – which, as detailed above, was banned under other provisions of the Act – “not reemerge in various kinds of professional fees from outside interests.”⁶⁰

Professions Covered by the Prohibitions. What types of professional activities are embraced by these prohibitions? The statute does not define “fiduciary,” a term generally denoting an obligation to act in another person’s best interests or for that person’s benefit, or a relationship of trust in which one relies on the integrity, fidelity, and judgment of another.⁶¹ However, the Bipartisan Task Force Report states that in order for the underlying purposes to be achieved, “the term fiduciary [should] not be applied in a narrow, technical sense.”⁶² The report further states:

⁵⁹ *Id.* at 14, 135 *Cong. Rec.* at H9256.

⁶⁰ *Id.* at 16, 135 *Cong. Rec.* at H9257.

⁶¹ See *Black’s Law Dictionary* 658, 1315 (8th ed. 2004); *Bipartisan Task Force Report*, *supra* note 8, at 16, 135 *Cong. Rec.* at H9257.

⁶² *Bipartisan Task Force Report*, *supra* note 8, at 16, 135 *Cong. Rec.* at H9257.

The task force intends the ban to reach, for example, services such as legal, real estate, consulting and advising, insurance, medicine, architecture, or financial.⁶³

In the same vein, in the debate preceding passage of this law, one of the Members who served on the Bipartisan Task Force explained that “it eliminates the ability of Members of Congress to earn income from professional fees such as law practice, insurance, or accounting, any income that could be funneled from lobbyists to Members under the guise of personal services.”⁶⁴

A Standards Committee advisory memorandum of February 23, 1998 (included in the appendices) contains a Committee determination that the practice of medicine is a profession involving a fiduciary relationship and hence is subject to the fiduciary relationship prohibitions. That memorandum further advised that henceforth, in determining whether a profession is covered by these provisions, the Committee would rely on the above-quoted list of professions in the Bipartisan Task Force Report, and would also look to (1) whether applicable state law establishes any fiduciary relationship with regard to that profession, and (2) the regulations on covered professions issued for the Executive Branch by the U.S. Office of Government Ethics (5 C.F.R. § 2636.305(b)(2) (2006)).⁶⁵ However, as discussed further below, the Committee has issued guidance permitting Members to accept fees for the practice of medicine in certain limited circumstances.

The applicability of the fiduciary relationship prohibitions to consulting or advising on business matters and political consulting, and to medical practice, is further addressed in this next section of this chapter.

There are three separate prohibitions relating to professions involving a fiduciary relationship. Except with regard to the practice of medicine, these prohibitions are set forth in virtually identical form in both statutory law and the House rules, as follows.

Prohibition Against Receiving Compensation From Practice of a Covered Profession. Members and senior staff are prohibited from “receiv[ing] compensation for practicing a profession that involves a fiduciary relationship.”⁶⁶ Accordingly, Members and senior staff may not receive compensation for providing professional

⁶³ *Id.*

⁶⁴ 135 *Cong. Rec.* H8751 (daily ed. Nov. 16, 1989) (statement of Rep. Obey).

⁶⁵ This approach superseded a “three-pronged test” that the Standards Committee had used to that time to determine whether a particular employment opportunity involved a fiduciary relationship. *See House Ethics Manual*, 102d Cong., 2d Sess. (April 1992), at 103.

⁶⁶ House Rule 25, cl. 2(c); 5 U.S.C. app. 4 § 502(a)(3).

services in the fields noted above, and may not participate in any arrangement under which fees for any such services that they render are paid to any other individual or entity.

The prohibition applies only to compensation for services that the individual provides while serving as a Member or senior employee, and it does not apply to compensation for services provided prior to assuming office. Thus, for example, a Member who had been an insurance agent may accept renewal commissions generated by policies sold prior to becoming a Member, and a Member who had been a leasing agent may accept renewal commissions with respect to leases that were entered into prior to that time. It appears that in most such arrangements, payment of the commission is not contingent upon the performance of any future services by the recipient, and the only contingency is that the insured or the lessee continue to pay premiums or rent, as the case may be.⁶⁷ Similarly, a Member who had been an attorney may accept a fee for legal work completed prior to becoming a Member.⁶⁸

Any such renewal commission or other income received by a Member or senior employee for services provided prior to assuming office must be reported on Schedule I of the Financial Disclosure Statement of the Member or senior staff person for the year in which the income was received. However, as detailed below, such income does not count against the individual's outside earned income limitation for that year.

As noted above, the prohibition extends generally to “**consulting and advising.**” They clearly apply to consulting and advising in professional fields such as law, accounting, investing, and real estate or insurance sales. In addition, as a general matter, the prohibition extends to consulting or advising on **business matters**. However, where certain requirements are satisfied, a Member or senior staff person is not prohibited from accepting compensation for business consulting

⁶⁷ It also appears that in most such arrangements, the level of a renewal commission was set at the time that the original policy or lease was entered into. In any instance in which the level of a renewal commission was not set at that time, but instead is to be determined by the parties at a later time, the Member or senior employee should contact the Standards Committee for advice.

⁶⁸ However, such a Member could not participate in an arrangement with his or her former firm in which the Member would be paid income derived from the continuing or future business of clients that the Member had brought into the firm.

Regarding the possibility that receipt of attorney's fees for work in a case against the United States performed prior to the commencement of one's service with the House may be prohibited by 18 U.S.C. §§ 203, 205, see *Attorney's Fees for Legal Services Performed Prior to Federal Employment*, Memorandum of Beth Nolan, Deputy Ass't Att'y Gen., Office of Legal Counsel, Dep't of Justice, to Director, Departmental Ethics Office (Feb. 11, 1999) (available on the Office of Legal Counsel website, www.usdoj.gov/olc). The provisions of 18 U.S.C. §§ 203 and 205 are discussed earlier in this chapter.

from a business in which the Member or staff person (or his or her family) holds a controlling interest. In order for business consulting on a paid basis to be permissible, (1) the family-owned business may not be a law firm, an insurance agency, or any other entity that provides professional services involving a fiduciary relationship, (2) the services provided by the Member or senior staff person may not be in a professional field such as law or accounting, and (3) the other limitations on outside earned income and employment set forth in this chapter must be observed. Any Member or senior staff person who wishes to receive compensation for consulting services provided to a family-owned business should first consult with the Standards Committee.

As a general matter, the prohibition also extends to consulting or advising on **political matters** and **public relations**. However, a senior staff person is not prohibited from accepting compensation for political consulting services that he or she provides to either a candidate (including one's employing Member), a political party, or a Member's leadership PAC.⁶⁹ Senior staff who wish to consult for any other type of political organization or entity should consult the Standards Committee for guidance before undertaking any such employment. In addition, in order to be permissible, the political consulting services for which the senior staff person is compensated may not be in a professional field such as law or accounting, and the other limitations on outside earned income and employment set forth in this chapter must be observed.

With regard to the **practice of medicine**, as noted above, in 1998 the Standards Committee determined that medical practice is a profession covered by the prohibitions. In 2003 the House amended its rules to exempt medical practice from the fiduciary relationship prohibitions, but no corresponding change has yet been made in the prohibitions as set out in statutory law.⁷⁰ Notwithstanding the existing statutory prohibition, the Standards Committee has authorized Member-physicians to practice medicine for a limited amount of compensation. Specifically, the Committee advised that a Member who is a doctor does not violate the prohibition if he or she receives, in any calendar year, fees or other payments for medical services that do not exceed the actual and necessary expenses incurred by the Member during the year in connection with the practice. The particulars of and the reasons for that Committee determination are set forth in the February 1998

⁶⁹ As indicated in the text, such compensation is permissible for senior staff persons only, and not for Members. It should also be noted that Federal Election Commission regulations that were promulgated in 2002 prohibit Members from receiving compensation from their own campaign (11 C.F.R. § 113.1(g)(1)(i)(I)). A Member's receipt of compensation from his or her own campaign is also barred by the provision of the House Rules that prohibits the conversion of campaign funds to personal use (House Rule 23, cl. 6).

⁷⁰ 149 *Cong. Rec.* H9, H12 (daily ed. Jan. 7, 2003). This amendment is reflected in the excerpt from the rule that is quoted at the beginning of this section.

memorandum included in the appendices to this Manual. Any Member-physician wishing to accept payment for providing medical services should review that memorandum and consult with the Standards Committee. In particular, Members who practice medicine for compensation must file an annual accounting with the Standards Committee that describes the total fees charged, payments received, and any expenses.

Occasionally a Member or senior staff person is named or requested to act as the **personal representative or executor of the estate** of a deceased individual. If the Member or senior staff person is an attorney, then any fees for serving as personal representative or executor would be deemed to constitute compensation for legal services and hence could not be accepted. However, the Standards Committee has recognized an exception to this rule when the deceased individual is an immediate family member of the Member or senior staff person. In that circumstance, the fees normally paid to a personal representative or executor may be accepted, but they would count against the individual's outside earned income limitation for the year(s) in which the services are rendered.

Finally, occasionally an incoming Member or senior staff practiced a profession involving a fiduciary relationship prior to taking office, and wishes to complete a matter after taking office. As a general rule, any such "winding up" work must be done on an uncompensated basis. Nevertheless, in certain very limited circumstances, the Standards Committee may allow the Member or senior staff person to accept compensation for that work. Any incoming Member or employee wishing to continue work under these circumstances should consult with the Standards Committee for more detailed guidance.

Example 24. A Member, before his election to the House, was vice president and general counsel of a small manufacturing company. After he assumes office, the company would like him to continue in his prior capacities, but at a reduced salary to reflect his reduced time commitment to the company. The Member may **not** accept any compensation from the company under these circumstances since the payment would be compensation for providing legal advice, a professional service involving a fiduciary relationship. (Such compensation would also be an impermissible officer's fee (see below).)

Example 25. A political consulting firm that specializes in advising candidates for state office offers a consulting contract to a Member. The firm is hoping to attract new clients by making available the demonstrated political savvy and expertise of the Member. The Member may **not** enter into the contract because the consulting services the Member would provide are among those for which a Member may not receive compensation, and in any event, it appears

that the purpose of the contract is to capitalize on the individual's status as a Member.

Example 26. A Member who is a lawyer would like to represent an indigent client on a *pro bono* (unpaid) basis. Since she will not be compensated, she may do so, provided that she observes all other limits on the practice of law by Members (see the section on law practice earlier in this chapter).

Example 27. The House pay of a staff person is increased to a rate above the senior staff rate. While she was paid below the senior staff rate, she earned outside income as an insurance and real estate broker. As of the time she becomes a senior employee, she may no longer do so.

Example 28. A Member who is an attorney is named the executor of his late uncle's estate. Because the service would be on behalf of a family member, he may accept payment of executor's fees at the customary rate.

Prohibition Against Receiving Compensation for Affiliating With an Entity That Provides Covered Professional Services. Members and senior staff are also prohibited from "receiv[ing] compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity that provides professional services involving a fiduciary relationship."⁷¹ Under this prohibition, Members and senior staff may **not** receive compensation for affiliating with or being employed by such an entity **in any capacity**.

Under this prohibition, a Member or senior staff person may **not** receive compensation for serving as, for example, a business manager or administrative assistant of a law firm, a medical practice, or a real estate or insurance agency. As to whether a particular firm provides professional services involving a fiduciary relationship (meaning that compensation for the services would be covered by this prohibition), see the description of covered professions that is provided above in this chapter.

Example 29. A Member is in her final year in the House, having announced her retirement. Upon leaving the House she will join a law firm and will open a new office for the firm. Before her term expires, she wishes to begin organizing the office by, for example, arranging for office space and interviewing potential employees. She may not

⁷¹ House Rule 25, cl. 2(a); 5 U.S.C. app. 4 § 502(a)(1).

receive any compensation from the law firm even for any non-legal work that she does in the time before her House term expires.

Example 30. A staff person whose House pay exceeds the senior staff rate ceased selling real estate prior after coming to work on the Hill. In order to maintain his license, however, he must remain affiliated with a real estate firm. As long as he is not actively selling and he receives no compensation, he may maintain this affiliation. However, the firm may **not** publicly use his name (see below).

Prohibition Against Permitting One's Name To Be Used by an Entity That Provides Covered Professional Services. A Member or senior staff person is further prohibited from "permit[ting] his name to be used by . . . a firm, partnership, association, corporation, or other entity" that "provides professional services involving a fiduciary relationship."⁷² While the other two fiduciary relationship prohibitions relate to receipt of compensation, the ban on allowing one's name to be used by a covered organization applies **regardless of whether the organization compensates the Member or employee**. The ban extends, for example, to use of the name of the Member or senior staff person on the letterhead, advertising, or signage of any covered organization.

Under this provision, when the name of an incoming Member or senior staff person had been used in the name of a law firm, real estate agency, or other organization that provides fiduciary services, the name of that organization must be changed to eliminate the name of the Member or senior staff person. However, the requirement does not apply when the organization's name in fact reflects a "family" name, as opposed to that of the individual Member or staff person. On this point, the Bipartisan Task Force Report states, "the fact that a Member, officer, or employee is presently associated with a law firm founded by, and still bearing the name of, his father would not require the firm to drop the 'family' name."⁷³

In addition, federal law at 5 U.S.C. § 501 provides that a firm, business, or organization that practices before the federal government may not use the name of a Member of Congress to advertise the business. These limitations are in accord with model rules of the American Bar Association (ABA) that prohibit the facade of retaining a government lawyer's name in a firm when the individual is not actively and regularly practicing.⁷⁴

⁷² House Rule 25, cl. 2(b); 5 U.S.C. app. 4 § 502(a)(2).

⁷³ *Bipartisan Task Force Report*, *supra* note 8, at 16, 135 *Cong. Rec.* at H9257.

⁷⁴ See ABA, *Model Rules of Professional Conduct*, Rule 7.5(c) (2007).

Example 31. A Member was a name partner in a law firm before election to Congress. Upon his election, the firm changed its name to reflect his resignation but requested that it be allowed to list him as “of counsel” on its letterhead so as to maintain the goodwill of his former clients. Even if he accepts no compensation from the firm, the Member must refuse the request.

Example 32. Member Jane Doe is a certified public accountant. Prior to her election, she was employed by the accounting firm of Doe & Moe, named for its founder and her father, Joe Doe. Since the firm was not actually named for her, it does *not* have to change its name upon her election.

***Prohibition Against Serving for Compensation as an Officer
or Board Member of Any Organization***

The ban on paid board service – like the restrictions on paid teaching discussed in the next section – arises from the same set of concerns as the fiduciary relationship prohibitions. The ban on accepting compensation for serving as an officer or board member applies to all entities, including nonprofit and campaign organizations, and governmental entities. As a general matter, Members and senior staff may serve in such capacities, but they may not be paid any directors’ fees or other compensation for that service.⁷⁵ They may accept reimbursements for travel and other expenses in carrying out the duties of a board member and may be covered by an insurance policy as a member of a board,⁷⁶ provided that acceptance is permissible under the applicable provision of the gift rule (House Rule 25, cl. 5(a)(3)(G)(i)).

Example 33. A Member serves on the board of a hospital in his district. He receives no salary, but the hospital pays for his travel expenses if he makes a special trip to attend a board meeting, and he is covered under the hospital’s officers’ and directors’ liability policy. These arrangements do not violate the prohibition against compensated board service.

⁷⁵ The Internal Revenue Code specifically excludes from income any payments in lieu of honoraria made to charities at a Member, officer, or employee’s behest and disallows any tax deduction for them by that individual (26 U.S.C. § 7701(k)). No comparable provision addresses payments to charity in lieu of directors’ fees. Thus, even if a director tried to have his or her fees donated to charity, those fees could still be deemed constructive income to the individual under tax law, which would permit the individual to take an itemized deduction. Any arrangement whereby a Member, officer, or covered employee receives a direct or indirect financial benefit from board service is prohibited under the Ethics Reform Act.

⁷⁶ See *Bipartisan Task Force Report*, *supra* note 8, at 16, 135 *Cong. Rec.* at H9257.

Example 34. A staff person whose pay is above the senior staff rate works on a Member's campaign on her own time and outside of congressional space. The staff person may be paid for her campaign work, subject to the outside earned income cap, as long as she is not paid as the campaign's treasurer or any other officer for the campaign.

Requirement for Prior Committee Approval of Compensation for Teaching

Members and senior staff may **not** teach for compensation **unless** they receive prior written approval from the Standards Committee for each semester or academic year in which the teaching will occur. This requirement ensures that teaching does not become an avenue for circumventing the honoraria ban. In order to receive approval, the teaching must conform to the following criteria:

- (1) The teaching is part of a regular course of instruction at an established academic institution.
- (2) All compensation comes from the funds of the institution and none is derived from federal grants or earmarked appropriations.
- (3) The payment is for services on an ongoing basis, not for individual presentations or lectures.
- (4) The teacher's responsibilities include class preparation and student evaluation (for example, grading papers, testing, and homework).
- (5) The students receive credit for the course taught.
- (6) The compensation does not exceed that normally received by others at the institution for a comparable level of instruction and amount of work.
- (7) No official resources, including staff time, are used in connection with the teaching.
- (8) The teaching does not interfere with official responsibilities nor is it otherwise inconsistent with the performance of congressional duties.
- (9) The employment or compensation does not present a significant potential for conflict of interest.

Items 1 through 6 should be confirmed in writing by the institution at which the paid teaching will occur. Documentation may be in the form of an explanatory

letter or copy of a teaching contract attached to the request for Committee approval. Items 7 through 9 should be affirmed in writing by the individual seeking to teach.

The Standards Committee also normally approves requests to teach for compensation in less formal settings such as Sunday school, piano lessons, aerobics classes, and other situations clearly unrelated to official duties or an individual's status in Congress. No documentation need be submitted from the employing institution in such instances, but Committee approval is required. Compensation received for teaching at any institution is subject to the outside earned income limit for Members and covered staff, discussed later in this chapter.

Requirement for Committee Approval of Publishing Contracts, and Prohibition Against Receipt of Any Advance Payment of Royalties

Three provisions of House Rule 25 apply where a Member or staff person paid at the senior staff rate wishes to enter into a contract for the publication of a book. Briefly stated, those provisions:

- Prohibit the receipt of copyright royalties unless the contract is first approved by the Standards Committee, with the criteria for approval being that the royalties are to be received from an established publisher pursuant to “usual and customary contractual terms;”
- Prohibit the receipt of any advance payment on copyright royalties (a researcher or other individual working for a Member on a book may receive an advance directly from the publisher, provided that the individual neither is employed by the House nor is a relative of any House Member, officer, or employee); and
- Exempt from the outside earned income limitation any copyright royalties received under a publishing contract that complies with the above rules.

Elaboration on these provisions follows.

The Requirement for Prior Approval of Publishing Contracts. A Member or senior employee may not “receive copyright royalties under a contract . . . unless that contract is first approved” by the Standards Committee (House Rule 25, cl. 3(b)). The criteria for Committee approval are that the royalties “are received from an established publisher under usual and customary contractual terms” (*id.* cl. 3(b), 4(d)(1)(E)).

In determining whether a publisher is an “established” one for purposes of the rule, the Committee will consider, among other things, information on the company that is available in standard industry reference books, such as the year that the company was founded and the number of titles that it has in print. In determining whether the terms of a proposed contract are “usual and customary” ones, the Committee requires representations from the publisher as to the contract

terms that it offers to similarly situated authors and whether the terms offered to the Member or employee differ in any way from its standard terms. In reviewing contract terms, the Committee considers, among other terms, those that benefit the author, including the royalty rates, any provision that entitles the author to copies of the book either without charge or at a reduced price, and any provision for a book tour sponsored by the publisher.

At times a Member wishes to enter into a publishing contract that provides that any royalties are to be paid directly to a charity that the Member designates in the contract. Any publishing contract of a Member or senior staff person that provides for the payment of royalties to a charity or other person must nevertheless be submitted to the Standards Committee for prior approval.

Contracts with a publisher for a congressional author to self-publish a book are permitted, provided the contract contains the publisher's standard terms, available to all authors. Such contracts may not provide any advance on royalties.

The Prohibition Against Receipt of an Advance on Copyright Royalties. Under a provision of the rules that was approved in late 1995, Members and senior staff are prohibited from “receiv[ing] an advance payment on copyright royalties” (House Rule 25, cl. 3(a)). However, the rule does **not** prohibit an individual who is working with a Member or senior employee on a publication, such as a literary agent or researcher, from receiving an advance on copyright royalties, provided that the individual is neither a House employee nor a relative of a Member or an employee. Specifically, the rule against advances on copyright royalties

does not prohibit a literary agent, researcher, or other individual (other than an individual employed by the House or a relative of a Member, . . . officer, or employee) working on behalf of a Member, . . . officer, or employee with respect to a publication from receiving an advance payment of a copyright royalty directly from a publisher and solely for the benefit of that literary agent, researcher, or other individual.⁷⁷

Exemption of Certain Copyright Royalties From the Outside Earned Income Limitation. The outside earned income of Members and senior staff are subject to the outside earned income limitation discussed later in this chapter. However, among the types of income that are **exempt** from the annual limitation are

⁷⁷ House Rule 25, cl. 3(a).

“copyright royalties received from established publishers under usual and customary contractual terms” (House Rule 25, cl. 4(d)(1)(E)). Underlying this provision of the rules is the concept that such royalties are a return on the author’s intellectual property, akin to other unrestricted returns on property.⁷⁸

It is important to note that the **only** copyright royalties that are exempt from the outside earned income limit are those “received from an established publisher under usual and customary contractual terms.” In the 104th Congress the Standards Committee determined that the amounts a Member had received for the sales of his book did not satisfy the requirements of the rule and hence were not exempt from the outside income limitation.⁷⁹ In that instance, the Member’s book was published in a foreign country under an arrangement in which the Member received a flat fee of \$25,000, as well as additional payments from a marketing agent based on a rate of 40% of the proceeds of sales. Moreover, all of the payments from the marketing agent derived from bulk book sales to businesses, trade associations, and other entities in that country. The payments that the Member had received for his book exceeded the outside earned income limit by \$112,258. Because refund of the excess to the purchasers of the book was impracticable, the Committee required the Member to donate the amount in excess of the outside earned income limitation either to qualified charities or the U.S. Treasury for debt reduction.

Other Rules on Book-Related Activities. The writing of a book by a Member or staff person is **not** considered official House business, even when the subject of the book is congressional issues or one’s experiences in Congress. The same applies to other book-related activities, such as seeking and entering into a contract with a publisher or others, and promoting one’s book. Instead, such activities are considered outside business activities, and this is so even if the Member or employee has contracted that any royalties will be paid to charity. Accordingly, those activities are subject to the laws, rules, and standards of conduct governing the outside employment of Members and all staff that are discussed earlier in this chapter.

Thus, for example, a Member or staff person may not use any House resources – including office supplies or equipment, or staff time – in any book-related activity in which he or she is engaging. In addition, at times the publisher wishes to arrange a book tour, or an individual or organization wishes to host a book-related event or otherwise assist or further sales of one’s book. For Members

⁷⁸ See Senate Special Comm. on Official Conduct, *Senate Code of Official Conduct*, S. Rep. 95-49, 95th Cong., 1st Sess. 39 (1977), *quoted in* House Comm. on Standards of Official Conduct, *Statement in the Matter of Rep. James C. Wright, Jr.*, 101st Cong., 1st Sess. 32 (1989).

⁷⁹ See House Comm. on Standards of Official Conduct, *In the Matter of Rep. Jay Kim*, H. Rep. 105-797, 105th Cong., 2d Sess. 56-66 (1998).

and staff, the acceptability of such an offer is governed by the gift rule (House Rule 25, clause 5). As a general matter, the provision of the gift rule implicated by such offers is that which allows a Member or staff person to accept benefits resulting from his or her outside activities, provided that two requirements are satisfied: (1) The benefits have not been offered or enhanced because of the individual's position with the House, and (2) those benefits are customarily provided to others in similar circumstances (House Rule 25, cl. 5(a)(3)(G)(i)).

In addition, under provisions of the House Rules and statutory law that prohibit the conversion of campaign funds to personal use, a Member is prohibited from using campaign funds or resources either to purchase copies of a book from which he or she receives royalties, or in furtherance of any activity that involves sales of such a book (House Rule 23, cl. 6; 2 U.S.C. § 439a). Chapter 8 regarding campaign activity provides further detail on this point.

Another relevant provision of the rules is the honoraria ban, which is discussed in more detail earlier in this chapter. While the ban generally prohibits Members and staff from receiving payment for, among other things, an article, a distinction is made between books and articles. A book author's royalties generally reflect the book's sales, that is, the public's assessment of the book's worth. An article, on the other hand, typically garners a one-time fee, based only on what the publisher is willing to pay the particular author (and not necessarily related to the marketability of the piece). To be exempt from the honoraria prohibition, a book must be published by an established publisher pursuant to a usual and customary royalty agreement, as discussed above.

In an investigation in the 101st Congress, the Committee found reason to believe that certain income that a Member reported as book royalties was actually excessive honoraria. The Committee's Statement of Alleged Violations charged that the Member, having reached his outside earned income limit, arranged bulk book sales to groups before whom he spoke in lieu of collecting honoraria.⁸⁰ The Member resigned before the Committee could proceed further.

Bulk book sales are not, however, invalid *per se*. In another case, the Committee declined to initiate a Preliminary Inquiry based on allegations (among others) that a bulk book sale might have been an improper gift or political contribution, where the Member received no personal financial benefit from the sale.⁸¹ Unlike the previous case, there were no allegations that the sale was arranged to compensate the Member for personal services.

⁸⁰ *Statement in the Matter of Rep. James C. Wright, Jr.*, *supra* note 78, at 19-42.

⁸¹ House Comm. on Standards of Official Conduct, *Statement Regarding Complaints Against Rep. Newt Gingrich*, 101st Cong., 2^d Sess. 41-43 (1990).

Example 35. A Member writes a book of memoirs about his years in public service. An established publisher offers the Member its usual and customary royalty terms for the right to publish the book. The Member **may** have the book published and collect royalties under the contract, once he receives written approval from the Committee. The royalties will be deemed “unearned income” and will not count against the Member’s outside earned income cap.

The Outside Earned Income Limitation Applicable to Members and Senior Staff

Amount of the Annual Limitation

In addition to the limitations on outside employment set forth above, House Members, as well as officers and employees paid at the “senior staff” rate for more than 90 days in a calendar year, are subject to an annual limitation on the amount of their outside earned income.⁸² The amount of the limit for any year is 15% of the rate of pay for Level II of the Executive Schedule in effect on January 1 of the year. The rate of pay for Executive Level II in 2008 is \$172,200. Accordingly, the outside earned income limit for calendar year 2008 is **\$25,830**. The limitations for other years are available from the Standards Committee.

Income Subject to the Annual Limitation, and Income Excluded From the Limitation. The limitation applies only to **earned** income, that is, compensation for services, and not to investment income. The term “outside earned income” is defined in the rules as –

wages, salaries, fees, and other amounts received or to be received as compensation for personal services actually rendered.

House Rule 25, cl. 4(d)(1). In the debate preceding adoption of the rule, one Member distinguished earned income as that which one earns “by the sweat of [one’s] brow.”⁸³ The matter of earned versus unearned income is discussed further below.

The limitation applies by its terms to outside earned income that is “attributable” to a calendar year. In attributing outside earned income, the

⁸² 5 U.S.C. app. 4 § 501(a)(1); House Rule 25, clause 1(a)(1). The House rule limiting outside earned income was adopted originally on Mar. 2, 1977 (H. Res. 287, 95th Cong., 1st Sess.) and amended on Dec. 15, 1981 (H. Res. 305, 97th Cong., 1st Sess.), and again, as a result of the Ethics Reform Act of 1989, Pub. L. 101-194, § 804, 103 Stat. 1716, 1776 (1989).

⁸³ 123 *Cong. Rec.* 5902 (Mar. 2, 1977) (statement of Rep. Frenzel).

Standards Committee uses the approach reflected in regulations issued by the U.S. Office of Government Ethics for the executive branch, *i.e.*, “[r]egardless of when it is paid, outside earned income is attributable to the calendar year in which the services for which it is paid were provided.” 5 C.F.R. § 2636.304(d) (2006).

In addition, in 1978 the House Select Committee on Ethics issued a major advisory opinion on the outside earned income limitation, and a copy of that opinion as updated to reflect changes to applicable laws and rules is reprinted in the appendices to this chapter.⁸⁴ That opinion states, “[o]utside earned income is attributed to the year in which the Member’s, officer’s or employee’s right to receive it becomes certain (*i.e.*, under the accrual method) rather than to the year of receipt.”⁸⁵ Accordingly, for purposes of the limitation, income that a Member or senior employee earns in a particular year may **not** be deferred to a future year in which he or she has less outside earned income, or until after the individual retires from Congress.

The rule explicitly **excludes** the following types of income from the definition of “outside earned income,” and hence from the outside earned income limitation:

- The individual’s congressional salary;
- Compensation for services “actually rendered” before the individual became a Member or senior employee, or before the effective date of the rule;
- Amounts paid by, or on behalf of, a Member or senior employee to a tax-qualified pension, profit-sharing, or stock bonus plan, and received by the individual from that plan;
- Amounts received from a family-controlled trade or business in which both personal services and capital are income-producing factors, provided that the personal services actually rendered by the Member or senior employee do not generate a significant amount of income; and
- Copyright royalties received from established publishers under usual and customary contractual terms (House Rule 25, cl. 4(d)(1)).

With regard to the exception for income from a family-owned farm or business, the Commission on Administrative Review in the 95th Congress offered the following explanation:

⁸⁴ House Select Comm. on Ethics, *Advisory Opinion No. 13* (Oct. 1978), *reprinted in* H. Rep. 95-1837, and reprinted in updated form in the appendices to this Manual.

⁸⁵ *Id.*

[T]he Commission believes that Members should be able to render personal services to manage or protect their equity in a family trade or business without having to allocate these personal services toward the 15-percent limitation. However, if the personal services, in and of themselves, generate any significant amount of income, the resulting income should be subject to the . . . limitation. Conversely, the Commission believes that in implementing this limitation care should be taken to prevent Members from circumventing it by incorporating themselves into a “family business” and then withdrawing what in reality are fees for personal services in the form of dividends or profits.⁸⁶

The debate preceding the adoption of this rule emphasized that personal services that generate income do **not** come within the exemption and would thus be subject to the earned income limitation:

The crucial element in determining whether the limitation applies . . . is this: If the personal services produce the income, then it does not matter whether it is a family business . . . or anything else. If those personal services actually produce the income, then it comes under the limitation.⁸⁷

Additionally, *Advisory Opinion No. 13* of the House Select Committee on Ethics (reprinted in updated form in the appendices to this Manual) emphasizes the following with respect to the “family business” exemption:

[T]he definition of earned income in Rule 25, which excludes amounts received by a Member from a family controlled business “so long as the personal services actually rendered by the individual . . . do not generate a significant amount of income,” was simply intended to assure Members, officers, and employees that they could continue to make decisions and take actions necessary to manage or protect their equity in a family trade or business, and would not be forced to divest themselves of their family business interests. As with any business, a Member, officer, or employee would not be required to allocate a share of the profits of the business as outside earned income when the facts and circumstances show that the income is in reality a return on investment.

⁸⁶ *Financial Ethics*, H. Doc. 95-73, *supra* note 57, at 11.

⁸⁷ 123 *Cong. Rec.* 5897 (Mar. 2, 1977) (statement of Rep. Hamilton); *see also id.* at 5902 (statement of Rep. Obey).

Earned vs. Unearned Income. The annual limitation applies to compensation for personal services (termed “earned income”), but not to moneys received from ownership or other investments of equity (so-called “unearned income”).⁸⁸ In this regard, *Advisory Opinion No. 13* emphasizes that the “real facts” of a particular case would control as to whether moneys received would be deemed earned income:

[T]he label or characterization placed on a transaction, arrangement or payment by the parties may be disregarded for purposes of the Rule. Thus, if amounts received or to be received by a Member, officer, or employee are in fact attributable to any significant extent to services rendered by the Member, officer, or employee the characterization of such amounts as partnership distributive share, dividends, rent, interest, payment for a capital asset, or the like, will not serve to prevent the application of Rule 25 to such amounts. . . .

For purposes of this Opinion, there are two types of income – earned and unearned. If the compensation received is essentially a return on equity, then it would generally not be considered to be earned income. If the income is not a return on equity, then such income would generally be considered to be earned income and subject to the limitation.

Personal Service Businesses. In businesses for which capital is **not** a material income-producing factor, the Advisory Opinion states that the entire share of profits is generally considered earned income, unless it can be shown that some income actually derives from a return on investment. Even when the Member performs no personal services, it is presumed, lacking a strong showing to the contrary, that the Member’s share of profits from a service business is for attracting or retaining clients and thus is considered earned income. As to law practices specifically, the Advisory Opinion states that “buy-out” arrangements are permitted and will not be counted toward the earned income limit when fair and reasonable in relation to comparable practices. To ensure that these criteria are satisfied, it is advisable for a Member to consult with the Standards Committee before accepting a “buy-out.”

Business Corporations. In business corporations, only payment for services the Member performs is considered earned income. An increase in the value of the firm’s stock or distribution of profits is **not** considered earned income. This practice, however, cannot be used as a subterfuge, such as a Member incorporating for the purpose of making speeches or writing articles, then having all fees directed to the corporation and later distributed to the Member as “profits.”

⁸⁸ See 123 *Cong. Rec.* 5901-02 (Mar. 2, 1977) (statement of Rep. Frenzel).

Close Corporations, Partnerships, and Unincorporated Businesses. When a Member has an ownership interest and also performs some services, as in a close corporation, partnership, or unincorporated business, some of the profits might result from the personal services of the Member and therefore would be considered earned income. *Advisory Opinion No. 13* (included in the appendices) states, “the determining factor is whether the Member’s personal services generate significant income for the business.” The Member may protect his or her interest and investments in the business through general oversight and management of investments without generating earned income. However, fees, compensation, or salaries from such a business are earned income. When the Member’s principal function is to refer or to help retain clients, then “the Member would be deemed to be rendering income-producing services, even though the actual time involved might be minimal.”

Administration and Enforcement of the Outside Employment and Outside Earned Income Limitations, and Impact of the Limitations

Administration and Enforcement

Statutory law provides that with respect to House Members, officers, and employees, the outside employment and earned income limitations are administered by and subject to the rules and regulations of the Standards Committee (5 U.S.C. app. 4 § 503(1)).⁸⁹ That statute also authorizes the Committee to render written advisory opinions on these provisions to Members and staff. Under the statute, any Member or staff person who acts in good faith in accordance with a written advisory opinion from the Committee is not subject to sanction under the statute. The Committee therefore encourages anyone with questions regarding outside employment or income to contact the Committee for guidance.

Statutory law further provides that the Attorney General may bring a civil action against any individual who violates the outside employment or earned income limitations, and that the court may assess a civil penalty of up to \$11,000 or the amount of compensation for the prohibited conduct, whichever is greater (5 U.S.C. app. 4 § 504(a)). A Member, officer, or employee who violates any of the limitations is also subject to disciplinary action by the House. In any event, the Standards Committee may require a Member or staff person who receives compensation in violation of any of the limitations to return the impermissible amount to the payor. When return would be impracticable, the Committee may permit the individual instead to make a donation in that amount to a charitable

⁸⁹ Under that statute, the Standards Committee also administers these provisions for certain legislative branch agencies, but it may delegate this authority to those agencies.

organization, with that donation being explicitly designated by the individual as having been made to remedy the violation. As to whether, in a given case, this remedy is permissible is for the Committee, not the individual, to decide.

Impact of the Limitations

The overall effect of the outside employment limitations as summarized above – particularly when considered with the honoraria ban and the other provisions on outside employment discussed in this chapter – is to severely restrict the ability of Members and senior staff to earn outside income. As a practical matter, relatively few Members receive outside earned income for services they provide on a current basis.⁹⁰ For the most part, those having such income receive it either from an approved teaching position or from a business that is controlled by either the Member or the Member's family. By and large, the senior staff members who have such income receive it for outside political work for either their employing Member or another candidate, or a political party.⁹¹

Member Voting and Other Official Activities on Matters of Personal Interest

Voting on matters before the House is among the most fundamental of a Member's representational duties, and historical precedent has taken the position that there is no authority to deprive a Member of the right to vote on the House floor.⁹² Thus, as a general matter, the decision on whether to refrain from voting on a particular matter rests with individual Members, rather than the Speaker or the Committee. However, general ethical principles and historical practice provide specific guidance as to the limited circumstances when it is advisable that a Member abstain from voting on a particular matter. Among these principles is that Members may not use their congressional position for personal financial benefit.

General Requirement That Members Vote on Questions Before the House

Certain matters go to the very heart of a Member's official responsibilities. Chief among them is voting on legislation. House Rule 3 provides:

⁹⁰ A number of Members receive earned income from services they rendered in the past, such as payments from a pension plan, or, for example, in the case of a Member who had been an insurance agent, renewal commissions generated by policies that he or she sold prior to becoming a Member.

⁹¹ While Members and senior staff are generally prohibited from receiving income for any consulting services, there is an exception for political consulting for a candidate, a political party, or a Member's leadership PAC.

⁹² *House Rules and Manual*, *supra* note 31, § 672.

1. Every Member . . . shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.

2. (a) A Member may not authorize any other person to cast his vote or record his presence in the House or the Committee of the Whole House on the state of the Union.

(b) No other person may cast a Member's vote or record a Member's presence in the House or the Committee of the Whole House on the state of the Union.

In the 100th Congress, prior to the adoption of this rule, the House reprimanded a Member for allowing another to vote on the floor in his place. In recommending disciplinary action, the Standards Committee expressed its firm belief that "nothing is more sacred to the democratic process than each person casting his own vote."⁹³

Voting and Other Activities on Matters of Personal Interest

No statute or rule requires the divestiture of private assets or holdings by Members or employees of the House upon entering their official position. Since legislation considered by Congress affects such a broad spectrum of business and economic endeavors, a Member of the House may be confronted with the possibility of voting on legislation that would have an impact upon a personal economic interest. This may arise, for example, where a bill authorizes appropriations for a project for which the contractor is a corporation in which the Member is a shareholder, or where a Member holds a kind of municipal security for which a bill would provide federal guarantees.

Longstanding House precedents have not found such interests to warrant abstention under the above-quoted House Rule that instructs Members to vote on each question presented unless they have "a direct personal or pecuniary interest in the event of such question." Rather, it has generally been found that "where legislation affected a class as distinct from individuals, a Member might vote."⁹⁴ The rule has been explained as follows:

It is a principle of 'immemorial observance' that a Member should withdraw when a question concerning himself arises; but it has been held that the disqualifying interest must be such as affects the Member directly, and not as one of a class. In a case where question

⁹³ House Comm. on Standards of Official Conduct, *In the Matter of Rep. Austin J. Murphy*, H. Rep. 100-485, 100th Cong., 1st Sess. 3 (1987).

⁹⁴ See 5 *Hinds' Precedents of the House of Representatives* § 5952, at 504 (1907) (hereinafter "*Hinds*").

affected the titles of several Members to their seats, each refrained from voting in his own case, but did vote on the identical cases of his associates. While a Member should not vote on the direct questions affecting himself, he has sometimes voted on incidental questions.⁹⁵

Thus, Members holding stock in national banks have voted on legislation “providing a national currency and to establish free banking” since Members “do not have that interest separate and distinct from a class, and, within the meaning of the rule, distinct from the public interest.”⁹⁶ Veterans in the House have properly voted on questions of pay and pensions in the military since such Members “did not enjoy the benefit arising from the legislation distinct and separate from thousands of men in the country who had held similar positions.”⁹⁷ The Speaker would not rule that a Member owning stocks in breweries or distilleries should be disqualified in voting on the proposed amendment to the Constitution concerning prohibition of the manufacture and sale of liquor.⁹⁸ Members who were stockholders in or had interests in import businesses voted on a tariff bill affecting the import business since “the bill before us affects a very large class. . . . The Chair would be surprised if there were not hundreds of thousands of American citizens who were stockholders in these companies. . . .”⁹⁹

Although the rule has been found not to apply when a Member is affected only as a member of a class rather than as an individual, some precedents in the House have indicated that the rule might apply if legislation affects only one specific business or property, rather than a class or group of businesses or properties. Thus, although the Speaker found that a Member interested in breweries or distilleries could vote on “prohibition” because it affected a class of businesses, the Speaker specifically noted,

[n]ow, if there was a bill here affecting one institution, if you call it that, the Chair would be inclined to rule that a Member interested in it pecuniarily could not vote, but where it affects a whole class he can vote.¹⁰⁰

Similarly, in ruling that Members with interests in import businesses could vote on a tariff bill, the Speaker observed, “Certainly it would not be within the power of the Chair to deny a Member the right to vote except in the case where the

⁹⁵ *House Rules and Manual*, *supra* note 31, § 673 (citations omitted).

⁹⁶ 5 *Hinds*, *supra* note 94, § 5952, at 503-504.

⁹⁷ *Id.* at 504.

⁹⁸ 8 *Cannon's Precedents of the House of Representatives* § 3071, at 620 (1936).

⁹⁹ *Id.* § 3072, at 623.

¹⁰⁰ *Id.* § 3071, at 621.

legislation applied to one and only one corporation.”¹⁰¹ In the case of an amendment to a bill specifically relating to the Central Pacific Railroad, the Speaker suggested that a stockholder Member should disqualify himself from voting, although a ruling disqualifying such Member was not made by the Chair:

In this case if the gentleman from Massachusetts be a stockholder in that road the Chair would rule he had no right to vote. It differs from the case of national banks, which has been brought up in several instances, in the fact that this is a single corporation, and is not of general interest held throughout the country by all classes of people in all communities. . . . But if a stockholder in a single railroad corporation, as in this case, has his vote challenged it would be the duty of the Chair to hold, if he is actually a stockholder of the road, that he has no right to vote. * * * The Chair so decides without any knowledge in this particular case. It is for the gentleman from Massachusetts whose delicacy the Chair knows and cheerfully recognizes to relieve the House from any embarrassment on that question.¹⁰²

As shown by more recent applications of the rule, however, even where one corporation or entity is primarily affected by legislation, a Member’s interest in such corporation or entity might not be found to be a disqualifying interest in the subject matter. As the Standards Committee noted in a report in a disciplinary case:

House precedents establish the rule that “where the subject matter before the House affects a class rather than individuals, the personal interest of Members who belong to the class is not such as to disqualify them from voting.” This principle was followed by the House as recently as December 2, 1975, when the question arose whether House Rule VIII(1) [currently numbered as House Rule 3, cl. 1] would disqualify Members holding New York City securities from voting on a bill to provide federal guarantees for these securities. Speaker Albert ruled that a point of order to disqualify Members holding such securities would not be sustained¹⁰³

The Committee found in that case that the respondent’s ownership of 1,000 shares of common stock in a defense contractor corporation, out of more than 4,550,000 shares outstanding, “was not, under House precedents, sufficient to

¹⁰¹ *Id.* § 3072, at 623.

¹⁰² 5 *Hinds*, *supra* note 94, § 5955, at 506.

¹⁰³ H. Rep. 94-1364, *supra* note 2, at 15.

disqualify him from voting on” an appropriations bill authorizing funds for a project for which the corporation was under contract with the government to perform.¹⁰⁴

In addition, House precedents favor “the idea that there is no authority in the House to deprive a Member of the right to vote.”¹⁰⁵ Given the size of today’s districts, when a Member refrains from voting, well over half a million people are denied a voice on the pending legislation.

However, while the Standards Committee has endorsed the principle that “each individual Member has the responsibility of deciding for himself whether his personal interest in pending legislation requires that he abstain from voting,”¹⁰⁶ it did so after investigating allegations (among others) that a Member had violated the rule by not refraining from voting in a particular instance. The Committee cleared the Member of this charge, but it has occasionally advised Members, in private advisory opinions, that it would be inappropriate for them to vote or to introduce legislation directly affecting significant and uniquely held financial interests. At times a question arises as to whether the “class” to which a Member belongs with regard to a piece of legislation – such as, for example, the class of owners of a particular area of land that would be acquired by the government under the legislation – is sufficiently large to warrant the Member voting under the authorities set out above.

The provisions of House Rule 3, clause 1, as discussed in this section, apply only to Member voting on the House floor. They do not apply to other actions that Members may normally take on particular matters in connection with their official duties, such as sponsoring legislation, advocating or participating in an action by a House committee, or contacting an executive branch agency. Such actions entail a degree of advocacy above and beyond that involved in voting, and thus a Member’s decision on whether to take any such action on a matter that may affect his or her personal financial interests requires added circumspection. Moreover, such actions may implicate the rules and standards, discussed above, that prohibit the use of one’s official position for personal gain. Whenever a Member is considering taking any such action on a matter that may affect his or her personal financial interests, the Member should first contact the Standards Committee for guidance. A Member should also exercise caution before accepting a position on the board of an organization that is subject to the oversight of a committee on which the Member sits.

¹⁰⁴ *Id.* at 14-16.

¹⁰⁵ *House Rules and Manual*, *supra* note 31, § 672, at 374; *see also* 5 *Hinds*, *supra* note 94, § 5956, at 506.

¹⁰⁶ H. Rep. 94-1364, *supra* note 2, at 15-16; *see also* 121 *Cong. Rec.* 38135 (Dec. 2, 1975).

In addition, as described earlier in this chapter, House Rule 27, clause 4 imposes a new, additional 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.” 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.¹⁰⁷ 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 Rule 27. Members who wish to avoid such conflicts are encouraged to delay any negotiations for future employment until after their successor has been elected.

Certification of No Financial Interest in Fiscal Legislation

The House Rules adopted at the beginning of the 110th Congress added a new provision in the Code of Official Conduct requiring Members to make an affirmation regarding their financial interests to the committee of jurisdiction when requesting certain types of fiscal legislative provisions. Specifically, House Rule 23, clause 17 requires any Member who “requests a congressional earmark, a limited tax benefit, or a limited tariff benefit in any bill or joint resolution (or accompanying report) or in any conference report on a bill or joint resolution (or an accompanying joint statement of managers)” to certify that neither the Member nor the Member’s spouse have a “financial interest in such congressional earmark or limited tax or tariff benefit.”

The committees with jurisdiction over earmark, tax, and tariff benefit requests are responsible for determining whether any particular spending provision triggers the certification required by the rule. A Member who requests an earmark or other provision covered by the rule must provide a written statement to the chairman and ranking member of the committee of jurisdiction of the bill, resolution, or report that contains the following information:

- The name of the Member;
- In the case of an earmark, the name and address of the intended recipient or if there is no intended recipient, the location of the activity;
- In the case of a limited tax or tariff benefit, the name of the beneficiary;
- The purpose of the earmark or limited tax or tariff benefit; and

¹⁰⁷ See 5 *Hinds*, *supra* note 94, §§ 5950, 5952 at 502, 503-04.

- A certification that both the Member and the Member's spouse have no financial interest in the earmark or limited tax or tariff benefit.

Whether a Member or a Member's spouse has a financial interest in an earmark will most frequently depend on the specific facts and circumstances regarding both the proposed provision and the personal financial circumstances of the Member and spouse. In the great majority of cases Members should readily be able to determine whether they have a financial interest in an earmark. Members are encouraged to consult the Committee for guidance with any fact-specific questions they may have.

The Committee nevertheless provides the following general guidance. As a general matter, a financial interest would exist in an earmark when it would be reasonable to conclude that the provision would have a direct and foreseeable¹⁰⁸ effect on the pecuniary interests of the Member or the Member's spouse. Such interests may relate to financial assets, liabilities, or other interests of the Member and spouse, such as investments in stocks, bonds, mutual funds, or real estate. A financial interest may also derive from a salary, indebtedness, job offer, or other similar interest.

A financial interest would not include remote, inconsequential, or speculative interests. For example, if a Member proposed an earmark or tax or tariff benefit assisting a certain company, the Member generally would not be considered to have a financial interest in the provision by owning shares in a diversified mutual fund, employee benefit plan (*e.g.*, the Thrift Savings Plan or similar state benefit plan), or pension plan that, in turn, holds stock in the company. However, a Member's direct ownership of stock, even a small number of shares in a widelyheld company, likely would constitute a financial interest under Rule 23.

A contribution to a Member's principal campaign committee or leadership PAC generally would not constitute the type of "financial interest" referred to in the rule. Nevertheless, a political contribution tied to an official action may raise other considerations. It is impermissible to solicit or accept a campaign contribution that is linked to any action taken or asked to be taken by a Member in the Member's official capacity – such as an earmark request that a Member has made or been asked to make. Accepting a contribution under these circumstances may implicate the federal gift statute or the criminal provisions on illegal gratuities or bribery, which are described in Chapters 2 and 4 on gifts and campaign activity, respectively.

¹⁰⁸ An effect is foreseeable if it is anticipated or predictable. For additional guidance, *see* 5 C.F.R. § 2640.103(a)(3) (defining the term "predictable" as "real, as opposed to a speculative, possibility that the matter will affect the financial interest").

Post-Employment Restrictions

Applicability of the Restrictions

The Ethics Reform Act of 1989 enacted, for the first time, post-employment restrictions on Members, the elected officers, and certain employees of the House and Senate, and certain officers and employees of other legislative branch offices. These restrictions are set out in a criminal statute, 18 U.S.C. § 207, and they took effect in 1991. The restrictions were amended slightly by Honest Leadership and Open Government Act of 2007,¹⁰⁹ which was enacted during the 110th Congress.

House staff who are employed in a Member, committee, or leadership office are covered by the restrictions if they were paid, for a period of 60 days or more in the one-year period preceding termination of their House employment, at a rate equal to or greater than 75% of Members' pay (18 U.S.C. § 207(e)(7)(A)). In 2008 the basic rate of Members' pay is \$169,300, and thus the post-employment threshold for employees who leave their House employment in 2008 is **\$126,975**. The threshold for other years is available from the Standards Committee. For employees of other legislative offices,¹¹⁰ the basic rate of pay triggering the restrictions is level IV of the Executive Schedule, which for 2008 is \$149,000.¹¹¹ Because an employee becomes subject to the restrictions where the employee's pay is at the threshold rate for a period as brief as two months, a House employee may become subject to the restrictions as a result of temporary changes in the base rate of pay, such as those made to pay a bonus.¹¹²

The post-employment restrictions of 18 U.S.C. § 207 are the **only** such restrictions applicable to former House employees. House employees whose pay

¹⁰⁹ Honest Leadership and Open Government Act of 2007, *supra* note 45.

¹¹⁰ "[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 Legal Counsel, and Chief Administrative Officer. *See* 18 U.S.C. § 207(e)(9)(G).

¹¹¹ 18 U.S.C. § 207(e)(6), (e)(7)(B).

¹¹² Regarding the post-employment implications of paying such an increase in the form of "lump sum" payments, rather than through a temporary adjustment in the employee's regular salary, see Chapter 7 on Staff Rights and Duties. Briefly stated, the Committee determined that lump sum payments, when properly used by an employing office, do not constitute part of the recipient's "rate of basic pay." Key factors in making this determination are that lump sum payments are not treated as salary for purposes of employment benefits, do not count in determining the maximum amount an employee can contribute to the Thrift Savings Plan, or the amount of life insurance that the employee may purchase, and likewise they do not count in determining an employee's "high three" years for purposes of calculating retirement benefits.

was **below** the threshold are **not** subject to the post-employment restrictions set out in the statute, and no other provision of federal statutory law or the House Rules establishes any comparable restrictions on post-employment activities.

Section 103(a) of the Honest Leadership and Open Government Act requires the Clerk of the House to provide all departing Members and covered employees (*i.e.*, those employees who are subject to the post-employment restrictions) with a letter notifying the individual “of the beginning and ending date of the prohibitions that apply.” Section 103(b) of the Act mandates that the same information be available on a public internet site.

Set out below is a brief summary of the provisions of 18 U.S.C. § 207 as applicable to House Members, officers, and employees. The Standards Committee has also prepared a pair of advisory memoranda – one for House Members and officers and one for House employees – that detail the applicability and scope of the restrictions of 18 U.S.C. § 207. Copies of those memoranda are available from the Standards Committee or its website. Anyone wishing a detailed explanation of the statute should refer to those advisory memoranda.

Scope of the Restrictions

Section 207 imposes a one-year “cooling-off period” on the former Members, officers and covered employees. As a general matter, for one year after leaving office, those individuals may not seek official action on behalf of anyone else by either **communicating with** or **appearing before** specified current officials with the intent to influence them. Thus,

- A former **Member** may not seek official action from any current Member, officer, or employee of **either the Senate or the House**, or from any current employee of any other legislative office (§ 207(e)(1)(B)).
- A former **elected officer** of the House may not seek official action from any current Member, officer, or employee of the House (§ 207(e)(1)(B)).
- A covered former employee on the **personal staff** of a Member may not seek official action from that Member or from any of the Member’s current employees (§ 207(e)(3)).
- A covered former employee of a **committee** may not seek official action from any current Member or employee of the employing committee or from any Member who was on the committee during the last year that the former employee worked there (§ 207(e)(4)).
- A covered former employee on the **leadership staff** (*i.e.*, an employee of any leadership office) may not seek official action from any current Member of the

leadership of the House¹¹³ or any current leadership staff employees (§ 207(e)(5)).

- A covered former officer or employee of any other **legislative office** may not seek official action from a current officer or employee of that legislative office (§ 207(e)(6)).¹¹⁴

For the purposes of the statute, a detailee is deemed to be an employee of both the entity from which he or she comes and the entity to which the individual is detailed (§ 207(g)).

These restrictions bar certain types of contacts with certain categories of officials, basically former colleagues and those most likely to be influenced on the basis of the former position. The law focuses on communications and appearances. By contrast, if a former official plays a background role, 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. Such a background role does not pose the risk of improper influence since the current officials are not even aware of the former official's participation.¹¹⁵ The law does, however, absolutely preclude one set of activities regardless of whether the former official acts openly or behind the scenes. None of the officials subject to the limitations described above may represent, aid, or advise 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 (§ 207(f)).

Exceptions

Under 18 U.S.C. § 207(j), these restrictions do not apply to official actions taken by employees or officials of the following: the United States government; the District of Columbia; state and local governments; accredited, degree-granting institutions of higher education; and hospitals or medical research organizations.

¹¹³ The "leadership" of the House consists of the Speaker; majority leader; minority leader; majority whip; minority whip; chief deputy majority whip; chief deputy minority whip; chairman of the Democratic Steering 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).

¹¹⁴ For these employees, post-employment restrictions do not apply unless their rate of basic pay equaled or exceeded that in effect for level IV of the Executive Schedule (\$149,000 in 2008). 18 U.S.C. § 207(e)(7)(B).

¹¹⁵ Former officials who are lawyers should consult their local bar association concerning the application of rules governing their involvement in matters in which they participated personally and substantially in their official capacity.

They further do not preclude activities on behalf of international organizations in which the United States participates where the Secretary of State certifies in advance that such activities serve the interests of the United States. In addition, section 207 does not prevent individuals from making uncompensated statements based on their own special knowledge, from furnishing scientific or technological information in areas where they possess technical expertise, or from testifying under oath. Under 18 U.S.C. § 207(e)(8), individuals are also permitted to contact the Office of the Clerk regarding compliance with lobbying disclosure requirements under the Lobbying Disclosure Act.

Penalties

Violation of § 207 is a felony, carrying penalties of imprisonment, fines, or both. Section 216 of Title 18 authorizes imprisonment for up to one year (or up to five years for willfully engaging in the proscribed conduct). Additionally, an individual may be fined up to \$50,000 for each violation or the amount received or offered for the prohibited conduct, whichever is greater. The statute further authorizes the Attorney General to seek an injunction prohibiting a person from engaging in conduct that violates the act.

The provisions of 18 U.S.C. § 207 summarized above govern the conduct of former Members, officers, and employees only, and do not apply to the conduct of current Members, officers, or employees. However, current Members and staff who receive improper contacts should be aware that, depending on the circumstances, they may be subject to House disciplinary action. In a Standards Committee disciplinary case that was completed in the 106th Congress, a Member admitted to engaging in several forms of conduct that violated the requirement of the House Code of Official Conduct that each Member and staff person “conduct himself at all times in a manner that shall reflect creditably on the House.” (House Rule 23, cl. 1). One of those violations was his engaging in a pattern and practice of knowingly allowing his former chief of staff to appear before and communicate with him in his official capacity during the one-year period following the termination of her House employment “in a manner that created the appearance that his official decisions might have been improperly affected.”¹¹⁶

A Member or employee who has any concerns about the applicability of the post-employment restrictions to his or her proposed conduct should contact the Standards Committee for specific guidance. While Committee interpretations of 18 U.S.C. § 207 are not binding on the Justice Department, those interpretations are based on the Committee’s analysis of the terms and purposes of the statute, as well

¹¹⁶ House Comm. on Standards of Official Conduct, *Summary of Activities, One Hundred Sixth Congress*, H. Rep. 106-144, 106th Cong., 2d Sess., at 10 (2001).

as any applicable opinions or guidance of the Justice Department or the U.S. Office of Government Ethics of which the Committee is aware.¹¹⁷

Employment Considerations for Spouses of Members and Staff

Being married to a House Member or staff person does not, of course, preclude one from earning a salary. Nevertheless, certain aspects of a spouse's employment may have implications for the Member or staff person.¹¹⁸

Federal law, at 5 U.S.C. § 3110, generally prohibits a federal official from hiring or promoting a relative, including a spouse. Prior to the 107th Congress, if a House employee married his or her employing Member, the employee could remain on the Member's personal or committee staff, but could not thereafter receive any promotions or raises other than cost-of-living or other across-the-board adjustments. However, at the beginning of that Congress in 2001, the House amended the Code of Official Conduct to provide that a Member may not retain his or her spouse in a paid position, and that a House employee may not accept compensation for work for a committee on which his or her spouse serves as a member.¹¹⁹ Accordingly, as a general rule, a Member's spouse may work in the Member's office on an unpaid basis only.¹²⁰

Spouses who accept civil service positions with federal, state, or local governments should be aware of possible limitations relating to their outside political activity under the Hatch Act¹²¹ or a similar law of the employing authority. An individual employed in such a position may be limited in the campaign efforts that may be made on behalf of his or her spouse. A spouse holding such a governmental position should consult with his or her supervising ethics office to determine the propriety of proposed campaign activities.

Neither federal law nor House rules specifically precludes the spouse of a Member or staff person from engaging in any activity on the ground that it could create a conflict of interest with the official's congressional duties. However, House rules and statutory provisions impute to a Member or staff person certain benefits

¹¹⁷ It should be noted that one court held that it is a complete defense to a prosecution for conduct assertedly in violation of a related federal criminal strict-liability statute (18 U.S.C. § 208) that the conduct was undertaken in good faith reliance upon erroneous legal advice received from the official's supervising ethics office. *United States v. Hedges*, 912 F.2d 1397 (11th Cir. 1990).

¹¹⁸ See generally Marc E. Miller, *Politicians and Their Spouses' Careers* (1985).

¹¹⁹ House Rule 23, cl. 8(c). The provision by its terms does not apply to a spouse whose employment predates the 107th Congress.

¹²⁰ See Chapter 7 for a further discussion of the law against nepotism.

¹²¹ 5 U.S.C. §§ 7321-7326, 1501-1508.

that are received by his or her spouse. Thus, a question may arise as to whether the official is improperly benefiting as a result of the spouse's employment.

The rules and standards that prohibit the use of one's official position for personal gain, which are set out in this chapter, are fully applicable to Members and staff persons with regard to their spouse's employment. Specifically, a provision of the House Code of Official Conduct, prohibits a Member from receiving any compensation, or **allowing any compensation to accrue to the Member's beneficial interest**, from any source as a result of an improper exercise of official influence (House Rule 23, cl. 3). Additionally, the Code of Ethics for Government Service (§ 5) admonishes officials never to accept benefits for themselves **or their families** "under circumstances which might be construed by reasonable persons as influencing the performance" of official duties. The income received by a spouse from employment usually accrues, albeit indirectly, to a Member's interest. Nonetheless, neither of these provisions is triggered by a spouse's employment unless a Member or staff person exerts influence or performs official acts in order to obtain compensation for, or as a result of compensation paid to, his or her spouse.

Two other provisions of the Code of Ethics for Government Service are also applicable to a Member or staff person with regard to the employment activities of one's spouse or any other family member. These are provisions that prohibit a government official from –

- Using "any information coming to him confidentially in the performance of governmental duties as a means of making private profit" (§ 8); and
- "[D]iscriminat[ing] unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not" (§ 5).

The prohibition against doing any special favors for anyone in one's official capacity is a fundamental standard of conduct, and it applies to an official's conduct with regard to not only his or her spouse or other family members, but more broadly to any person.

Special caution must be exercised when the spouse of a Member or staff person, or any other immediate family member, is a lobbyist. At a minimum, such an official should not permit the spouse to lobby either him- or herself or any of his or her subordinates. When the spouse of a staff person is a lobbyist, the staff person should inform his or her employing Member before the spouse or anyone with the spouse's firm makes a lobbying contact with anyone on the staff, and no such contacts should occur without the Member's approval. Furthermore, a recently enacted provision of the House rules (House Rule 25, clause 7) requires that the Member prohibit his or her staff from having any lobbying contacts with that

spouse if such individual is a registered lobbyist or is employed or retained by a registered lobbyist to influence legislation.¹²²

In certain limited circumstances, the gift rule allows a Member or staff person to accept a meal, travel, or other benefits that result from his or her spouse's business or employment activities (House Rule 25, cl. 5(a)(3)(G)(i)). This provision of the rule is explained in Chapter 2 of this volume, as is the rule's applicability to gifts given to the spouse or another family member of a Member or staff person.

As explained earlier in this chapter, official resources are to be used for official purposes. Thus a Member may not use any congressional resources (including, *e.g.*, staff time or the office computer) on behalf of any private enterprise, including a spouse's professional activities.

Occasionally the Standards Committee has looked into allegations that spouses were not earning their income, but rather that their salaries and benefits were provided as indirect gifts to the Members. In one case, the Committee issued a Statement of Alleged Violations stating, among other things, that there was reason to believe that the Member had violated the gift and financial disclosure rules in that:

- Compensation received by the Member's wife from a business was not in return for identifiable services or work products that she provided to the business;
- The free use of a car that she received from that business was not required for her employment with that business; and
- These apparent gifts were not provided wholly independent of her relationship to the Member.¹²³

In that case, the Member resigned before the Committee could proceed further. However, in another case in which there was a complaint against a Member alleging that fees paid to a Member's spouse by a business were a gift received by the Member in violation of the gift rule, the Committee declined to initiate a preliminary inquiry upon receiving documentation of the services that the spouse had performed for the business.¹²⁴

¹²² That provision was added by § 302 of HLOGA (*see* note 45, *supra*).

¹²³ *Statement in the Matter of Rep. James C. Wright, Jr.*, *supra* note 78, at 70-81.

¹²⁴ *See Statement Regarding Complaints Against Rep. Newt Gingrich*, *supra* note 81, at 34-36.

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FINANCIAL DISCLOSURE

The Financial Disclosure instructions are updated annually. Find the most current guidance, including salary thresholds and outside employment requirements, online at <https://ethics.house.gov/financial-disclosure>.

FINANCIAL DISCLOSURE

Overview

The private financial interests and investments of Members and employees, as well as those of candidates who are seeking election to the House of Representatives, may present potential conflicts of interest with official duties. The New York City Bar Association undertook a comprehensive study of Congressional ethics beginning in 1967. The Bar commission's study found that

[t]he most serious charge which can be made against a public official's ethics is that he betrays the public's trust in him by using the office to advance his own financial interests at the public's expense. . . . Much distrust of government flows from ambiguous circumstances where there is ground for suspicion that officials are promoting their own welfare rather than the public's.¹

The financial disclosure required of House Members, officers, senior employees, and candidates was instituted in part to address this concern.

In addition, all Members, officers, and employees are prohibited from improperly using their official positions for personal gain. As a general matter, however, Members and employees need not divest themselves of assets upon assuming their positions, nor must Members disqualify themselves from voting on issues that generally affect their personal financial interests. Instead, public financial disclosure provides a means of monitoring and deterring conflicts.

To accomplish this disclosure, Members, officers, candidates, and certain employees must file annual Financial Disclosure Statements, summarizing financial information concerning themselves, their spouses, and dependent children. Among other information, these statements must disclose outside compensation, investments and assets, and business transactions.

This chapter is intended to provide only a basic overview of the financial disclosure requirements. Each year, the Committee on Standards of Official Conduct publishes comprehensive instruction booklets detailing the instructions for completing a Financial Disclosure Statement. One booklet covers the instructions for Form A, which is used by current and terminating Members, officers, and employees, and the other is for Form B, which is used by candidates for the House

¹ Special Comm. on Congressional Ethics, Ass'n of the Bar of the City of New York, *Congress and the Public Trust* 34 (J. Kirby, Jr., exec. director 1970) (hereinafter "*Congress and the Public Trust*").

and covered new House employees. Copies of the current instruction booklets are available from the Standards Committee or the Legislative Resource Center.

Statutes and Rules Governing Disclosure of Financial Interests

No federal statute, regulation, or rule of the House absolutely prohibits a Member or House employee from holding assets that might conflict with or influence the performance of official duties. However, acting partly to address the issues identified by the Bar Commission, Congress passed the Ethics in Government Act of 1978 (“EIGA”),² which mandated annual financial disclosure by all senior federal personnel, including all Members and some employees of the House. The Ethics in Government Act, as amended, provides the statutory basis for the disclosure currently required of House Members, candidates, and senior House employees.³

House Rule 26 adopts Title I of EIGA as a rule of the House.⁴ House Rule 26, clause 1 requires the Clerk of the House to publish a report each August 1 compiling all Member Financial Disclosure Statements filed by June 15 of that year.

In addition, statutes and House rules restrict income from outside financial interests or govern aspects of the business dealings or investments of House Members and employees, as follows:

- Members and employees of Congress may not use their official positions for personal gain;⁵
- Members may not enter into or enjoy benefits under contracts or agreements with the United States;⁶
- Members and employees should not engage in any business with the federal government, either directly or indirectly, that is inconsistent with the conscientious performance of their congressional duties;⁷
- Members and employees may not receive any compensation or allow any compensation to accrue to their beneficial interests from any source if its

² Pub. L. 95-521, 92 Stat. 1824 (Oct. 26, 1978). Legislative branch disclosure requirements were then codified at 2 U.S.C. § 701 *et seq.*

³ See Ethics in Government Act of 1978, as amended, 5 U.S.C. app. 4 § 101 *et seq.*

⁴ House Rule 26(2).

⁵ See House Rule 23, cl. 3; Code of Ethics for Government Service ¶ 5, H. Con. Res. 175, 72 Stat., Part 2, B12 (1958).

⁶ 18 U.S.C. § 431.

⁷ Code of Ethics for Government Service, *supra* note 5, at ¶ 7.

receipt would occur by virtue of influence improperly exerted from a position in the Congress;⁸

- Members and employees of the House may not accept benefits under circumstances that might be construed by reasonable persons as influencing the performance of their governmental duties;⁹ and
- Members and employees should never use any information received confidentially in the performance of governmental duties as a means for making private profit.¹⁰

In its very first case, in the 94th Congress, the Standards Committee found that a Member had violated the prohibition on the use of one's official position for personal gain when he sought benefits from an organization after he had actively promoted the establishment of that organization in his official capacity. The Committee found that the Member had worked, through his congressional office, to help establish a bank on a military base. During the time he was actively assisting in that effort, he approached organizers of the bank and inquired about the possibility of buying stock in it.¹¹ He subsequently purchased 2,500 shares of the bank's privately held stock. The Committee noted that "[i]f an opinion had been requested of this Committee in advance about the propriety of the investment, it would have been disapproved."¹² The Member was also found to have used public office for private gain in that he had sponsored legislation to remove a reversionary interest and restrictions on land in which he had a personal financial interest.¹³ The Member was reprimanded by the House.¹⁴

Policies Underlying Disclosure

Members, officers, and certain employees must annually disclose personal financial interests, including investments, income, and liabilities.¹⁵ Financial disclosure provisions were enacted to monitor and to deter possible conflicts of interest due to outside financial holdings. Proposals for divestiture of potentially conflicting assets and mandatory disqualification of Members from voting were

⁸ House Rule 23, cl. 3.

⁹ Code of Ethics for Government Service, *supra* note 5, at ¶ 5.

¹⁰ *Id.* at ¶ 8.

¹¹ See House Comm. on Standards of Official Conduct, *In the Matter of a Complaint against Representative Robert L.F. Sikes*, H. Rep. 94-1364, 94th Cong., 2d Sess. 3 (1976).

¹² *Id.* at 4.

¹³ *Id.* at 3-4.

¹⁴ 122 *Cong. Rec.* 24379-83 (July 29, 1976).

¹⁵ Title I of the Ethics in Government Act of 1978, as amended, 5 U.S.C. app. 4 §§ 101-111.

rejected as impractical or unreasonable.¹⁶ Such disqualification could result in the disenfranchisement of a Member's entire constituency on particular issues.¹⁷ A Member may often have a community of interests with the Member's constituency, and may arguably have been elected because of and to serve these common interests, and thus would be ineffective in representing the real interests of the constituents if the Member was disqualified from voting on issues touching those matters of mutual concern. In rare instances, the House rule on abstaining from voting may apply where a direct personal interest in a matter exists.¹⁸

Members of Congress enter public service owning assets and having private investment interests like other citizens. Members should not "be expected to fully strip themselves of worldly goods."¹⁹ Even a selective divestiture of potentially conflicting assets could raise problems for a legislator. Unlike many officials in the executive branch, who are concerned with administration and regulation in a narrow area, a Member of Congress must exercise judgment concerning legislation across the entire spectrum of business and economic endeavors. Requiring divestiture may also insulate legislators from the personal and economic interests held by their constituencies, or society in general, in governmental decisions and policy.

As noted by the Bipartisan Task Force on Ethics:

The problem of conflicts of interest involves complex and difficult issues, especially with respect to the legislative branch. 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. Some conflicts of interest are inherent in a representative system of government, and are not in themselves necessarily improper or unethical. Members of Congress frequently maintain economic interests that merge or correspond with the interests of their constituents. This community of interests is in the nature of representative government, and is therefore inevitable and unavoidable.

At the other extreme, a conflict of interest becomes corruption when an official uses his position of influence to enhance his personal financial interests. Between these extremes are those ambiguous circumstances which may create a real or potential conflict of interest. The problem is identifying those instances in which an official allows

¹⁶ See House Comm'n on Admin. Review, *Financial Ethics*, H. Doc. 95-73, 95th Cong., 1st Sess. 9-10 (1977) (hereinafter "*Financial Ethics*").

¹⁷ *Congress and the Public Trust*, *supra* note 1, at 40.

¹⁸ House Rule 8, cl. 1; see Chapter 5 of this Manual for further discussion of this provision.

¹⁹ *Congress and the Public Trust*, *supra* note 1, at 47.

his personal economic interests to impair his independence of judgment in the conduct of his public duties.²⁰

Each situation must be reviewed on a case-by-case basis to determine if an actual conflict of interest exists. The Standards Committee has admonished all Members “to avoid situations in which even an inference might be drawn suggesting improper action.”²¹

Thus, public disclosure of assets, financial interests, and investments has been required as the preferred method of regulating possible conflicts of interest of Members of the House and certain congressional staff. Public disclosure is intended to provide the information necessary to allow Members’ constituencies to judge their official conduct in light of possible financial conflicts with private holdings. Review of a Member’s financial conduct occurs in the context of the political process. As stated by the House Commission on Administrative Review of the 95th Congress in recommending broader financial disclosure in lieu of other restrictions on investment income:

In the case of investment income, then, the Commission’s belief is that potential conflicts of interest are best deterred through disclosure and the discipline of the electoral process. Other approaches are flawed both in terms of their reasonableness and practicality, and threaten to impair, rather than to protect, the relationship between the representative and the represented.²²

The House has required public financial disclosure by rule since 1968, and by statute since 1978. The Commission on Administrative Review noted: “The objectives of financial disclosure are to inform the public about the financial interests of government officials in order to increase public confidence in the integrity of government and to deter potential conflicts of interest.”²³ The Bipartisan Task Force on Ethics cited two further goals underlying statutory disclosure requirements: (1) Requiring disclosure of only those items that are relevant to potential conflicts of interest; and (2) developing reporting requirements that avoid unnecessary invasions of privacy or excessively burdensome recordkeeping. In short, the financial disclosure requirements must effectively

²⁰ House Bipartisan Task Force on Ethics, *Report on H.R. 3660*, 101st Cong., 1st Sess. 22 (Comm. Print, Comm. on Rules 1989), *reprinted in* 135 *Cong. Rec.* H9253, H9259 (daily ed. Nov. 21, 1989) (hereinafter “*Bipartisan Task Force Report*”).

²¹ House Comm. on Standards of Official Conduct, *Investigation of Financial Transactions Participated in and Gifts of Transportation Accepted by Representative Fernand J. St Germain*, H. Rep. 100-46, 100th Cong., 1st Sess. 3, 9, 43 (1987).

²² *Financial Ethics*, H. Doc. 95-73, *supra* note 16, at 9.

²³ *Id.* at 4.

balance the privacy rights of the reporting individual with the governmental interests in informing the public and deterring conflicts of interest.²⁴

Specific Disclosure Requirements

EIGA mandated annual financial disclosure by all senior federal personnel, including all Members and some employees of the House.²⁵ The Ethics Reform Act of 1989²⁶ substantially revised these provisions and condensed what had been different requirements for each branch into one uniform title covering the entire federal government. As such, Financial Disclosure Statements **must** disclose outside compensation, holdings, and business transactions, generally for the calendar year preceding the filing date. In all instances, filers may disclose additional information or explanation at their discretion.

The Standards Committee develops forms and instructions for financial disclosure and reviews the completed statements of House Members, officers, employees, candidates, and certain other legislative branch personnel for compliance with applicable laws. The Clerk of the House is responsible for making the forms available for public inspection. The discussion that follows focuses primarily on those requirements that apply to Members, officers, and employees of the House. The instruction booklets issued by the Standards Committee should be consulted for specific guidance when completing a Financial Disclosure Statement.

Who Must File

All Members of the House and those House employees earning “above GS-15,” that is, at least 120% of the federal GS-15 base level salary, for at least 60 days during the calendar year must file a Financial Disclosure Statement by May 15 of each year. For 2008, the triggering salary, referred to as the “senior staff rate,” is \$114,468. Employees who are paid at this rate are termed “senior” or “covered” employees. Each Member’s office must also have at least one employee who files (this individual is referred to as the “principal assistant”). Thus, if a Member has no employee on his or her personal staff who is paid at the senior staff rate, the Member must designate at least one member of his or her staff as a principal assistant to file. As the Committee first stated in its 1969 financial disclosure instructions, this person will usually be an employee whose relationship with the Member permits the person, under some circumstances, to act in the Member’s name or with the Member’s authority.

²⁴ *Bipartisan Task Force Report*, *supra* note 20, at 22; 135 *Cong. Rec.* H9259.

²⁵ Pub. L. 95-521, 92 Stat. 1824 (Oct. 26, 1978). Legislative branch disclosure requirements were then codified at 2 U.S.C. § 701 *et seq.*

²⁶ Pub. L. 101-194, 103 Stat. 1716 (Nov. 30, 1989), *amended by* Pub. L. 101-280, 104 Stat. 149 (May 4, 1990), and Pub. L. 102-90, 105 Stat. 447 (Aug. 14, 1991).

An individual who qualifies as a candidate for the House must file within 30 days of becoming a candidate, or on or before May 15, whichever is later, but in any event at least 30 days before any election (including a primary) in which that individual is seeking office. Individuals who do not qualify as candidates until within 30 days of the election must file as soon as they do qualify. An individual seeking office qualifies as a candidate for financial disclosure purposes by raising or spending more than \$5,000 for his or her campaign.²⁷ Both the office-seeker's own funds and contributions from third parties count towards the threshold. An individual who never raises or spends more than \$5,000 has no financial disclosure obligations with the House, even if that person's name appears on an election ballot. All individuals who do meet this definition must file each year that they continue to be candidates.

Spouse and Dependent Information

In general, reporting individuals must disclose the financial interests of their spouses and dependent children, in addition to their own.²⁸ Only in rare circumstances, when the financial interest of a spouse or dependent child meets **all three** standards listed below, may a filer omit disclosure of an asset:

- (1) The item is the sole interest or responsibility of the spouse or dependent child, and the reporting individual has no knowledge of the item;
- (2) The item was not in any way, past or present, derived from the income, assets, or activities of the reporting individual; and
- (3) The reporting individual neither derives, nor expects to derive, any financial or economic benefit from the item.²⁹

An individual is not required to disclose financial information about a spouse from whom he or she has separated with the intention of terminating the marriage or providing for a permanent separation.³⁰

²⁷ The "more than \$5,000" threshold is the same as that provided for in the Federal Election Campaign Act as requiring registration as a candidate with the Federal Election Commission. See 2 U.S.C. § 431(2).

²⁸ 5 U.S.C. app. 4 § 102(e)(1).

²⁹ *Id.* § 102(e)(1)(E). See also House Comm. on Standards of Official Conduct, *In the Matter of Representative Geraldine A. Ferraro*, H. Rep. 98-1169, 98th Cong., 2d Sess. (1984) (finding, in part, that the Member was unable to claim spousal exemption when she derived some personal benefit — such as payment of mortgage or household expenses — from spouse's employment or financial interests).

³⁰ 5 U.S.C. app. 4 § 102(e)(2).

Example 1. Member A sets up an account in his 10-year-old daughter's name, into which he deposits funds that he has earmarked to pay for her college education. Member A must disclose the account.

Example 2. Member B's husband has a stock portfolio, entirely in his own name. He uses the income from these investments to finance family vacations and other non-routine family expenses. Member B must disclose the contents of the stock portfolio.

Example 3. Member C's wife inherits some real estate. She is the sole owner, but C will inherit the land if his wife predeceases him. C must disclose the property.

Income

The term "income," as defined in the EIGA, is intended to be comprehensive. For reporting purposes, income is divided into two categories, "earned" and "unearned" income. Each type of income is explained more fully in this section.

Earned Income and Honoraria. "Earned" income refers to compensation derived from employment or personal efforts. Such income earned by the filer must be disclosed when it totals \$200 or more from any one source in a calendar year. The source, type, and exact dollar amount of the reporting individual's earnings must be stated.³¹ A filer must report the source, but not the amount, of income earned by a spouse when that income exceeds \$1,000. Earned income of a dependent child need not be reported, regardless of the amount.³²

While Members, officers, and covered employees may not themselves receive honoraria,³³ reporting individuals must still disclose the source and amount of payments that are directed to charity in lieu of honoraria. In addition, a confidential listing of the recipient charities must be filed separately with the Standards Committee.³⁴ The source and exact dollar amount of spousal honoraria must be disclosed.

Assets and Unearned Income. "Unearned" income refers to income derived from property held for investment or the production of income, such as real estate, stocks, bonds, savings accounts, and retirement accounts. Any asset held for such

³¹ *Id.* § 102(a)(1)(A).

³² *Id.* § 102(e)(1)(A).

³³ See Chapter 5 of this Manual for a discussion of the honoraria ban.

³⁴ 5 U.S.C. app. 4 § 102(a)(1)(A).

an investment purpose must be disclosed if it either was worth more than \$1,000 at the close of the calendar year or it generated income of more than \$200 during the year.³⁵ Where the value of an item is difficult to determine, a good faith estimate of fair market value may be used.

The identity of the property, in addition to its category of value,³⁶ must be specified. Each company in which stock worth over \$1,000 is held must be listed separately. Except in limited circumstances, the filer must disclose the specific contents of any investment account, private retirement account (*e.g.*, a 401(k) or IRA), or education savings account (*i.e.*, a “529 plan”). In other words, the EIGA requires disclosure of each asset held within such an account that meets the value or income tests described above. Disclosure of real property should include a description sufficient to permit its identification (*e.g.*, street address or plat and map location).

Interest-bearing savings accounts valued at more than \$1,000 must be disclosed only if all such accounts total more than \$5,000 in value. Savings accounts include certificates of deposit, money market accounts, or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution. Non-interest-bearing checking accounts, on the other hand, need not be disclosed since they produce no income. Financial interests in United States government retirement programs (*e.g.*, the Thrift Savings Plan) need not be reported.

Example 4. Member D has a stock portfolio, managed by a stock broker. Member D must disclose each stock in the portfolio that is worth more than \$1,000 at the end of the year or generates more than \$200 in income during the year.

Example 5. Member E Lists \$1,200 worth of stock in Company Z on her Financial Disclosure Statement. Over the next year, the company suffers losses such that it declares no dividends during the year and E’s stock declines in value to \$900 by year’s end. E need not disclose her stock in Z on her next Financial Disclosure Statement. (However, for the sake of clarity, E may wish to list her stock in Z nonetheless, indicating a value of less than \$1,000, rather than delete the asset from her latest filing without explanation.)

³⁵ *Id.* § 102(a)(3), (a)(1)(B).

³⁶ Except for earned income, the exact value of financial interests need not be disclosed; only the range within which an item falls – called the “category of value” – is required.

Example 6. Member F has \$10,000 invested in a money market account with a brokerage firm. The money market fund is managed by an employee of the firm who invests the fund's assets in stocks. Individual investors like F have no control over which stocks the fund holds. F must disclose his investment in the overall fund, but he need not list the individual stocks held within the fund's portfolio.

Example 7. Member G's wife has an IRA worth \$12,000. Member G must disclose each asset held in the IRA that is worth more than \$1,000 at year end or that generated more than \$200 in income during the calendar year.

The holdings of and income derived from a trust or other financial arrangement in which the reporting individual, spouse, or dependent child has a beneficial interest in principal or income generally must be disclosed. The three instances when such assets need not be disclosed are when they are held in (1) a qualified blind trust, (2) a qualified diversified trust, or (3) a trust which was not created by the beneficiary and regarding which neither the reporting individual, spouse, nor dependent child have specific knowledge of the holdings or sources of income.³⁷ Even for such trusts, the category of value of any unearned trust income must be reported if it exceeds \$200. Both qualified blind trusts and qualified diversified trusts must be pre-approved by the Standards Committee. These instruments are discussed in greater detail later in this chapter.

Loans made by the filer on which the filer is charging interest must be disclosed, unless the borrower is the spouse, parent, sibling, or child of the filer. Personal residences not producing rental income, and personal property not held primarily for investment or the production of income (such as artwork displayed in one's home) need not be reported.

Example 8. Member H owns a vacation home, which she uses for one month during the year. The rest of the time, she allows family members and close friends to use it at no charge. H need not disclose this property.

Example 9. Member I owns a vacation home, which he uses for one month during the year. The rest of the time, he rents it out. I must disclose this property.

Example 10. Member J's home includes a basement apartment that he rents to a tenant for \$800 a month. H must disclose this rental

³⁷ 5 U.S.C. app. 4 § 102(f)(2).

income, as well as the property that generated it. The “asset value” is the value of the entire home, not just the basement apartment.

Example 11. Member K owns an antique car worth \$50,000. K never uses the car for commercial purposes; he uses it exclusively for his personal enjoyment. K need not disclose the car.

Transactions

The Financial Disclosure Statement must include a brief description, the date, and category of value of any purchase, sale, or exchange of real property, stocks, bonds, commodities, futures, or other forms of securities (including trust assets) that exceeds \$1,000.³⁸ The category of value to be reported is the **total purchase or sale price** (or the fair market value in the case of an exchange), regardless of any capital gain or loss on the transaction.

Stock and commodity options, futures contracts, and bonds (corporate and government) are considered types of securities. As such, transactions in these items are reportable. Transactions by a partnership in which the reporting individual has an interest must be disclosed when the partnership is organized for the investment or production of income and is not actively engaged in a trade or business. These partnership transactions need only be reported, however, to the extent that the filer’s share of the transaction exceeds \$1,000.

The purchase or sale of property used solely as a personal residence (including a secondary residence not used for rental purposes) of the reporting individual or spouse and transactions solely by and between the reporting individual and his or her spouse or dependent children need not be disclosed. Likewise, the opening or closing of bank accounts, the purchase or sale of certificates of deposit, and contributions to or the rollover of IRAs and other retirement plans need not be reported.

Example 12. Member L sells stock in Company Z for \$5,000, realizing a \$700 capital loss. L must report the \$5,000 sale as a transaction. L may add that the sale represents a loss if she so chooses, but this information is not required.

Example 13. Member M has a 25% interest in a partnership that buys and sells real estate for investment purposes. The partnership buys a piece of property for \$400,000. M must disclose the partnership’s purchase, in the category of value reflecting his \$100,000 share of the transaction.

³⁸ *Id.* § 102(a)(5).

Information regarding asset transactions is not required of congressional candidates or new employees.

Liabilities

Personal obligations aggregating over \$10,000 owed to one creditor at any time during the calendar year, regardless of repayment terms or interest rates, must be listed.³⁹ The identity (name of the creditor), type, and amount of the liability must be stated. Except for revolving charge accounts (*i.e.*, credit cards), the largest amount owed during the calendar year is the value to be reported. For revolving charge accounts, the year-end balance is used; if the account balance declines by the year's end to \$10,000 or less, no reporting is required.

Just as personal liabilities **owed to** a reporting individual by certain relatives need not be reported as assets, liabilities **owed by** a reporting individual to a spouse, parent, sibling, or child of the filer or of the filer's spouse need not be listed. Mortgages and home equity loans secured by a personal residence (including secondary residences not used for rental purposes) as well as personal loans secured by motor vehicles, household furniture, or appliances need not be disclosed as long as the indebtedness does not exceed the purchase price of the item. Filers also need not report contingent liabilities, such as that of a guarantor, endorser, or surety; liabilities of a business in which the reporting individual has an interest; loans secured by the cash value of a life insurance policy; and tax deficiencies.

Gifts

EIGA requires disclosure of gifts received during the year, from someone other than a relative, whose aggregate value exceeds "minimal value," as defined in the statute. For 2008, "minimal value" is \$335, but gifts valued below \$134 need not be counted towards this limit.⁴⁰ Gifts valued below "minimal value" need not be reported. However, because the House gift rule (House Rule 25, clause 5) limits the value of gifts that Members, officers, and employees of the House may accept in a calendar year from any source other than a relative or fellow Member,⁴¹ few gifts exceeding this dollar amount are acceptable.

Notwithstanding the limitations on gift acceptance, there are gifts valued in excess of \$335 which a House Member, officer, or employee may accept that exceed

³⁹ *Id.* § 102(a)(4).

⁴⁰ Minimal value for purposes of disclosure under EIGA is the same as that for the Foreign Gifts and Decorations Act, 5 U.S.C. § 7342(a)(5). Pursuant to that statute, the General Services Administration sets the minimal value every three years. Minimal value for calendar years 2008 through 2011 is \$335. *See* 73 Fed. Reg. 7475 (Feb. 8, 2008).

⁴¹ See Chapter 2 of this Manual for more information on the rules pertaining to gifts.

the reporting threshold and for which disclosure must therefore be made on a Financial Disclosure Statement. Examples of such gifts include gifts provided on the basis of personal friendship, contributions to a legal expense fund, and commemorative items that exceed the reporting threshold. As a general matter, in each of these instances, the recipient must first seek written approval from the Committee prior to accepting such a gift.

Example 14. Member N obtains written permission from the Committee to accept from a personal friend \$500 in travel expenses to attend their college reunion. Member N must report the gift.

The rule contains a number of exceptions to the reporting requirement. Gifts from relatives, personal hospitality, and local meals need not be disclosed. “Personal hospitality” means hospitality extended for a non-business purpose by an individual, at the individual’s residence or other property. A “local meal” means a meal unconnected with a travel package, at which the host is present. Gifts to a spouse or dependent child that are totally independent of the recipient’s relationship with the reporting individual are exempt from both the gift rule and the disclosure statute. If not totally independent, gifts from third parties to a spouse or dependent child are treated the same as gifts to the reporting individual. However, simultaneous gifts to the reporting individual and his or her spouse or dependent child may be treated as separate gifts for the purpose of determining whether the \$122 aggregation threshold has been reached.

Example 15. Member O receives from her father a gift of \$10,000. O need not disclose the gift because it is from a relative.

The statute requires disclosure only of gifts received while the filer was a Member or employee of the House. Thus, no information regarding gifts is required from filers who are congressional candidates or new House employees.

Travel Reimbursements

Travel-related expenses provided by nongovernmental sources for activities such as speaking engagements, conferences, or fact-finding events are not considered gifts, but they must be reported when they total more than \$335 in value from one source in a year. These expenses include those reimbursed to the reporting individual as well as those paid directly by the sponsoring organization. Unlike with gifts, all travel expenses count towards the \$335 limit; there is no \$134 minimum threshold. For reimbursements and gifts of travel, the Financial Disclosure Statement must list the source, travel itinerary, inclusive dates, and nature of expenses provided, but the dollar value of the travel need not be listed. Travel paid for by a private source must be disclosed, even if unrelated to the traveler’s congressional duties. Travel paid for by a foreign government under the

Mutual Educational and Cultural Exchange Act (often referred to as “MECEA”)⁴² must also be reported.

Example 16. Member P gives a speech in Chicago at a meeting of a trade association which pays airfare, food, and lodging for P and his wife to attend. The expenses for Mr. and Mrs. P exceed \$335. P must disclose the source, dates, and nature of the expenses, but he need not report any dollar amounts.

Example 17. Member Q’s wife works for a law firm that holds an annual retreat at an out-of-state resort for all of its employees. Each employee is allowed to bring his or her spouse, at the firm’s expense. Q attends the retreat with his wife. If the cost of Q’s attendance exceeds \$335, he must report the trip on his statement, even though his attendance was unrelated to his official duties.

Travel reported on federal campaign filings, such as Federal Election Commission reports, need not be disclosed on a Financial Disclosure Statement, nor need travel provided on an official basis by federal, state, or local government entity. Travel provided by a foreign government pursuant to the Foreign Gifts and Decorations Act⁴³ is disclosed on a separate form for that purpose, and thus need not be disclosed on a Financial Disclosure Statement.

The statute requires disclosure only of travel taken while the filer was a Member or employee of the House. Thus, no information regarding travel is required from congressional candidates or new House employees.

Positions

Individuals must disclose any nongovernmental positions, whether or not compensated, that they **currently** hold, unless the Statement is the first one filed with the House. On an individual’s first Statement, the individual must disclose all positions they currently hold as well as those held in the previous two years.⁴⁴ Included are such positions as officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution. Positions held in a religious, social, fraternal, or political entity, and positions solely of an honorary nature need not be disclosed.

⁴² 22 U.S.C. § 2458a.

⁴³ 5 U.S.C. § 7342.

⁴⁴ 5 U.S.C. app. 4 § 102(a)(6)(A).

The title or nature of each position and the name of the organization should be stated. Only positions held by the reporting individual need to be disclosed, not those held by a spouse or dependent child.

Agreements

Any agreements or arrangements of the reporting individual concerning future employment, leave of absence during government service, continuation of payments from a private source, deferred compensation plans, or continued participation in an employee benefit or welfare plan of a former private employer must be disclosed.⁴⁵ The parties, dates, and terms should be reported by Members, officers, and employees. This information is not required of a candidate, or of the spouse or dependent children of a filer.

Continued payments or benefits from a former employer would include, for example, interest in or contributions to a pension fund, profit-sharing plan, or life and health insurance; buyout agreements; and severance payments. A deferred compensation plan would include an arrangement for the delayed payment of amounts due for services rendered by a reporting individual. Deferred compensation is not subject to outside earned income limitations, but it is reportable.

Only agreements to which the reporting individual is a party need be disclosed, not those of a spouse or dependent child.

Compensation in Excess of \$5,000 Paid by One Source

New officers and employees and **candidates** must disclose any compensation in excess of \$5,000 received from a single source other than the United States.⁴⁶ Reporting individuals need disclose only their own compensation in this section, not that received by their spouses or children. The information must cover two calendar years.

Specifically, a reporting individual who was a member or partner of a firm or association that provided services (such as legal, architectural, or accounting services) must disclose the clients or customers of that firm or association to whom he or she directly provided services. The clients or customers of a filer who was the sole proprietor of a business or professional practice must be disclosed in the same manner. The nature of the duties performed only need be described generally. Thus, a client name (which may be a company name, if the client is a corporation)

⁴⁵ *Id.* § 102(a)(7).

⁴⁶ *Id.* § 102(a)(6)(B).

and “legal services” would be sufficient for services rendered by an attorney. The amount of compensation also need not be disclosed.

Trusts

A reporting individual must usually provide the same information for trust assets and income as for other items, with three exceptions. The first exception from reporting is for trusts that were not created by the reporting individual, his spouse, or dependent, when none of the three has specific knowledge of the holdings or the sources of income of the trust. The other exceptions are for qualified blind trusts and qualified diversified trusts.⁴⁷

In a **qualified blind trust**, an official places financial assets under the exclusive control of an independent party. All assets or holdings transferred to a trust at the time of its creation or any time thereafter must be identified, valued, and publicly disclosed. Eventually, through the sale of existing assets and the acquisition of new ones, the identity of specific assets owned by the trust will be unknown to the official and will thus be eliminated as a factor in influencing official decision-making.

A qualified blind trust must satisfy a number of requirements, including the following:

- The trustee must be an independent financial institution, lawyer, certified public accountant, broker, or investment advisor;
- There may be no restrictions on the disposal of the trust assets;
- The trust instrument must limit communications between the trustee and interested parties; and
- The trust instrument and the trustee must be approved by the Standards Committee.

The third exception from trust disclosure is for a qualified diversified trust, an arrangement not generally well suited to use in the legislative branch because of the breadth of legislators’ official duties. Such a trust must meet the following requirements:

- The trust must consist of a diversified portfolio of readily marketable securities;

⁴⁷ *Id.* § 102(f).

- The trust assets may not consist of securities of entities having substantial activities in the area of primary responsibility of the reporting individual;
- The trust instrument must prohibit the trustee from publicly disclosing or informing any interested party of the sale of any security;
- The trustee must have power of attorney to prepare the personal income tax returns of the individual and any other returns that may contain information pertaining to the trust; and
- The trustee as well as the trust instrument must be approved in advance by the Standards Committee.

Termination Reports

Within 30 days of leaving House employment, a reporting individual must file a termination report.⁴⁸ The termination report covers all financial activity through the person's last day on the payroll. An individual who leaves the House to take a federal government position that also requires a **public** Financial Disclosure Statement need not file a termination report. Such an individual should inform the House Clerk in writing of the new position. A requirement to file a **confidential** disclosure statement in the new position will not excuse the filing of a termination report.

Example 18. Member A resigns from Congress to take a position as a Cabinet Secretary. A must file a public financial disclosure statement in his new position. A need not file a termination report with the House, but he must advise the House in writing that he is going to a covered position that requires the filing of a public Financial Disclosure Statement.

Filing Deadlines, Committee Review, and Amendments

A report must be physically filed or postmarked by the due date, unless an extension has been granted by the Committee pursuant to a written request. Total extensions for any report may not exceed 90 days.⁴⁹ An individual who files a report more than 30 days after it is due must pay a late filing fee of \$200, unless the Committee waives the fee in exceptional circumstances.⁵⁰

⁴⁸ *Id.* § 101(e).

⁴⁹ *Id.* § 101(g).

⁵⁰ *Id.* § 104(d).

Within 60 days of receipt, the Committee on Standards of Official Conduct reviews Financial Disclosure Statements of filers under its jurisdiction to determine whether the reports have been filed in a timely manner, appear substantially accurate and complete, and comply with applicable conflict of interest laws and rules.⁵¹ If the review indicates a possible problem, the reporting individual is notified and given an opportunity to amend within a specified period.

A filer may also amend a Financial Disclosure Statement on his or her own initiative. Such amendments are normally given a presumption of good faith by the Committee if submitted before the end of the year in which the report was originally filed.⁵²

To amend a Financial Disclosure Statement, a filer may, but is not required to, submit an entirely new form. Instead, an amendment can be in the form of a letter addressed to, and filed with, the Clerk of the House. Both the original filing and the amendment are made public.

Retention of and Public Access to Reports

The House Clerk retains the reports of House Members and employees for six years and the reports of unsuccessful candidates for one year.⁵³ The Clerk makes all forms on file available for inspection by the public within thirty days of receipt.⁵⁴ In addition, pursuant to the Honest Leadership and Open Government Act, the Clerk must make the reports of all Members filed after June 1, 2008 available on a public, searchable website within 45 days of their filing.⁵⁵

Anyone wishing to review a report on file with the Clerk must provide his or her name, occupation, and address; the name of any other person or entity on whose behalf the information is sought; and a statement that he or she is aware of the prohibitions on use of the information.⁵⁶ It is unlawful to use the information contained in Financial Disclosure Statements for any commercial purpose other than new reporting, any unlawful purpose, to establish a filer's credit rating, or for charitable, political, or other solicitations.⁵⁷

⁵¹ *Id.* § 106.

⁵² The Committee's amendment policy, contained in a letter sent to all Members on April 23, 1986, is included in the appendices to this Manual.

⁵³ 5 U.S.C. app. 4 § 105(d).

⁵⁴ *Id.* § 105(b)(1).

⁵⁵ Honest Leadership and Open Government Act of 2007, Pub. L. 110-81, § 304, 121 Stat. 735, 752-53 (Sept. 14, 2007).

⁵⁶ *Id.* § 105(b)(2).

⁵⁷ *Id.* § 105(c)(1), (2).

Failure To File or Filing False Disclosure Statements

The financial disclosure provisions of EIGA have been incorporated by reference as a rule of the House of Representatives,⁵⁸ over which the Standards Committee has jurisdiction.⁵⁹ In addition to any Committee action, EIGA authorizes the Attorney General of the United States to seek a civil penalty of up to \$11,000 against an individual who knowingly and willfully falsifies or fails to file or to report any required information.⁶⁰ Moreover, under federal criminal law, anyone who knowingly and willfully falsifies or conceals any material fact in a statement to the government may be fined up to \$11,000, imprisoned for up to five years, or both.⁶¹

The Committee is authorized to render advisory opinions interpreting the financial disclosure provisions of EIGA for any person under its jurisdiction. An individual who acts in good faith in accordance with a written advisory opinion shall not be subject to any sanction under the Act.⁶²

⁵⁸ House Rule 26.

⁵⁹ See House Rule 10, cl. 1(t).

⁶⁰ 5 U.S.C. app. 4 § 104(a).

⁶¹ 18 U.S.C. § 1001.

⁶² 5 U.S.C. app. 4 § 106(b)(7).

STAFF RIGHTS AND DUTIES

Overview

The House has adopted specific rules and regulations governing the employment relationship. In addition, the Congressional Accountability Act of 1995, the first law passed by the 104th Congress, applies the rights and protections of twelve civil rights, labor, and other workplace laws to employees of the legislative branch of the government.¹ This chapter covers the laws, rules, and standards concerning:

- Restrictions against discrimination in hiring and compensation;
- Nepotism;
- “Kickback” schemes and other illegal hiring, firing, and compensation practices;
- Regulations on employment and compensation, including lump sum payments;
- Guidelines affecting interns, fellows, volunteers, and detailees; and
- Consultants.

The general terms, conditions, and specific duties of House employees traditionally have been within the discretion of the employing Member or committee.² Nonetheless, certain general limitations and restrictions apply to all House employees. Employees of the House are paid from funds of the United States Treasury to perform public duties. These duties include assisting the Members in their official responsibilities³ and working on official committee business,⁴ but they

¹ See Congressional Accountability Act of 1995, Pub. L. 104-1, 109 Stat. 3 (1996) (codified at 2 U.S.C. § 1301 *et seq.*).

² Some House employees, generally those under the employ of an officer of the House, will be subject to the House Employees Position Classification Act (2 U.S.C. §§ 291-303) and regulations on applicable employment standards issued by the Committee on House Administration.

³ See 2 U.S.C. § 57b(a)-(b). During each session of Congress, each Member gets a single allowance, known as the Members’ Representational Allowance (“MRA”) to conduct official and representational duties. The Clerk Hire Allowance, the Official Expenses Allowance, and Official Mail Allowance have all been merged into the MRA. See also Legislative Branch Appropriations Act, 2008, Pub. L. 110-161, Division H, title I - House of Representatives - Members’ Representational Allowances Including Clerk Hire, Official Expenses of Members, and Official Mail.

⁴ See House Rule 10, cl. 9(a)(1).

do **not** include performing nonofficial, personal, or campaign duties.⁵ The Code of Official Conduct (House Rule 23) instructs Members and officers to retain no one on their staffs “who does not perform official duties for the offices of the employing authority commensurate with the compensation he receives” (House Rule 23, clause 8).⁶

Discrimination

House Rules

In addition to federal law, House rules have long prohibited discriminatory conduct in employment. Part of the Code of Official Conduct (House Rule 23, clause 9) provides:

A Member, Delegate, Resident Commissioner, officer, or employee of the House 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, but may take into consideration the domicile or political affiliation of such individual.

This provision has been part of the Code, in substantially this form, since 1975.⁷

Standards Committee Action. The Committee on Standards of Official Conduct is charged with investigating alleged violations of the Code of Official Conduct (House Rule 10, clause 1(q)). In the 101st Congress, the Committee undertook a preliminary inquiry into charges that a Member had sexually harassed two female employees on his personal staff. In that case, the Committee affirmed

⁵ See *United States v. Rostenkowski*, 59 F.3d 1291, 1307-11 (D.C. Cir. 1995), *reh'g denied*, 68 F.3d 489 (D.C. Cir. 1995); *United States v. Diggs*, 613 F.2d 988, 994-97, 1002 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 982 (1980).

⁶ See also Comm. on House Admin., *U.S. House of Representatives Members' Congressional Handbook* (hereinafter “*Members' Handbook*”); Comm. on House Admin., *U.S. House of Representatives Committees' Congressional Handbook* (hereinafter “*Committees' Handbook*”); Code of Ethics for Government Service ¶ 3, H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt. 2, B12 (1958). The text of the *Members' Handbook* and the *Committees' Handbook* is available on that Committee's website.

⁷ See H. Res. 5, 94th Cong., 1st Sess. (121 *Cong. Rec.* 20-32 (Jan. 14, 1975)). The rule was amended by H. Res. 5, 100th Cong., 1st Sess., to preclude discrimination on the basis of age (133 *Cong. Rec.* H6-16 (daily ed. Jan. 6, 1987)), and by the Ethics Reform Act of 1989, to preclude discrimination on the basis of marital or parental status and handicap and to exclude domicile and political affiliation (see Pub. L. 101-194, § 802(b)(2), 103 Stat. 1716, 1773 (1989)) – matters that are also now addressed by the Congressional Accountability Act of 1995.

that sexual harassment is a form of sex discrimination, that the Member charged had indeed harassed his employees, and that this behavior violated the Code of Official Conduct. The Committee report stressed that the applicable provision of the Code (House Rule 23, clause 9) tracks the language of Title VII of the Civil Rights Law of 1964 and should be interpreted in light of judicial and administrative decisions (*e.g.*, those of the Equal Employment Opportunity Commission) construing that law.⁸

While the Committee may conduct investigations and disciplinary hearings and make recommendations to the full House that it formally sanction a Member, the Committee does not have the authority to order remedies such as monetary relief for an aggrieved employee. Employees seeking such remedies have recourse to the Office of Compliance.

Example 1. Member A, a Californian, only hires other Californians. A is not violating House rules.

Example 2. Member B, a Republican, only hires other Republicans. B is not violating House rules.

Example 3. As a matter of policy, Member C refuses to hire women except for clerical positions. C is in violation of House Rule 23.

Example 4. District manager D dismisses Employee E after E turns 55, on the ground that the office needs to maintain a youthful and energetic image. D has violated House Rule 23.

Congressional Accountability Act of 1995

Effective January 23, 1996, the Congressional Accountability Act of 1995 extended the rights and protections of the following federal employment laws, including those laws that prohibit various forms of discrimination, to “covered” Congressional employees and employing offices:

- Title VII of the Civil Rights Act of 1964, as amended by the *Civil Rights Act of 1991*, which prohibits discrimination in employment because of race, color, religion, sex, or national origin;
- The Age Discrimination in Employment Act of 1967, which prohibits employment discrimination against individuals 40 years of age and over;

⁸ See House Comm. on Standards of Official Conduct, *In the Matter of Representative Jim Bates*, H. Rep. 101-293, 101st Cong., 1st Sess. 8-10 (1989). The Committee issued a public letter of reproof to the Member. *Id.* at 25-26.

- Title I of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, which prohibit employment discrimination against qualified individuals with disabilities;
- The Fair Labor Standards Act of 1938 (“FLSA”), which governs overtime pay, minimum wage, and child labor protection, and prohibits pay discrimination on the basis of sex;
- The Family and Medical Leave Act of 1993, which entitles eligible employees to take leave for certain family and medical reasons;
- The Employee Polygraph Protection Act of 1988, which restricts the use of lie detector tests by employers;
- The Worker Adjustment and Retraining Notification Act, which assures employees of notice before shut-downs and mass lay-offs; and
- Section 2 of the Uniformed Services Employment and Reemployment Rights Act of 1994, which protects job rights of individuals who serve in the military and other uniformed services.

The application of three other laws had a delayed effective date:

- The Federal Service Labor-Management Relations Act, which establishes the rights of individuals to form, join, or assist a labor organization, or to refrain from such activity, and to collectively bargain over conditions of employment through their representatives (effective October 1, 1996);
- The Occupational Safety and Health Act of 1970, which protects the safety and health of employees from physical, chemical, and other hazards in places of employment (effective January 1, 1997); and
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibits discrimination against qualified individuals with disabilities in the areas of public services and accommodations (effective January 1, 1997).

The Congressional Accountability Act established the Office of Compliance, an independent office within the legislative branch, with a five-member Board of Directors, an Executive Director, of Deputy Executive Director for the Senate, a Deputy Executive Director for the House, and a General Counsel. That office administers formal and informal procedures to resolve disputes and provides monetary awards and other appropriate remedies for congressional employees if a violation is found. The Office of Compliance has published a guide to the Congressional Accountability Act, which is available on its website. It also provides educational services and information to congressional employees and their employing offices. Employees with questions about their rights under these statutes should contact the Office of Compliance. The Committee on House Administration has published a *Model Employee Handbook*, available on that Committee’s website, that provides office policies that comply with applicable House

rules and federal employment laws and regulations.⁹ In addition, the House Office of Employment Counsel is available to provide advice and guidance to House Members and other employing authorities on employment matters and on the establishment of office policies consistent with these House rules, laws, and regulations.

Fair Labor Standards

Certain federal employment protections applied to staff even before the enactment of the Congressional Accountability Act. House employees have long been entitled to the minimum wage and overtime protection (except for exempt employees¹⁰), the requirement of equal pay for equal work, protection against oppressive child labor conditions,¹¹ and protection against retaliation for exercising any of these rights.¹² The Office of Compliance now administers these provisions.

Pursuant to regulations issued by the Office of Compliance, the minimum wage and overtime provisions of the FLSA do not apply to staff “employed in a bona fide executive, administrative, or professional capacity.”¹³ In light of this standard, the Committee on House Administration has incorporated in its *Model Employee Handbook* provisions establishing written leave policies, job descriptions for each employee stating whether or not the position is exempt from the pay provisions and time-keeping procedures. The equal pay provisions of the FLSA and Office of Compliance regulations prohibit paying lower wages based on gender:

for equal work on jobs[,] the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex¹⁴

⁹ See Comm. on House Admin., U.S. House of Representatives, *Model Employee Handbook* (Sept. 1999).

¹⁰ See *Office of Compliance Manual*, section 5, part C, FLSA Regulations, § 541 *et seq.* (exemption criteria). The text of the manual is available on the Office of Compliance’s website.

¹¹ See 29 U.S.C. § 203(l) for the definition of “oppressive child labor.”

¹² See Fair Labor Standards Amendments of 1989, Pub. L. 101-157, § 8, 103 Stat. 938, 944 (1989).

¹³ See *Office of Compliance Manual*, *supra* note 10.

¹⁴ 29 U.S.C. § 206(d)(1). An employer may not comply with this provision by reducing anyone’s wages. *Id.*

Nepotism

Federal law, at 5 U.S.C. § 3110, generally prohibits a federal official, including a Member of Congress, from appointing, promoting, or recommending for appointment or promotion any “relative” of the official to any agency or department over which the official exercises authority or control. The statute defines a relative, for these purposes, as:

an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

The law bans the employment only of these specifically named relatives.¹⁵ The statute does not prohibit a Member from employing two individuals who are related to each other but not to the Member. In addition, the 107th Congress amended the Code of Official Conduct (House Rule 23, clause 8(c)(1)) to prohibit a Member from retaining a spouse in a paid position, and to prohibit a House employee from accepting compensation for work on a committee on which the spouse serves as a member.¹⁶

The employing Member or committee and subcommittee chairman must certify, on the monthly payroll authorizations, each employee’s relationship (or lack thereof) to **any** Members of Congress. The anti-nepotism law, as applied in the House, thus prohibits the hiring of a relative of a Member on that Member’s staff or on the staff of a committee or subcommittee that the Member chairs. The prohibition, however, does not apply “in the case of a spouse whose pertinent employment predates the One Hundred Seventh Congress” (House Rule 23, clause 8(c)(2)).

If a House employee becomes related to the employing Member through marriage (*e.g.*, an employee in the Member’s congressional office marries a relative of the Member), the employee may remain on the Member’s personal or committee staff, **unless** the employee is the spouse of the employing Member or the works for a Committee on which the Member serves. Similarly, if a Member becomes the supervisor of a relative (other than a spouse) who was hired by someone else (*e.g.*, the Member ascends to the chairmanship of a committee or subcommittee for which the relative is already working), the relative may remain on the payroll. However,

¹⁵ See *Lee v. Blount*, 345 F. Supp. 585, 588 (N.D. Cal. 1972).

¹⁶ See H. Res. 5, 107th Cong., 1st Sess. (147 *Cong. Rec.* H6-10, H8 (Jan. 3, 2001)).

the Member may **not** then give that individual further promotions or raises, other than cost-of-living or other across-the-board adjustments. Changing an employee's status from part-time to full-time would not be considered a raise or promotion and, therefore, would be permitted under 5 U.S.C. § 3110.

Similarly, regulations issued by the Committee on House Administration prohibit the use of Committee funds for the benefit of a Member or relative of a Member by way of a contract or otherwise. Specifically, those regulations state that “[u]nless specifically provided by federal laws, House rules, or Committee on House Administration regulations, no Member, relative of the Member, or anyone with whom the Member has a professional or legal relationship may directly benefit from the expenditure” of either the clerk hire or the official expenses allowance.¹⁷ A comparable provision applies to House committees. The anti-nepotism restrictions apply only to employees on the Member's or a committee's official payroll. Campaign workers are not covered.

Example 5. Member D would like to hire his uncle by marriage to work in his congressional office. Member D would be in violation of House Rule 23 by hiring a specifically named relative.

Example 6. Employee F has been a caseworker in Member E's district office for two years, and she later marries Member E's son. Employee F may remain on Member E's payroll.

Example 7. Employee G works on Member F's committee, and Employee G and Member F get married. Employee G may no longer receive compensation from the committee on which Member F serves.

Illegal Hiring and Firing Practices

Criminal provisions of the United States Code prohibit offering or threatening federal jobs to induce payments, political activities, or contributions. Specifically, federal law prohibits anyone from asking for or receiving anything of value, including a campaign contribution, in return for promising to help someone obtain a federal post.¹⁸ Further, candidates may not directly or indirectly promise appointment or use of influence or support in obtaining “any public or private position or employment” in return for someone's political support.¹⁹ Federal law also bars any individual from promising a federal job, contract, or benefit to a person as consideration or reward for political support or opposition to any

¹⁷ *Members' Handbook*, *supra* note 6.

¹⁸ See 18 U.S.C. § 211.

¹⁹ See 18 U.S.C. § 599.

candidate or party.²⁰ Moreover, no one may deprive or threaten to deprive anyone of a federal job or benefit as a way to induce political contributions, including services, for a candidate or party.²¹ These provisions carry penalties ranging to fines of \$10,000 and imprisonment for two years.

In addition to these provisions, during the 110th Congress, the House amended the Code of Official Conduct (House Rule 23, clause 14) to prohibit any Member, Delegate, or Resident Commissioner from influencing an employment decision or employment practice of any private entity on the basis of partisan political affiliation.

Salary Kickbacks

Federal law contains no statutory provision that specifically bars “kickbacks.”²² However, the Department of Justice, under general fraud statutes, has prosecuted several Members of Congress and congressional aides involved in kickback schemes. Section 1001 of title 18, for example, specifically prohibits the making of any false, fictitious, or fraudulent statements or knowingly covering up or concealing, by any trick or scheme, any material fact concerning matters in the jurisdiction of the executive, legislative, or judicial branch of the government.²³ A Member or employee who uses the mail to distribute payroll checks or other funds in furtherance of a kickback scheme may also be violating the federal mail fraud statute.²⁴

²⁰ See 18 U.S.C. § 600.

²¹ See 18 U.S.C. § 601.

²² The term kickback generally refers to a scheme whereby an employee is coerced, as a condition of employment, into remitting a portion of the individual’s salary to the employer or into spending a portion of the salary for goods or services for the employer’s benefit. It may also include the designation by an employer of certain persons on the payroll who actually perform no duties but turn over their salaries to the employer.

²³ In 1996, the statute was amended to expressly extend its coverage to “any matter within the jurisdiction of the executive, *legislative*, or judicial branch.” False Statements Accountability Act of 1996, Pub. L. 104-292, § 2, 110 Stat. 3459 (1996) (emphasis added). The Supreme Court had held that a previous version of this statute prohibited making a false or fraudulent statement or falsifying or concealing a material fact on a payroll voucher or certification to a disbursing officer of the House to further a kickback scheme. See *United States v. Bramblett*, 348 U.S. 503 (1955). That decision was overruled by *Hubbard v. United States*, 514 U.S. 695, 715 (1995), which held that the false statements statute in effect at the time the conduct occurred did not apply to statements made in a *judicial* proceeding. See also *United States v. Oakar*, 111 F.3d 146 (D.C. Cir 1997) (relying on *Hubbard* and holding that the false statements statute did not apply to statements made to the House Committee on Standards).

²⁴ See 18 U.S.C. § 1341; see also *Rostenkowski*, 59 F.3d at 1294-95; *Diggs*, 613 F.2d at 997-99, 1002-03; *United States v. Clark*, Crim. No. 78-207 (W.D. Pa. 1978).

Court and Standards Committee Actions. The United States Court of Appeals for the District of Columbia Circuit upheld the conviction of a Member of the House under an earlier version of 18 U.S.C. § 1001, concluding that the Member's failure to disclose to the House payroll office the real purpose of pay to employees in a kickback scheme, in which such funds were used for personal and congressional expenses of the Member, was a material omission in violation of the criminal law.²⁵ In the course of a subsequent Committee investigation of the Member, he admitted that he had misused the clerk hire allowance (the clerk hire allowance is now included in the Members' Representational Allowance ("MRA"))²⁶ in violation of then-House Rule 43, clauses 1 and 8, part of the Code of Official Conduct, and that he had been unjustly enriched thereby. He agreed to make restitution to the House, apologized, and was censured by the House.²⁷

With respect to the MRA, this Committee has long taken the view that:

it is improper to levy, as a condition of employment, any responsibility on any clerk to incur personal expenditures for the primary benefit of the Member or of the Member's congressional office operations

The opinion clearly would prohibit any Member from retaining any person from his [MRA] under either an express or tacit agreement that the salary paid to the individual is in lieu of any present or future indebtedness of the Member, any portion of which may be allocable to goods, products, printing costs, campaign obligations, or any other nonrepresentational service.²⁸

In the 100th Congress, a Delegate and his administrative assistant pleaded guilty to having conspired to defraud the United States in violation of the criminal conspiracy statute²⁹ by submitting payroll forms and collecting salary checks for individuals who did no work for the House. The Standards Committee found that the Delegate had used the checks to pay for hotel and meal expenses for visiting constituents and staff, campaign expenses, and travel for the Delegate and his family, in violation not only of the conspiracy statute, but also of the House Code of Official Conduct and the Code of Ethics for Government Service. The Delegate and

²⁵ *Diggs*, 613 F.2d at 999.

²⁶ See note 3, *supra*.

²⁷ See House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles C. Diggs, Jr.*, H. Rep. 96-351, 96th Cong., 1st Sess. (1979); 125 *Cong. Rec.* 21584-92 (July 31, 1979).

²⁸ House Comm. on Standards of Official Conduct, *Advisory Opinion No. 2* (July 11, 1973), reprinted in 119 *Cong. Rec.* H6073-74 (July 12, 1973), and in the appendices to this Manual.

²⁹ See 18 U.S.C. § 371.

employee resigned before the Committee could hold a disciplinary hearing to consider sanctions.³⁰

In the 107th Congress, a Member was convicted of, among other things, conspiracy to violate the federal bribery statute³¹ by agreeing to employ an individual as a member of the Member's congressional district staff in exchange for certain gratuities, including the payment by that individual of \$2,500 a month of his congressional salary.³² In a subsequent Committee investigation, an investigative subcommittee stated in a letter transmitting a Statement of Alleged Violation to the full Committee that the individual had described in his trial testimony in detail how each month he deposited an envelope containing \$2,500 under the door of the Member's private office.³³ The Committee found that the conduct by the Member violated clauses 1-3 of the Code of Official Conduct (House Rule 23). On the basis of this violation, as well as other conduct found to be in violation of the Code of Official Conduct, which taken together were "of the most serious character meriting the strongest possible Congressional response,"³⁴ the Committee recommended that the House of Representatives adopt a resolution that the Member be expelled.³⁵ The House later voted to expel the Member.³⁶

General Employment and Compensation Provisions

The Committee on House Administration has promulgated regulations covering the Members' Representational Allowance ("MRA")³⁷ and the employment of committee staff. The *Members' Handbook* and *Committees' Handbook* contain these regulations.³⁸ A summary follows.

Personal Staff

Each Member of the House may employ up to 18 permanent employees and a total of not more than four additional employees appointed as interns, part-time

³⁰ House Comm. on Standards of Official Conduct, *Summary of Activities, One Hundredth Congress*, H. Rep. 100-1125, 100th Cong., 2d Sess. 15-16 (*In the Matter of Delegate Fofa I.F. Sunia and Matthew K. Iuli*).

³¹ See 18 U.S.C. § 201(c).

³² *United States v. James A. Traficant, Jr.*, Crim. No. 4:01CR207 (N.D. Ohio 2002).

³³ House Comm. on Standards of Official Conduct, *In the Matter of Representative James A. Traficant, Jr.*, H. Rep. 107-594, 107th Cong., 2d Sess. 120 (2002).

³⁴ *Id.* at 2.

³⁵ See H. Res. 495, 107th Cong., 2d Sess. (148 *Cong. Rec.* H5375-93 (July 24, 2002)).

³⁶ *Id.*

³⁷ See note 3, *supra*.

³⁸ See note 6, *supra*.

employees, shared employees, temporary employees, or staff on leave without pay to serve as the Member's staff. The regulations issued by the Committee on House Administration establish the maximum and minimum annual rates of employee salaries. A portion of the MRA is used for securing staff to provide assistance to Members in the discharge of official and representational duties.³⁹ A statute that required that individuals compensated from the then-clerk hire allowance⁴⁰ work either in Washington, D.C., or in the state or district that the Member represents was repealed in 1996, thereby permitting employees to "telecommute."⁴¹ The Committee on House Administration has issued a policy statement on telecommuting, which is available on that committee's website. As discussed in that policy statement, telecommuting is entirely at the discretion of the employing office, and employing offices are under no obligation to offer a telecommuting option to employees. An employee with a telecommuting work arrangement is subject to the same rules, regulations, and procedures applicable to all staff of an employing office, including those contained in the House rules, the Committee on House Administration's regulations set forth in the *Members' Handbook* and *Committees' Handbook*, the employing office's employee manual, applicable federal laws, and guidance of the Standards Committee.

Committee Staff

Provisions of the House rules establish a ceiling on the number of professional and clerical staff that may be employed by each standing committee of the House and address the pay of these employees (House Rule 10, clauses 9(a) and 9(c)). The *Committees' Handbook* sets out regulations and guidelines for employment and compensation of committee staff.

The House rules state that professional staff members of the standing committees of the House "may not engage in any work other than committee business during congressional working hours" and that they "may not be assigned a duty other than one pertaining to committee business" (House Rule 10, clauses 9(b)(1)(A) and 9(b)(1)(B)). Thus, committee staff may *not* be used to supplement the personal office needs of committee members.

All Staff

The regulations of the Committee on House Administration require employing Members to provide monthly salary certifications for their staff. A salary may be disbursed to an employee only upon submission of a signed statement by the appropriate Member certifying that the Office of Human Resources has correctly

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Pub. L. 104-186, Title II, § 204(43), 110 Stat. 1718, 1736 (Aug. 20, 1996).

listed the name and salary of each employee, and that the employees have certified that they have no relationship to any current Member of Congress, unless specifically noted. Compensation may be received only for duties performed within the preceding month.

The Ethics Reform Act of 1989 amended what is now House Rule 23, clause 8, “to strengthen and broaden [Members’ and officers’] accountability for the pay and performance of staff.”⁴² Whereas the old rule explicitly addressed only Members as employing authorities, the revised rule explicitly applies as well to House officers, committee chairs, subcommittee chairs, and ranking minority members in their supervisory roles. Clause 8, in pertinent part, provides:

(a) A Member, Delegate, Resident Commissioner, or officer of the House may not retain an employee who does not perform duties for the offices of the employing authority commensurate with the compensation he receives.

(b) In the case of committee employee who works under the direct supervision of a member of the committee other than a chairman, the chairman may require that such member affirm in writing that the employee has complied with clause 8(a) (subject to clause 9 of rule X) as evidence of compliance by the chairman with this clause and with clause 9 of rule X.

Thus, when a Member other than a committee chair (*e.g.*, a subcommittee chair or ranking minority member) directly supervises committee staff, the chair may require the supervising Member to certify the staff’s performance. According to the Bipartisan Task Force report,

[t]he purpose of this requirement is to ensure accountability for employee performance. The rule specifically states that, if a supervising Member has affirmed in writing that the employee under his authority has met the criteria of the rule, this written affirmation is sufficient evidence that the chairman is in compliance with the rule’s provisions. Any violation would consequently become the responsibility of the supervising Member.⁴³

⁴² *Bipartisan Task Force on Ethics*, Report on H.R. 3660, 101st Cong., 1st Sess. 60 (Comm. Print, Comm. on Rules 1989), reprinted in 135 *Cong. Rec.* H9253, H9270 (daily ed. Nov. 21, 1989) (hereinafter “*Bipartisan Task Force Report*”). See also Ethics Reform Act of 1989, Pub. L. 101-194, § 802(b)(1), 103 Stat. 1716, 1773 (1989).

⁴³ *Bipartisan Task Force Report*, *supra* note 42, at 33; 135 *Cong. Rec.* H9262.

Guidelines of the Committee on House Administration prohibit two or more employees from holding the same House position and from dividing a House salary. In addition, House employees are prohibited from subletting any portion of their official duties to someone else.⁴⁴ One employee may be shared between two or more House employing authorities (*e.g.*, one staffer may work for two Members or for both a Member and a committee). Part-time work is also permitted.⁴⁵

The underlying standard for the receipt of compensation by an employee of the House is that the employee has regularly performed official duties commensurate with the compensation received. The Code of Ethics for Government Service instructs every employee to “[g]ive a full day’s labor for a full day’s pay; giving to the performance of his duties his earnest effort and best thought.”⁴⁶ Employees are paid United States Treasury funds to perform public duties. Appropriated funds are to be used solely for the purposes for which appropriated.⁴⁷ Funds appropriated for congressional staff to perform official duties should be used only for assisting a Member in his or her legislative and representational duties, working on committee business, or performing other congressional functions. Employees may not be compensated from public funds to perform nonofficial, personal, or campaign activities on behalf of the Member, the employee, or anyone else.

There is no conclusive listing of a Member’s “official and representational duties.” However, the Supreme Court discussed such a concept in a different context and stated that “legitimate” activities of a Member include things said or done in the House relating to official duties and include “legitimate ‘errands’ performed for constituents, the making of appointments with Government agencies, assistance in securing Government contracts, preparing so-called ‘news letters’ to constituents, news releases and speeches delivered outside the Congress.”⁴⁸

Standards Committee Actions. In one case considered by the Standards Committee in the 100th Congress, involving the misuse of clerk hire funds, the Committee found that a Member maintained an employee on the payroll of a subcommittee the Member chaired, while knowing that the employee was not

⁴⁴ See 2 U.S.C. § 101.

⁴⁵ See *Members’ Handbook* and *Committees’ Handbook*, *supra* note 6.

⁴⁶ See Code of Ethics for Government Service ¶ 3, *supra* note 6.

⁴⁷ See 31 U.S.C. § 1301(a).

⁴⁸ *United States v. Brewster*, 408 U.S. 501, 512 (1972). See also *McCormick v. United States*, 500 U.S. 257, 272 (1991) (“Serving constituents and supporting legislation that will benefit the district and individuals and groups therein is the everyday business of a legislator.”).

coming to work. The House reprimanded the Member for, among other things, violating the Code of Official Conduct (currently clause 8 of House Rule 23).⁴⁹

In the 104th Congress, the Standards Committee considered several allegations also involving a Member's misuse of clerk hire funds. One matter concerned, among other things, a Member's regular assignment to an employee of duties that were clearly personal in nature, including paying the Member's bills, retrieving personal mail, cleaning the Member's home, serving as a point of contact for vendors and service providers in connection with the Member's personal affairs, and performing a variety of personal services, such as curling the Member's hair and making shopping trips to department stores, grocery stores, and furniture stores, during work hours.⁵⁰

In another matter, the Committee self-initiated a complaint against a Member involving allegations that, among other things, the Member had "misused congressional staff for personal purposes" and "failed to repay personal debts incurred by personal staff on the [Member's] behalf."⁵¹

In the 106th Congress, a Member admitted to a Statement of Alleged Violation charging that he brought discredit to the House of Representatives by, among other things, permitting employees under his supervision and control to work for the Member's campaign, to "the detriment of the time they were required to spend on official duties."⁵² The Committee determined that contributing to this misconduct was the failure of the Member "to establish a comprehensive and comprehensible policy for his congressional staff to record the annual, sick[,] and administrative leave taken by each employee in his congressional office."⁵³

⁴⁹ See House Comm. on Standards of Official Conduct, *In the Matter of Representative Austin J. Murphy*, H. Rep. 100-485, 100th Cong., 1st Sess. 5, 9 (1987); 133 *Cong. Rec.* H11686-96 (daily ed. Dec. 18, 1987).

⁵⁰ See House Comm. on Standards of Official Conduct, *In the Matter of Representative Barbara-Rose Collins*, H. Rep. 104-876, 104th Cong., 2d Sess. 14-17. In that matter, an investigative subcommittee adopted a Statement of Alleged Violation against the Member, alleging, among other things, the improper performance of personal services by House employees. No further action was taken in the matter, however, because as of the time the investigative subcommittee completed its work, the Member was about to depart the House. See *id.* at 4.

⁵¹ The Committee lost jurisdiction over the matter when the Member resigned from the House. See House Comm. on Standards of Official Conduct, *Summary of Activities, One Hundred Fourth Congress*, H. Rep. 104-886, 104th Cong., 2d Sess. 19 (*In re Rep. Mel Reynolds*).

⁵² House Comm. on Standards of Official Conduct, *In the Matter of Rep. E.G. "Bud" Shuster*, H. Rep. 106-979, 106th Cong., 2d Sess., 6-7 (2000).

⁵³ *Id.* at 63.

Court Actions. The Department of Justice has on four separate occasions pursued criminal charges, against two then-current and two former Members of the House, for allegedly placing persons on the congressional payroll who did not regularly perform official congressional duties but rather performed personal services or duties for or on behalf of the Members.⁵⁴ The charges included fraud, mail fraud, perjury, and embezzlement of government funds. The sitting Members were convicted;⁵⁵ the former Members pleaded guilty.⁵⁶

In one of these cases, the United States Court of Appeals, summarizing the testimony of a House officer, stated that it is “within a congressman’s discretion to define the parameters of an employee’s responsibilities as long as those responsibilities related to the congressman’s ‘official and representative duties.’”⁵⁷ Nevertheless, the court, in upholding the fraud conviction of the Member of Congress, stated that although the employees had performed some official services for the Member, “only a nominal percentage of [the employees’] responsibilities were congressionally related,” and thus a jury had sufficient evidence to conclude that such employees were paid from clerk hire allowances “with the intention of compensating them for services rendered to the [defendant Member’s private business] or the defendant.”⁵⁸ Thus, while it might have been argued that “it was a matter of [the Member’s] discretion to fix their duties and salaries as congressional employees,” the “defendant’s representations to the House Office of Finance that the [employees] were *bona fide* congressional employees were fraudulent and material in violation of 18 U.S.C. § 1001.”⁵⁹

In a more recent case, the Court of Appeals observed that, although “the House has not attempted to define a Member’s ‘official and representative duties,’ and has in large measure vested Members ‘with discretion to fix the terms and conditions of employment’ of staff members,” Congress “has drawn a line between use of the Clerk Hire Allowance to employ staff assisting ‘in the discharge of official and representative duties’ (permissible under the Annual Appropriations Acts) and use of that allowance ‘to defray personal, political or campaign related allowances’ (prohibited by 2 U.S.C. § 57; 31 U.S.C. § 1301; and the [Members’ Congressional] Handbook.”⁶⁰ The court stated that where to draw the line between “official work”

⁵⁴ See, e.g., *United States v. Rostenkowski*, Crim. No. 94-0226 (D.D.C.); *United States v. Diggs*, Crim. No. 78-142 (D.D.C.); *United States v. Clark*, Crim. No. 78-201 (W.D. Pa.).

⁵⁵ See notes 5 and 33, *supra*.

⁵⁶ See *Congressional Quarterly’s News, Hill News Highlights* (Apr. 9, 1996); *Congressional Quarterly Weekly Report* 1263 (June 23, 1979).

⁵⁷ *Diggs*, *supra* note 5, 613 F.2d at 997.

⁵⁸ *Id.* at 1002 (emphasis added).

⁵⁹ *Id.* at 997.

⁶⁰ *Rostenkowski*, *supra* note 5, 59 F.3d at 1309 (emphasis added).

and “personal services” may not always be clear. In concluding that certain counts of the criminal indictment against a former Member were justiciable (*i.e.*, capable of resolution by the court), the court determined that staff’s involvement with engraving gift items and mounting souvenirs on plaques as gifts and performing bookkeeping duties for a private insurance company owned by the Member would be prohibited by House rules and regulations as personal services, but the court could not say that “picking up [a Member’s] laundry and driving his family members around Washington” could not be considered official rather than personal activities “[b]ecause the performance of those activities might, in some circumstances, directly – even vitally – aid a Congressman in the performance of his official duties.”⁶¹

During the 107th Congress, a Member was convicted of conspiracy to defraud the United States by, among other things, soliciting and receiving payments from the salaries of congressional employees, directing members of his congressional staff to perform labor and services to maintain his boat, and by having members of his congressional staff perform labor and services at the Member’s farm.⁶² In a subsequent investigation by the Standards Committee, an investigative subcommittee stated that such personal services included baling hay, running and repairing farm equipment, repairing farm structures, building a horse corral, converting a corn crib to another use, and performing electrical and plumbing repairs. For example, one employee testified at trial that he spent most of his time at the Member’s farm doing work which included plumbing, wiring, and other handyman work. That employee further testified that he also spent time in Washington, D.C., as a part of his part-time congressional employment for the Member, but that he performed no official duties at the congressional office. Instead, he performed work on the Member’s boat, which included painting, varnishing, and repairing brass fittings.⁶³ For their personal services, the employees received no compensation other than their congressional salaries.⁶⁴ Following the investigation, the adjudicatory subcommittee found that the Member’s conduct in directing and having members of his congressional staff perform personal services and labor violated clauses 1-3 of the Code of Official Conduct.⁶⁵

⁶¹ *Id.* at 1310.

⁶² *See* note 33, *supra*.

⁶³ *Id.* at 121.

⁶⁴ *See id.*

⁶⁵ *Id.* at 2.

Annual Ethics Training Requirement

The House rules adopted at the beginning of the 110th Congress included a new provision that requires the Standards Committee to provide annual ethics training to all House Members, officers, and employees.⁶⁶ The rule also requires that House officers and employees certify by January 31 of each year that they have attended annual ethics training in the prior calendar year under the guidelines established by the Standards Committee. All new officers and employees must receive ethics training within 60 days after beginning their service to the House.

Lump Sum Payments

House offices have had broad authority to make lump sum payments to employees since 1997. The House Administration Committee has, under authority granted by the lump sum payment statute,⁶⁷ issued a set of regulations governing the making of such payments. Those regulations are published in both the *Members' Handbook* and the *Committees' Handbook*.⁶⁸ While those regulations set out basic rules on the making of lump sum payments, it is the responsibility of the Standards Committee to determine the manner in which those payments are to be treated for purposes of the House Code of Official Conduct and other ethics laws, rules, and standards. The Standards Committee has provided the following guidance.

Any lump sum payment must be made in compliance with the provision of the House rules requiring that each employee perform duties for his or her employing office that are commensurate with the compensation paid to that employee (House Rule 23, clause 8). Before making any lump sum payment, a Member must be satisfied that the employee has performed services for the congressional office that are commensurate with the amount the employee is to be paid in the lump sum combined with his or her regular salary. Furthermore, an employee may not be compensated from public funds, including by means of a lump sum payment, for the performance of nonofficial, personal, political, or campaign activities on behalf of the Member, the employee, or anyone else.

In addition, the Standards Committee has determined that, as a general rule, a lump sum payment will **not** count in the determination whether an employee is being paid at a rate that results in the employee being subject to the requirement to file a Financial Disclosure Statement, the outside earned income limitation and restrictions, and the post-employment restrictions on lobbying. A key factor in this

⁶⁶ See House Rule 11, cl. 3(a)(6)

⁶⁷ See 2 U.S.C. § 60o.

⁶⁸ See note 6, *supra*.

Committee determination is the fact that by and large, the provisions of law involved here look to the employee's "rate of basic pay."⁶⁹ In the Committee's opinion, lump sum payments, when properly used by an employing office, do not constitute part of the recipient's "rate of basic pay." Another important factor here is that the Committee has been advised that lump sum payments are not treated as salary for purposes of employment benefits. Thus, according to the information provided to the Committee, those payments do not count in determining the maximum amount an employee can contribute to the Thrift Savings Plan, or the amount of life insurance that the employee may purchase, and likewise they do not count in determining an employee's "high three" years for purposes of calculating retirement benefits.

The Standards Committee has cautioned, however, that Members should **not** use lump sum payments as means of enabling employees to evade the financial disclosure requirements, the outside earned income limitation and restrictions, or the post-employment restrictions. For example, an intent to evade may be inferred when an employee's regular salary rate is below the applicable thresholds, but that employee is regularly given a lump sum payment in an amount that, if it had been paid in the form of regular salary instead, would have subjected the employee to one or more of these requirements or restrictions. Receiving a lump sum end-of-the-year bonus or other one time payment recognizing a particular accomplishment is generally permissible. Members and staff are reminded that the House Code of Conduct specifically requires them to adhere not only to the letter but also to the spirit of the House Rules (House Rule, 23, clause 2). A Member who uses lump sum payments with the intent to enable an employee to evade any of these requirements or restrictions will be subject to disciplinary action by the Committee. In addition, when the Committee finds that lump sum payments were made with such an intention, the Committee reserves the right to determine that those payments should be treated as part of the recipient's basic rate of pay, thus subjecting that individual to the applicable requirements and restrictions.

Volunteers, Interns, Fellows, and Detailees

House rules prohibit unofficial office accounts, that is, private supplements to the funds available to Members through their clerk hire and official expenses allowances.⁷⁰ In *Advisory Opinion No. 6*, interpreting the unofficial office account prohibition, the House Select Committee on Ethics, 95th Congress, concluded that in addition to money, the prohibition on unofficial office accounts proscribes the private, in-kind contribution of goods or services for official purposes. The Select Committee found that "no logical distinction can be drawn between the private contribution of in-kind services and the private contribution of money, and that

⁶⁹ See 5 U.S.C. app. 4 §§ 109(13)(B), 501(a)(1); 18 U.S.C. § 207(e)(6).

⁷⁰ A full explanation of this topic is available in Chapter 10 of this Manual.

both perpetuate the very kind of unofficial office accounts and practices that are prohibited” by the rule.⁷¹

The Select Committee did, however, recognize several exceptions to the general prohibition against acceptance of services including the following:

- Services provided by federal, state, or local government agencies; and
- Intern, fellowship, or similar educational programs that are primarily of educational benefit to the individual, as opposed to primarily benefiting the Member or office, and which do not give undue advantage to special interest groups.

Definitions

The Committee defines the terms “employee,” “intern,” “fellow,” “volunteer,” and “detailee” as follows:

- An **employee** means a person appointed to a position of employment in the House of Representatives by an authorized employing authority, whether that person is receiving a salary disbursed by the Chief Administrative Officer, or is in a Leave Without Pay or Furlough status.
- An **intern** means an individual performing services in a House office on a temporary basis incidental to the pursuit of the individual’s educational objectives. Some interns receive no compensation from any source, while some receive compensation or other assistance from an educational institution or other sponsoring entity. Although some interns may receive compensation from House allowances,⁷² this discussion deals primarily with those who do not receive such House compensation.
- A **fellow** means an individual performing services in a House office on a temporary basis as part of an established mid-career education program, while continuing to receive the usual compensation from his or her sponsoring employer.
- A **volunteer** means an individual performing services in a House office without compensation from any source.

⁷¹ House Select Comm. on Ethics, *Advisory Opinion No. 6* (May 9, 1977), reprinted in *Final Report of the Select Committee on Ethics*, H. Rep. 95-1837, 95th Cong., 2d Sess. app. at 65 (1979), and in the appendices to this Manual.

⁷² The *Members’ Handbook* and *Committees’ Handbook* include provisions for **paid** interns, but they provide that such individuals may work for no more than 120 days in a twelve-month period. See note 6, *supra*.

- A **detailee** means an executive branch employee assigned to a committee staff for a period of up to one year.⁷³

Internship and Fellowship Programs

A Member or House office may accept the temporary services of an intern participating in a program, as discussed below, which is **primarily of educational benefit** to the participant, irrespective of whether the individual is being compensated by a third-party sponsoring organization. Similarly, a Member or House office may accept the temporary services of a fellow participating in a mid-career education program, as discussed below, while the individual receives compensation from his or her employer. An internship or fellowship program should be operated by an entity not affiliated with a congressional office, and the organization should be willing to indicate its sponsorship of the intern or fellow in writing.

Restrictions on Establishing Internships and Fellowships. House Members and staff may not raise or disburse funds for programs that place interns or fellows in their own offices.⁷⁴ Offices that have established their own internship program for students may advertise intern openings.⁷⁵ In addition, Members do have the right to select or approve those program participants who will be working in their offices.

While internship and fellowship programs are often sponsored by educational institutions, other public or private organizations may act as sponsors, provided the arrangement does not give undue advantage to special interests. Therefore, an intern or fellow should not be assigned duties that will result in any direct or indirect benefit to the sponsoring organization or anyone else with which the individual is affiliated (including the employer or a fellow), other than broadening the individual's knowledge.

An individual who is serving as a **paid** intern or fellow must comply with all the laws, rules, and standards of conduct applicable to House employees, including the Code of Official Conduct (House Rule 23), the gift rule (House Rule 25, clause 5), the ban on solicitations (5 U.S.C. § 7353), and the limitations on accepting a payment for a speech, article, or appearance (House Rule 25, clause 1(a)(2)). In addition, under provisions of the criminal code (18 U.S.C. §§ 203, 205), such individuals are prohibited from representing anyone before any federal agency or

⁷³ See generally 2 U.S.C. § 72a(f); *Members' Handbook* and *Committees' Handbook*, *supra* note 6.

⁷⁴ See *Advisory Opinion No. 6*, *supra* note 71.

⁷⁵ See *Members' Handbook* and *Committees' Handbook*, *supra* note 6.

official or in any matter in which the federal government is a party or has a direct and substantial interest.

Foreign nationals. Generally, it is permissible for a foreign national to serve an unpaid internship or fellowship for a Member in either a personal or committee office. Such an internship or fellowship would be subject to the same conditions and restrictions as other such educational programs. Thus, the foreign national should not be assigned any matter of interest to the individual's employer (if any) or the program sponsor. In addition, the foreign national should not be assigned any duties that enable the individual to influence United States policy in a way that benefits the individual's home country. Because of concerns arising under Article I, section 9, clause 8 of the Constitution (the Emoluments Clause), the Standards Committee should be contacted for advice about any prospective internship or fellowship involving a foreign national receiving a salary, or some other form of support, from the individual's home country while serving in a House office.

Example 8. Student A writes to Member B offering to work in B's office for one semester, as part of his college's government internship program. A encloses a copy of the college's brochure on its internship program and a letter from the dean, indicating that A will get college credit for his participation. B may accept A's services.

Example 9. Scientist C works for a pharmaceutical company that sponsors a mid-career fellowship program. In conjunction with the program, C writes to the Science Committee, offering her services for one year, during which time the company would continue to pay her salary. The Committee may accept C's services, provided that she does not work on legislation that will directly benefit her employing company.

Example 10. Student D's college does not have a formal internship program. D's political science professor has offered to give him independent study credit if he volunteers in a congressional office and writes a paper on what he learns about the legislative process. A Member could accept D's services as a volunteer under these circumstances (see discussion below on "Volunteers"). The independent study credit demonstrates the educational benefit to Student D.

Example 11. E, a foreign national, has applied through an educational program in Washington, D.C., to serve as a "visiting fellow" in Member F's office for six months. The program will pay E a stipend and will pay for the individual's health insurance during the fellowship. E will receive no other salary or form of support from any source. Member F

may accept E's services, provided that she is not assigned any duties that would benefit the sponsoring program or the fellow's home country.

Volunteers

A Member or House office may accept the **temporary** services of a volunteer, provided the Member or office has a clearly defined program to assure that: (1) The voluntary service is of **significant educational benefit** to the participant; and (2) such voluntary assistance does **not** supplant the normal and regular duties of paid employees. In this regard, limitations should be imposed on the number of volunteers who may assist a congressional office at any one time, as well as the duration of services any one volunteer may provide. A volunteer should be required to agree, in advance and in writing, to serve without compensation and not to make any future claim for payment, and to acknowledge that the voluntary service does not constitute House employment.⁷⁶

A Member or House office wishing to use the services of an individual seeking to volunteer may also place the individual in a temporary paid position on the Member's clerk hire payroll or other personnel fund, as authorized by regulations of the Committee on House Administration. If so, the individual would have to comply with the laws, regulations, and standards of conduct applicable to House employees.

Immediate Family Members May Volunteer. A Member may accept volunteer services without limit from his or her own immediate family, *i.e.*, spouse, children, or parents. As discussed previously in this chapter, however, 5 U.S.C. § 3110 and House rules prohibit Members from appointing relatives to **paid** positions.

Example 12. A recent college graduate seeking work on Capitol Hill offers to volunteer in Member A's office while looking for a paying job. Unless A has a program in the office to ensure that volunteers derive

⁷⁶ Federal law, at 31 U.S.C § 1342, provides:

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. . . .

In Opinion B-69907 (issued on February 11, 1977), the Comptroller General of the United States determined that the statute applies to Members of Congress and other legislative branch officers and employees. However, because the statute was enacted to prevent funding deficiencies, it was deemed not to prohibit a Member of Congress from using volunteers to assist in the performance of official functions of the Member's office, provided such volunteers agree in advance to serve without compensation, so that there is no basis for a future claim for payment.

significant educational benefit and do not merely fill in for busy staffers, A may *not* accept the offer.

Example 13. A retiree in Member B's district offers to volunteer two days a week in the district office, answering telephones, making copies and generally freeing up the paid staff to do more substantive work. B may *not* accept this volunteer's services because they are not of significant educational benefit to the volunteer, and they supplant the normal and regular duties of paid employees.

Example 14. Member C runs a program for senior citizens in C's district office. One or two retirees at a time volunteer for six-month periods during which time they receive regular briefings on legislative issues of concern to seniors and act as liaisons to other seniors in the district. Because the volunteers' services are temporary, of significant educational benefit to the participants, and do not supplant the normal and regular duties of paid employees, this program complies with Committee guidelines.

Example 15. Member D's spouse offers to volunteer in the district office as an extra caseworker. As long as the spouse receives no pay, Member D may accept.

Example 16. A social services agency in Member E's district wishes to include the Member's district office as a work site in a welfare-to-work program. A participant in the program wishes to be assigned to the office for up to 12 months to provide clerical services. The program participant would not displace any incumbent employee or fill a vacant, unfilled position. Because the job training program sponsored by the agency serves essentially the same purpose as in internship or volunteer program providing a significant educational benefit to the participant, E may participate in the welfare-to-work program.

Volunteers, interns, and fellows should be made aware of the implications their activities have for the Members in whose offices they work. Technically, House rules cannot be enforced against individuals who are not House employees. However, such individuals may be in a position to take actions and make representations in the name of a Member, for which the Member may be responsible. The government may also be subject to a claim of liability for work-related injuries to, or caused by, a volunteer, intern, or fellow acting within the scope of his or her position with the House. The Committee recommends that Members and House offices obtain the agreement of such individuals that, although not House employees, they will conduct themselves in a manner that reflects creditably on the House. **Members are also encouraged to obtain the Committee's**

guidance regarding their participation in any volunteer, internship, or fellowship program in which they wish to participate.

Business Cards. In a June 29, 1990, letter from the Standards Committee to all Members addressing the circumstances under which the services of volunteers may be accepted in congressional offices, the Committee concluded that individuals not paid by the House of Representatives (which also includes interns and fellows) may not use or obtain business cards or other materials suggesting an employment relationship with the House.⁷⁷

Standards Committee Actions. In recent years, the Standards Committee has investigated a number of complaints involving the inappropriate use of volunteers. In the 104th Congress, the Committee considered two complaints involving the misuse of volunteer services by a Member. In one matter, the Committee found that the Member made inappropriate use of volunteer services during the period in which he was assembling a leadership staff to become the Speaker of the House.⁷⁸ In addition, the Committee found that the routine presence of a volunteer in the Member's congressional office created the appearance of improper commingling of political and official resources and, thus, violated the prohibition on unofficial accounts.⁷⁹ In the second matter, the Committee found that while the Member's office took steps to ensure that a volunteer's activities were proper, the volunteer's participation as an "informal advisor" did not comply with the Committee's guidelines governing interns or volunteers because the services were not part of a clearly defined educational program.⁸⁰ The Committee directed the Member to take immediate steps to not only prevent the reoccurrence of similar incidents and ensure compliance with the Committee's standards, but also to guard against even the appearance of any impropriety.⁸¹

In the 105th Congress, the Standards Committee considered a complaint that alleged, among other things, that a Member had received improper personal benefits from a political action committee. The Committee determined that there was substantial documentary evidence that a paid consultant to the political action committee "provided a wide array of services pertaining to the development and

⁷⁷ A copy of the letter is contained in the appendices to this Manual.

⁷⁸ See House Comm. on Standards of Official Conduct, *Summary of Activities, One Hundred Fourth Congress*, H. Rep. 104-886, 104th Cong., 2d Sess. 13 (*In re Rep. Newt Gingrich*).

⁷⁹ See *id.*

⁸⁰ *Id.* at 16.

⁸¹ See *id.*

implementation of [the Member's] legislative agenda, and that he did so at [the Member's] request.”⁸²

Another matter considered during the 105th Congress concerned a Member's use of a paid employee of an outside organization. An investigative subcommittee determined that the individual, who had unusual access to the Member's official schedule, served as an unofficial policy advisor to the Member, and the Member solicited the individual's views and assistance concerning official matters. Specifically, the individual was found to have provided ongoing advice to the Member and his staff to assist him in conducting duties related to urban issues, frequently attending official meetings with Members of Congress, other government officials, and staff.⁸³ The investigative subcommittee, in its report, advised that “Members must exercise caution to limit the use of outside resources to ensure that the duties of official staff are not improperly supplanted or supplemented.”⁸⁴

In the 106th Congress, a Member admitted to a Statement of Alleged Violation charging, among other things, that the Member had authorized and accepted the scheduling and advisory services of his former chief of staff on exclusively official matters over an eighteen-month period after the individual had resigned her position.⁸⁵ The Standards Committee determined that the repeated and prolonged nature of the conduct, supplanting the duties normally performed by congressional employees, represented a significant violation that lasted beyond a reasonable period of transition.⁸⁶ The activities in question involved the day-to-day management of the Member's schedule, such as screening appointments, arranging meetings (including those for clients of the former employee), and directing congressional employees to attend designated events. The activities also involved

⁸² House Comm. on Standards of Official Conduct, *Summary of Activities, One Hundred Fifth Congress*, H. Rep. 105-848, 105th Cong., 2d Sess. 15 (*In re Rep. Newt Gingrich*). In this matter, the Committee dismissed the count of the complaint involving the inappropriate use of volunteer services because the violation had alleged occurred approximately five years before the filing of the complaint and there was no evidence of an ongoing violation involving the prohibition against unofficial House office accounts. *See id.*

⁸³ House Comm. on Standards of Official Conduct, *In the Matter of Rep. Newt Gingrich*, H. Rep. 105-1, 105th Cong., 1st Sess. 96-97 (1997).

⁸⁴ While the subcommittee determined that the “regular, routine, and ongoing assistance” provided by the individual to the Member and his staff “could create the appearance of improper commingling of official and unofficial resources,” the subcommittee found that the action did not warrant inclusion as a count in the Statement of Alleged Violation because the activities had ceased before the issuance of two earlier letters of reproof to the Member regarding the use of outside resources in two unrelated matters. *Id.* at 97.

⁸⁵ *See* H. Rep. 106-979, at 44, *supra* note 52.

⁸⁶ *See id.*

routine service as a political advisor to the Member.⁸⁷ The Committee concluded that such conduct violated the prohibition on unofficial accounts,

under which House offices are generally prohibited from accepting private support for official activities. Former Rule 45 [now Rule 24] provided that “no Member may maintain or have maintained for his use an unofficial office account.” The prohibition extends not only to private monetary contributions, but also to in-kind support from private sources. As a general matter, the official activities of each Member and Committee office are to be supported by official monies appropriated for those activities. The Committee on Standards has interpreted former Rule 45 to support its finding that the regular involvement of a volunteer/political advisor is a congressional office who performs tasks properly associated with the official responsibilities of House Members and employees is inappropriate.

The concerns regarding the acceptance of voluntary services of individuals include the fact that at times, quite obviously, an individual offering to perform such services for a Member of Congress may have his or her own agenda. Thus, even with regard to individual participation in established intern or fellowship programs, whose services may be accepted by a House office, the Committee on Standards has cautioned that those individuals “should not be assigned duties that will result in any direct or indirect benefit to the sponsoring organization, other than the broadening the individual’s knowledge.”⁸⁸

Detailees

The above guidelines do not prohibit a Member or other House office from accepting services, including detailed staff, provided on an official basis by a unit of federal, state, or local government. House staff and resources may not, however, be similarly used to perform the work of other governmental units, or of any private organization.

A committee may request or accept detailed staff from executive branch departments or agencies. The Select Committee on Ethics ruled that “in-kind services and functions provided by federal, state, and local government agencies do not fall in the same category as private donations of money or in-kind services.”⁸⁹

⁸⁷ See generally *id.* at 44-51.

⁸⁸ *Id.* at 44-45 (quoting *Inquiry into Various Complaints Filed Against Rep. Newt Gingrich*, H. Rep. 104-401, 104th Cong., 1st Sess. 4 (1995); and *House Ethics Manual*, 102d Cong., 2d Sess. 197 (1992)).

⁸⁹ *Advisory Opinion No. 6*, *supra* note 72.

While federal law specifically authorizes the detailing of executive branch personnel to **committee staffs**, there is no comparable provision allowing detailees to serve on the **personal staffs** of Members.⁹⁰

Regulations of the Committee on House Administration provide that the detailee remains, for most purposes, an employee of the source department or agency, rather than becoming a House employee during the assignment period.⁹¹ For the purposes of post-employment restrictions, however, federal law mandates that detailees be considered employees both of the entity from which they come and that to which they are sent.⁹²

The Committee on House Administration's guidelines provide that Committees are not required to reimburse the sending organization for detailees, except for detailees from the Government Printing Office ("GPO"). Detailees assigned from GPO require reimbursement from committee funds. According to House Administration guidance, the number of non-reimbursable detailees, at one time, must remain at or below 10% of the committee's staffing ceiling.

Consultants

Amendments to the House rules that were approved at the start of the 106th Congress and the 107th Congress subject consultants to the House, including consultants to House committees, to certain ethics rules.⁹³ Under the Code of Official Conduct (House Rule 23), any individual whose services are paid for by the House pursuant to a consultant contract are considered "an employee of the House"⁹⁴ subject to clauses 1-4, 8, 9, and 13 of House Rule 23, under which such individual:

- Must at all times conduct him or herself in a manner that reflects creditably on the House;
- Must adhere to the spirit as well as the letter of the rules of the House and its committees;

⁹⁰ See 2 U.S.C. § 72a(f); *Members' Handbook* and *Committees' Handbook*, *supra* note 6.

⁹¹ See *Members' Handbook* and *Committees' Handbook*, *supra* note 6. However, regulations of the Office of Government Ethics provide: "An employee on detail, including a uniformed officer on assignment, from his employing agency to the legislative or judicial branch for a period in excess of 30 calendar days shall be subject to the ethical standards of the branch or entity to which detailed. . . ." 5 C.F.R. § 2635.104(b).

⁹² 18 U.S.C. § 207(g). Post-employment restrictions are discussed in Chapter 5.

⁹³ See H. Res. 5, 106th Cong., 1st Sess. (145 *Cong. Rec.* H6-10, H31 (Jan. 6, 1999)); H. Res. 5, 107th Cong., 1st Sess. (147 *Cong. Rec.* H6-10, H8 (Jan. 3, 2001)).

⁹⁴ House Rule 23, cl. 18(b).

- May not receive compensation and may not permit compensation to accrue to his or her beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from the consultant's position with the House;
- May not accept any gift, except as provided in the House gift rule (House Rule 25, clause 5);
- Must perform duties for the contracting committee that are commensurate with the compensation received by the consultant;
- May not discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of race, color, religion, gender, disability, age, or national origin; and
- Must execute a confidentiality oath before receiving access to classified information.

Lobbying

In addition to these limitations and restrictions, consultants are also prohibited from engaging in certain lobbying activity. In the 110th Congress this lobbying provision was extended to include lobbying restrictions for the other members of firms whose employees are consultants for House committees. Specifically, House Rule 23, clause 18(b) provides:

An individual whose services are compensated by the House pursuant to a consultant contract may not lobby the contracting committee or the members of staff of the contracting committee on any matter. Such an individual may lobby other Members, Delegates, or the Resident Commissioner or staff of the House on matters outside the jurisdiction of the contracting committee. In the case of such individual who is a member or employee of a firm, partnership, or other business organization, the *other* members and employees of the firm, partnership, or other business organization shall be subject to the *same* restrictions on lobbying that apply to the individual under this paragraph. (Emphasis added.)

Accordingly, the Standards Committee considers the following restrictions to be appropriate:

- Each such consultant should establish an “ethics wall” to isolate his or her work on behalf of the contracting committee from any lobbying activity of the other members of his or her firm before the House;

- During the period of the consultant's service to the House, other members of the firm may not lobby the contracting committee, including its Members or staff during the term of the contract on any matter;
- Regardless of the subject matter, the other members of the firm should not refer to or otherwise use the fact of the consultant's position in the House in any contacts they may have with any House Member, officer, or employee in official matters; and
- In conducting any permissible lobbying activity, consultants are subject to the provision of the Code of Official Conduct discussed above.

Acceptable Gifts

Consultants are also subject to the House gift rule, which is set forth in clause 5 of House Rule 25, and which is described in detail in Chapter 2 on gifts. Under the gift rule, a consultant – like any House Member or regular staff person – may not accept any gift except as specifically provided in the rule. The rule governs the acceptance of virtually anything having monetary value, including services, travel, meals, and tickets to sporting events and shows (House Rule 25, clause 5(a)(2)(A)). Thus, prior to commencing service under a consultant contract, an individual should carefully review the provisions of the gift rule and should contact the Standards Committee staff as any questions arise.

Practically speaking, the major effect of the gift rule on consultants is to limit their ability to accept gifts that are motivated by their position with the House. The Standards Committee anticipates that consultants will have relatively little difficulty in distinguishing such gifts. The gift rule includes a number of provisions allowing the acceptance of gifts that are motivated by some factor other than one's position with the government.

For example, one provision that consultants may find particularly relevant allows the acceptance of benefits that result from one's outside business, employment or other activities and are not offered or enhanced because of one's position with the House (*Id.*, clause 5(a)(3)(G)(i)). Another provision allows the acceptance of gifts offered by an individual on the basis of personal friendship, and that provision includes criteria to be used in determining whether a gift can validly be considered a personal friendship gift (*Id.*, clause 5(a)(3)(D)). Other provisions allow the acceptance of gifts from one's relatives, gifts from Members, officers, and employees of the House or Senate, and anything paid for by a federal, state, or local governmental entity (*Id.*, clauses 5(a)(3)(C), (F) and (O)).

The gift rule also includes a general provision allowing the acceptance of any gift (other than cash or cash equivalent) having a value of less than \$50 provided that the donor is not a registered lobbyist, an agent of a foreign principal, or an entity that retains or employs such individuals (*Id.*, clause 5(a)(1)(A)-(B)). Under

this provision, an individual may not accept, from any one source in a calendar year, gifts having a cumulative value of \$100 or more, but gifts having a value of less than \$10 do not count toward this annual limitation. Gifts that may be motivated by one's position with the House may be accepted under this provision, although in no event may any government official accept a gift that is linked to any official action that the official has taken or is being asked to take.

Confidential Financial Disclosure

House rules do **not** require consultants to file public financial disclosure statements. In the Committee's view, such a requirement would be inappropriate for consultants, who serve the House on a relatively short-term basis and hence are expected to maintain their outside business activities.⁹⁵

It is equally clear, however, that a contracting committee would not be in a position to evaluate a prospective consultant's compliance with conflict-of-interest rules without having certain basic information on his or her financial interests. Similarly, when the Standards Committee is asked for an advisory opinion on a committee's proposed arrangements with a contractor, it will be unable to render a complete opinion without having access to such information. But such information need not be as extensive as that required by the House of Representatives Financial Disclosure Statement, and the purposes here can be served by submission of the information on a confidential, rather than a public basis.

Accordingly, the Standards Committee strongly recommends that each committee, prior to entering into a consulting contract, obtain, at a minimum, the following information from the prospective consultant(s):

- Each of the individual's current sources of earned income, the type of income (*e.g.*, salary, partnership income, director's fee), and the rate at which he or she is compensated;
- The identity of each client for whom the individual is currently providing services, and of each client for whom he or she anticipates providing services during the term of the committee contract; and
- The nature and value of any investment or liability held by the consultant that could be affected by or is in any way related to the duties that the individual would perform for the committee.

⁹⁵ The Committee understands that in the Senate, consultants are technically subject to the requirement to file a public financial disclosure statement, but that the Senate Select Ethics Committee will routinely waive the requirement. However, the grant of the waiver is subject to the condition that the consultant agrees to make confidential submissions to the Senate Ethics Committee regarding, among other things, his or her clients and the clients of the firm with which the consultant is affiliated.

The contracting committee should also obtain the commitment of a prospective consultant to inform the committee promptly regarding any such source of earned income, client or investment that he or she obtains during the term of the contract.

House committees are urged to contact the Standards Committee before entering into any proposed arrangement with a consultant.

CASEWORK

Overview

An important aspect of a House Member's representative function is to act as a "go-between" or conduit between the Member's constituents and administrative agencies of the federal government. Whether promoting projects that will benefit constituents or assisting in the resolution of the problems that are an inevitable by-product of government regulation, the Member is serving as a facilitator, or ombudsman. Such activity, in the opinion expressed by the late Senator Paul H. Douglas, plays a useful role in the governmental process by helping legislators and administrators perform their respective jobs adequately through the interest of the former in the work of the latter.¹

In a committee print entitled *Ethical Standards in Government*, a subcommittee headed by Senator Douglas stated that legislators performing casework functions can "legitimately serve as an informal board of inspectors" over administrators, and "can prevent the administrators from flagging in their zeal and can detect and check abuses in the conduct of public business."² Douglas concluded in his own study of ethics in government that there is a "sound ethical basis for legislators to represent the interests of constituents and other citizens in their dealings with administrative officials and bodies."³

The Constitution guarantees all citizens the right to petition the government for redress of grievances.⁴ A logical point of contact is one's elected representative. Furthermore, Members of Congress continually must monitor government programs and the administration of public laws. As the Supreme Court has recognized, "[s]erving constituents and supporting legislation that will benefit the district and individuals and groups therein is the everyday business of a legislator."⁵

This chapter includes a discussion on the rules in making contacts in aid of constituents with governmental agencies, the courts, and nongovernmental parties. Pursuant to long-standing guidance, it is generally permissible for Members (and staff acting on their behalf) to:

¹ Paul H. Douglas, *Ethics in Government* 87 (1952).

² Special Subcomm. on the Establishment of a Comm'n on Ethics in Gov't, Senate Comm. on Labor and Public Welfare, *Ethical Standards in Government*, 82d Cong., 1st Sess. 28 (Comm. Print 1951).

³ Douglas, *supra* note 1, at 87.

⁴ U.S. Const., amend. I.

⁵ *McCormick v. United States*, 500 U.S. 257, 272 (1991).

- Request information or status reports;
- Urge prompt consideration of a matter based on the merits of the case;
- Arrange appointments;
- Express judgment on a matter – subject to the *ex parte* communication rules; and
- Ask for reconsideration, based on law and regulation, or administrative and other decisions.

In taking any such action, a Member or staff person must observe certain ethical principals. Of particular importance is the principle that a Member's obligations are to all constituents equally, and considerations such as political support, party affiliation, or one's status as a campaign contributor should not affect either the decision of a Member to provide assistance or the quality of help that is given to a constituent.

Also discussed in this chapter is the prohibition against the acceptance of gifts offered in connection with or in return for taking official actions (a matter also discussed at length in Chapter 2), and the guidelines for employment recommendations.

Off-the-Record (*Ex parte*) Communications

Even though performing casework is an important congressional duty, it is not totally unrestricted. Federal law specifically prohibits certain off-the-record comments, known as *ex parte* communications, directed to executive or independent agency officials on the merits of matters under their formal consideration.⁶ Whenever parties to a dispute come before a formal tribunal, they are entitled to a fair, impartial hearing and to equal access to the fact-finder. The *ex parte* rule is designed to preserve the due process rights of all parties to administrative proceedings.

An *ex parte* communication is an oral or written communication made without proper notice to all parties and not on the public record, from an interested person outside the agency to a member of the agency, an administrative law judge, or an employee involved in the decision-making process.⁷ Since 1976, the

⁶ 5 U.S.C. § 557(d).

⁷ 5 U.S.C. § 551(14).

“Government in the Sunshine Act” has prohibited anyone from making an *ex parte* communication to an administrative agency decision-maker concerning the merits of an issue that is subject to formal agency proceedings.⁸ This broad prohibition encompasses the statements of Members and employees of Congress acting on behalf of constituents.

Formal agency proceedings generally include those of a quasi-adjudicatory (or trial-type) nature and those rulemaking proceedings that must include formal hearings and a decision on the record. The legislative history of the Government in the Sunshine Act shows that “[t]he prohibition only applies to formal agency adjudication. Informal rulemaking proceedings and other agency actions that are not required to be on the record after an opportunity for a hearing will not be affected by the provision.”⁹ Thus, a House Member or employee may undertake communications to an agency on behalf of a constituent concerning those matters not subject to formal agency proceedings. Development of agency policy and establishment of budgetary priorities are examples of areas in which Members of Congress are generally free to voice their own views or to forward those of their constituents. Agencies often ask for public comment on proposed regulations. Representatives, like other members of the public, may clearly contribute their opinions.¹⁰ It should be noted that some communications, even if related to a matter not then in a formal agency proceeding, may become part of the public record concerning that matter if the communication forms the basis of subsequent formal action, particularly one involving competing claims to a valuable privilege.¹¹

The proscription against *ex parte* communications does not extend to “general background discussions about an entire industry which do not directly relate to specific agency adjudication involving a member of that industry, or to formal rulemaking involving the industry as a whole.”¹² The statute specifically exempts

⁸ See 5 U.S.C. § 557(a), (d).

⁹ Senate Comm. on Gov’t Operations, *Government in the Sunshine Act, Report to Accompany S. 5*, S. Rep. 94-354, 94th Cong., 1st Sess. 35 (1975); see also *Government in the Sunshine Act*, S. Conf. Rep. 94-1178, 94th Cong., 2d Sess. 29 (1976).

¹⁰ In addition, the “Congressional Review Act” requires formal congressional review of agency rules. Under the Act, agencies are required to submit proposed rules to the House and Senate for review by each Committee with appropriate oversight jurisdiction. Agency rules may be disapproved by joint resolution. 5 U.S.C. § 801 *et seq.*

¹¹ See *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 57 (D.C. Cir.) (“information gathered *ex parte* from the public which becomes relevant to a rulemaking will have to be disclosed at some time”), *cert. denied*, 434 U.S. 829 (1977); see also *Action for Children’s Television v. FCC*, 564 F.2d 458, 474-77 (D.C. Cir. 1977).

¹² House Comm. on Gov’t Operations, *Government in the Sunshine Act*, H. Rep. 94-880, 94th Cong., 2d Sess., pt. I, at 20 (1976).

congressional status requests.¹³ As stated in a House report on the Government in the Sunshine Act: “While the prohibitions on *ex parte* communications relative to the merits apply to communications from Members of Congress, they are not intended to prohibit routine inquiries or referrals of constituent correspondence.”¹⁴

Both the House and Senate reports recognized the possibility that a request for background information or a status report “may in effect be an indirect or subtle effort to influence the substantive outcome of the proceedings.” Thus in doubtful cases, agency personnel may treat these requests as *ex parte* communications “to protect the integrity of the decision-making process.”¹⁵ One way to avoid violating the statutory prohibition is to put all communications with agencies in writing and to request that they be made a part of the record, available to all interested parties.

Example 1. After taking testimony in a formal, contested proceeding under Federal Acquisition Regulations, an agency official is about to decide which of two competing bidders will be awarded a contract. It would be an improper, *ex parte* communication for Member A to call up the official and suggest that one of the two competitors receive the award.

Example 2. In the same circumstances as Example 1, it would be proper for Member A to put his views in writing, as part of the formal record, under established agency procedures.

Example 3. A constituent company in Member B’s district has been awaiting a decision for some time in a formal agency proceeding. Member B may contact the agency seeking information regarding the status of the proceeding and urging prompt consideration of the company’s claim.

Example 4. A constituent company in Member C’s district has been awaiting a decision for some time in a formal agency proceeding. Member C has received information on the status of the proceeding from the agency’s congressional liaison officer. A call later that day from Member C to the head of the agency, asking for the same information, could be viewed as an attempt to influence the outcome. C should refrain.

¹³ 5 U.S.C. § 551(14); see S. Conf. Rep. 94-1178, *supra* note 9, at 29.

¹⁴ H. Rep. 94-880, *supra* note 12, pt. I, at 21-22.

¹⁵ *Id.* at 21; see also S. Rep. 94-354, *supra* note 9, at 37.

Judicially Imposed Limits

No other statute or rule restrains Members of Congress from communicating with agency decision-makers. However, certain federal court opinions discourage inordinate pressure on officials charged by law with responsibility for making administrative decisions. While such pressure may not violate any standard of conduct overseen by this Committee, Members should be aware that a *court's* perception that a Member has overstepped may lead it to invalidate the very determination that the Member was seeking. Judicial reaction varies, depending on the degree of formality of the administrative proceeding, the goal of the congressional intervention, and the impact that the intervention had on the agency's determination.

Senator Douglas pointed out with respect to proceedings conducted by administrative personnel that a legislator "should make it clear that the final decision is in their hands."¹⁶ Federal courts have nullified administrative decisions on grounds of due process and fairness towards all of the parties when congressional interference with ongoing administrative proceedings may have unduly influenced the outcome. In a seminal case, the court set aside a decision of the Federal Trade Commission because of aggressive questioning of agency officials by a Senate committee regarding their rationale for deciding an issue still pending before the officials in a formal setting.¹⁷ The court's concern had nothing to do with undisclosed communications; the questioning occurred during public hearings. Nonetheless, the court held that "common justice to a litigant requires that we invalidate the order entered by a quasi-judicial tribunal that was importuned by members of the U.S. Senate, however innocent they intended their conduct to be, to arrive at the ultimate conclusion which they did reach."¹⁸

When congressional action is directed at less formal, non-adjudicatory administrative proceedings, courts are loathe to interject themselves between the legislative and the executive branches. As one court explained:

Americans rightly expect their elected representatives to voice their grievances and preferences concerning the administration of our laws.

¹⁶ Douglas, *supra* note 1, at 90.

¹⁷ *Pillsbury Co. v. FTC*, 354 F.2d 952 (5th Cir. 1966); *see also Koniag, Inc. v. Andrus*, 580 F.2d 601, 610 (D.C. Cir.) (letter from Congressman to Secretary of Interior suggesting regulatory interpretation arrived at by the Secretary two days later "compromised the appearance of the Secretary's impartiality" and warranted setting aside of Secretary's determination), *cert. denied*, 439 U.S. 1052 (1978). *Cf. ATX Inc. v. Department of Transportation*, 41 F.3d 1522 (D.C. Cir. 1994) (agency decision upheld despite 60 letters to agency head from various Congressmen, and "particularly troubling" testimony of one congressman at quasi-judicial hearing).

¹⁸ *Id.* at 963.

We believe it entirely proper for Congressional representatives vigorously to represent the interests of their constituents before administrative agencies engaged in informal, general policy rulemaking, so long as individual Congressmen do not frustrate the intent of Congress as a whole as expressed in statute, nor undermine applicable rules of procedure. Where Congressmen keep their comments focused on the substance of the proposed rule . . . administrative agencies are expected to balance Congressional pressure with the pressures emanating from all other sources. To hold otherwise would deprive the agencies of legitimate sources of information and call into question the validity of nearly every controversial rulemaking.¹⁹

The court focused here on “the intent of Congress . . . as expressed in statute.” In another case, a court set aside an administrative determination that appeared to have been influenced, at least in part, by “irrelevant or extraneous” political considerations.²⁰ There, a subcommittee chairman had stated that funding for unrelated aspects of the agency’s budget would be withheld until the department’s Secretary approved a particular project. The court emphasized that it was not finding that the Member had acted improperly, but it nonetheless remanded the case, directing the Secretary to “make new determinations based strictly on the merits and completely without regard to any considerations not made relevant by Congress in the applicable statutes.”²¹

Agency investigations occupy a middle ground between formal adjudications and informal rulemaking. An administrative decision in this context need not be

¹⁹ *Sierra Club v. Costle*, 657 F.2d 298, 409-10 (D.C. Cir. 1981) (emphasis added); *see also DCP Farms v. Yeutter*, 957 F.2d 1183 (5th Cir.) (Department of Agriculture action upheld when, prior to the time the matter had reached adjudicative stage, congressman advocated to the agency a certain interpretation of regulations), *reh’g denied*, 962 F.2d 9 (5th Cir.), *cert. denied*, 506 U.S. 953 (1992); *U.S. ex rel. Sequoia Orange Co. v. Sunland Packing House Co.*, 912 F. Supp. 1325 (E.D. Cal. 1995) (congressional contact with the Department of Agriculture did not constitute undue influence when contacts concerned proper subject matter and did not contain threats of adverse action against the Department), *aff’d*, 151 F.3d 1139 (9th Cir. 1998), *cert. denied*, 525 U.S. 1067 (1999); *Sokaogon Chippewa Community v. Babbitt*, 929 F. Supp. 1165 (W.D. Wis. 1996) (congressional contacts not improper in administrative decision-making by Department of the Interior under Indian Gaming Regulatory Act when there was no indication that Department was asked to consider factors other than those enumerated under that Act), *reconsidered in part*, 961 F. Supp. 1276 (W.D. Wis. 1997); *Environmental Defense Fund, Inc. v. Blum*, 458 F. Supp. 650, 662-63 (D.D.C. 1978) (in informal rulemaking, congressmen “properly brought to the agency’s attention the concerns of their respective constituencies” which were “directly relevant to the agency’s proceeding”).

²⁰ *D.C. Fed’n of Civic Ass’ns v. Volpe*, 459 F.2d 1231, 1248 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 1030 (1972).

²¹ *Id.* at 1246, 1249.

completely immune from congressional pressure, provided that the agency has an independent basis for its conclusion. Thus, for example, one corporation tried to resist a Securities and Exchange Commission subpoena on the ground that it had resulted from political pressure instigated by a corporate competitor. The court ruled: “That the SEC commenced these proceedings as a result of the importunings of [a Senator and his constituent, the competitor], even with malice on their part, is not a sufficient basis to deny enforcement of the subpoena. . . . [But t]he SEC order must be supported by an independent agency determination, not one dictated or pressured by external forces.”²²

Courts have historically refused to intervene when Members attempted to expedite an administrative process rather than urging a particular outcome. In the words of one court, “where the Congressional involvement is directed not at the agency’s decision on the merits but at accelerating the disposition and enforcement of the pertinent regulations, it has been held that such legislative conduct does not affect the fairness of the agency’s proceedings and does not warrant setting aside its order.”²³

Congressional Standards

Congress has adopted standards that recognize the legitimate role of Members in assisting constituents, while protecting both the due process rights of parties potentially affected by government actions and the ability of agency officials to exercise their responsibilities. The Committee on Standards of Official Conduct has observed:

It is clear that under our constitutional form of government there is a constant tension between the legislative and executive branches regarding the desires of legislators on the one hand and the actions of agencies on the other in carrying out their respective responsibilities. The assertion that the exercise of undue influence can arise based upon a legislator’s expressions of interest jeopardizes the ability of Members effectively to represent persons and organizations having concern with the activities of executive agencies.

. . . In sum, . . . a finding [of undue influence] cannot rest on pure inference or circumstance or, for that matter, on the technique and

²² *SEC v. Wheeling-Pittsburgh Steel Corp.*, 648 F.2d 118, 130 (3d Cir. 1981); *see also U.S. v. American Target Advertising*, 257 F.3d 348 (4th Cir. 2001) (Postal Service subpoena, allegedly issued as the result of pressure by a U.S. Senator, upheld in the absence of a showing of bad faith on the part of the Postal Service).

²³ *United States v. Armada Petroleum Corp.*, 562 F. Supp. 43, 51 (S.D. Tex. 1982) (citing *Gulf Oil Corp. v. Fed. Power Comm’n*, 563 F.2d 588, 611 (3d Cir. 1977)).

personality of the legislator, but, instead, must be based on probative evidence that a reprisal or threat to agency officials was made.²⁴

This Committee's longstanding guidance on communicating with executive and independent agencies of the federal government is expressed in *Advisory Opinion No. 1*.²⁵ This opinion states that it is appropriate for a Member to introduce an individual to an agency, to arrange interviews and meetings for the individual, to provide a character reference, and to urge prompt and fair consideration of a matter on the merits of the case. Inquiries as to the status of a proceeding or ruling may be directed to any agency or department. A Member may urge reconsideration of a decision on the ground that it is unsupported by federal law, regulation, or legislative intent. If a Member has strong feelings about a particular case, judgment on the merits of the case may be expressed, subject, of course, to the prohibition on *ex parte* communications in formal agency proceedings. A Member should **not** directly or indirectly threaten reprisal or promise favoritism or benefit to any administrative official. Written communications are preferred to ensure compliance with these principles.

The Committee set forth the following standards in *Advisory Opinion No. 1*:

REPRESENTATIONS

This Committee is of the opinion that a Member of the House of Representatives, either on his own initiative or at the request of a petitioner, may properly communicate with an Executive or Independent Agency on any matter to:

request information or a status report;

urge prompt consideration;

arrange for interviews or appointments;

express judgment;

call for reconsideration of an administrative response which he believes is not supported by established law, federal regulation or legislative intent;

²⁴ House Comm. on Standards of Official Conduct, *Statement in the Matter of James C. Wright, Jr.*, 101st Cong., 1st Sess. 84 (1989).

²⁵ House Comm. on Standards of Official Conduct, *Advisory Opinion No. 1*, reprinted in the appendices to this Manual.

perform any other service of a similar nature in this area compatible with the criteria hereinafter expressed in this Advisory Opinion.

PRINCIPLES TO BE OBSERVED

The overall public interest, naturally, is primary to any individual matter and should be so considered. There are also self-evident standards of official conduct which Members should uphold with regard to these communications. The Committee believes the following to be basic:

1. A Member's responsibility in this area is to all his constituents equally and should be pursued with diligence irrespective of political or other considerations.
2. Direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representative role.
3. A Member should make every effort to assure that representations made in his name by any staff employee conform to his instruction.

When communicating with an agency, Members and staff should only assert as fact that which they know to be true. In seeking relief, a constituent will naturally state his or her case in the most favorable terms. Moreover, the constituent may not be familiar with the intricacies of the controlling administrative regulations. Thus, a Member should exercise care before adopting a constituent's factual assertions. A prudent approach in any communication would be to attribute factual assertions to the constituent.

In order to avoid any inference on the part of agency personnel that a Member is asking for action in a particular matter that is inappropriate under agency guidelines, the Member should consider expressly assuring administrators that no effort is being made to exert improper influence. For example, a letter could ask for "full and fair consideration consistent with applicable law, rules, and regulations."

The staff of the Committee's Office of Advice and Education is available to review, on an informal basis, drafts of letters to administrative agencies. Formal written advisory opinions may also be requested from the Committee regarding the propriety of particular communications.

Example 5. Company Z in Member A's district faces bankruptcy during the pendency of an unrelated administrative appeal. A may inform the agency of Z's financial difficulties and ask that Z's claim be expedited if agency procedures allow it.

Example 6. Member B sits on the Veterans' Affairs Committee. B, like any other Member, may inquire as to the status of constituents' pending appeals to the Department of Veterans' Affairs. Obviously, in making these inquiries, B should not suggest that the agency's budget will be cut if B's constituents do not receive favorable determinations.

Example 7. A constituent asks Member C for help with a pending administrative claim. If the Member cannot substantiate that the facts presented by the constituent are correct and complete, the Member should state in any communications to the agency that the information is "according to my constituent."

Example 8. A constituent business asks Member D for help getting relief from agency regulations. Member D served on the committee that drafted the legislation under which the regulations were promulgated. Member D may tell agency officials of her view that the way in which the legislation is being implemented is inconsistent with the legislative language or intent.

Assisting Supporters

Because a Member's obligations are to all constituents equally, considerations such as political support, party affiliation, or campaign contributions should not affect either the decision of a Member to provide assistance or the quality of help that is given. While a Member should not discriminate in favor of political supporters, neither need he or she discriminate against them. As this Committee has stated:

The fact that a constituent is a campaign donor does not mean that a Member is precluded from providing any official assistance. As long as there is no *quid pro quo*, a Member is free to assist all persons equally.²⁶

²⁶ House Comm. on Standards of Official Conduct, *Statement Regarding Complaints Against Representative Newt Gingrich*, 101st Cong., 2d Sess. 66 (1990).

An individual's status as a donor may, however, raise an appearance of impropriety. The Senate Select Committee on Ethics has expressed the issue as follows:

The cardinal principle governing Senators' conduct in this area is that a Senator and a Senator's office should make decisions about whether to intervene with the executive branch or independent agencies on behalf of an individual without regard to whether the individual has contributed, or promised to contribute, to the Senator's campaigns or other causes in which he or she has a financial, political or personal interest. . . .

Because Senators occupy a position of public trust, every Senator always must endeavor to avoid the appearance that the Senator, the Senate, or the governmental process may be influenced by campaign contributions or other benefits provided by those with significant legislative or governmental interests. Nonetheless, if an individual or organization has contributed to a Senator's campaigns or causes, but has a case which the Senator reasonably believes he or she is obliged to press because it is in the public interest or the cause of justice or equity to do so, then the Senator's obligation is to pursue that case. In such instances, the Senator must be mindful of the appearance that may be created and take special care to try to prevent harm to the public's trust in the Senator and the Senate. This does not mean, however, that a Member or employee is required to determine if one is a contributor before providing assistance.²⁷

The Senate Committee concluded that "established norms of Senate behavior do not permit linkage between . . . official actions and . . . fund raising activities."²⁸ House Members, too, should be aware of the appearance of impropriety that could arise from championing the causes of contributors and take care not to show favoritism to them over other constituents.

Assisting Non-Constituents

On occasion a Member's publicized involvement in legislation or an issue of national concern will generate correspondence from individuals outside the district. A private citizen may communicate with any Member he or she desires. However, the Member's ability to provide assistance to such individuals is limited.

²⁷ Senate Select Comm. on Ethics, *Investigation of Senator Alan Cranston*, S. Rep. 102-223, 102d Cong., 1st Sess. 11-12 (1991).

²⁸ *Id.* at 29.

The statute that establishes the Members' Representational Allowance provides that the purpose of the allowance is "to support the conduct of the official and representational duties of a Member of the House of Representatives **with respect to the district from which the Member is elected.**"²⁹ This statute does not prohibit a Member from ever responding to a non-constituent. In some instances, working for non-constituents on matters that are similar to those facing constituents may enable the Member better to serve his or her district. Other times, the Member may serve on a House committee that has the expertise and ability to provide the requested help. Of course, if a Member has personal knowledge regarding a matter or an individual, he or she may always communicate that knowledge to agency officials. As a general matter, however, a Member should not devote official resources to casework for individuals who live outside the district. When a Member is unable to assist such a person, the Member may refer the person to his or her own Representative or Senator.

Government Procurement and Grants

Constituents frequently request congressional assistance with government contracts or grants. These matters are subject to the same guidelines as other casework. Thus, Members may generally forward introductory information to an agency from a constituent firm or request information for a constituent on available opportunities. On the other hand, an attempt to influence the outcome of a quasi-judicial proceeding such as a formal contract dispute or a bid protest pending before a board of contract appeals could trigger complaints from third parties that the fairness and impartiality of the tribunal has been compromised.³⁰ Moreover, experience has shown that contacts like these may be resented by the decision-makers. Consequently, such efforts may do more harm than good to the constituent's cause.

In assisting a private enterprise, a Member should be mindful that congressional allowances, including those for staff, are available only for conducting official business.³¹ Assistance should not extend so far that the congressional office is actually doing the work of the private business, rather than of the Congress. Again, Members and employees should take care not to discriminate unfairly among constituents, *e.g.*, on political grounds.

²⁹ 2 U.S.C. § 57b (emphasis added); *see also* Comm. on House Admin., U.S. House of Representatives, *Members' Congressional Handbook*, Regulations Governing the Members' Representational Allowance (2001) (hereinafter "*Members' Handbook*").

³⁰ *See Peter Kiewit Sons' Co. v. U.S. Army Corps of Engineers*, 714 F.2d 163 (D.C. Cir. 1983).

³¹ 31 U.S.C. § 1301(a); *see also Members' Handbook*, *supra* note 29.

Example 9. Member A may contact agency officials and request that they meet with a constituent seeking a grant. Employee B on Member A's congressional staff may accompany the constituent, but B should make clear that he is not there as the constituent's agent. Care should also be taken to avoid any inference of a threat to agency officials.

Example 10. Constituent Z requests Member B's assistance with a grant. Z is unfamiliar with the governing regulations and asks B if her staff, being experienced in such matters, would prepare the application on Z's behalf. It would not be appropriate for congressional staff to be doing the work of a private party in this fashion.

Example 11. Member C is approached by a constituent business for help in getting a government agency to purchase its product. The Member may provide assistance, but C should either (a) be personally familiar with the company, product, and government requirements, or (b) be willing to provide the same type of assistance to other, similarly situated constituent businesses.

Communicating With Courts

Just as they are asked to intervene with agency officials responsible for making on-the-record decisions, Members may also be asked to communicate with judges in pending court cases. Most courts are subject to limits on *ex parte* communications which are at least as restrictive as those applicable to executive agencies. Judges, whether serving at the federal, state, or municipal level, are charged with performing their duties in an impartial manner. They are guided in their actions by standards such as the following:

A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding³²

When a Member believes it necessary to attempt to affect the outcome in a pending case, the Member has a variety of options. A Member who has relevant information could provide it to a party's counsel, who could then file it with the court and notify all parties. Alternatively, the Member could seek to file an *amicus curiae*, or friend of the court, brief. Yet another option, in an appropriate case, might be to seek to intervene as a formal party to the proceeding. A Member could

³² ABA Model Code of Judicial Conduct Canon 3B(7) (2000).

also make a speech on the House floor or place a statement in the *Congressional Record* as to the legislative intent behind the law. A Member should refrain, however, from making an off-the-record communication to the presiding judge, as it could cause the judge to recuse from further consideration of the case.

When a Member does have personal knowledge about a matter or a party to a proceeding, the Member may convey that information to the court through regular channels in the proceeding (*e.g.*, by submitting answers to interrogatories, being deposed, or testifying in court). Members and employees should also be aware that special procedures are to be followed whenever they receive a subpoena seeking information relating to official congressional business.³³ The House Office of General Counsel should be consulted for further guidance.

Contacting Other Governments

Besides intervening with federal agencies and personnel, Members may also be asked to assist constituents in their dealings with state, local, and foreign governments. Members may do so. Their communications should adhere to the same general principles described above that guide their contacts with federal agencies.³⁴

Example 12. Constituent Z has a claim pending before the state Workers' Compensation Board. If Member A would do the same for any similarly situated constituent, A may write to the state board inquiring as to the status of Z's claim and asking for expedited review if such would be consistent with the board's governing law and regulations. A may not imply that the state will receive increased federal aid in return for a disposition favorable to Z.

Example 13. General Widget, Inc., an old and respected manufacturer in Member B's district, would like to take advantage of the opening of potential Eastern European markets for its products. GW asks B for a letter of introduction to a certain foreign Minister of Finance. B writes:

³³ See House Rule 8.

³⁴ An eighteenth century law, the Logan Act (18 U.S.C. § 953), 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 on the books.

Dear Minister:

General Widget, Inc. has been doing business in my congressional district for 70 years. Now it seeks the opportunity to do business in your country as well. GW's executives would be happy to describe to you its wide range of products. I would appreciate any consideration you could show to GW and its representatives.

Sincerely,
B
Member of Congress

B's letter is appropriate. If B writes this letter on GW's behalf, B should be willing to write such a letter for any similarly situated constituent company.

Intervening With Nongovernmental Parties

Members are often asked to assist constituents in their dealings with government agencies. In some circumstances, however, the Member may be asked to assist one private party in dealings with another private individual or organization. For example, a constituent company seeking subcontracts may ask a Member for a letter of introduction to another company which has been awarded federal funds. As another example, two businesses may ask a Member to act as a mediator in a private dispute.

Although a Member may take actions that the Member believes will assist the congressional district, intervening in private matters requires the exercise of particular caution. Unlike agency personnel, many private businesses are not used to dealing with Members of Congress on a regular basis. Thus, a communication from a Member's office may be viewed as an official endorsement of a private enterprise, or as pressure to take action in order to please the Member, rather than based on the merits. In this context, again, Members and employees should bear in mind that official resources should not be devoted to doing the work of private businesses.³⁵

Confidentiality of Records

The "Privacy Act" protects the records maintained by government agencies from disclosure, except for specified purposes or with the permission of the person to whom the record pertains.³⁶ Although the statute does permit disclosure "to either

³⁵ See 31 U.S.C. § 1301(a); see generally *Members' Handbook*, *supra* note 29.

³⁶ 5 U.S.C. § 552a(b).

House of Congress,”³⁷ some agencies require Members to show written consent from their constituents before they will release the constituents’ records to the Members. The Privacy Act does not apply to congressional documents. Historically, however, communications between Members and constituents have been considered confidential and should generally not be made public without the constituent’s consent.

Personal Financial Interests

Just as Representatives may vote on legislation that affects them as members of a class rather than as individuals, Members and employees may generally contact federal agencies on issues in which they, along with their constituents, have interests.³⁸ A constituent need not be denied congressional intercession merely because a Member or the staff assistant assigned to a particular issue may stand to derive some incidental benefit along with others in the same class. Thus, Members who happen to be farmers may nonetheless represent their constituents in communicating views on farm policy to the Department of Agriculture. Only when Members’ actions would serve their own narrow, financial interests as distinct from those of their constituents should the Members refrain. See Chapter 5 on “Member Voting and Other Official Activities on Matters of Personal Interest.”

As always, Members and employees must guide their actions in this regard by the Code of Official Conduct, House Rule 23. The Code prohibits Members and staff from allowing compensation to accrue to their benefit “by virtue of influence improperly exerted” from a position in Congress.³⁹ Moreover, an employee who files a Financial Disclosure Statement may not contact a court or executive branch agency with respect to non-legislative matters affecting any entity in which the individual has a significant financial interest, unless the employing Member grants a written waiver and files it with the Committee on Standards of Official Conduct.⁴⁰

Gifts and Compensation for Casework

When assisting constituents, Members and staff should be aware that the federal criminal code prohibits the receipt of anything of value in return for or

³⁷ *Id.* § 552a(b)(9).

³⁸ Conflict of interest issues that arise in connection with a Member’s financial interests and official activities are discussed in Chapter 5 of this Manual.

³⁹ House Rule 23, cl. 3; *see also* Code of Ethics for Government Service ¶ 5, H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt. 2, B12 (1958), reprinted in the appendices.

⁴⁰ House Rule 23, cl. 12. See Chapter 5 for further details on staff conflicts of interest.

because of official actions.⁴¹ Gifts offered as a thank you for casework assistance should generally be declined.

Members and employees also may not ask for or receive compensation for “services rendered” in relation to matters or proceedings in which the United States is a party or has an interest.⁴² No funds or things of value, other than one’s official salary, may be accepted for dealing with an administrative agency on behalf of a constituent.

Caution should always be exercised to avoid the appearance that solicitations of campaign contributions from constituents are connected in any way with a legislator’s official advocacy. A discussion of this problem was offered by Senator Douglas:

It is probably not wrong for the campaign managers of a legislator to request contributions from those for whom the legislator has done appreciable favors, but this should never be presented as a payment for the services rendered. Moreover, the possibility of such a contribution should never be suggested by the legislator or his staff at the time the favor is done. Furthermore, a decent interval of time should be allowed to lapse so that neither party will feel that there is a close connection between the two acts. Finally, not the slightest pressure should be put upon the recipients of the favors in regard to the campaign. It should be clearly understood that any gift they make is voluntary and there will be no question of reprisals or lack of future help by the legislator if the gift is withheld. In other words, any contribution should be not a *quid pro quo* but rather a wholly voluntary offering based upon personal friendship and a belief in the effectiveness of the legislator sharpened perhaps by individual experience.⁴³

If a Member were to ask for political support as a *quid pro quo* for official action, the Member could be subject to extortion charges. In overturning the conviction of a state legislator, the Supreme Court observed that soliciting campaign contributions from constituents with legislative business could be extortion, “but only if the payments are made in return for an explicit promise or undertaking by the official to perform or not to perform an official act.”⁴⁴ The Court held in that case that, given the realities of financing campaigns, “[w]hatever

⁴¹ 18 U.S.C. § 201. See Chapter 2 for a discussion of the bribery and illegal gratuities laws.

⁴² 18 U.S.C. § 203; *see also* House Rule 25, cl. 6.

⁴³ Douglas, *supra* note 1, at 89-90.

⁴⁴ *McCormick v. United States*, *supra* note 5, 500 U.S. at 273.

ethical considerations and appearances may indicate,” it is generally not a federal crime for legislators to “act for the benefit of constituents or support legislation furthering the interests of some of their constituents, shortly before or after campaign contributions are solicited and received from those beneficiaries.”⁴⁵

Other limitations may affect assistance to private individuals, even when no compensation is involved. Under House Rules and federal law, employees usually may not represent individuals or organizations before the government other than in the performance of official duties.⁴⁶ Although Members are not subject to the same statutory limitations, representing a private entity before the government outside of official duties may be inconsistent with a representative’s obligations to serve the public interest.⁴⁷

Recommendations for Government Employment

Members of the House are frequently asked to provide letters of recommendation on behalf of persons seeking employment or appointment to positions in the federal government, state or local governments, or in the private sector.⁴⁸ Writing letters of recommendation for constituents is consistent with the representational duties of Members of Congress. However, when writing letters of recommendation, Members should adhere to the Code of Ethics for Government Service, which requires Members to “never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not.”⁴⁹ Requests from similarly situated constituents should therefore be handled in comparable fashion, without regard to party affiliation, campaign support, or other such factors.

This section summarizes the laws and rules governing the ability of Members to provide employment recommendations for positions with federal, state, or local governments and the private sector, and also addresses the use of official letterhead and other miscellaneous issues related to preparing letters of recommendation.

⁴⁵ *Id.*

⁴⁶ 18 U.S.C. § 205; House Rule 25, cl. 6. See Chapter 5 of this Manual for a discussion of these provisions.

⁴⁷ See, e.g., Code of Ethics for Government Service ¶¶ 5 and 7, *supra* note 39.

⁴⁸ The provisions governing written recommendations apply equally to oral recommendations; therefore, when a “letter of recommendation” is used, the guidance provided above also applies to oral recommendations.

⁴⁹ Code of Ethics for Government Service ¶ 5, *supra* note 39.

“Competitive Service” Positions With the Federal Government

Under amendments to the Hatch Act that were enacted in 1996,⁵⁰ Members may make recommendations, either orally or in writing, on behalf of applicants for competitive service⁵¹ positions in the executive branch of the federal government.⁵² However, as detailed below, there are significant limitations on the content of such recommendations. The statutes governing recommendations for the competitive service apply equally to administrative law judge positions, career positions in the Senior Executive Service, and any position in the “excepted service”⁵³ that is not confidential or policy-related in nature.⁵⁴

Federal hiring officials may consider a recommendation for a competitive service position only if the content of the recommendation complies with established guidelines. Federal hiring officials may never consider a recommendation for a competitive service position that contains direct or indirect references to the job applicant’s political affiliation or membership.⁵⁵ The permissible contents of recommendations for a competitive service position depend on whether the Member has personal knowledge of the applicant’s work ability or performance.

If the Member does not have personal knowledge of the applicant’s work ability or performance, the letter of recommendation may address **only** the applicant’s character or residence.⁵⁶ In that circumstance, the hiring official may not consider any portion of a recommendation that discusses the specific qualifications of an applicant or that assesses the applicant’s suitability for employment with a particular agency or for a particular job.⁵⁷

⁵⁰ Pub. L. 104-197, § 315, 110 Stat. 2416 (1996).

⁵¹ The competitive service is defined at 5 U.S.C. § 2102. Essentially, the competitive service includes all civil services positions other than statutorily excepted positions, non-career Senior Executive Service positions, and political positions. Certain positions, such as agency fellowships, do not fall within the definition of the competitive service, but agencies sometimes require compliance with the competitive service provisions when considering recommendations for such positions. The Committee recommends consulting with individual agencies if there is any question whether a position falls within the competitive service or is governed by the same guidelines.

⁵² Prior to the 1996 amendments, Members could provide only a statement related to the character and residence of the applicant unless the agency requested an evaluation of the applicant’s qualifications. *See* Pub. L. 103-94, 107 Stat. 1001, 1006 (1993) (codified at 5 U.S.C. § 3303).

⁵³ The excepted service is defined at 5 U.S.C. § 2103.

⁵⁴ Memorandum from James B. King, Director, Office of Personnel Management, to Heads of Executive Departments and Agencies, at 3 (Apr. 7, 1997) (hereafter “*OPM Memorandum*”).

⁵⁵ 5 U.S.C. § 3303 and 5 U.S.C. § 2302(b)(2).

⁵⁶ 5 U.S.C. § 3303. A recommendation under this statute based on the character and residence of the applicant may be offered only by a Representative or a Senator.

⁵⁷ *OPM Memorandum*, *supra* note 54, at 2.

Example 14. Constituent Z asks Member A to provide a letter of recommendation to Federal Agency in connection with Z's application for a competitive service position. A may provide a letter of recommendation concerning Z's character and residence. Hiring Official at Federal Agency may consider a recommendation similar to the following: "I have known Z, a resident of my state, for many years. Z is a fine person and has always been reliable, has shown good judgment and integrity, and is highly regarded in the community." Hiring Official could not consider any portion of the letter if it also referred to Z's political affiliation or suitability for employment in a particular agency or a particular job (*e.g.*, "I would like you to consider Z for the currently vacant position of policy analyst in your office.").

If the Member has personal knowledge of the applicant's work ability or performance, the federal hiring official may consider a recommendation based on the Member's personal knowledge or records that contains an evaluation of the job applicant's work performance, ability, aptitude, general qualifications, character, loyalty, or suitability.⁵⁸ Such personal knowledge of applicant's work can be the result of any working association of the Member and the applicant, whether or not related to the Member's official responsibilities.

Example 15. A former staff member asks his former employing Member, B, to provide a letter of recommendation to Federal Agency in support of his application for a competitive service position. Member B may prepare a letter of recommendation based on the former employee's prior work performance, ability, aptitude, and character. A hiring official at Federal Agency may consider the letter of recommendation.

"Political" Positions With the Federal Government

With respect to applications for "political" positions, such as Schedule C or non-career Senior Executive Service positions, federal hiring officials may consider any information a Member includes in a recommendation, even if the recommendation is not based on the Member's personal knowledge or records. The information permitted to be considered includes, but is not limited to, statements about character and residence, evaluations of work qualifications, statements about political affiliation, and statements about the suitability for employment with a particular agency or a particular job. (The matter of whether such a letter may be sent on official letterhead is discussed below.)

⁵⁸ 5 U.S.C. § 2302(b)(2). A recommendation under this statute based on personal knowledge or records may be offered by anyone and is not limited to Representatives and Senators.

Example 16. Employee asks Member C to provide a letter of recommendation to Federal Agency in connection with employee's interest in a Schedule C (*i.e.*, political) position. Member C may prepare a letter to Federal Agency that endorses employee for the position based on various factors, including prior work performance, ability, aptitude, character, and political considerations. A hiring official at Federal Agency may consider the letter of recommendation in its totality.

Postal Service

Under federal law, Members of Congress are prohibited from making or transmitting to the Postal Service “any recommendation or statement, oral or written” on behalf of a person under consideration for a position with the Postal Service except for a “statement” relating solely to the character and residence of such person; however, if the Postal Service so requests, a Member may provide a statement regarding the applicant's qualifications.⁵⁹

Military Services and Academies

Under federal law, military services or academies may consider any relevant information a Member chooses to provide in a letter of recommendation. With respect to letters to military promotion boards, congressional offices should consult with the particular promotion board or the constituent service member to ensure compliance with applicable regulations. For example, although officer promotion boards may consider letters of recommendation authored by third parties, such letters should be submitted directly by the officer concerned, and they cannot be accepted from the third party.⁶⁰

State Governments and the Private Sector

Unless otherwise prohibited by state law or by corporate policy, a hiring official may consider any information the Member chooses to provide in a letter of recommendation for appointments or positions in state and local governments or the private sector. Members may provide statements about character and residence, evaluations of work qualifications, statements about political affiliation, and statements about the suitability for employment with a particular agency or a particular job.

⁵⁹ 39 U.S.C. § 1002(b), (e)(2).

⁶⁰ Under 10 U.S.C. §§ 615 and 14107, active and reserve officer promotion boards may consider “information communicated to the board **by the officer.**” (Emphasis added). *See also* Department of Defense Instruction 1320.14, Commissioned Officer Promotion Program Procedures, September 24, 1996.

Example 17. Constituent Z, who is a personal friend of Member D, asks D for a letter of recommendation concerning Z's interest in a position with a corporation in Member D's district. Many private parties are not used to dealing with Members of Congress on a regular basis. Accordingly, Members should exercise caution when submitting a letter of recommendation to a private company or individual to avoid even the appearance of improper or undue influence on the private party. In this case, D may be able to provide the requested recommendation, but she should proceed cautiously and should consult with the Standards Committee.

Letterhead

When writing letters of recommendation, Members must carefully assess whether the letter may be sent on official congressional stationery. Official stationery, like other official resources, may be used only for official purposes.⁶¹ Whether a particular letter of recommendation may be considered official business, and may therefore be written on official letterhead, depends on whether the proposed letter may be mailed using the frank under the regulations of the Franking Commission.⁶²

According to Franking Commission regulations, Members may use the frank to mail letters of recommendation for the following:

- An applicant seeking admission to a military academy;
- An applicant seeking a political appointment to a federal or state government position; or
- An applicant who is a current employee, was a former employee, or has worked with the Member in an official capacity and the letter relates to the duties performed by the applicant.⁶³

The Franking Commission broadly interprets the authority to write letters of recommendation on behalf of a person "who has worked with the Member in an

⁶¹ 31 U.S.C. § 1301(a); *Members' Handbook*, *supra* note 29.

⁶² Any question regarding whether a particular letter may be mailed under the frank should be addressed to the Franking Commission, formally known as the Commission on Congressional Mailing Standards of the House of Representatives.

⁶³ Commission on Congressional Mailing Standards, U.S. House of Representatives, *Regulations on the Use of the Frank by Members of the House of Representatives*, at 13 (June 1998). Members may also send under the frank general letters of introduction that are not endorsements or recommendations. *Id.*

official capacity.” Such persons may include, among others, persons employed (or formerly employed) by a federal, state, or local government agency who worked with the Member or the Member’s staff on matters relating to the Member’s official duties, as well as persons working in the private sector (such as attorneys, university professors, or persons affiliated with “think tanks”) who have assisted the Member’s office on legislative matters.

If the criteria specified above are met, letters of recommendation may be prepared on official stationery for persons seeking jobs in the private sector as well as federal, state, or local governments; otherwise, the letter of recommendation must be prepared on the Member’s personal stationery.

Example 18. A social acquaintance of Member E, who has not previously worked with E in any official capacity, asks E to write a letter of recommendation to Federal Agency in support of his application for a competitive service position. E may prepare a letter of recommendation but must do so on personal stationery.

Example 19. An Executive Director of a nonprofit organization, who assisted Member F with a legislative initiative, asks F to provide a letter of recommendation to a corporation in Member F’s district in support of Executive Director’s application for a position with the corporation. F may provide a letter of recommendation on official letterhead and mail it by means of the congressional frank.

Miscellaneous Considerations

In addition to the standards and requirements discussed above, Members should be mindful of the following restrictions set forth in federal criminal statutes:

- A candidate, including a Member of Congress, may not promise to appoint, or to use influence or support in appointing, any person to any public or private position for the purpose of procuring support for his or her candidacy.⁶⁴
- No one may promise any employment, position, compensation, contract, appointment, or other benefit provided for or made possible by any Act of Congress, to any person in return for political activity or support in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office.⁶⁵

⁶⁴ 18 U.S.C. § 599.

⁶⁵ 18 U.S.C. § 600.

- The knowing denial or deprivation, or the threat of denial or deprivation, of any federal or state employment, or any employment, compensation, or benefit made possible by an Act of Congress, for the purpose of securing political contributions, services, or any other thing of value, is prohibited.⁶⁶
- No one may solicit or receive any money or other thing of value in return for the promise of support or the use of influence in obtaining an appointive federal post on behalf of another person.⁶⁷

Violations of these statutory provisions are criminal offenses and are all punishable by fines, imprisonment for up to one year, or both. If a Member willfully violates the prohibition against promising employment in exchange for political support under 18 U.S.C. § 599, the imprisonment may be for up to two years.

Example 20. Constituent Z who made a financial contribution to Member G's election campaign sends G a letter requesting a recommendation in support of Z's application for a political position at Federal Agency. In the letter, Z refers to his contribution to Member G's campaign; however, he does not expressly ask G to provide the job recommendation in return for his past financial support. The Committee cautions Members against providing such a letter because, under these facts, the Member G's letter of recommendation might be construed as an improper *quid pro quo*.

⁶⁶ 18 U.S.C. § 601.

⁶⁷ 18 U.S.C. § 211.

OFFICIAL ALLOWANCES

Overview

Members of Congress receive a Members' Representational Allowance ("MRA"), which is available to support the conduct of official and representational duties to the district from which they are elected. Statutory authorizations often note that such allowances are for expenses of an "official purposes" or a "strictly official" nature.¹ Legal and ethical problems arise when these allowances are used for other than official expenses, such as when they are converted to personal or campaign use. This chapter discusses the official expense allowance and the franking privilege. Members and staff seeking guidance on matters relating to the MRA or the franking privilege should first review the *Members' Handbook* or the *Franking Manual* before consulting this chapter.

Members' Representational Allowance

During each session of Congress, each Member has a single MRA available to support the conduct of official and representational duties to the district from which elected. Committee on House Administration regulations state that the MRA is to be used to pay "ordinary and necessary expenses incurred by the Member or the Member's employees within the United States, its territories, and possessions in support of the conduct of the Member's official and representational duties to the district from which elected."² The MRA may only be used for official and representational expenses. The MRA may not be used to pay for any expenses related to activities or events that are primarily social in nature, personal expenses, campaign or political expenses, or House committee expenses.³ Members may be personally liable for misspent funds or expenditures exceeding the MRA.⁴

The rules governing the MRA include the following restrictions:

- The MRA may be used only for official expenses;
- The MRA may **not** be converted to personal or campaign use or applied toward any unofficial activity;
- As a general matter, only the MRA and Members' personal funds may be used to defray official expenses;

¹ See, e.g., 2 U.S.C §§ 42c, 43b, 46g, 46g-1, 56, 122a.

² Comm. on House Admin., *Members' Congressional Handbook* (hereinafter "*Members' Handbook*").

³ *Id.*: Members' Representational Account, General.

⁴ *Id.*

- House Rule 24, which sets forth the prohibition on unofficial office accounts, bars the use of private funds or in-kind support from outside sources for official activities;
- In addition to possibly violating House rules, the misuse of the MRA may also subject a Member or employee to criminal prosecution and actions to recover the misspent funds; and
- The Committee on House Administration governs certifications, documentation, and other standards for reimbursement from the MRA; that Committee's regulations are set forth in the *Members' Handbook*.

Example 1. Member A's wife is a travel agent. A may not make official travel arrangements through his wife's agency because she, and thus A, would then be benefiting monetarily from the expenditure of official funds.

Example 2. Member B's district manager is part owner of a building in the district. B may **not** rent space in the employee's building for the congressional district office.

Example 3. Member C is very interested in the matter of childhood literacy and would like to have her congressional staff, during official hours, work with a local literacy group in enlisting volunteer tutors, locating children who need help, and making arrangements for the volunteers to work with these children. It is not permissible for the office to undertake such a project because congressional staff may not engage in such a charitable undertaking while on official congressional time and using any official House resources.

In the 100th Congress, the Committee on Standards of Official Conduct investigated charges that a Member had allowed his former law firm to use official resources.⁵ The Standards Committee found that over a nine-year period, the firm had been permitted access to government photocopy services, furniture, supplies, long distance telephone lines, and a receptionist's services. For this and other violations, the House reprimanded the Member.

A Member is responsible for assuring that resources provided for support of official duties are applied to the proper purposes.⁶ In the 101st Congress, the Standards Committee determined that a Member was "remiss in his oversight and

⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Austin J. Murphy*, H. Rep. 100-485, 100th Cong., 1st Sess. 4 (1987).

⁶ *Id.*

administration of his congressional office” regarding a mailing sent out by staff over his signature on his official letterhead.⁷ The mailing did not comport with House Rule 23, clause 11, in that it promoted a cruise sponsored by a private organization and requested that follow-up contacts go to the Member’s congressional office.

The *Members’ Handbook* provides examples of items for which reimbursement with the official allowances may be permitted, as well as a list of prohibited expenditures. Included among the permissible uses are expenditures for certain travel, office equipment leases, district office leases, stationery, telecommunications, printing and product services, costs of audio and video recordings produced in the House Recording studio, postage, computer services, and other expenses related to a Member’s official business. Included among impermissible uses are expenditures for greeting cards, social events or activities, consultants, vendor security deposits, dues and membership fees, educational expenses to obtain any level of educational degree, expenses associated with acquiring or maintaining professional certification or licensing, and employment relocation expenses.

Anything supported with official funds is an official resource, including congressional offices. The House Office Building Commission, comprised of the Speaker, the Majority Leader, and the Minority Leader, has issued regulations governing the use of House facilities.⁸ These regulations generally ban solicitation and commercial activity, limit photography, restrict use of meeting rooms to congressionally related purposes, and impose various health and safety restraints. In addition, as is true of all official resources, congressional offices may not be used for the conduct of campaign or political activities.

Example 4. Member D is planning to film a campaign commercial. D may **not** film in her congressional office because that would be using an official resource for a campaign purpose. She may film her commercial outside the Capitol in the areas designated by the Sergeant-at-Arms as part of the public space.

Other entities may have jurisdiction over the use of particular official resources. The Joint Committee on Printing, for example, publishes *Government Printing and Binding Regulations* pertaining to government documents. These regulations caution:

⁷ House Comm. on Standards of Official Conduct, *Statement Regarding Complaints Against Representative Newt Gingrich*, 101st Cong., 2d Sess. 60 (1990).

⁸ House Office Building Comm’n, *Rules and Regulations Governing the House Office Buildings, House Garages and the Capitol Power Plant* (February 1999) (available from the Speaker’s Office).

No Government publication . . . shall contain . . . material which implies in any manner that the Government endorses or favors any specific commercial product, commodity, or service.

The Joint Committee on Printing has advised that commercial advertising is not a proper or authorized function of the government. Such advertisements are unfair to those who do not so advertise in that, whether intentionally or not, they are frequently made to appear to have the sanction of the government. Furthermore, the publication of such advertisements is unjust to the public in that the advertisers profit thereby at the expense of the government, particularly as a considerable number of the publications are circulated free, at least in part, under government frank.

Members should also bear these regulations in mind in the context of the common practice of inserting an Extension of Remarks in the *Congressional Record*, noting the accomplishments of a district business. While it is usually appropriate publicly to congratulate a local business for achieving an award or celebrating a significant anniversary, Members should refrain from overtly commercial promotions. See Chapter 10 on official and outside organizations for further information.

Unofficial Office Accounts

House Rule 24 prohibits “unofficial office accounts.” Accordingly, outside private donations, funds, or in-kind goods or services may not be used to support the activities of, or pay the expenses of, a congressional office. Only appropriated funds or Members’ personal funds may be used for this purpose.⁹ House Rule 24 has been in effect since 1977. Congress codified this rule into law governing both Chambers as part of the Legislative Branch Appropriations Act, 1991.¹⁰ Under federal law and House rules, however, funds from a Member’s principal campaign committee may be used to pay for certain congressional office expenses. See Chapter 4 on campaign activity for further information.

The House Commission on Administrative Review (95th Congress) proposed House Rule 24 as a “wall” between private funds and official allowances. The House adopted most of the Commission’s recommendations on March 2, 1977, as revisions to the House Rules of Conduct.¹¹ The Commission explained the requirement that official expenses of a Member be paid exclusively from official, appropriated funds as follows:

⁹ See also 31 U.S.C. § 1342 (prohibiting acceptance of voluntary services without specific authorization (augmentation of appropriations)).

¹⁰ See 2 U.S.C. § 59e(d).

¹¹ H. Res. 287, 95th Cong., 1st Sess. (1977).

The Commission strongly believes that private funds should be used only for politically related purposes. Official allowances should reflect the necessary cost of official expenses. Increasing official allowances . . . to eliminate reliance on private sources represents a small cost to the public for the benefits to be derived. To suggest otherwise would be to accept or condone the continuation of the present system which, at the very least, allows for the appearance of impropriety, and, at worst, creates a climate for potential “influence peddling” through private financing of the official expenses of Members of Congress.¹²

Several rules in addition to House Rule 24 implement the Commission’s recommendation that private financing of official expenses be eliminated. House Rule 23, clause 7, requires that a Member treat all proceeds from testimonial dinners or other fund-raising events as campaign contributions.¹³ House Rule 23, clause 6(c), provides that campaign funds may be used only for “bona fide campaign or political purposes.” As a general matter, these provisions mandate that private funds be used only to support private or political, and not official, activities.

No specific definition of bona fide campaign or political purposes exists in the rules or legislative history of the provision. What would be an official, as opposed to a campaign, expense depends on the particular facts of the situation.¹⁴ During floor debate on adoption of the rule, it was noted, for example, that travel to a Member’s home district might be considered a political expense for which private campaign funds could be used if the purpose of the trip was political.¹⁵ Similarly, the expense of taking certain individuals to dinner, if it is determined to be a political meeting rather than one relating to official duties, could be paid from campaign accounts.¹⁶

Members often have discretion in determining whether an event will be “political” or “official,” with the following caveat: “[The] committee is of the opinion that once the Member makes his determination, he is bound by it. A single event

¹² House Comm. on Admin. Review, *Financial Ethics*, H. Doc. 95-73, 95th Cong., 1st Sess. 18 (1977).

¹³ Members often assist charities in their fundraising efforts. This rule does not, of course, mean that funds that a Member helps to raise for charity are deemed campaign contributions. Solicitations for charity are discussed in Chapter 10 on official and outside organizations.

¹⁴ See 123 *Cong. Rec.* 5900 (Mar. 2, 1977) (Statement of Rep. Frenzel).

¹⁵ *Id.*

¹⁶ *Id.* at 5908 (colloquy between Reps. Evans and Bauman).

cannot, for the purpose of the House rules, be treated as *both* political and official.”¹⁷ Therefore, in *Advisory Opinion No. 6* the Standards Committee permitted a Member to designate a town meeting in areas newly added to his district as either a political (campaign) event or official (representational) one. But, by sending announcements of the meeting under the frank (which can be used only in the conduct of official business), the Member defined the event as official and, thus, could not use campaign or other private funds to conduct, promote, or advertise it without violating House Rule 24 or House Rule 23, clause 6(c).¹⁸ See Chapter 10 on official and outside organizations for the rules on hosting conferences and town hall meetings.

The legislative history of the unofficial office account rule indicates that the prohibition applies to accounts maintained by third parties for a Member’s benefit, even if they are not maintained for the Member’s direct use. The prohibition extends to any “process whereby funds are received or expended” regardless of whether an actual account or repository is maintained.¹⁹ In an interpretation of the unofficial office account prohibition, the House Select Committee on Ethics of the 95th Congress found the private, in-kind contribution of goods or services for official purposes to be banned under House Rule 24.²⁰ The Select Committee found, however, that the following would **not** violate House Rule 24:

- Services provided by units of federal, state, or local government;
- The occasional use of privately owned space to meet with constituents, when no public accommodations are reasonably available; and
- Intern or volunteer programs in a Member’s office that are primarily of educational benefit to the intern, as opposed to primarily benefiting the Member or office, and that do not give undue advantage to special interest groups. However, Members and their staffs may not personally raise, receive, or disburse any private contributions for intern programs associated with their office.²¹

Note that while Members may accept the services of other units of government for official events without violating House Rule 24, they may not

¹⁷ House Comm. on Standards of Official Conduct, *Advisory Opinion No. 6* (Sept. 14, 1982) (emphasis in original), *reprinted in* 128 *Cong. Rec.* H7294 (Sept. 21, 1982) and in the appendices to this Manual.

¹⁸ *Id.*

¹⁹ 123 *Cong. Rec.* 5941 (colloquy between Reps. Panetta and Obey).

²⁰ House Select Comm. on Ethics, *Advisory Opinion No. 6* (May 9, 1977), *reprinted in Final Report of the Select Committee on Ethics*, H. Rep. 95-1837, 95th Cong., 2d Sess. app. at 64-66 (1979) (hereinafter “*Final Report*”), and in the appendices to this Manual.

²¹ Intern programs are discussed in Chapter 7 on staff rights and duties.

conversely use official congressional resources to do the work of other entities, **even other public entities**.

Members and staffers are sometimes offered scholarships to participate in study programs that will assist them in the performance of their official duties. The Standards Committee has determined that accepting tuition, room, and board expenses to attend such a program does **not** violate House Rule 24, provided that the following criteria are met:

- The scholarship payments must be made from a sponsoring accredited educational institution of higher learning;
- The program must be primarily of educational benefit to the participants;
- Scholarship assistance may not be limited to congressional participants, but must be available to other, similarly situated individuals;
- The House employee's participation may not in any way give undue advantage to special interest groups or others with a direct interest in legislation; and
- Members and employees may not personally raise, receive, or disburse contributions to support the program.

The *Final Report* of the Select Committee also notes that House Rule 24 “is not intended in any way to restrict the Member’s use of his personal funds.”²² This principle was reiterated in the statutory codification of House Rule 24.²³ Thus, for example, Members may establish petty cash funds out of their personal funds to pay for miscellaneous office expenses.²⁴

Example 5. Member E would like to decorate his House office in a modern style of furniture not available from Office Furnishings. E may **not** accept the offer of a furniture store to supply his office with free furniture. E may purchase the furniture of his choice with his own money.

²² *Final Report*, *supra* note 20, at 25.

²³ See 2 U.S.C. § 59e(i).

²⁴ *Final Report*, *supra* note 20, at 25.

Example 6. The local cable television company in Member F's district offers her free cable service in her office so that her district staff may monitor events on the House floor. F may **not** accept the offer.

Official Travel

Official travel is not subject to the time limits imposed by the House gift rule (House Rule 25, clause 5).²⁵ To receive reimbursement, however, a House traveler must follow the usually traveled routes. A traveler who chooses an indirect route or stops along the way for nonofficial purposes will be personally responsible for any added expense.²⁶

The Committee on House Administration's regulations encourage the official use of travel awards acquired while on official business. The *Members' Handbook* states:

Free travel, mileage, discounts, upgrades, coupons, etc., awarded at the sole discretion of a company as a promotional award may be used at the discretion of the Member or the Member's employee. The [Committee on House Administration] encourages the official use of these travel promotional awards wherever practicable.

The Ethics Reform Act of 1989 clarified one point regarding the use of official and campaign vehicles.²⁷ The Bipartisan Task Force wished to approve the incidental use of these vehicles for nonofficial or nonpolitical purposes, respectively, to reflect the reality that a Member may attend numerous events in the course of a single day, some of which may be official in nature while others are political.²⁸ It would be impractical under such circumstances to require the Member to keep switching cars as the Member travels from one function to the next. Members should, however, maintain records of the mileage attributable to official, political, and personal trips to ensure that no account is subsidizing another and that any crossover use of a vehicle is indeed incidental. Thus, with respect to nonofficial use of official vehicles, the Task Force recommended "that such incidental use should be during the course of and along the route of a day's official itinerary, incidental to the day's official business, *de minimis* in nature, frequency and time consumed, and

²⁵ The matter of privately-sponsored, officially-connected travel is discussed in Chapter 3.

²⁶ *Members' Handbook*, Travel: Combined Travel.

²⁷ Pub. L. 101-194, § 503, 802(d)-(e), 103 Stat. 1716, 1773 (1989) (codified at 31 U.S.C. § 1344 note and 2 U.S.C. § 29d note).

²⁸ House Bipartisan Task Force on Ethics, *Report on H.R. 3660*, 101st Cong., 1st Sess. 34-36, 60 (Comm. Print, Comm. on Rules 1989), reprinted in 135 *Cong. Rec.* H9253, H9263, H9270 (daily ed. Nov. 21, 1989) (hereinafter "*Bipartisan Task Force Report*").

otherwise not constitute a significant activity or event.”²⁹ During the 109th Congress, the House Rules were amended to permit a Member to lease or purchase a motor vehicle with campaign funds and to use that vehicle on an unlimited basis for travel for both campaign and official House purposes. See Chapter 4 on campaign activity for further guidance.

Example 7. Member G has four official events to attend in his district one day. He will be traveling between events in the car leased for the use of his congressional district office and paid for out of official expenses allowance. As he drives from the second to the third event, he will pass by the dry cleaner. He may stop to pick up his dry cleaning, as it would be a permissible incidental nonofficial use of the car.

The Committee on House Administration should be consulted before seeking reimbursement from official allowances for official mileage. The Federal Election Commission should be consulted for guidance on reimbursement to the campaign for any personal mileage.

False Claims and Fraud

Federal law provides that official funds may be used only for the purposes for which they are appropriated.³⁰ When funds are used other than for their intended purposes, the misused funds may be recovered by the government for repayment to the United States Treasury.

The use of the MRA for other than official purposes, including double billing and claims for nonexistent expenses, could subject a Member, officer, or employee to civil penalties under the False Claims Act.³¹ Any citizen may initiate such a suit, in the name of the United States, by alleging that false, fraudulent, or fictitious claims have been made. The Department of Justice may then take over the suit.³² The government has also initiated civil suits against Members subsequent to their criminal prosecution for the same or related conduct. In one such suit, for example, the government contended that a former Member had used, and permitted his family and friends to use, his official telephone credit card to charge personal calls.³³

²⁹ *Id.* at 35, 135 *Cong. Rec.* H9263.

³⁰ 31 U.S.C. § 1301(a).

³¹ 31 U.S.C. § 3729. A civil penalty of \$5,000 to \$10,000, plus 3 times the amount of damages that the government sustains, may be imposed for knowing violations.

³² 31 U.S.C. § 3730.

³³ *United States v. Eilberg*, 507 F. Supp. 267, 272-73 (E.D. Pa. 1980); *see also United States v. Eilberg*, 536 F. Supp. 514 (E.D. Pa. 1982).

Committee on House Administration regulations require Members to certify and document all expenses before funds may be disbursed from the MRA.³⁴ The use of money received by submitting such a voucher for other than official expenses may involve a fraud against the government, in violation of 18 U.S.C. § 1001 (prohibiting making any false, fictitious, or fraudulent statements or using false writings, documents, or entries, concerning any matter within the jurisdiction of any agency or department of the United States). The Supreme Court has ruled that 18 U.S.C. § 1001 applies to false statements, writings, or other representations made to a disbursing officer of the U.S. House of Representatives in furtherance of a fraudulent scheme.³⁵ In another case, the U.S. Court of Appeals for the District of Columbia Circuit affirmed a Member's conviction of fraud for having used an official allowance "for purposes other than those intended by the appropriation and duly certified by the congressman."³⁶

Other criminal provisions of the United States Code prohibit:

- Making false or fictitious claims upon the United States;³⁷
- Conspiring to defraud the government by obtaining or aiding in obtaining the payment of false claims;³⁸
- Knowingly stealing or "convert[ing] to [one's] use or the use of another . . . any money or thing of value of the United States."³⁹

The Frank

The term "frank" refers to the autograph or facsimile signature of a person authorized to transmit matter through the domestic mails without prepayment of postage.⁴⁰ Members of Congress and certain officers of the House are authorized to send, as franked mail, material relating to the official business, duties, and activities of their offices.⁴¹ Use of the franking privilege is governed by federal law at 39 U.S.C. § 3210 *et seq.*

³⁴ *Members' Handbook*: Seeking Reimbursement: Vouchers.

³⁵ *United States v. Bramblett*, 348 U.S. 503 (1955).

³⁶ *United States v. Diggs*, 613 F.2d 988, 997 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 982 (1980).

³⁷ 2 U.S.C. § 287.

³⁸ 2 U.S.C. § 286; *see also* 18 U.S.C. § 371.

³⁹ 18 U.S.C. § 641.

⁴⁰ 39 U.S.C. § 3201.

⁴¹ 39 U.S.C. § 3210(b)(1).

Commission on Congressional Mailing Standards (The Franking Commission)

The bipartisan Commission on Congressional Mailing Standards, or the “Franking Commission,” was established under Public Law 93-191 with a three-fold mandate: (1) To issue regulations governing the proper use of the franking privilege; (2) to provide guidance in connection with mailings; and (3) to act as a quasi-judicial body for the disposition of formal complaints against Members of Congress who have allegedly violated franking laws or regulations. The Franking Commission is under the jurisdiction of the Committee on House Administration. Regulations issued by the Commission, set forth in the *Franking Manual* (or “*Red Book*”), should be consulted for authoritative guidance.

The Franking Commission⁴² provides guidance and gives advisory opinions on the frankability of mail matter.⁴³ The Franking Commission is authorized to hear complaints of abuses of the frank, subject to judicial review.⁴⁴

The Commission’s regulations are provided in the *Franking Manual*, which is available from the Committee on House Administration. The *Franking Manual* should be consulted by congressional employees involved in mailing material under the franking privilege. In addition to providing guidelines and requirements for franked mail, the *Franking Manual* includes examples of permissible and impermissible items or mailings.

“Dear Colleague” Letters

House-wide “Dear Colleague” letters may be transmitted by inside mail without frank or stamp. These “Dear Colleague” letters must be prepared on official letterhead, signed by the Member, and related to official business. They may include as attachments material prepared by other individuals or organizations, provided that each such item to be distributed is accompanied by a Member-signed cover letter, on official letterhead, endorsing the material.⁴⁵

⁴² See 2 U.S.C. § 501(a).

⁴³ 2 U.S.C. § 501(d).

⁴⁴ 2 U.S.C. § 501(e).

⁴⁵ *Members’ Handbook*. Inside Mail.

OFFICIAL AND OUTSIDE ORGANIZATIONS

Overview

Members and employees of the House of Representatives are frequently presented with opportunities to interact with various groups and organizations. In addition, Members are often asked to lend their names to outside undertakings or otherwise to assist in advancing private endeavors.

This chapter discusses the standards Members and employees must observe regarding the activities of organizations they establish to support their official functions. The chapter also addresses restrictions on working cooperatively with private, or “outside,” entities. A primary consideration in any contemplated arrangement with a private entity is the need to distinguish clearly between official congressional actions and outside activities in which the Member engages.

House Rule 24 prohibits the use of outside funds or in-kind support to supplement congressional allowances. And the reverse is also true: Members and employees of the House are prohibited from using official resources for any private purpose.¹

The decision whether to define an event as official (or not) generally lies within the discretion of the Member. This decision controls who can pay and how both Members and outside organizations can participate. If a Member determines that an activity is official, no private funds or in-kind support except a limited use of campaign funds, as described below, may be used to support the activity under House Rule 24. Conversely, if an event is deemed to be other than an official function, official resources may not be used. An activity may not be treated as both official and unofficial.² Thus, joint endeavors, which would be supported with a combination of private resources and official funds, are generally prohibited. This restriction precludes joint activities even with charitable or educational organizations, although not with governmental entities. These considerations do not prevent the personal involvement of Members in various functions, including by lending their names to support specific causes, provided no appearance of official sponsorship is created.

¹ See 31 U.S.C. § 1301(a).

² See House Comm. on Standards of Official Conduct, *Advisory Opinion No. 6* (Sept. 14, 1982), reprinted in the appendices.

Official Support Organizations

Official support organizations generally take one of two forms, either as a registered Congressional Member Organization (“CMO”) or a Congressional Staff Organization (“CSO”).

Congressional Member Organizations

The term “CMO” refers to a particular category of working group³ of Members organized to pursue common legislative objectives. Such entities must register with the Committee on House Administration. In addition to the House rules applicable to all Members, officers, and employees, CMOs are subject to specific Committee on House Administration regulations.⁴

Restrictions on CMOs flow from the principle that Members should not be allowed to do collectively – through a working group – what the Rules of the House prohibit Members from doing individually. Thus, like any other congressional organization, a CMO must comply with House Rule 24, which prohibits unofficial office accounts. As a general rule, no private resources (except the personal funds of Members), whether monetary or in-kind, may be used for the operation of a CMO.⁵ Conversely, any group that is supported by private resources may not receive support from official allowances and may not provide legislative services to Members. Thus, a CMO may not use official resources to support the operations of a private organization. Like other congressional offices, however, a CMO may distribute to Members reports, analyses, or research material prepared by private parties, as long as the real source of the material is disclosed.⁶

Because CMOs are considered extensions of the individual offices of participating Members, a member of a CMO may use employees and official resources under the control of the Member to assist the CMO in carrying out its

³ A CMO often may be referred to as a “caucus,” “task force,” “delegation,” “coalition,” or similar term. For purposes of this chapter, the term “CMO” refers to all Member organizations that are supported by official resources.

⁴ See Comm. on House Admin., *Members’ Congressional Handbook* (hereinafter “*Members’ Handbook*”). The Committee on House Administration has also issued regulations concerning expenditures from committee funds. See Comm. on House Admin., *Committees’ Congressional Handbook* (hereinafter “*Committees’ Handbook*”). Both handbooks are available on the Committee on House Administration’s website.

⁵ *Members’ Handbook*, *supra* note 4.

⁶ See *id.*

legislative objectives, but no employees may be appointed in the name of a CMO. A CMO may not be assigned separate office space.⁷

Congressional Staff Organizations

CSOs exist for the purpose of facilitating interaction among congressional staff. A CSO may only make incidental use of official resources in connection with its activities. Furthermore, the members of a CSO should contact the Committee on Standards of Official Conduct before accepting anything of monetary value from a private source. A CSO must register with the Committee on House Administration in each Congress in order to use official resources.

Informal Member and Staff Organizations

Members and employees may also associate with caucuses and other informal groups not registered as CMOs or CSOs. Informal Member caucuses are distinguishable from CMOs in that the former are dependent on the support of individual Members for their existence, while CMOs are recognized by the Committee on House Administration and may be supported directly by disbursements from official allowances (and by the House itself in the form of office space and facilities). House Rule 24 applies to both registered and informal organizations, however, because each plays a direct role in assisting individual Members in the conduct of their official responsibilities. Thus, an informal caucus organized by a group of Members to assist them in official matters may not invite an individual not in Congress to be a member of the caucus, nor may any private individual or organization contribute funds or other resources to support the caucus.

Staff may also associate with informal groups not registered with the Committee on House Administration. While an informal staff group may receive some *limited* private assistance notwithstanding House Rule 24, other considerations limit the amount of such assistance that may be accepted. As discussed in Chapter 2 concerning gifts, the House gift rule prohibits Members, officers, and employees from accepting gifts except as permitted by the rule. The receipt of anything of value by a group of employees primarily for their *own* benefit (as opposed to the benefit of the group as a whole) would be a gift subject to the rule, although its value would be apportioned among all the recipients. Additionally, the Code of Ethics for Government Service prohibits federal officials, including House Members and staff, from accepting “benefits which might be construed by reasonable persons as influencing the performance of official duties.”⁸ House staff involved with an informal group should exercise caution in accepting

⁷ See *id.*

⁸ Code of Ethics for Government Service ¶ 5, H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., Part 2, B12 (1958) (reprinted in the appendices).

anything of value from a private source, including by contacting the Committee as necessary.

Private Entities With Shared Goals

The House organizations described above often share goals with outside entities. Sometimes Members who have formed a CMO are affiliated with a private foundation or institute with similar objectives. Members may cooperate with these private entities, subject to all the generally applicable restrictions on involvement with outside entities, as described in this chapter.

No outside entity may imply official House sponsorship. The letterheads of a CMO and any outside organization with related goals should be sufficiently distinct as to avoid any confusion of identities. No outside organization may use any official funds or resources, including House office space, the frank, and staff time. Public and private funds must be kept absolutely separate. While outside entities may raise private funds, these funds may not be used to support any official functions. Official and unofficial organizations may not co-sponsor events or jointly undertake any activities. As to any event or activity that is sponsored by a CMO or outside organization, the identity of the sponsoring entity should be made clear. No House resources, including staff time, may be used to support any event or activity of the outside organization, and the Members of the CMO may not accept any resources of the outside organization (or any other private individual or entity) in furtherance of the CMO's events or activities.

Example 1. Several Members organize an informal caucus to assist them in foreign trade matters. An academic who has written extensively on foreign trade issues offers his assistance. While he may address the group and provide them with a copy of a report he had previously prepared, he may *not* be a regular member of the informal caucus.

Example 2. A group of private individuals has formed a coalition to promote environmental legislation. Member A may join the coalition, but she may not permit the coalition to suggest that it has any official standing within the House, nor may she permit the coalition to use any congressional resources, including staff time, in connection with the coalition's work.

Example 3. A trade association is interested in issues being considered by a CMO. The association offers to "sponsor" the CMO by providing staff support and hosting weekly breakfast meetings on the CMO's behalf. The Members may **not** accept the offer. However, the association may host its own reception for the CMO, provided that the

event is not characterized as a CMO function and the invitations for the event are issued by the association, not the CMO.

Example 4. An informal staff group is planning an open house to encourage new employees to join. The reception may be held in House facilities. A supermarket chain that does not retain or employ a federal registered lobbyist offers to provide sodas for the event. The offer may be accepted, provided that the acceptance would not give rise to an appearance of improper influence.

Member Advisory Groups

Members may also form advisory groups to receive advice and counsel from private individuals and organizations, subject to the following limitations. House Rule 24 applies to both CMOs and Member advisory groups because each plays a direct role in assisting individual Members in the conduct of their official responsibilities. Nevertheless, the giving of advice by informal advisory groups to a Member does not constitute the type of private contribution of funds, goods, or in-kind services to the support of congressional operations that is prohibited by House Rule 24, clauses 1 and 3.⁹ While the rule prohibits private activities in support of the operations of a House office that could be deemed an improper subsidy of official allowances, the rule was not intended to interfere with a Member's ability to communicate with and gain input from constituents, to consult with knowledgeable persons, or generally to gather any information that the Member deems relevant to the representational or legislative role. Thus, it is entirely appropriate for a Member (or group of Members) to constitute a group to advise them on any topic. Such groups do not register with the Committee on House Administration.

In forming an advisory group, however, a Member should exercise care to ensure that the "wall" between public and private activities and resources is not breached. Like volunteers, members of advisory groups, and any individuals associated with those members, should not be assigned work that supplants the regular duties of paid congressional staff. It would be a violation of House Rule 24 for Members or staff to assign members of the advisory panel to draft legislation, congressional statements, or other legislative materials. In addition, consistent with the House gift rule (House Rule 25, clause 5), Members and staff should not solicit the preparation of any such materials from the members of the advisory panel. Members and staff, however, are free to accept from advisory panel members any such materials that they prepare of their own volition, without any prompting.

⁹ See House Select Comm. on Ethics, *Advisory Opinion No. 6* (May 9, 1977), reprinted in the appendices.

Also relevant are the regulations of the Committee on House Administration applicable to CMOs. The main provision states that “[n]either CMOs nor individual Members may accept goods, funds, or services from private organizations or individuals to support the CMO. Members may use personal funds to support the CMO.”¹⁰

Because an advisory group is not itself an official House entity, and since the individual members of the group are not House employees, neither the advisory group itself nor any of its members individually are entitled to the use of the frank, official letterhead, congressional office equipment (including computers, telephones, and facsimile machines), office supplies (including official stationery and envelopes), work stations in congressional office space, congressional staff time, the services of the Congressional Research Service, or any other official resources. Members of the advisory group may not use the congressional office address or telephone number as a point of contact. Underlying the requirement for separation is 31 U.S.C. § 1301(a), which provides that official House resources may be used only for the purposes appropriated. Other statutory provisions and regulations of the Committee on House Administration further emphasize that official House allowances may be used only for official House business.

In addition, a Member should not authorize the members of the advisory group to represent themselves as having any official status or as acting on the Member’s behalf. They should not be issued congressional business cards or other forms of official identification. Furthermore, members of the advisory group may not contact federal agencies or any other entity on a Member’s behalf, even if they are seeking information that they believe will be helpful to the member. These individuals may contact agencies or persons on their own behalf, however, to gather such information.

Conferences and Town Hall Meetings

Members may participate in conferences and town hall meetings in a variety of ways. They may plan official conferences or town hall meetings that are arranged, promoted, and put on entirely or almost entirely using official allowances.¹¹ Alternatively, they may hold town hall meetings as political events, organized and funded by their campaigns. No official resources, including the frank and official staff time, may be used in support of such political gatherings. Generally, it is up to the Member arranging the event to determine whether a particular meeting is official or political in nature.¹² With regard to Member-

¹⁰ *Members’ Handbook*, *supra* note 4.

¹¹ The use of funds from a Member’s principal campaign in support of an official event is discussed in Chapter 4.

¹² *See Advisory Opinion No. 6*, *supra* note 2.

sponsored events, as a general rule no outside assistance may be accepted. Underlying this guidance is House Rule 24, which as previously discussed prohibits the acceptance of a private subsidy for official House business. This provision applies to all official House business, including events sponsored – that is, organized and conducted – by any House office. Further elaboration on House Rule 24 is provided below and in Chapter 9 on official allowances.

While Members may not “co-sponsor” or hold joint events with private entities, they may cooperate in private events by, for example, speaking, serving as honorary chairs, and even signing letters of invitation on behalf of private groups, provided the identity of the actual host is made clear. The rules concerning Member involvement in events sponsored by outside organizations are discussed in the next section.

Applicability of House Rule 24 to Events Sponsored by a House Office

With regard to events sponsored by a House office, the effect of House Rule 24 is generally to prohibit House Members and staff from accepting, in connection with any such event, any financial support, goods, or in-kind services having monetary value from any private individual or organization. Accordingly, an event sponsored by a House office:

- May not include a meal or any other refreshments that are paid for by a private organization or individual;
- May not be planned or organized, in whole or in part, by a private organization or individual; and
- May not take place on private property unless the sponsoring office pays fair value for its use, or unless one of the limited exceptions described below applies.

The rule applies to House office-sponsored events that take place in Washington, D.C., as well as those that take place in a Member’s congressional district or elsewhere. The intent of the rule is that events sponsored by a House office will be scheduled, organized, and conducted by House Members and staff, using House funds and resources (with limited exceptions that are described in this section). Of course, the funds and resources of Member offices and of committees must be used consistent with the rules set forth in, respectively, the *Members’ Handbook* and the *Committees’ Handbook* issued by the Committee on House Administration. When any question arises as to whether a proposed use of Member or committee allowances would be permissible, the Committee on House Administration should be contacted for guidance. There are several additional points Members and staff should bear in mind regarding House Rule 24 as they consider holding conferences, meetings, briefings, or other events, as follows.

In-Kind Support From Federal, State, or Local Governmental Entities. The rule prohibits only the **private** subsidy of official House business. Accordingly, as a general matter, Members and staff may accept any kind of in-kind support for office-sponsored events that a federal, state, or local governmental entity offers to provide.¹³ This includes support from public colleges and universities.

For example, if a community college in a Member's district offers to provide use of its auditorium for the Member's town hall meeting without charge, the offer may be accepted. In addition, when a House office is sponsoring an event on a particular subject – such as paying for college costs, retirement planning, or public health issues – government agencies with responsibilities in that area may offer to provide various kinds of assistance. Such assistance may also be accepted.

Appearance of Private Organizations and Individuals as Guests at an Official Event. House offices sometimes plan to have a representative of a private organization or other individual appear and make a presentation at an official event. For example, at a town hall meeting on home buying, the sponsoring House office may wish to have presentations from government officials whose agencies provide assistance for home purchasing and representatives of private businesses in that field. Such presentations at an event sponsored by a House office, as well as the distribution of appropriate informational materials by such private organizations, do not violate House Rule 24. Indeed, events such as a government procurement fair sponsored by a Member's office inherently involve private businesses setting up booths and providing information to participants.

However, when a private organization will be making a presentation at an official event, it should be clearly understood that the organization is merely a guest of the sponsoring office, and the office retains full control over the program for the event. **It should also be clearly understood that the purpose of that organization's presence is limited to providing information on a congressionally-related subject.** Thus, private businesses that appear at an official event are not authorized to enter into any commercial transactions or sign up clients while there, and membership organizations are not authorized to sign up new members or solicit funds. Any printed materials that a private organization distributes at an official event must comply with these same limitations. In addition, any reference to such an organization that is made in materials that the congressional office prints to promote the event (such as a mailing or a leaflet) must comply with the rules of the Committee on House Administration and the Franking Commission.

A private organization or individual may incur travel expenses in attending an event sponsored by a House office. Consistent with the above guidance, there is

¹³ See *Advisory Opinion No. 6*, *supra* note 9.

no violation of House Rule 24 if the invited organizations or individuals pay their own travel expenses to the event, or arrange – without any involvement of House Members or staff – for others to pay their travel expenses. In addition, a Member may use campaign funds to pay such travel expenses. *See* Chapter 4 on campaign activity.

Benefits That a Private Organization Routinely Offers Without Charge. A Member does not violate House Rule 24 by accepting from a private organization, for an official event, a benefit that the organization routinely offers without charge to similarly situated persons. For example, if a private organization that owns a meeting room routinely makes that room available without charge to any nonprofit or governmental entity that wants to use it, a House office does not violate the rule in using that room without charge.¹⁴ Before accepting a benefit under this exception, a House office should carefully verify (if possible, in writing) that the policy of the particular private organization is indeed routinely to offer that benefit without charge.

As another example, Members sometimes wish to sponsor a “health fair” or similar event in their congressional district where they offer, for example, blood pressure, cholesterol, or diabetes screening tests. In some communities, hospitals or other organizations may routinely offer such tests without charge at a range of community events. A Member may, consistent with the rule, allow such an organization to provide such free tests at a health fair sponsored by the Member’s congressional office. However, this is the **only** circumstance in which a private organization may provide a health test or screening at such an event. If an organization does not have a clearly established policy of routinely offering free tests at community events – including events sponsored by persons other than a Member – then a Member may not accept the organization’s offer to provide free testing at the Member’s event.

Charging a Registration Fee to Event Participants. A House office may, consistent with House Rule 24, charge a registration fee to attendees at an event it is sponsoring for the purpose of defraying the costs of food, beverages, and printed materials that are provided to the attendees.¹⁵ These are the **only** expenses that may be covered by the registration fee. The Committee’s guidance should be sought before charging a registration fee to cover other types of expenses.

¹⁴ The policy underlying this principle is that “the occasional use of privately owned meeting space where no other appropriate public accommodations are reasonably available for meeting constituents does not fall within the proscriptions of [House Rule 24].” *Advisory Opinion No. 6, supra* note 9. This policy applies primarily when a Member wishes to have an event for constituents who live in a remote and lightly populated area of the congressional district.

¹⁵ House Select Comm. on Ethics, *Final Report*, H. Rep. 95-1837, 95th Cong., 2d Sess., at 25 (1979).

When an office wishes to defray those costs in this manner, the registration fee must be calculated to cover those costs without generating a surplus, and the Member should establish a temporary, non-interest-bearing account to hold the fees collected. If a surplus is generated inadvertently, the excess funds must be either refunded on a prorata basis to the participants, or donated to charity. Instead of establishing an account, a Member may direct the participants to send the fee directly to the entity that will be providing the food and beverages, but the fees should not be collected by any private third party.

If a Member holds such an event on a regular basis, the Member may maintain a bank account with just enough funds from any surplus to cover bank charges and fees. Doing so would avoid the multiple costs that would be incurred in closing and re-opening accounts. However, maintenance of such an account at more than a minimum level would be impermissible. Thus, any surplus from an event beyond that necessary to keep the account open should be promptly refunded or donated to charity.

With the availability of these alternatives for the sponsorship of events, it is **very** important that Members decide early in the planning process what the nature of the event will be, and that they and their staff follow the rules applicable to the chosen alternative. The Standards Committee's staff is available to consult with Members and staff from the start of their planning process for the purpose of advising on permissible activities under the rules.

Involvement With Outside Activities and Entities

In working with outside entities, the distinction between activities that may be considered official and those that may not is not always readily apparent. Some guidance may be found in regulations issued by the Committee on House Administration. A House rule¹⁶ and various federal statutes¹⁷ give that committee responsibility for determining how official funds will be applied. Pursuant to this authority, regulations and accounting procedures for allowances and expenses of Members, committees, and employees of the House have been promulgated.¹⁸ These regulations identify a wide range of activities and specific expenses that may be supported from official allowances, and thus are reimbursable, as well as expenses that may not be reimbursed. The regulations specifically preclude reimbursement for some expenses that might otherwise appear to support official and representational duties (*e.g.*, certain travel outside of the district, holiday greeting cards, *etc.*).

¹⁶ House Rule 10, cl. 1(j)(1).

¹⁷ *See, e.g.*, 2 U.S.C. §§ 57, 57a, and 72b.

¹⁸ *See Members' Handbook* and *Committees' Handbook*, *supra* note 4.

In addition, when debating the prohibition of House Rule 23, clause 6, against the use of campaign funds for other than bona fide campaign purposes, the Members recognized that adopting a precise definition of what constitutes an “official” expenditure is difficult, if not impossible, to do.¹⁹ The conclusion reached in that debate was that the individual Member must determine if an activity, and the concomitant expense, is more properly characterized as official or campaign-related. In its *Final Report* to the 95th Congress, the Select Committee on Ethics concurred in this position.²⁰

Events With Outside Entities

Members may not co-sponsor or hold joint events with outside entities, but they may participate or cooperate in such events. This prohibition derives from rules discussed above that generally prohibit Members from accepting private financial or in-kind support for official activities, and require that official House resources be expended for official business of the House, and not for the business of any other entity, **public or private**.

A private entity may wish to involve a Member or group of Members in an event that it is hosting. A Member could be publicly identified as “cooperating” in the undertaking, and could appear at the event. Members may cooperate by, for example, speaking, serving as honorary chairs, or signing letters of invitation on behalf of (and on the stationery of) private groups, provided that the identity of the actual host is made clear. In such an instance, private resources would not be expended to subsidize legislative services or the Members’ performance of official duties. Moreover, the Member may not use any congressional resources for the event, including assigning employees to assist in organizing the event, using official letterhead or other expressions or symbols of official sponsorship, or using the frank or inside mail for sending invitations. The separate identity of the sponsor should be made clear to all participants, and no Member should take personal credit for an activity actually sponsored or hosted by another organization or individual. Instead, invitations and other literature should make clear that the private source is conducting the activity “in cooperation with” or “in conjunction with” the Member.

Example 5. Advocacy group Z was active in lobbying for Pub. L. 007, which was sponsored by Member C. After its enactment, Z plans to host a conference for its members and other interested parties explaining the impact of the new law. Because of C’s prominent role in the law’s passage, Z invites C to be the keynote speaker at the conference and wishes to list C’s name on the invitations. Z may, with

¹⁹ 123 *Cong. Rec.* 5900 (Mar. 2, 1977).

²⁰ H. Rep. 95-1837, *supra* note 15, at 16.

C's permission, send out the following invitations (on Z's letterhead and at Z's expense):

Advocacy Group Z
in cooperation with
Representative C
invites you to a conference
on Public Law 007

No official resources may be used for the conference.

While Members are not permitted to send an official "Dear Colleague" letter to invite guests to an event being sponsored by an outside entity, as a general matter a Member may send a "Dear Colleague" letter to follow up on an invitation to an event that was previously sent to House offices by the sponsoring organization, or to alert Members that they will be receiving such an invitation, provided the event is taking place in a congressional room or office.

Congressional Art Competition

One instance when cooperation with private groups has been explicitly recognized is the annual competition among high school students in each congressional district to select a work of art to hang in the Capitol, referred to as the Congressional Art Competition.²¹ Members may announce their support for the competition in official letters and news releases, staff may provide administrative assistance, a local arts organization or *ad hoc* committee may select the winner, and a corporation may underwrite costs such as prizes and flying the winner to Washington, D.C. Private involvement with the Congressional Art Competition in this manner is not viewed as a subsidy of normal operations of the congressional office. Members may not solicit on behalf of the arts competition in their district without Standards Committee permission unless the organization to which the donation will be directed is qualified under § 170(c) of the Internal Revenue Code. The guidelines concerning Member solicitations are discussed below.

Expressions or Symbols of Official Sponsorship

Members of Congress communicate with the public in various capacities. However, communications of a private (or political) nature, whether sent by a Member or by organizations outside the House, may not be prepared or mailed at official expense. In addition, such communications should not carry expressions or symbols that might improperly indicate official sponsorship or endorsement.

²¹ See H. Res. 201, 102d Cong., 1st Sess. (1991).

These restrictions are based on a provision of the Code of Official Conduct (House Rule 23, clause 11), which provides:

A Member, Delegate, or Resident Commissioner may not authorize or otherwise allow an individual, group, or organization not under the direction or control of the House to use the words “Congress of the United States,” “House of Representatives,” or “Official Business,” or any combination of words thereof, on any letterhead or envelope.

The rule is designed to prevent private organizations from using facsimiles of congressional stationery to solicit support or contributions, thereby implying that the message is endorsed by the Congress or is related to the official business of a Member. In providing a general interpretation of the rule, this Committee found that “the use of congressional letterhead facsimiles by private organizations is a deliberate misrepresentation which reflects discredit upon the House of Representatives.”²²

The rule encompasses reproduction of an official communication in another publication, as well as direct use of official-appearing documents. Even if the specific words mentioned in the rule are not used, authorizing a non-House individual or group to use letterhead, expressions, or symbols conveying the impression of an official communication from the Congress would violate the spirit of House rules,²³ as well as other statutory provisions, as discussed below.

Clause 11 of House Rule 23 is not intended to restrict a Member’s official communications or the ability to lend one’s name in support of a private group. Thus, a Member’s name and title may appear in the letterhead of an organization with which the Member holds an actual or honorary position, provided the letterhead does not indicate an official communication from the Congress.

Solicitation of Funds From or on Behalf of Outside Organizations

The Ethics Reform Act of 1989²⁴ enacted a government-wide restriction with respect to the solicitation of funds or other items of value by Members, officers, and employees. This provision, codified at 5 U.S.C. § 7353, bars Members, officers, and employees 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

²² House Comm. on Standards of Official Conduct, *Advisory Opinion No. 5*, reprinted in the appendices.

²³ See House Rule 23, cl. 2.

²⁴ Pub. L. 101-194, 101st Cong., 1st Sess. § 303, 103 Stat. 1716, 1746-47 (Nov. 30, 1989), as amended by Pub. L. 101-280, 101st Cong., 2d Sess., 104 Stat. 149 (May 4, 1990).

may be substantially affected by the performance of official duties. The only exceptions are those expressly permitted by the Standards Committee, as discussed below, as the supervising ethics office for the House. These statutory restrictions cover the solicitation of “anything of value,” regardless of whether the official personally benefits from it.

As a general matter, the Committee permits (without the need to seek prior Committee approval) Members and staff to solicit on behalf of organizations qualified under § 170(c) of the Internal Revenue Code – including, for example, § 501(c)(3) charitable organizations – subject to certain restrictions. Solicitations on behalf of non-qualified entities or individuals are decided on a case-by-case basis through the submission to the Standards Committee of a written request for permission to make such solicitations.²⁵ The general permission granted by the Committee does **not** extend to activities on behalf of an organization, regardless of tax status, that was established or is controlled by Members (or staff). In such circumstances the Member must seek and be granted written permission by the Standards Committee before making any solicitations on the organization’s behalf. Such permission will only be granted for organizations that exist for the primary purpose of conducting activities that are unrelated to the individual’s official duties. The Committee has determined that the only exceptions under the statute are for solicitations on behalf of the campaign and other political entities.²⁶ All permissible solicitations are subject to the following restrictions:

- No official resources may be used. Such official resources include House staff while working on official time, telephones, office equipment and supplies, and official mailing lists.
- No official endorsement by the House of Representatives may be implied. Thus, no letterhead or envelope used in a solicitation may bear the words “Congress of the United States,” “House of Representatives,” or “Official Business,” nor may the letterhead or envelope bear the Seal of the United States, the Congress, or the House.²⁷ It is permissible for Members to identify themselves as a Member of Congress, Congressman, Congresswoman, Representative, or by using their leadership title.
- No direct personal benefits may result to the soliciting official.

²⁵ For example, solicitations on behalf of persons who are in need of assistance because of a catastrophic injury or natural disaster, most tax-exempt organizations that are not § 501(c)(3) charitable organizations, and the Congressional Art Competition require prior, written approval of the Standards Committee.

²⁶ See Chapter 4 on campaign activity for a discussion of the laws and rules applicable to solicitations on behalf of a Member’s own campaign.

²⁷ See House Rule 23, clause 11; 18 U.S.C. § 713.

- Regulations of the House Office Building Commission generally prohibit soliciting and other nongovernmental activities in facilities of the House of Representatives.²⁸
- No suggestion may be made either that donors will be assisting the individual in the performance of official duties or that they will receive favorable consideration from the individual in official matters.
- Under a provision of the House gift rule, registered lobbyists or agents of foreign principals may not be targeted in any solicitation. Thus, *no* employee of a lobbying firm should be targeted in a solicitation. However, it is permissible to solicit a company, association, or other entity that employs registered lobbyists to lobby only for itself or its members, provided that the solicitation is directed to an officer or employee who is not a lobbyist.²⁹

Another provision of the gift rule sets out certain kinds of gifts that are expressly prohibited by the rule, including “[a]nything provided by a registered lobbyist or an agent of a foreign principal to an entity that is maintained or controlled by a Member”³⁰

Example 6. Member A is an honorary, unpaid board member of a § 501(c)(3) charitable organization. Member A may sign a fundraising letter for the charity, as a Member of Congress, on the organization’s own letterhead, in a mailing paid for at private expense, provided that registered lobbyists or foreign agents are not targeted in the mailing.

Support for Commercial Enterprises

Members and employees of the House are frequently approached by individuals or organizations seeking assistance for business undertakings. Obtaining information for constituents regarding government contracts and services, as well as helping them deal with government regulations, is an important

²⁸ House Office Building Comm’n, *Rules and Regulations Governing the House Office Buildings, House Garages and the Capitol Power Plant* ¶ 4 (February 1999) (hereinafter “*House Building Comm’n Regs.*”) (available from the Speaker’s Office).

²⁹ The provision of the gift rule noted above, clause 5(e)(2) of House Rule 25, states that among the kinds of gifts that are prohibited by the gift rule is –

A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal on the basis of a designation, recommendation, or other specification of a Member . . . or employee of the House (not including a mass mailing or other solicitation directed to a broad category of persons or entities), other than a charitable contribution permitted by paragraph (f) [*i.e.*, a charitable contribution in lieu of honoraria].

³⁰ House Rule 25, cl. 5(e)(1).

aspect of a Member's representational duties. In providing such services, care should be exercised never to "discriminate unfairly by the dispensing of special favors."³¹ Thus, Members and employees should undertake for one individual or business no more than they would be willing to do for others similarly situated. Members and staff should also avoid becoming too closely affiliated with a particular enterprise, to prevent any appearance that they are accruing benefits "by virtue of influence improperly exerted from [their] position in Congress."³² These and other related issues are addressed in Chapter 8 on casework. Several main points are discussed below.

The prohibition against use of House resources to support unofficial undertakings clearly applies to support of business endeavors. Thus, an outside entity should never be permitted to use congressional stationery to promote a commercial or other unofficial endeavor. When responding to requests for support, Members and staff should draft communications so that they do not lend themselves to misinterpretation as an official endorsement from the Congress, consistent with clause 11 of House Rule 23. Various House regulations restrict the mailing of commercial materials under the frank and limit the display or distribution of commercial materials in House office buildings.³³

When a House office wishes to have a representative of a private organization or other individual appear and make a presentation at an event the House office is sponsoring, it should be clearly understood that the organization is merely a guest of the sponsoring office, and the office retains full control over the program for the event. It should also be clearly understood that the purpose of that organization's presence is limited to providing information on a congressionally related subject. Thus, private businesses that appear at an official event are not to enter into any commercial transactions or sign up clients while there, and membership organizations are not to sign up new members or solicit funds.

Conversely, a Member may be asked to participate personally in an event that is sponsored by an outside organization, such as privately-sponsored Medicare prescription card events. In participating in such an event, Members and staff must avoid becoming too closely affiliated with any commercial entity, in order to avoid any appearance that they are accruing benefits by virtue of improper influence exerted from their position in Congress, or are dispensing special favors.³⁴ Thus, in participating in a privately-sponsored event a Member must take care to avoid any action that may be perceived as an endorsement of the private sponsor.

³¹ Code of Ethics for Government Service, ¶ 5, *supra* note 8.

³² House Rule 23, cl. 3.

³³ See ¶ 4 *House Building Comm'n Regs.*, *supra* note 28.

³⁴ See Code of Ethics for Government Service, ¶ 5 *supra* note 8.

Unofficial Representational Activities

Several provisions of the federal criminal code and House rules restrict the ability of Members and staff to become involved with outside organizations in ways that require interaction with the federal government. An in-depth discussion of these provisions is found in Chapter 5 on outside employment. The following is an overview of several main considerations.

Members, officers, and employees are prohibited by 18 U.S.C. § 203 from asking for or receiving compensation for “representational services” rendered in relation to a matter or proceeding in which the United States is a party or has a direct and substantial interest. Included are proceedings before any government department or agency. Additionally, House Rule 23, clause 3, prohibits Members and their staffs from receiving compensation by virtue of influence improperly exerted from a position in Congress.

Even absent compensation, employees are restricted by law and rule from private representation of others before the United States government or the pursuit of others’ federal claims when not in the proper discharge of official duties. Section 205 of title 18 prohibits employees from acting as agent or attorney for another person or organization in prosecuting a claim against the United States or in connection with “any covered matter.” A covered matter includes “any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.”³⁵

These provisions have generally been enforced in instances when an official’s public duties have conflicted with private interests. Enforcement of the criminal code is the responsibility of the Department of Justice.

Another provision that would apply to an employee seeking to represent others in federal matters is House Rule 25, clause 6. That rule states:

A person may not be an officer or employee of the House, or continue in its employment, if he acts as an agent for the prosecution of any claim against the Government or if he is interested in such claim, except as an original claimant or in the proper discharge of official duties.

As with 18 U.S.C. § 205, there is no requirement in the rule that the representation involve any compensation.

³⁵ 18 U.S.C. § 205(h).

General ethical standards and rules restrict the ability of both Members and employees to engage in undertakings inconsistent with congressional responsibilities. Even the appearance of a conflict may adversely affect public perceptions and confidence. No special advantage should be provided to an outside organization with which a Member is affiliated. Thus, the Committee has consistently advised Members not to take an active role in lobbying Congress on behalf of a private organization since that would conflict with a Member's general obligation to the public.

Example 7. Employee A has developed expertise in a subject. Whether or not that knowledge was gained through her congressional employment, she may not represent others in the area of her expertise before a federal government agency, with or without compensation.

Example 8. Employee B may not help a private, not-for-profit organization in his spare time by lobbying Congress or executive agencies.

Example 9. Member C may sit on the board of an organization which, among other things, lobbies Congress, but the Member should not personally supervise the organization's lobbying activities since such action on behalf of a single private group would appear inconsistent with her responsibilities to the public at large.

Mailing Lists and Outside Organizations

A Member's publicized involvement in legislation or an issue of national concern may generate significant correspondence from outside the district. The names gathered comprise a mailing list that would be potentially valuable to organizations outside the Congress. However, either permitting a private organization to respond to letters received by a Member in an official capacity or providing outside groups access to an official mailing list would violate House rules and Committee on House Administration regulations.³⁶

A Member may purchase a mailing list from an outside organization or unofficial entity (including his or her own campaign committee), at fair market value, provided the list is available on the same terms to any other organization that wants to purchase it (including the campaign of the Member's opponent).³⁷ For the purchase to be reimbursable from official allowances, it must meet the criteria ordinarily attendant to such expenses. In addition, the contents of any list must be purged of any campaign or politically related data before it may be used officially.

³⁶ See House Rule 24; *Members' Handbook*, *supra* note 4.

³⁷ See *Members' Handbook*, *supra* note 4.

These rules should not be interpreted technically so as to infringe upon a Member's ability to communicate with constituents. Members may receive membership lists, sets of labels, or names from organizations operating in their districts if the information either forms the basis for an official mailing or is added to the Member's database with the organization's permission. In either instance, a Member may not accept a mailing list unless the source makes it generally available on similar terms to others.

Example 10. Member A may not share with an outside organization the names of individuals who have written to him on a particular issue.

Example 11. Member B may use official funds to purchase from her campaign committee a list of constituents, as long as any other person could also purchase the list for the same price, and political identifiers are deleted from the list. However, before entering into such a transaction, B's congressional staff should consult with the Committee on House Administration for guidance.

Example 12. The local chamber of commerce maintains a mailing list of businesses in Member C's district. The chamber may provide Member C with a set of labels for use on an official mailing on the same terms as it would give the list to others. The office may not use the mailing to help the chamber update or correct its list.

APPENDICES

Code of Ethics for Government Service

72 Stat., Part 2, B12 (1958), H. Con. Res. 175, 85th Cong.

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including officeholders:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

1. Put loyalty to the highest moral principals and to country above loyalty to Government persons, party, or department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and 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.
6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly which is inconsistent with the conscientious performance of his governmental duties.
8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
9. Expose corruption wherever discovered.
10. Uphold these principles, ever conscious that public office is a public trust.

(Passed July 11, 1958.)

Committee on Standards of Official Conduct Advisory Opinion No. 1¹

SUBJECT

On the Rule of a Member of the House of Representatives in Communicating With Executive and Independent Federal Agencies.

REASON FOR ISSUANCE

A number of requests have come to the Committee for its advice in connection with actions a Member of Congress may properly take in discharging his representative function with respect to communications on constituent matters. This advisory opinion is written to provide some guidelines in this area in the hope they will be of assistance to Members.

BACKGROUND

The first Article in our Bill of Rights provides that “Congress shall make no law . . . abridging the . . . right of the people . . . to petition the government for a redress of grievances.” The exercise of this Right involves not only petition by groups of citizens with common objectives, but increasingly by individuals with problems or complaints involving their personal relationships with the Federal Government. As the population has grown and as the Government has enlarged in scope and complexity, an increasing number of citizens find it more difficult to obtain redress by direct communication with administrative agencies. As a result, the individual turns increasingly to his most proximate connection with his Government, his representative in the Congress, as evidenced by the fact that congressional offices devote more time to constituent requests than to any other single duty.

The reasons individuals sometimes fail to find satisfaction from their petitions are varied. At the extremes, some grievances are simply imaginary rather than real, and some with merit are denied for lack of thorough administrative consideration.

Sheer numbers impose requirements to standardize responses. Even if mechanical systems function properly and timely, the stereotyped responses they produce suggest indifference. At best, responses to grievances in form letter or by other automated means leave much to be desired.

Another factor which may lead to petitioner dissatisfaction is the occasional failure of legislative language, or the administrative interpretation of it, to cover adequately all the merits the legislation intended. Specific cases arising under these conditions test the legislation and provide a valuable oversight disclosure to the

¹ Issued January 26, 1970. The Opinion should be read in conjunction with subsequent legislation, regulations, and rules, such as 5 U.S.C. § 557(d), relating to prohibited *ex parte* communications to administrative agencies.

Congress.

Further, because of the complexity of our vast federal structure, often a citizen simply does not know the appropriate office to petition.

For these or similar reasons, it is logical and proper that the petitioner seek the assistance of his Congressman for an early and equitable resolution of the problem.

REPRESENTATIONS

This Committee is of the opinion that a Member of the House of Representatives, either on his own initiative or at the request of a petitioner, may properly communicate with an Executive or Independent Agency on any matter to:

- request information or a status report;
- urge prompt consideration;
- arrange for interviews or appointments;
- express judgments;
- call for reconsideration of an administrative response which he believes is not supported by established law, Federal Regulation, or legislative intent;
- perform any other service of a similar nature in this area compatible with the criteria hereinafter expressed in this Advisory Opinion.

PRINCIPLES TO BE OBSERVED

The overall public interest, naturally, is primary to any individual matter and should be so considered. There are also other self-evident standards of official conduct which Members should uphold with regard to these communications. The Committee believes the following to be basic:

1. A Member's responsibility in this area is to all his constituents equally and should be pursued with diligence irrespective of political or other considerations.
2. Direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representative role.
3. A Member should make every effort to assure that representations made in his name by any staff employee conform to his instruction.

CLEAR LIMITATIONS

Attention is invited to United States Code, Title, 18, Sec. 203(a) which provides in part:

Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly, demands, seeks, receives, accepts, or agrees to receive or accept any compensation

for any representational services, as agent or attorney or otherwise, rendered or to be rendered either receives or agrees to receive, either personally or by another

(A) at a time when such person is a Member of Congress .

. . . ; or

(B) at a time when such person is an officer or employee of the United States in the . . . legislative . . . branch of the Government . . . in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court, court-martial, officer, or any civil, military, or naval commission . . .

shall be subject to the penalties set forth in section 216 of this title.²

Section 216 provides for imprisonment for up to one year for engaging in the conduct, and for imprisonment for up to five years knowingly engaging in the conduct, plus fines.

The Committee emphasizes that it is not herein interpreting this statute but notes that the law does refer to any compensation, directly or indirectly, for services by himself or another. In this connection, the Committee suggests the need for caution to prevent the accrual to a Member of any compensation of any such services which may be performed by a law firm in which the Member retains a residual interest.

It should be noted that the above statute applies to officers and employees of the House of Representatives as well as to Members.

² As amended by the Ethics Reform Act of 1989, P.L. 101-194.

Committee on Standards of Official Conduct Advisory Opinion No. 2¹

SUBJECT

On the subject of a Members' Representational Allowance.²

REASON FOR ISSUANCE

A number of requests have come to the Committee for advice on specific situations which to some degree, involve consideration of whether monies appropriated for Members' Representational Allowance are being properly utilized.

A summary of the responses to these requests forms the basis for this Advisory Opinion which, it is hoped, will provide some guidelines and assistance to all Members.

BACKGROUND

The Committee requested the Congressional Research Service to examine in depth the full scope of the laws and the legislative history surrounding Members' clerk hire. The search produced little in the way of specific parameters in either case law or congressional intent, concluding that “. . . no definitive definition was found . . .” It is out of this absence of other guidance the Committee feels constrained to express its views.

The clerk hire allowance [now included in the Members' Representational Allowance (MRA)]³ for Representatives was initiated in 1893 (27 Stat. 757). The law providing it spoke of providing clerical assistance to a Representative “in the discharge of his official and representative duties . . .” The same phraseology is used today in each Legislative Appropriations bill and by the Clerk of the House in his testimony before the Subcommittee on Legislative Appropriations. An exact definition of “official and representative duties” was not found in the extensive materials researched. Remarks concerning various bills, however, usually refer to “clerical service” or terms of similar import, thus implying a consistent perception of the term as payment for personal services.

¹ Issued July 11, 1973.

² This memorandum has been updated to reflect current terminology. During each session of Congress, each Member gets a single allowance, known as the Members' Representational Allowance (MRA) to conduct official and representational duties. The Clerk Hire Allowance, the Official Expenses Allowance, and Official Mail Allowance have all been merged into the MRA.

³ *Id.*

SUMMARY OPINION

This Committee is of the opinion that the funds appropriated for [Members to hire staff] should result only in payment for personal services of individuals, in accordance with the law relating to the employment of relatives, employed on a regular basis, in places as provided by law, for the purpose of performing the duties a Member requires in carrying out his representational functions.

The Committee emphasizes that this opinion in no way seeks to encourage the establishment of uniform job descriptions or imposition of any rigid work standards on a Member's staff. It does suggest, however, that it is improper to levy, as a condition of employment, any responsibility on any clerk to incur personal expenditures for the primary benefit of the Member or of the Member's congressional office operations, such as subscriptions to publications, or purchase of services, goods or products intended for other than the employee's own personal use.

The opinion clearly would prohibit any Member from retaining any person from his [MRA] under either an express or tacit agreement that the salary to be paid him in lieu of any present or future indebtedness of the Member, any portion of which may be allocable to goods, products, printing costs, campaign obligations, or any other non-representational service.

In a related regard, the Committee feels a statement it made earlier, in responding to a complaint, may be of interest. It states: "As to the allegation regarding campaign activity by an individual on the House [payroll], it should be noted that, due to the irregular time frames in which the Congress operates, it is unrealistic to impose conventional work hours and rules on congressional employees. At some times, these employees may work more than double the usual work week - at others, some less. Thus employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods. If, during the periods employees are free and they voluntarily engage in campaign activity, there is no bar to this. There will, of course, be differing views as to whether the spirit of this principle is violated, but this Committee expects Members of the House to abide by the general proposition."

Select Committee on Ethics Advisory Opinion No. 6¹

SUBJECT

Acceptance of in-kind services for official purposes.

REASON FOR ISSUANCE

House Rule 24 provides that no funds may be paid into any unofficial office account subsequent to March 2, 1977, and that such accounts must be abolished by January 3, 1978. The definition of an unofficial office account included in the new Rule focuses on the most common form, *i.e.*, a privately subsidized account used to supplement official allowances.

The legislative history of Rule 24 refers to an unofficial office account as a fund, repository, or process whereby funds are received or expended. The reasons for adopting new Rule 24, as presented in the Financial Ethics report of the Commission on Administrative Review (H. Doc. 95-73, February 14, 1977), emphasize that eliminating private support of the public's business should be the primary objective of a new Rule.

The Commission strongly believes that private funds should be used only for politically-related purposes. Official allowances should reflect the necessary cost of official expenses. . . . To suggest otherwise would be to accept or condone the continuation of the present system [of unofficial office accounts] which, at the very least, allows for the appearance of impropriety, and at worst, creates a climate for potential "influence pedaling" through private financing of official expenses of Members of Congress.

Although it is clear that acceptance of monetary contributions to sustain such accounts was perceived as conduct to be prohibited by the new Rule, questions have been raised concerning the application of Rule 24 to acceptance of certain in-kind services (*e.g.*, office supplies and equipment, district office space, etc.) and whether such items will be treated differently than monetary contributions for purposes of the Rule 24 prohibition.

The Select Committee finds that no distinction can be made between in-kind and monetary contributions. Whether the private support alluded to in the Commission's report is in the form of a monetary contribution or in the form of an in-

¹ Issued on May, 9, 1977. This opinion has been updated, *inter alia*, to reflect the renumbering of the House Rules in the 106th and 107th Congresses.

kind service is not relevant in view of the intended prohibition against the private financing of official business. Moreover, it can hardly be argued that donation of in-kind services is any less an infusion of private support for official business than is the donation of money.

At least two precedents for treating in-kind services as monetary contributions are found in regulations promulgated by the Federal Election Commission (FEC) and the Internal Revenue Service (IRS). Those regulations require the inclusion of in-kind donations as contributions to unofficial office accounts, thus confirming the Select Committee's understanding that money and in-kind contributions should be treated the same.

The FEC defines an "office account" (unofficial office account) as "an account established for the purposes of supporting the activities of a Federal or State officeholder which contains campaign funds and funds donated. . . ." (11 CFR 113.1(b)). A contribution includes a thing of value, including in-kind services. (11 CFR 100.51(a), 100.52 (d)(1)). Therefore, according to the FEC definitions, unofficial office accounts may encompass in-kind services or resources.

Similarly, the IRS considers the donation of in-kind resources as a "contribution," applying the criterion of "anything of value." The IRS treats the contribution of in-kind services or resources used for official purposes as personal income to the Member, just as it treats contributions to unofficial office accounts.

In sum, the Select Committee finds that for the purposes of applying Rule 24, no logical distinction can be drawn between the private contribution of in-kind services and the private contribution of money, and that both perpetuate the very kind of unofficial office accounts and practices that are prohibited by House Rule 24.

Equally clear, however, is that various in-kind services and functions provided by federal, state and local government agencies do not fall in the same category as private donations of money or in-kind services. Thus, the provision of office space or rooms for constituent meetings, etc., by a state or local government would not be prohibited by application of this Rule. Of course, the occasional use of privately owned meeting space where no other appropriate public accommodations are reasonably available for meeting constituents does not fall within the proscriptions of the new Rule.

Additionally, application of the Rule would not prohibit a Member from continued participation with various educational intern, fellowship, or volunteer programs. Members have long recognized that there is an inherent educational and professional benefit in interns, fellows, and volunteers viewing first hand the Legislative Branch of government, and that there are compelling public policy considerations for encouraging such programs. There is nothing in the legislative history that suggests an intent to discontinue these programs, nor has there surfaced

any evidence of abuses resulting from the infusion of private money into public business causing conflict of interest or other situations intended to be prohibited by the New Rule. The Select Committee believes these programs are of primary benefit to the persons involved and notes that interns, fellows, and volunteers are not on the payroll of the House, nor are they considered to be employees of the House of Representatives. Therefore, this interpretation of Rule 24 does not apply to intern programs, provided the internships are primarily for educational purposes and do not give undue advantage to special interest groups or others with a direct interest in legislation.

However, it is clear that a Member would be violating the intent and the spirit of House Rule 24 if he attempted to supplement his official allowance by raising, receiving, or disbursing contributions to hire or support interns in his office. Therefore, it follows that a Member and his staff are prohibited from personally raising, receiving, or disbursing contributions used to support an educational intern, fellowship, or volunteer program. This holding represents the only effective method for restricting the potential to collect and maintain, directly or indirectly, unofficial funds for supplementing staff assistance and the officially provided clerk-hire allowance.

SUMMARY OPINION

For purposes of House Rule 24, the private contribution of in-kind services for official purposes is prohibited. However, Rule 24 does not apply to services provided by federal, state and local government agencies, or to the occasional use of privately-owned meeting space where not public accommodations are reasonably available for meeting with constituents. Nor does Rule 24 apply to interns or volunteers in a Member's office, based on the understanding that such intern programs are primarily of educational benefit to the intern and do not give undue advantage to special interest groups. However, Members and their staffs may not personally raise, receive or disburse any private contributions for intern programs associated with their offices.

Select Committee on Ethics
Advisory Opinion No. 13¹

**SUBJECT: GENERAL INTERPRETATION OF HOUSE RULE 25, DEALING
WITH LIMITATIONS ON MEMBERS' OUTSIDE EARNED INCOME**

1. General

(a) *Purpose of the rule.* House Rule 25, was adopted on March 2, 1977 [as Rule 47] as part of the financial ethics code. Originally limited to Members, it was amended by the Ethics Reform Act of 1989 to include officers and senior employees.² Besides restricting the type of employment in which covered individuals can engage, the Rule limits the amount of “outside earned income” a Member, officer, or senior employee may have.³ Two major considerations prompted adoption of the Rule. First, substantial payments to a Member, officer, or senior employee for rendering “personal services” to outside groups presents a significant and avoidable potential for conflict of interest. Second, it is inconsistent with the concept that being a Member, officer, or senior employee of Congress is a full-time job to permit substantial earnings from other employment.

(b) *Annual Limitation generally.* Clause 1 of the Rule prohibits a Member, officer, or senior employee from having outside earned income attributable to a calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule as of January 1 of such calendar year.⁴ In order for an item to be counted against this limitation for a particular year: (i) it must be “outside earned income” within the meaning of Rule 25; and (ii) it must be attributable to that year. The Rule defines outside earned income to mean “wages, salaries, fees, and other amounts received or to be received as compensation for personal services actually rendered.”

Outside earned income is attributed to the year in which the Member’s, officer’s or employee’s right to receive it becomes certain (*i.e.*, under the accrual method) rather than to the year of receipt. Therefore, receipt of income earned during a particular year cannot be deferred to a future year in which the Member, officer, or employee has less outside earned income or until after the individual retires from Congress. The

¹ This Opinion was originally issued in October 1978. It has been updated to reflect changes to applicable rules and laws made by the Ethics Reform Act of 1989, P.L. 101-194, the Federal Employees Pay Comparability Act, P.L. 101-509, and the Legislative Branch Appropriations Act, 1992, P.L. 102-90.

² Senior employees are those compensated at or above 120 percent of the GS-15 base salary.

³ In addition to being a Rule of the House of Representatives, the outside earned income limitations of Rule 25 have been enacted into law. *See* 5 U.S.C. Appendix 4, §§ 501-505. As a result, besides action by the Committee on Standards of Official Conduct and House of Representatives, the limitations may be enforced through civil action by the Attorney General.

⁴ The Executive Level II salary is normally the same as that paid to a Member of Congress.

limitation is not applicable to compensation for personal services rendered prior to the effective date of Rule 25, or prior to the effective date of the individual's becoming a Member, officer, or employee, if later. Outside earned income is determined without regard to any community property law. That is, even though under applicable community property law one-half of any personal service income earned by an individual is deemed to belong to the spouse, all of such income is considered earned income of the Member, officer, or employee for purposes of the Rule.

(c) Real facts controlling. The limitations imposed by Rule 25 may not be avoided by the characterization or disposition of any payment for services rendered. In all cases, the real facts will control. For example, if a spouse, child, other relative of a Member, officer, or employee, or trust for the benefit of any of them, is paid an amount, however denominated, and the true consideration for the payment is services rendered by the Member, officer, or employee, the amount will be deemed outside earned income by the Member, officer, or employee. Similarly, the label or characterization placed on a transaction, arrangement or payment by the parties may be disregarded for purposes of the Rule. Thus, if amounts received or to be received by a Member, officer, or employee are in fact attributable to any significant extent to services rendered by the Member, officer, or employee, the characterization of such amounts as partnership distributive share, dividends, rent, interest, payment for a capital asset, or the like, will not serve to prevent the application of Rule 25 to such amounts. Moreover, the Rule 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.

In short, income may not be recharacterized in order to circumvent the Rule. Indeed, characterization of income is essentially irrelevant. For purposes of this Opinion, there are two types of income – earned and unearned. If the compensation received is essentially a return on equity, then it would generally not be considered to be earned income. If the income is not a return on equity, then such income would generally be considered to be earned income and subject to the limitation.

When such amounts received or to be received by a Member, officer, or employee are designated as salary, fees, or commissions, the overriding presumption is that such amounts, almost by definition, constitute compensation for personal services rendered. An honorarium from a speaking engagement, for example, is obviously outside earned income.⁵ With respect to income from business ventures, the Committee is convinced that in the overwhelming majority of cases, there will be little or no difficulty in determining whether certain income is subject to the Rule. Again, the facts of each individual case will govern applicability of the Rule, but the principles set forth in this Opinion should be followed in making that determination.

⁵ The Ethics Reform Act of 1989 banned receipt of all honoraria by Members, officers, and senior employees, effective January 1, 1991. However, employees paid below the senior staff pay level would be allowed to receive honoraria for speeches, appearances, and articles unrelated to their official duties or status in Congress. See chapter 5 of this volume for more discussion on this point.

2. Outside earned income from business ventures

This Advisory Opinion differentiates between businesses in which both capital and personal services are material income-producing factors and those in which personal service is the only material income-producing factor.

(a) Personal service businesses. Where a Member, officer, or employee owns or participates in a personal service business, such as a professional practice, in which capital is not a material income-producing factor, his entire share of the profits is deemed to be outside earned income for purposes of the Rule, except to the extent he can demonstrate that his income in fact represents a return on investment. In general, capital is not a material income-producing factor where gross income of the business consists principally of fees, commissions or other compensation for personal services performed by an individual. Thus, the practice of one's profession by a doctor,⁶ lawyer, insurance broker, or real estate agent will not, as such, be treated as a business in which capital is a material income-producing factor. Even where the practitioner may have a substantial investment in professional equipment or in the physical plant constituting the office from which he conducts his practice, the capital investment would be regarded as only incidental to the professional practice.⁷

Moreover, the fact that the Member, officer, or employee may not personally participate to any substantial extent in the rendering of services to the customers or clients of the business, all such services being performed by assistants or associates, would not serve to justify classification of his or her share of the business income as other than earned income. If a Member, officer, or employee shares in the profits of a personal service organization without being required to perform any significant productive services, absent a strong showing to the contrary, it will be presumed that the Member, officer, or employee is being compensated for attracting or retaining clients, and such income is considered outside earned income.

Law practices. Since there are a number of attorneys serving in the House of Representatives, for purposes of example, application of the Rule to the practice of law is specifically addressed in this Opinion. Those Members, officers, and senior employees who previously maintained an active affiliation with a law firm generally find it necessary to enter into a buy-out agreement with their partners in order to liquidate their equity in the firm. This is perfectly appropriate. Amounts received or receivable by a Member, officer, or employee in payment for an interest in a law firm or similar organization upon retirement from it would not constitute outside earned income so long as the amounts payable do not, in effect, represent a continuing

⁶ The House amended Rule 25 during the 108th Congress in 2003 to exempt the practice of medicine from this provision. However, as discussed above, this restriction is also codified as part of the Ethics in Government Act of 1978 (5 U.S.C. app. 4 § 502(a)), and no corresponding change has been made to the statute. Thus, while the House rule has removed the fiduciary restriction to allow the practice of medicine for compensation, the statutory ban remains in effect.

⁷ Note, however, that Members, officers, and senior employees covered by the earned income limit are also totally precluded from receiving compensation for practicing a profession which involves a fiduciary relationship. See House Rule 25, clause 2; 5 U.S.C. app. 4 § 502.

participation in the law firm and the total amount payable is not in excess of the fair market value of the interest of the Member, officer, or employee. Normally such arrangements call for fixed payments at annual or more frequent intervals over a period of years. In some cases, however, the retiring partner and those continuing the business are unable to agree on a value for one or more assets of the business, such as contingent fee cases or accounts receivable of dubious value, and the buy-out agreement may accordingly provide that the retiring partner will be paid a share of such items, if, as and when they are collected.

Payments to a Member, officer, or employee under a buy-out agreement will not be deemed to be outside earned income where the arrangements are entered into in good faith and agreed to by all the partners, and reflect the usual and customary value of the equity generally accorded to partners in similar law practices in the same geographic area. A buy-out agreement should also be reasonably calculated to avoid the Member's, officer's, or employee's participation in post-withdrawal profits. In general, the proceeds resulting from a buy-out agreement are taxed as capital gains. If such an agreement is not limited to liquidation of the Member's, officer's or employee's equity in the firm, and includes payments which might be taxable as earned income, any such payments under the agreement might be such to the earned income limitation. The Committee notes that Rule 25, clause 2, prohibits a Member, officer, or employee from receiving compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship. Even if no compensation is received, the Member, officer, or employee may not permit his or her name to be used by any such firm, partnership, association, corporation, or other entity. This limitation parallels the American Bar Association Code of Ethics, which states in part: "A lawyer who assumes . . . a legislative post . . . shall not permit his name to remain in the name of a law firm or to be used in the professional notice of the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm." (ABA Disciplinary Rule 2-102B).

(b) Business where capital is a material income-producing factor. Capital is a material income producing factor if a substantial portion of the gross income of the business is attributable to the employment of capital, as reflected, for example, by a substantial investment in inventories, plant, machinery or other productive equipment. This Opinion discusses the application of the Rule in such cases to income from a fully taxable corporation and income from an unincorporated business or Subchapter S corporation.

(1) Taxable corporations

If a Member, officer, or employee renders services to a fully taxable business corporation, he or she will not be deemed to realize outside earned income from such services beyond the amount of salary or other form of extra compensation designated as consideration for the personal service rendered. In those cases where the sole financial interest of the Member, officer, or employee is stock in the corporation, an increase in the net assets of the corporation would not be considered to be subject to the limitation. An increase in the value of stock or other property is not ordinarily

treated as earned income either for tax purposes or under generally accepted accounting principles; and any increase in the corporation's net profits would be subject first to corporate income tax and then to personal income tax before the Member, officer, or employee receives any resulting increment to his or her wealth through a dividend or sale of stock. The foregoing has not application, of course, to income which a Member, officer, or employee earns through personal efforts in dealings with third parties but causes to be paid to a corporation and distributed. For example, if a Member, officer, or employee incorporates for the purpose of conducting a personal service, and all fees are paid to the corporation from which "profits" are then drawn, all such amounts would be considered outside earned income.

In sum, if a Member, officer, or employee renders services to a taxable corporation, only the salary or other compensation received for those services would be subject to the limitation, but not any increase in the corporation's assets or a share of the profits. This ruling is consistent with the intent of the Commission on Administrative Review which recommended the limitation on outside earned income. In its report (House Document No. 95-73), the Commission stated that ". . . Members should be able to render personal services to manage or protect their equity . . . without having to allocate these personal services toward the 15 percent limitation."

(2) Subchapter S corporations, partnerships, unincorporated businesses

In those cases where the Member, officer, or employee has an ownership interest in a business for which he or she also performs services, as in a subchapter S corporation or a partnership, some part of the individual's share of the profits of that business may reflect the value of services, and thus would be considered outside earned income. The determining factor is whether the Member's, officer's, or employee's personal services generate significant income for the business. Of course, if the Member, officer, or employee receives formal income from the business, for example, payments designated as salary or fees, such amounts would be considered earned income. Additionally, in those cases where other partners or associates are providing capital and managerial experience, and the principal role of the Member, officer, or employee is to refer clients to the business or to help retain existing customers or clients, the Member, officer, or employee would be deemed to be rendering income-producing services, even though the actual time involved might be minimal. However, if the Member, officer, or employee is engaged primarily in the general oversight and management or protection of his or her investment, such services would not be deemed to generate significant income. Such non-income generating services would include consultation with other management officials, analysis of financial and other reports, participation in formal meetings, and making decisions concerning the general operations and investment strategy of the business. The application of the Rule to the various types of business organizations as discussed in this Opinion applies equally to a business owned or controlled by the Member, officer, or employee or the individual's family. Again, the determining factor is whether or not the personal services of the Member, officer, or employee actually generate any significant income for the business. In those situations where the services rendered by the Members, officers, or employees are incidental and do not

generate significant income, no part of a share of the profits or any increase in the assets of the business would be deemed to be outside earned income.

The Committee emphasizes that the definition of earned income in Rule 25, which excludes amounts received by a Member, officer, or employee from a family controlled business “so long as the personal services actually rendered by the individual . . . do not generate a significant amount of income,” was simply intended to assure Members, officers, and employees that they could continue to make decisions and take actions necessary to manage or protect their equity in a family trade or business, and would not be forced to divest themselves of their family business interests. As with any business, a Member, officer, or employee would not be required to allocate a share of the profits of the business as outside earned income when the facts and circumstances show that the income is in reality a return on investment. For example, if the Member, officer, or employee owns a hardware store and the services rendered are incidental, such as occasionally serving customers, the income received from the business is basically a return on equity, (i.e., profits from the sale of hardware goods) and is not generated by the services of the Member, officer, or employee. Similarly, if the Member, officer, or employee gives overall direction to the management of the business for a family owned farm, the income received from the farming operations is not generated by the personal services of the Member, officer, or employee, but rather is basically a return on equity from the sale of crops or dairy products. These types of businesses are distinguishable from a personal service business where income is essentially produced by the services of the individual affiliated with the organization.⁸

(3) When income is attributable

(a) Income from pre-effective date services. The Rule excludes from earned income any compensation derived by a Member, officer, or employee for personal services rendered prior to the effective date of the Rule or prior to the effective date becoming a Member, officer, or employee, if later. This provision would serve to exclude from the limitation, for example, most renewal commissions paid to a Member, officer, or employee with respect to life insurance policies sold prior to the effective date, or similar commissions received by a Member, officer, or employee with respect to pre-employment leases in which the individual was the leasing agent. In most such arrangements, payment of the commission is not contingent upon the performance of any future services by the recipient; the only contingency is that the insured or lessee continue to pay premiums or rent, as the case may be. The exclusion would also apply to a fee received by a Member, officer, or employee who was a lawyer where all the work had been done prior to the effective date. However, this exclusion would not apply to income derived from the continuing or future business of clients brought into the firm prior to the effective date of the Rule.

⁸ Note, however, that no compensation could be received for serving as an officer or director of the family owned business. See Rule 25, clause 2; 5 U.S.C. app. 4 § 502.

(b) *Application of the limitation to part years.* Where an individual becomes a Member, officer, or employee during any calendar year, the Rule applies only to outside earned income of the individual attributable to periods after the effective date of becoming a Member, officer, or employee. For the balance of the calendar year, the applicable limitation will be 15% of the Executive Level II salary for that part of the year, and only outside earned income attributable to that part is counted against the limitation.

(4) *Other provisions*

(a) *Payments attributed to deferred compensation plans.* Amounts received by a Member, officer, or employee from a tax-qualified pension, profit sharing or stock bonus plan are not treated as outside earned income, as provided in the Rule, nor are contributions to such a plan counted as outside earned income. Amounts received by a Member, officer, or employee from a non-qualified deferred compensation plan which were earned in a year prior to the effective date of the Rule or the individual coming to Congress are not outside earned income for the year received under the principle explained in section 3(a), provided no part of the consideration for such payments is current services. Amounts set aside for a Member, officer, or employee under a non-qualified deferred compensation plan for services rendered after the Rule's effective date or coming to Congress will generally constitute outside earned income of the Member, officer, or employee for that year, even though they will not be received until a later year, unless receipt is subject to a substantial risk of forfeiture.

(b) *Assignment of income to charities.* Notwithstanding the general holding of this Opinion that a Member, officer, or employee cannot deflect the application of the Rule by assigning to another income which in fact was earned through rendering services, earned income assigned by a Member, officer, or employee to a tax-exempt charity will not be counted as part of the outside earned income of the Member, officer, or employee, provided the individual is not a "disqualified person" with respect to the recipient organization within the meaning of section 4946(a) of the Internal Revenue Code. For the purposes of this portion of the Rule, such income would not be deemed to have been "received" by the Member, officer, or employee provided that he did not personally benefit in any way from such income.⁹

⁹ The Internal Revenue Service has interpreted the definition of "gross income" in section 61 of the Internal Revenue Code as follows:

Where . . . pursuant to an agreement or understanding, services are rendered to a person for the benefit of an organization described in section 170(c) and an amount for such services is paid to such organization by the person to whom the services are rendered, the amount so paid constitutes income to the person performing the services. (See the last sentence of Reg. § 1.61-2(c).)

If an amount paid to charity is treated as constructive income, a Member, officer, or employee could possibly receive an indirect tax benefit. For example, such amounts may be counted as adjusted gross income for the purposes of computer entitlement to make contributions to a tax-favored "Keogh" retirement plan. The Member, officer, or employee would also be allowed to take an itemized deduction for a charitable contribution under section 67 of the Internal Revenue Code. Any tax or other financial benefit on account of payments directed to charity in consideration of personal services may result in the Member, officer, or employee being viewed as receiving income for the purposes of Rule 25 and 5 U.S.C. § 502.

(c) *Honoraria*. Clause 1(a)(1)(B) of Rule 25 provides that a Member, officer, or employee of the House may not receive any honorarium. Clause 3(c) defines “honorarium” to exclude any actual and necessary travel expenses incurred by the Member, officer, or employee in connection with the event. Payment of actual and necessary travel expenses of a relative accompanying the Member, officer, or employee are also excluded from the limitation.

A payment in lieu of an honorarium may be made directly by the sponsor of an event to a qualified charitable organization on behalf of a Member, officer, or employee. No such payment may exceed \$2,000, nor may it be made to a charitable organization from which the Member, officer, or employee or a parent, sibling, spouse, child, or dependent relative of the Member, officer, or employee derives any financial benefit.¹⁰ Section 7701(k) of the Internal Revenue Code provides that an amount so paid to a charitable organization is not deemed income to the Member, officer, or employee for tax purposes, nor is any charitable deduction allowed.

¹⁰ See Rule 25, clause 1(a)(3); 5 U.S.C. app. 4 § 501(c).

**Committee on Standards of Official Conduct
Advisory Opinion No. 5¹**

SUBJECT

General interpretation of House Rule 23, Clause 11.

BACKGROUND AND DISCUSSION

House Rule 23, clause 11 [originally adopted on January 15, 1979] provides as follows:

A Member . . . may not authorize or otherwise allow an individual, group, or organization not under the direction and control of the House to use the words “Congress of the United States,” “House of Representatives,” or “official business,” or any combination of words thereof, on any letterhead or envelope.

This addition to the Code of Official Conduct took effect upon adoption. The primary purpose of clause 11 is to prohibit Members from authorizing private organizations to use a facsimile of their congressional stationery to solicit contributions or political support in a direct mail appeal. Such use of congressional letterhead by non-House groups is clearly intended to convey the impression that the solicitation is endorsed by the Congress or is related to the official business of the Member who signs the letter. In adopting clause 11, the House has determined that the use of congressional letterhead facsimiles by private organizations is a deliberate misrepresentation which reflects discredit upon the House of Representatives.

Rule 23, clause 11, generally would prohibit a Member from authorizing a non-House individual or group to use that Member’s congressional stationery, or any letterhead that purports to be an official communication from the Congress, in any mailing paid for with non-appropriated funds. This prohibition would apply to any letterhead designed in such a manner as to convey the impression that the letter is an official communication. The Committee emphasizes that Rule 23, clause 2, directs Members to “adhere to the spirit and the letter of the Rules of the House” Therefore, since clause 11 is intended to prohibit solicitations by private interest groups on facsimiles of congressional stationery, it would appear to be a violation of the spirit of that rule if a Member authorized a non-House group to use letterhead that did not contain the words prohibited by clause 11, but which was designed to convey the impression that it is an official communication from the Congress. For

¹ Issued on April 4, 1979. This opinion has been updated to reflect the renumbering of the House Rules in the 106th and 107th Congresses.

example, letterhead which purports to be an official communication by containing a Member's committee assignments, office address, and the "congressional seal" would be contrary to the spirit of clause 11. The Committee notes in this regard that title 18 of the United States Code, section 713, specifically prohibits use of the United States seal for the purpose of conveying a false impression of sponsorship by the United States Government.

The clause 11 prohibition is not intended in any way to restrict a Member's communication with the public or his right to lend his name to any organization or interest group. The rule imposes no restriction on a Member's freedom to sign a fund-raising appeal or other solicitation of political support on a non-House group's own letterhead, and be identified as a Member of Congress. Similarly, a Member's name and title may appear in the letterhead of a non-House organization (*e.g.*, if the Member serves in an official capacity or honorary position with that organization), provided that the letterhead does not purport to be an official communication from the Congress.

The terms "non-House individual, group, or organization" as used in the rule would not extend to a Member's principal campaign committee. The Committee understands that the clause 11 prohibition on lending congressional letterhead to private groups was not intended to prohibit a Member from using a facsimile of official stationery in fund-raising activities for his own campaign.² This interpretation is based on the debate in the Democratic Caucus which recommended adoption of clause 11 on December 6, 1978, and on the legislative history of a similar amendment that was offered to the Ethics in Government Act during the 95th Congress (*see* CONGRESSIONAL RECORD, September 20, 1978, page H10212). It should also be noted that the Senate Select Committee on Ethics issued an advisory opinion imposing comparable prohibitions on use of official stationery by non-Senate groups, and did not apply those prohibitions to a Senator's campaign committee.

The Committee emphasizes again in this regard that the clear intent of clause 11 is to prohibit special interest groups and other private organizations from using congressional letterhead for political solicitations. Such use of congressional stationery facsimiles conveys the false impression that the private group is sponsored or endorsed by the House of Representatives. This is not the case when a Member, strictly on his behalf rather than for a third party, uses a facsimile of his personalized stationery for campaign fund raising appeals or other political mailings. With respect to campaign solicitations, the Committee notes that such letters must include a notice regarding the availability of campaign reports filed with the Federal Election

² Other restrictions, however, including the Deceptive Mailings Prevention Act of 1990, P.L. 101-524, pose difficulties with regard to use of a facsimile of congressional letterhead in a campaign. *See* 39 U.S.C. §§ 3001, 3005.

Commission, as required by title 2 of the United States Code, section 435.³ Moreover, with respect to other political mailings, the Committee does not believe that it is improper for a Member to use his congressional letterhead to send, for example, thank you notes to contributors or other politically-related letters which may not be mailed under the frank. The Committee is confident that use of a Member's personalized congressional letterhead for political mailings on his own behalf would not be misinterpreted as an official communication from the House of Representatives or an endorsement by the Congress. In sum, the abuse of congressional stationery that clause 11 is designed to correct is not present in the case of a Member's campaign committee, nor was the rule intended to prohibit a Member's use of his congressional letterhead for political mailings.

The prohibitions of clause 11 also would not apply to the Democratic and Republican Congressional Campaign Committees, nor would it apply to the various informal Member organizations or caucuses composed solely of Members of Congress. The ad hoc Member groups, which are quasi-official in nature, and the party campaign committees would not be considered "non-House" organizations for purpose of Rule 23, clause 11.

³ This provision was repealed by the Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, title I, § 105(1), 93 Stat. 1354 (Jan. 8, 1980). Section 441d(a) of Title 2 of the United States Code now requires that campaign fund solicitations and other candidate political communications clearly state that it has been paid for by the candidate's campaign committee.

Committee on Standards of Official Conduct Advisory Opinion No. 6¹

SUBJECT

General Interpretation of House Rule 23, Clause 6, and House Rule 24.

REASON FOR ISSUANCE

The Committee has received an inquiry concerning the application of House Rule 23, clause 6, and Rule 24, to the use by a Member of campaign funds to advertise or promote a town meeting in his district and in areas newly added to the district by reapportionment after notice of the meeting has been mailed under the frank.

BACKGROUND

House Rule 23, clause 6, prohibits a Member from expending funds from his campaign account that are not attributable to “bona fide campaign or political purposes.” Rule 24, clause 1, bars a Member from maintaining, or having maintained for his use, “an unofficial office account.” These provisions were included in the amendments to the House Rules made by H. Res. 287, 95th Congress, adopted pursuant to the recommendations of the Commission on Administrative Review. The Commission, in explaining the purpose of these rules, observed (*Financial Ethics*, H.R. Doc. No. 95-73, 95th Congress, 1st Session 23 (1977)):

The Commission strongly believes that a wall should be built between political expenses and public money, that private money should not be relied upon to pay for the conduct of the House’s official business. It regards such a wall as critically important to the integrity of the representative process

Although federal statutory law (2 U.S.C. § 439a) generally would allow a Member to use excess campaign funds to defray ordinary and necessary expenses incurred in connection with holding office, the amendment to House Rule 23, clause 6, made by H. Res. 287, 95th Congress, specifically prohibits this practice. As the Select Committee on Ethics observed in its *Final Report* (H.R. Report No. 95-1837, 95th Congress, 2nd Session (1979)): “The intent of this rule is to restrict the use of

¹ Issued on September 14, 1982. This opinion has been updated to reflect changes to applicable rules made by the Ethics Reform Act of 1989, Pub. L. No. 101-194, 101st Cong., 1st Sess., 103 Stat. 1716 (Nov. 30, 1989), as amended by Pub. L. No. 101-280, 101st Cong., 2d Sess., 104 Stat. 149 (May 4, 1990). It also reflects the re-numbering of the House Rules in the 106th and 107th Congresses. The opinion should also be read in light of the amendment to House Rule 24 in the 109th Congress to permit the limited use of funds from a Member’s principal campaign committee to pay for certain official expenses. See Chapter 4 concerning Campaign Activity for further guidance.

campaign funds to politically related activities and to thus prohibit their conversion to personal use or to supplement official allowances.” Rule 24 has a similar purpose. It was intended to eliminate the “potential for ‘influence peddling’ through private financing of the official expenses of Members of Congress.” *See Financial Ethics, supra*, at 18.

In adopting these rules, the House was aware that “there are gray area expenditures which could be classified (as) either political or official” *See Final Report of the Select C23committee on Ethics, supra*. The rules do not include any definition of “political” or “official” expenses. As Representative Frenzel observed during the debate on H. Res. 287, 95th Congress (123 Cong. Rec. 5900 (March 2, 1977):

What is political is a matter of fact rather than of definition . . .

(W)hat we have tried to do is to confine expenses from political accounts or volunteer committee accounts to expenses that are political. *By and large, that definition will be left up to the Member and to his volunteer committee*, and as it is broadly defined under the election law. (Emphasis added.)

The Select Committee on Ethics, in its *Final Report, supra*, also expressed the view that Members should make the determination as to whether gray area expenditures are to be classified as political or official.

SUMMARY OPINION

This Committee agrees that the determination as to whether a particular expense is for political or official purposes should be made by the individual Member. A gathering of a Member’s constituents at a “town meeting” could be either a political (campaign) event, or an official (representative) one. In such a case, the Member is free to use his judgment in defining it as political or official. However, this Committee is of the view that once the Member makes his determination, he is bound by it. A single event cannot, for purposes of the House rules, be treated as *both* political and official.

When a Member sends announcements of a town meeting under the frank, he has thereby made the decision that the event is an official one. Under Federal law, the franking privilege may only be used in the conduct of official business. 39 U.S.C. § 3210(a)(1). Having thus defined the event as an official one, he may not then use campaign funds (Rule 23, clause 6) or any other private funds (Rule 24) to conduct, promote, or advertise the event. (It is noted that Rule 24 was intended to prohibit the expenditure of private monies for official purposes even if no particular account or repository as such is maintained. See the colloquy between Representatives Panetta and Obey during the debate on H. Res. 287, 95th Congress, 124 Congressional Record 5941 (March 2, 1977).

Because the town meetings that are the subject of this opinion were promoted in the first instance by means of the frank, they thereby become official and representational functions and it is an improper mixture of public and campaign funding to promote such official town meetings as political events. In a case such as this, the wall between public and private funding is easily placed.

FURTHER CONSIDERATIONS

Having stated the general rule that certain events or activities may be deemed “official” or “political” but not both, and that the Member must exercise his judgment in making such determinations, there are long established practices not offensive to the principle of separation that are not affected by this Advisory Opinion.

One such practice is a campaign committee making use of materials originally generated and used solely in the course of the Member’s official and representational duties once the official use of the material is exhausted. For example, a Member may, at official expense and by means of the franking privilege, reproduce and distribute otherwise frankable reprints from the Congressional Record, radio and television programs, correspondence from public officials, etc. The Committee believes that Rule 24, which prohibits outside contributions for official purposes, does not ban a Member from later distributing such items at campaign committee expense provided *all* the expenses associated with reproducing and distributing the material are paid from campaign funds and the material itself or the context in which it is presented clearly establishes its campaign or political purposes and thus its non-official use, so that there would be no appearance that private funds are supplementing official allowances.

Another such practice occurs if an individual or organization *without the Member’s consent*, expends funds or donates services to advertise or promote some official or representational activity of the Member. For example, no violation would occur if a radio to television station in a Member’s district promoted a Member’s previously announced town meeting in public service announcements.

Policy Regarding Amendments to Financial Disclosure Statements

MEMORANDUM OF APRIL 23, 1986

TO: All Members, Officers, and Employees of the U.S. House of
Representatives

FROM: Committee on Standards of Official Conduct
Julian C. Dixon, Chairman
John T. Myers, Ranking Minority Member

The purpose of this letter is to inform all Members, officers, and employees who are required to file Financial Disclosure (FD) Statements pursuant to the Ethics in Government Act (EIGA) of 1978, 5 U.S.C. app. 4, § 101 *et seq.*,¹ whose filings are under the jurisdiction of this Committee, of a revision to the Committee's policy regarding the submission of amendments to earlier filed disclosure statements. The new policy, discussed below, will be implemented immediately and all future statements as well as the amendments thereto will be handled in accordance therewith.

To date, it has been the general policy of this Committee to accept amended FD Statements from all filers and consider such amendments to have been timely filed without regard to the duration of time between the date of the original filing and the amendment submitted thereto. Over time, this practice has resulted in the Committee having received a significant number of amendments to disclosure statements under circumstances not necessarily reflecting adequate justification or explanation that the amendment was necessary to clarify previously disclosed information or that a disclosure was omitted due either to unavailability of information or inadvertence. Moreover, and particularly in the case of an individual whose conduct (having EIGA implications) is under review, the Committee has been faced with the somewhat inconsistent tasks of identifying the deficiencies in earlier FD Statements while simultaneously accepting amendments to such statements that may well have been intended to have a mitigating or even exculpatory effect. Quite clearly, both time and experience have established the need to make some adjustments to the financial disclosure process in order to alleviate such perceived problems and create a more logical and predictable environment for filers to meet their statutory obligation under EIGA and the parallel responsibility of this Committee to implement that law. It is in this context that a new policy for accepting and considering amended disclosure statements is being implemented.

¹ Title I of EIGA was recodified following enactment of the Ethics Reform Act of 1989, P.L. 101-194, 103 Stat. 1716. Legislative branch disclosure requirements were previously found at 2 U.S.C. § 701 *et seq.* The 1989 statute combined separate provisions applicable to all three branches into the one title now found at Appendix 4 of title 5, United States Code.

To begin, effective immediately, an amendment to an earlier FD Statement will be considered timely filed if it is submitted by no later than the close of the year in which the original filing so affected was proffered. There will be, however, a further caveat to this “close-of-year” approach. Specifically, an amendment will not be considered to be timely if the submission thereof is clearly intended to “paper over” an earlier mis/non filing or there is no showing that such amendment was occasioned by either the prior unavailability of information or the inadvertent omission thereof. Thus, for example, so long as a filer wishes to amend within the appropriate period of prescribed “timeliness” and such amendments are not submitted as a result of, or in connection with, action by this Committee that may have the effect of discrediting the quality of the initial filing(s), then such amendments will be deemed to be presumptively good faith revisions to the filings. In essence, the amendment, per se, should be submitted only as a result of the need to clarify an earlier filing or to disclose information not known (or inadvertently omitted) at the time the original FD was submitted. In sum, the Committee will adopt a two-pronged test for determining whether an amendment is considered to be filed with a presumption of good faith: First, whether it is submitted within the appropriate amendment period (close-of-year); and second, a “circumstance” text addressing why the amendment is justified. In this latter regard, filers will be expected to submit with the amendment a brief statement on why the earlier FD is being revised. Thus, amendments meeting the two-pronged test will be accorded a rebuttable presumption of good faith and this Committee will have the burden to overcome such a presumption. Conversely, any amendment not satisfying both of the above-stated criteria will not be accorded the rebuttable presumption of good faith. In such a case, the burden will be on the filer to establish such a presumption.

The Committee is well aware that disclosure statements filed in years past may be in need of revision. To this end, the Committee has determined that a grace period ending at the close of calendar year 1986 will be granted during which time all filers may amend any previously submitted FD Statements. Again, while an amendment may be timely from the standpoint of when it is submitted – *i.e.*, within the current year – information regarding the need for and, hence, appropriateness of the amendment will also be considered *vis-à-vis* the rebuttable presumption of good faith.

In sum, the effect of the new policy is to establish a practice of receiving and anticipating that FD Statements and amendment thereto will be submitted within the same calendar year and that departures based on either timeliness or circumstances can be readily identified for scrutiny and possible Committee action. As noted, implementation of the new policy will affect not only statements filed this year but also all statements filed in prior years in light of the grace period being adopted.

Should you have a question regarding this matter, please feel free to contact the Committee staff at 225-7103.

Gift Rule Provisions Applicable to Loans to Members, Officers, and Employees¹

May 23, 1997

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Standards of Official Conduct

James V. Hansen, Chairman

Howard L. Berman, Ranking Democratic Member

Questions have arisen as to whether – under the gift rule that took effect on January 1, 1996 [currently clause 5 of House Rule 25] – Members and staff may accept loans from persons other than financial institutions, and if so, on what terms. The purpose of this memorandum is to advise that the Committee interprets the gift rule to allow the acceptance of a loan from a person other than a financial institution, provided that the loan is made in a commercially reasonable manner, including requirements that the loan be repaid, and that a reasonable rate of interest be paid.

Background. The reason that loans are a concern under the gift rule is quite obvious: depending on the terms, a transaction labeled as a *loan* may in fact constitute an impermissible *gift* to a Member, officer or employee, in whole or in part.² However, at least from the late 1970's through 1995, the standard in effect in the House regarding loans to Members and staff was quite clear: a loan was *not* deemed a gift to the official provided that it was made in a commercially reasonable manner, including requirements for repayment and a reasonable interest rate. This standard, which included no restriction on the source of loans, was stated in an advisory opinion of the House Select Committee on Ethics issued on May 9, 1977, and it is stated as well in the most recent edition of the *House Ethics Manual* (102d Cong., 2d Sess. (April 1992)), on p. 32.

However, the gift rule that took effect on January 1, 1996 has created some uncertainty on this matter, because it does not explicitly incorporate the standard on loans set forth above. Instead, the rule defines the term “gift” to include any

¹ This memorandum has been updated in several respects, including to reflect the renumbering of the House Rules that occurred at the beginning of the 106th Congress and in the 107th Congress.

² One or more loans or claimed loans were at issue in several Committee proceedings, including *In the Matter of Representative James C. Wright, Jr.* (Committee Statement of April 13, 1989, pp. 82-83), and *In the Matter of Representative Charles H. Wilson of California* (H.R. Rep. No. 930, 96th Cong., 2d Sess., p. 4 (1980)).

loan (clause 5(a)(2)(A)), and it provides that Members, officers and employees may accept

[o]pportunities and benefits that are . . . in the form of loans from banks and other financial institutions on terms generally available to the public [clause 5(a)(3)(R)(v)].

The rule also includes a provision which allows the acceptance of “[a]nything for which the Member, . . . officer, or employee of the House pays the market value” (clause 5(a)(3)(A)). The rule further provides (in clause 5(f)) that this Committee has sole authority to interpret the rule.

The Committee’s Ruling, and the Reasons for It. As stated above, the Committee is now announcing that it interprets the current gift rule – and specifically the rule’s “market value” provision quoted above – to allow the acceptance of loans from persons other than financial institutions, provided that they are on terms which satisfy the requirements which the Committee had previously utilized in evaluating loans: that is, the terms are commercially reasonable, including requirements for repayment and a reasonable rate of interest. Put another way, while the current gift rule clearly allows the acceptance of loans from financial institutions (on terms generally available to the public), the rule does *not* prohibit Members and staff from accepting loans from anyone other than a financial institution. The reasons that the Committee has decided to interpret the rule in this manner are as follows.

The plain meaning of the gift rule provision on loans – clause 5(a)(3)(R)(v), quoted above – is *not* that a loan is acceptable *only if* it is from a financial institution, but rather that a loan from such an institution *is* acceptable if on terms generally available to the public. The provision does *not* define the universe of acceptable loans.

Indeed, there are a number of *other* gift rule provisions under which Members and staff may conceivably accept a loan or other extension of credit, including the provisions allowing acceptance of things of value from relatives and personal friends (clause 5(a)(3)(C), (D)), and the provisions allowing acceptance of benefits offered to the public, or to a group or class in which membership is unrelated to congressional employment, or to members of an organization such as a credit union (clause 5(a)(3)(R)(i)-(iii)). Because the rule does not limit Members and staff to accepting loans from financial institutions, they may likewise accept a loan where they satisfy the requirement of clause 5(a)(3)(A) of the gift rule: that is, they pay “market value” for the funds borrowed.

The Committee also reviewed the legislative history of the current gift rule, and consistent with the above review of the rule’s terms, the Committee found

nothing indicating an intent to restrict the source of loans to financial institutions. Furthermore, as noted above, as of the time the current gift rule was approved, the standard allowing acceptance of loans from persons other than financial institutions, on proper terms, had been a longstanding one in the House³. Thus to prohibit Members and staff from accepting loans from anyone other than a financial institution would be a major change in the governing standard, and the Committee is reluctant to effect such a significant change absent an indication that the change was intended.

In this regard, the Committee also notes that the provision of the current gift rule on loans from financial institutions – like a number of other provisions of the current rule – was drawn almost verbatim from the Executive Branch gift regulations. Thus it appears that this provision was included in the gift rule as a drafting convenience, and was not the result of a conscious effort to change the prior House practice regarding loans. It is also noteworthy that for the Committee to interpret the gift rule differently, so as to limit the source of loans to financial institutions, could have absurd results, such as that Members and staff could not accept loans from relatives (although, pursuant to the rule, they clearly may accept gifts from relatives), or could not utilize a credit card issued by a department store or gas station.

Finally, in the Committee's view, where a loan to a Member, officer, or employee is made on commercially reasonable terms, and those terms are adhered to, he or she pays "market value" for the funds borrowed, and hence the loan is permissible under clause 5(a)(3)(A) of the gift rule. As the Office of Government Ethics observed recently with regard to the Executive Branch gift standards, "While the term 'gift' is broadly defined in the Standards . . . the term ought not to be understood as encompassing items or services for which the employee 'pays the fair value.'"

The Need for Caution in Accepting Loans from Persons Other Than Financial Institutions. Whether a loan proposed to be made to a Member, officer, or employee is on terms that are "commercially reasonable" – and hence acceptable under the interpretation announced here – will depend on a number of facts and circumstances. Thus *before* entering into any loan arrangement with a person other than a financial institution, Members and staff should contact the Committee for a review of the proposed terms, and a determination by the Committee on whether the loan is acceptable under the gift rule. Those who accept such a loan without prior Committee consideration run a risk of being found in violation of the gift rule, and possibly other provisions of law as well.

³ The established nature of this standard is also indicated by the fact that according to financial disclosures, a number of Members and staff have loans from individuals or entities that are not financial institutions.

It also bears noting that merely because a proposed loan would be from a financial institution does not necessarily mean that it is acceptable under the gift rule. A loan from a financial institution must be on terms generally available to the public in order to be acceptable under clause 5(a)(3)(R)(v) of the rule. However, loans from relatives (as defined in the Ethics in Government Act), as well as extensions of credit from credit card issuers on terms generally available to the public, are clearly permissible under other provisions of the gift rule and require no Committee review.

Any questions on this matter, as well as questions regarding any other provision of the gift rule, should be directed to the Committee's Office of Advice and Education at 5-7103.

February 23, 1998

MEMORANDUM FOR ALL MEMBERS, OFFICERS AND EMPLOYEES *

FROM: **Committee on Standards of Official Conduct**
 James V. Hansen, Chairman
 Howard L. Berman, Ranking Democratic Member

SUBJECT: Outside Earned Income Restrictions on Members and Senior Staff

Introduction. The Ethics Reform Act of 1989 imposed a number of restrictions on the outside earned income of Members and senior staff¹ of the House and Senate, as well as senior officials in the other branches of government. One of these restrictions is a prohibition on their receiving “compensation for practicing a profession which involves a fiduciary relationship.” 5 U.S.C. app. 4 § 502(a)(3); House Rule 47, cl. 2(3) [now House Rule 25, cl. 2(a)].²

This Committee is responsible for implementing these provisions in the House, and under them, the Committee has generally held that Members and senior staff may *not* receive pay for services rendered in the fields of law, real estate or insurance. Otherwise, however, up to now the Committee has implemented these provisions in a way that *has* allowed compensation for certain professional services, even though they are generally viewed as involving a fiduciary relationship.

After receiving inquiries on whether Members who are doctors may collect fees for providing medical services, the Committee decided to review its policy in this area. With this memorandum, the Committee announces that it will no longer approve the receipt of compensation for *any* professional services that involve a “fiduciary relationship” as that term is generally defined in law. The prohibition, as now implemented by the Committee, extends to the practice of medicine for compensation. In the Committee’s view, the approach previously used – to the extent it allowed receipt of compensation for such professional services – was not consistent with the terms or the legislative history of the Ethics Reform Act.

* This memorandum was originally written in 1998. It has been updated solely to reflect current House rule numbers and salary information.

¹ “Senior staff” refers to employees who are paid at or above a particular threshold annual rate for more than 90 days in a calendar year. In 1998, the threshold rate is \$87,030 [In 2008, threshold rate is \$114,468.]

² As generally used, the term “fiduciary” refers to an obligation to act in another person’s best interests, or a relationship of trust in which one relies on the integrity, fidelity and judgment of another. *House Ethics Manual*, 102d Cong., 2d Sess. (April 1992), p. 102.

Furthermore, that approach was not consistent with that used in the Senate or the Executive Branch.

Elaboration on the background and the terms of the Committee's action follows.

Background. As a result of the Ethics Reform Act of 1989, both statutory law and the House rules include provisions that prohibit Members and senior staff from doing, as here relevant, three things:

- “receiv[ing] compensation for practicing a profession which involves a fiduciary relationship,”
- “receiv[ing] compensation for affiliating with or being employed by a firm, partnership . . . or other entity which provides professional services involving a fiduciary relationship,” and
- permitting one’s name to be used by such an entity. 5 U.S.C. app. 4 §502(a); House Rule 47, cl. 2 [now House rule 25, cl. 2].³

When the Committee began to implement these provisions in 1990-91, it elected, with regard to the key provision on professional practice, *not* to use a conventional legal definition of the term “fiduciary relationship.” Instead, as reflected on page 103 of the *House Ethics Manual*, 102d Cong., 2d Sess. (April 1992), the Committee elected to “evaluate the nature and circumstances of each individual’s particular employment on a case-by-case basis in light of the objectives of the Act.” In this regard, the Committee adopted a three-part test for determining whether any particular employment involved a prohibited fiduciary relationship, *i.e.*, (1) Could the employment result in a conflict of interest between private and public responsibilities? (2) Does the employment create an appearance that an official position is being used for private gain? and (3) Does the compensation appear to be an effort to circumvent the ban on honoraria?

Using this three-part test, the Committee has issued advisory opinions stating that a Member or senior staffer could not earn income from providing legal advice, selling insurance, or acting as a real estate broker (see page 145 of the *Manual*). However, using this test, the Committee has also occasionally allowed compensation for certain professional services, even though the services involved a “fiduciary relationship” as that term is conventionally defined.

³ These same provisions also prohibit Members and senior staff from serving for compensation as an officer or member of the board of any corporation or other entity, and from receiving compensation for teaching without the prior approval of this Committee. With regard to outside earned income from permissible activities, Members and senior staff are also subject to an annual limitation. In calendar year 1998, the outside earned income limit is \$20,505. [For 2008, the limit is \$25,830.]

The Committee Action. As noted above, last year the Committee was formally asked, for the first time since the 1989 Act took effect, whether Members who are doctors may receive compensation for practicing medicine. Recently the Committee decided, on the basis of essentially three factors, that those Members may *not* receive compensation for practicing medicine. *First*, the statute and rule are straightforward in banning receipt of compensation for practicing a profession involving a fiduciary relationship, and it is undisputed that state laws generally establish a fiduciary relationship between a doctor and his or her patient.

Second, while it has been argued that these provisions were not intended to ban the compensated practice of medicine, the report of the 1989 House Bipartisan Task Force on Ethics, which authored these provisions, states the following with regard to their intended scope:

The task force intends the ban to reach, for example, services such as legal, real estate, consulting and advising, insurance, medicine, architecture, or financial.

Report of the Bipartisan Task Force on Ethics on H.R. 3660, 101st Cong., 1st Sess. 16 (Nov. 15, 1989).

Finally, both in the Senate and in the Executive Branch, these provisions are interpreted to prohibit the receipt of compensation for practicing medicine. (The regulations issued by the U.S. Office of Government Ethics, which are applicable to Executive Branch officials, are set out at 5 C.F.R. § 2636.305.)

In so deciding the question of compensated medical practice, the Committee also decided that the three-part test set out on p. 103 of the *Manual* will no longer be used to determine whether *any* professional services involve a prohibited fiduciary relationship. Instead, in making that determination, the Committee will henceforth rely on the above-quoted list of professions set forth in the 1989 Task Force report, as well as the admonition in the report (on page 16) that, “[T]he task force intends that the term fiduciary not be applied in a narrow, technical sense and wants to ensure that honoraria not reemerge in various kinds of professional fees from outside interests.” With regard to any particular profession, the Committee will also look to whether any fiduciary relationship is established by the applicable state law, and to the regulations issued by the U.S. Office of Government Ethics.

In responding to the inquiries on medical practice, the Committee also issued advice on how Members who are doctors may, consistent with the “fiduciary relationship” provisions, continue to practice medicine on a limited basis. Specifically, the Committee advised that a Member who is a doctor does *not* violate those provisions when he or she receives, in any calendar year, fees or other payments for medical services that do not exceed the “actual and necessary expenses” incurred by the Member during the year in connection with the practice.

In other words, receipt of fees and other income in that amount is *not* deemed to constitute the practice of medicine for compensation.

The Committee adopted this position on medical practice in response to two points made by Members who are doctors: they need to continue to practice in order to maintain their skills, and perhaps even their license to practice medicine, and medical practice necessarily entails a number of extraordinary expenses, including in particular the cost of malpractice insurance. It is also noteworthy that defining compensation in this manner accords with the definition of that term used by the Office of Government Ethics. 5 C.F.R. § 2636.303(b)(6). This limitation on the receipt of fees and payments for medical services, which is keyed to the *actual* and *necessary* expenses incurred in one's practice, precludes the receipt of compensation from medical practice in any form.

Members and senior staff who receive outside income through the rendering of professional services should consult with the Committee's Office of Advice and Education (extension 5-7103) regarding the possible applicability of the "fiduciary relationship" provisions in their circumstances. Any questions about this memorandum should likewise be directed to the Office of Advice and Education.

Regulations for the Acceptance of Decorations and Gifts

Including Travel or Expenses for Travel, by Members, Officers, and Employees of the House of Representatives

From Foreign Governments

PROMULGATED BY THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

1. AUTHORITY

The Committee on Standards of Official Conduct is authorized to issue regulations on this subject by 5 U.S.C. § 7342(a)(6)(A), (g)(1), commonly known as the Foreign Gifts and Decorations Act.

2. PURPOSE

The purpose of these regulations is to establish standards for the acceptance and disclosure of decorations, gifts of more than minimal value, and gifts of travel or expenses for travel taking place entirely outside the United States tendered by foreign governments to Members, officers, and employees of the House of Representatives.

3. GENERAL STANDARDS

(a) The United States Constitution (Article I, Section 9, clause 8) prohibits a Federal official from accepting gifts of any kind whatever from a foreign government without the consent of the Congress.

(b) The Foreign Gifts and Decorations Act (5 U.S.C. § 7342) prohibits an officer or employee of the Government from requesting or otherwise encouraging the tender of a gift or decoration from a foreign government, and prohibits the acceptance of such gifts other than in accordance with the provisions of that Act as implemented for Members, officers, and employees of the House by these regulations.

(c) The House gift rule, clause 5 of House Rule 26, prohibits a Member, officer or employee of the House from accepting any gift except as specifically provided in that rule. Under clause 5(a)(3)(N) of the rule, among the gifts that may be accepted is “[a]n item, the receipt of which is authorized by the Foreign Gifts and Decorations Act.”

4. DEFINITIONS

As used in these regulations:

(a) “Member, officer, or employee of the House of Representatives” includes the Resident Commissioner of Puerto Rico and the Delegates to the House, and except for section 7 of these regulations, includes the spouse of any such individual (unless such individual and spouse are separated) or a dependent of such individual (as defined in section 152 of the Internal Revenue Code of 1986);

(b) “foreign government” means

- (i) any unit of foreign governmental authority, including any foreign national, State, municipal or local government;
- (ii) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (i); and
- (iii) any agent or representative of any such unit or such organization, while acting as such;

(c) “decoration” means any order, device, medal, badge, insignia, emblem or award tendered by, or received from, a foreign government;

(d) “gift” means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government; and

(e) “Committee” means the Committee on Standards of Official Conduct.

5. CONSENT OF CONGRESS FOR THE ACCEPTANCE OF DECORATIONS

The Congress has consented (5 U.S.C. § 7342(d)) to the accepting, retaining, and wearing by a Member, officer, or employee of the House of Representatives of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the Committee.

(a) *Decorations of minimal intrinsic value.* Decorations presented to Members, officers, or employees of the House tendered by or received from a foreign government may be accepted by such Member, officer, or employee where the intrinsic value of the decoration is of minimal value, without prior approval of the Committee. Pursuant to 5 U.S.C. § 7342(a)(5), “minimal value” is redefined every three years by the General Services Administration to reflect changes in the consumer price index. The current figure, set in 1999, is \$260, and thus a decoration of minimal value is one having a retail value in the United States of \$260 or less. [Minimal value for calendar years 2008 through 2010 is \$335.]

(b) *Decorations of more than minimal intrinsic value.* Unless acceptance is specifically approved by the Committee, decorations of more than minimal value, if not promptly returned, are deemed to have been accepted on behalf of the United States and shall become the property of the United States. Within 60 days after acceptance of such a decoration, the decoration must be turned over to the Clerk of the House of Representatives for disposal; or, with the approval of the Committee, retained for official use. At the time such decoration is turned over to the Clerk or retained for official use by a Member, officer, or employee, such individual must file a disclosure statement concerning such decoration with the Committee as provided in section 7(a) of these regulations.

6. CONSENT OF CONGRESS FOR THE ACCEPTANCE OF GIFTS

Congress has consented to the acceptance of certain gifts, or gifts under particular circumstances, from foreign governments by officers or employees of the Government, including Members, officers, and employees of the House.

(a) *Gifts of minimal value.* Members, officers, or employees of the House may accept gifts of minimal value from foreign governments tendered and received as a souvenir or mark of courtesy, including a meal, entertainment or local travel in the United States when such a gift is related to official dates. Pursuant to 5 U.S.C. § 7342(a)(5), “minimal value” is redefined every three years by the General Services Administration to reflect changes in the consumer price index. The current figure, set in 1999, is \$260, and thus a gift of minimal value is one having a retail value in the United States of \$260 or less. [Minimal value for calendar years 2008 through 2010 is \$335.]

(b) *Gifts of more than minimal intrinsic value where refusal may cause offense and embarrassment.* A Member, officer, or employee may accept tangible gifts of more than minimal value when refusal would be deemed likely to cause offense or embarrassment or otherwise adversely affect United States foreign relations. However, any such tangible gift received and not promptly returned is deemed to have been accepted on behalf of the United States, and upon acceptance becomes the property of the United States. Within 60 days after accepting of such a gift, the gift must be turned over to the Clerk of the House of Representatives for disposal, or, with the approval of the Committee, retained for official use. At the time such gift is turned over to the Clerk or retained for official use by a Member, officer, or employee, such individual must file a disclosure statement concerning such gift with the Committee as provided in section 7(a) of these regulations. Intangible gifts of more than minimal value may be accepted only in accordance with section 6(c) and (e) of these regulations.

(c) *Educational scholarship or medical treatment.* Members, officers, or employees of the House may accept a gift of more than minimal value from a foreign government when the gift is in the nature of an educational scholarship or medical treatment.

(d) *Foreign educational or cultural exchange.* Acceptance of assistance from a foreign government for participation in foreign exchange or visitors programs by Federal officers or employees is consented to by Congress in certain instances outlined in 22 U.S.C. § 2458a, the Mutual Educational and Cultural Exchange Act. Assistance or grants received under that Act are not considered “gifts” under these regulations.

(e) *Travel or expenses for travel outside of the United States.* A Member, officer, or employee of the House may accept gifts of travel or expenses for travel taking place entirely outside of the United States offered by a foreign government when such travel or expenses for travel relate directly to the official duties of the Member, officer, or employee. Gifts of travel or expenses for travel include food, lodging, transportation and entertainment relating to the official duties of the Member, officer, or employee. This provision allows a Member, officer, or employee to take advantage of opportunities such as for on-site inspection or fact finding while in a foreign country.

A spouse or dependent of a Member, officer, or employee of the House may accept such travel or expenses for travel when accompanying the Member, officer, or employee of the House. Such travel or expenses for travel may not be accepted merely for the personal benefit, pleasure, enjoyment or financial enrichment of the individual or individuals involved. The acceptance of any such travel or expenses for travel shall be reported within 30 days after acceptance to the Committee on Standards of Official Conduct, providing information required in section 7(b) of these regulations. For the purposes of these regulations, travel or expenses for travel are deemed accepted upon departure from the donor country.

7. REPORTS AND DISCLOSURE

Any gift provided to a spouse or dependent should be considered to be a gift provided to the Member, officer, or employee and therefore must be disclosed by such Member, officer, or employee.

For the purposes of these regulations, any decoration presented by a foreign government to the spouse or a dependent of a Member, officer, or employee of the House is considered to be presented to the Member, officer, or employee when it is apparent the decoration would not have been offered but for the recipient’s relation to the Member, officer, or employee, and therefore must be disclosed by such Member, officer, or employee.

An appraisal of tangible gifts or decorations, if necessary, may be obtained through the Clerk of the House of Representatives.

(a) *Tangible gifts and decorations.* Within 60 days after acceptance of a tangible gift or decoration of more than minimal value pursuant to section 5(b) or 6(b) of these regulations, a Member, officer, or employee shall file a disclosure statement with the Committee containing the following information:

- (i) the name and position of the reporting individual and the recipient;
- (ii) a brief description of the gift or decoration and the circumstances justifying acceptance;
- (iii) the estimated value in the United States at the time of acceptance;
- (iv) the date of acceptance of the gift or decoration;
- (v) the identity, if known, of the foreign government and the name and position of the individual who presented the gift or decoration;
- (vi) disposition or current location of the gift or decoration.

(b) *Other gifts.* Within 30 days after acceptance of a gift of travel pursuant to section 6(e) of these regulations, a Member, officer, or employee shall file a disclosure statement with the Committee containing the following information:

- (i) the name and position of the reporting individual;
- (ii) a brief description of the gift and the circumstances justifying acceptance; and
- (iii) the identity, if known, of the foreign government and the name and position of the individual who presented the gift.

8. PUBLIC INSPECTION

Reports filed under these regulations shall be maintained by the Committee on Standards of Official Conduct and made available for public inspection at reasonable hours. Not later than January 31 of each year, the Committee on Standards of Official Conduct will compile a listing of all statements filed during the preceding year and will transmit such listing to the Secretary of State for publication in the Federal Register.

Reports filed with the Committee under these regulations will be maintained for public inspection for a period of 7 years following transmittal to the Secretary of State.

Legal Expense Fund Regulations

MEMORANDUM TO ALL MEMBERS, OFFICERS, AND EMPLOYEES¹

From: Committee on Standards of Official Conduct

Nancy L. Johnson, Chairman

Jim McDermott, Ranking Democratic Member

Date: June 10, 1996

The new gift rule exempts “a contribution or other payment to a legal expense fund established for the benefit of a Member, officer, or employee that is otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Standards of Official Conduct,” as long as the contribution is not from a registered lobbyist or an agent of a foreign principal (House Rule 25, clause 5(a)(3)(E)). In light of this new rule, and pursuant to its authority there under, the Committee hereby issues regulations explaining its “restrictions and disclosure requirements” for legal expense funds. The regulations set forth below supersede the Committee’s prior policies under the old gift rule² and take effect as of July 1, 1996. The prior policies remain in effect until that date.

Legal Expense Fund Regulations

1. A Member, officer, or employee who wishes to solicit and/or receive donations, in cash or in kind, to pay legal expenses shall obtain the prior written permission of the Committee on Standards of Official Conduct.³
2. The Committee shall grant permission to establish a Legal Expense Fund only where the legal expenses arise in connection with: the individual’s candidacy for or election to federal office; the individual’s official duties or position in Congress (including legal expenses incurred in connection with an amicus brief filed in a Member’s official capacity, a civil action by a Member challenging the validity of a law or federal regulation, or a matter before the Committee on Standards of Official Conduct); a criminal prosecution; or a civil matter bearing on the individual’s reputation or fitness for office.

¹ These regulations have been updated in several respects, including to reflect certain Committee policies established after the regulations were originally issued, and the renumbering of the House Rules that occurred at the beginning of the 106th and 107th Congresses.

² See *House Ethics Manual*, 102d Cong., 2d Sess. 49-50 (1992).

³ Permission is not required to solicit and/or receive a donation in any amount from a relative or a donation of up to \$250 from a personal friend.

3. The Committee shall not grant permission to establish a Legal Expense Fund where the legal expenses arise in connection with a matter that is primarily personal in nature (*e.g.*, a matrimonial action).
4. A Member, officer, or employee may accept pro bono legal assistance without limit to file an amicus brief in his or her capacity as a Member of Congress; to bring a civil action challenging the validity of any federal law or regulation; or to bring a civil action challenging the lawfulness of an action of a federal agency, or an action of a federal official taken in an official capacity, provided that the action concerns a matter of public interest, rather than a matter that is personal in nature. Pro bono legal assistance for other purposes shall be deemed a contribution subject to the restrictions of these regulations.
5. A Legal Expense Fund shall be set up as a trust, administered by an independent trustee, who shall oversee fund raising.
6. The trustee shall not have any family, business, or employment relationship with the trust's beneficiary.
7. Trust funds shall be used only for legal expenses (and expenses incurred in soliciting for and administering the trust), except that any excess funds shall be returned to contributors. Under no circumstances may the beneficiary of a Legal Expense Fund convert the funds to any other purpose.
8. A Legal Expense Fund shall not accept more than \$5,000 in a calendar year from any individual or organization.
9. A Legal Expense Fund shall not accept any contribution from a registered lobbyist or an agent of a foreign principal.
10. Other than as specifically barred by law or regulation, a Legal Expense Fund may accept contributions from any individual or organization, including a corporation, labor union, or political action committee (PAC).
11. No contribution shall be solicited for or accepted by a Legal Expense Fund prior to the Committee's written approval of the completed trust document (including the name of the trustee). No amendment of the trust document is effective, and no successor or substitute trustee may be appointed, without the Committee's written approval.
12. Within one week of the Committee's approval of the trust document, the beneficiary shall file a copy of the trust document with the Legislative Resource Center (B-106 Cannon House Office Building) for public disclosure.

13. The beneficiary of a Legal Expense Fund shall report to the Committee on a quarterly basis, with a copy filed for public disclosure at the Legislative Resource Center:
- a) any donation to the Fund from a corporation or labor union;
 - b) any contribution (or group of contributions) exceeding \$250 in a calendar year from any other single source; and
 - c) any expenditure from the Fund exceeding \$250 in a calendar year.

The reports shall state the full name and street address of each donor, contributor or recipient required to be disclosed. Beginning October 30, 1996, these reports shall be due as follows:

<u>Reporting Period</u>	<u>Due Date</u>
January 1 – March 31	April 30
April 1 – June 30	July 30
July 1 – September 30	October 30
October 1 – December 31	January 30

14. Any Member or employee who established a Legal Expense Fund prior to July 1, 1996 shall make any necessary modifications to the trust document to bring it into compliance with these regulations and shall disclose the trust document with his or her first quarterly report of the 105th Congress on January 30, 1997. Reports of receipts and expenditures shall be due beginning October 30, 1996, as stated in paragraph 13, above.

Use of Campaign Funds for Legal Expenses

This Committee has stated (in Chapter 4 on campaign activity) that Members may use campaign funds to defend legal actions arising out of their campaign, election, or the performance of their official duties. More recently, however, the Federal Election Commission (FEC) issued regulations defining impermissible personal uses of campaign funds, including using campaign funds for certain legal expenses. Any Member contemplating the use of campaign funds for the direct payment of legal expenses or for contribution to a legal expense fund should first contact the FEC.

Travel Guidelines and Regulations

MEMORANDUM TO ALL MEMBERS, OFFICERS, AND EMPLOYEES

From: Committee on Standards of Official Conduct
Stephanie Tubbs Jones, Chairwoman
Doc Hastings, Ranking Republican Member

Date: February 20, 2007

The new travel rules that were passed at the beginning of the 110th Congress require the Committee to issue guidelines concerning the reasonableness of travel expenses and the types of information that must be submitted to the Committee in order to obtain prior approval of privately-sponsored, officially-connected travel.¹ The rules also direct the Committee to issue regulations describing when a two-night stay will be permitted in order for a Member, officer, or employee to participate in a one-day event sponsored by a private entity that retains or employs a lobbyist, and the circumstances under which a lobbyist is permitted to have *de minimis* involvement in planning, organizing, requesting, or arranging a trip.²

The Committee hereby issues guidelines and regulations concerning the new travel restrictions and requirements. In many significant areas, the regulations and guidelines set forth below are new restrictions and requirements that *supersede* the Committee's policies under the travel rules that existed in previous congresses, and *they take effect on March 1, 2007*.

Travel Guidelines and Regulations³

A. Connection between Trip and Official Duties

A Member, officer, or employee seeking approval for travel must demonstrate that the activities on the trip are related to the individual's official responsibilities or matters arising from his or her official duties. In evaluating a request for approval to travel at private expense, the Committee will evaluate the individual's responsibilities, and/or whether the purpose of the trip relates to matters within the general legislative or policy interests of the Congress. Travel will not be approved if

¹ House Rule 25, cl. 5(i).

² House Rule 25, cl. 5(b)(1)(C). For brevity's sake, references in the text to the term "lobbyist" also include agents of a foreign principal.

³ These provisions address both the acceptance of in-kind transportation, lodging, and meals as well as reimbursement of travel expenses.

it does not include sufficient officially-connected activities, or if it includes excessive amounts of unscheduled time or opportunities for recreational activities during the official itinerary, even if such activities are engaged in at personal expense.

B. Reasonableness of Travel Expenses

(1) *Transportation to the Event:* Members, officers, and employees may accept up to business-class transportation on commercial air carriers or trains to participate in Committee-approved, privately-sponsored travel. Other transportation (including first-class airfare or train fare, charter travel, or travel on private aircraft) may *only* be accepted if:

(a) it is demonstrated that the cost of such travel does not exceed the cost of available business-class transportation (or if the traveler uses the traveler's own frequent flyer or similar benefits to upgrade to first class);

(b) such travel is necessary to accommodate a disability or other special need as substantiated in writing by a competent medical authority;

(c) genuine security circumstances require such travel;

(d) the scheduled flight time, including stopovers and change of planes, is in excess of 14 hours; or

(e) the Committee permits such travel based on *exceptional* circumstances.

(2) *Local Transportation:* Local area transportation expenses during a trip must be reasonable and unrelated to personal or recreational activities.

(3) Lodging:

(a) For travel to events arranged or organized *without regard* to congressional participation (for example, annual meetings of business or trade associations or other membership organizations), Members, officers, and employees may accept lodging accommodations at a pre-arranged location for event attendees commensurate with those customarily provided to or purchased by other event attendees. The quality or location of the accommodations may not be enhanced because of the official position of the Member, officer, or employee.

(b) For travel to events arranged or organized *specifically with regard* to congressional participation (for example, fact-finding trips, site visits, educational conferences, and other trips designed for congressional attendance), Members, officers, and employees may accept reasonable lodging expenses at an appropriate facility. Among the factors to be considered in judging the reasonableness of expenses for a lodging facility are the cost of the facility, the location of the facility and its proximity to the site(s) being visited, the quality of its

conference facilities, any security concerns, and whether the facility may accommodate the number of attendees at the event.

(4) *Food:*

(a) For travel to events arranged or organized *without regard* to congressional participation (for example, annual meetings of business or trade associations or other membership organizations), Members, officers, and employees may accept meals related to the event that are similar to those provided to or purchased by other event attendees.

(b) For privately-sponsored travel to events arranged or organized *specifically with regard* to congressional participation (for example, fact-finding trips, site visits, educational conferences, and other trips designed for congressional attendance), Members, officers, and employees may accept reasonable meal expenses at an appropriate facility. The factors to be considered in judging the reasonableness of a meal expense include the maximum *per diem* rates for meals for official Government travel published by the General Services Administration or, for international travel, the maximum *per diem* rate for meals published by the State Department.

(5) *Other Travel Expenses:* Members, officers, and employees may accept reasonable miscellaneous travel expenses, such as transportation to and from airports, security costs, interpreter fees, visa application fees, and similar expenses that are necessary for the officially-connected purpose of the trip.

C. Relationship Between an Event and the Officially-Connected Purpose of the Trip

The location of events arranged or organized *without regard* to congressional participation (for example, annual meetings of business or trade associations) is presumptively reasonable. The location of *other* events must be necessary to the purpose of the event, or if more than one possible location may be relevant to the event, then the location selected must be a reasonable one in relation to the alternatives. If there is no specific location necessary or relevant to the purpose of the event, the location selected must be a reasonable one in light of the nature of the event and its participants, and should not create the appearance that the Member, officer, or employee attending the event is using his or her public office for personal gain.

D. Direct and Immediate Relationship between Source of Funding and an Event

Expenses may only be accepted from an entity or entities that have a significant role in organizing and conducting a trip, and that also have a clear and

defined organizational interest in the purpose of the trip or location being visited. Expenses may not be accepted from a source that has merely donated monetary or in-kind support to the trip but does not have a significant role in organizing and conducting the trip.

E. One-day Event Trips Sponsored by a Private Entity that Retains or Employs a Lobbyist

The Committee will authorize a Member, officer, or employee to accept a second night's lodging and meal expenses in order for the individual to participate in a one-day event when it determines that such expenses are necessary due to availability of transportation to or from the event, or in those circumstances when an additional night's stay is practically required in order to facilitate the individual's full participation in the event. The Member, officer, or employee seeking approval for a two-night stay *must request approval from the Committee*.

In determining whether to permit a second night's stay, the Committee will consider the following factors:

(1) the availability of transportation to and from the location of the one-day event;

(2) whether the trip is outside the continental United States or involves travel across two or more time zones;

(3) whether the Member or staff person is participating in a full-day's worth of officially-connected activities (*e.g.*, is the individual giving a speech, taking part in fact-finding, observing presentations, or participating in a panel discussion); or

(4) any other *exceptional* circumstances that are described in detail by the traveler.

F. *De Minimis* Lobbyist Involvement in Planning, Organizing, Requesting, or Arranging a Trip

Member and staff participation in officially-connected travel that is in any way planned, organized, requested, or arranged by a lobbyist is *prohibited*, except as provided below:

(1) when the travel is sponsored by an institution of higher education within the meaning of section 101 of the Higher Education Act of 1965; or

(2) when the travel is for a one-day event trip *and* the involvement of a lobbyist in planning, organizing, requesting, or arranging the trip is *de minimis*, meaning only negligible or otherwise inconsequential in terms of time and expense to the overall planning and purpose of the trip.

G. Information that must be Submitted to the Standards Committee for Purposes of Receiving Prior Approval of Privately-Sponsored Travel

A private sponsor offering officially-connected travel to a Member, officer, or employ must complete and sign a Private Sponsor Certification Form, and provide a copy of that form to the invitee(s). The sponsor should not submit that form directly to the Committee. Private sponsors are strongly urged to submit the form to the invitee(s) at least 30 days before the travel is scheduled to begin.

A Member, officer, or employee must submit to the Committee a completed and signed Privately-sponsored Travel Approval Form that attaches or includes the Private Sponsor Certification Form and, for staff travel, a copy of the Advance Authorization of Employee Travel Form.

Guidance on Intern, Volunteer, and Fellow Programs

LETTER OF JUNE 29, 1990^[1]

Dear Colleague:

The Committee on Standards of Official Conduct has received a number of inquiries regarding the propriety of House offices accepting services from volunteers,² interns,³ fellows,⁴ and others who receive no salary from the House of Representatives. This is to explain the Committee's policy on this subject for all Members and House offices.

House Rule 24, "Prohibition of Unofficial Office Accounts," was adopted by the House on March 2, 1977, along with other recommendations of the Commission on Administrative Review. H. Res. 287, 95th Congress, 123 Congressional Record 5933-53. In recommending the rule, the Commission posed the question: "Is it proper for a private corporation, independent businessman, or anyone else to pay for the conduct of the House's official business?" The Commission concluded that the answer was "no," that a "wall" should exist between official and unofficial funds. H. Doc. No. 95-73, *Financial Ethics*, 95th Cong., 1st Sess., p. 17.

In Advisory Opinion No. 6, interpreting the unofficial office account prohibition, the House Select Committee on Ethics concluded that in addition to money, Rule 24 prohibits the private, in-kind contribution of goods or services for official purposes. The Select Committee found that "no logical distinction can be drawn between the private contribution of, in-kind services and the private contribution of money, and that both perpetuate the very kind of unofficial office accounts and practices that are prohibited" by the rule. H. Rep.

¹ This letter has since been updated to reflect, among other things, the re-numbering of the House Rules that occurred at the beginning of the 106th Congress and in the 107th Congress.

² A "volunteer" as used in this letter means an individual performing services in a House office without compensation from any source.

³ An "intern" is an individual performing services in a House office on a temporary basis incidental to the pursuit of the individual's educational objectives. Some interns receive no compensation from any source, while some receive compensation or other assistance from an educational institution or other sponsoring entity. While some interns may receive compensation from House allowances, this letter deals primarily with those who do not receive such House compensation.

⁴ A "fellow" is an individual performing services in a House office on a temporary basis as part of an established mid-career education program, while continuing to receive the usual compensation from his or her sponsoring employer.

No. 95-1837, 95th Cong., 2d Sess., *Final Report of the Select Committee on Ethics*, p. 65.

However, the Select Committee did recognize several exceptions to the general prohibition against the acceptance of services, including the following:

Services provided by federal, state, or local government agencies;

Intern, fellowship, or similar educational programs that are primarily of educational benefit to the individual, as opposed to primarily benefiting the Member or office, and which do not give undue advantage to special interest groups.

Accordingly, while House Rule 24 generally prohibits Members from accepting either the services of volunteers or of individuals compensated for congressional duties by an outside entity, limited authority exists to accept the services of volunteers, interns, and fellows.

In this regard, the Select Committee expressed the view that the intent and spirit of House Rule 24 would be violated if a congressional office attempted to supplement official allowances by directly or indirectly raising, receiving, or disbursing contributions, if such contributions were to be used to compensate individuals working in a House office, or used to support programs which placed interns, fellows, or volunteers in House offices. The prohibition against engaging in such activities applies to both Members and staff.

Also relevant to this issue is 31 U.S.C. § 1342, as follows:

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property.

In Opinion B-69907, issued February 11, 1977, the Comptroller General of the United States determined that the statute applies to Members of Congress and other officers and employees of the Legislative Branch. However, because the statute was enacted to prevent funding deficiencies, it was deemed not to prohibit a Member of Congress from utilizing volunteers to assist in the performance of official functions of the Member's office, provided such volunteers agree in advance to serve without compensation, so that there is no basis for a future claim for payment.

The acceptance of services from volunteers not associated with an established program potentially raises other concerns. Individuals who are not

House employees⁵ are not subject to rules and statutes governing their conduct. However, such individuals may be in a position to take actions and make representations in the name of a Member, for the *Member* may be responsible. The Member or office may also be subject to a claim of liability for work-related injuries to, or caused by, a volunteer.

In view of the above, the Committee has established the guidelines set forth below to Members and House offices considering acceptance of the services of interns, fellows, or volunteers who will not be paid by the House of Representatives.

INTERN AND FELLOWSHIP PROGRAMS

A Member or House office may accept the temporary services of an *intern* participating in a *program*, as discussed below, which is primarily of educational benefit to the participant, irrespective of whether the individual is being compensated by a third-party sponsoring organization.

Similarly, a Member or House office may accept the temporary services of a *fellow* participating in a mid-career education *program*, as discussed below, while the individual receives compensation from his or her employer.

An intern or fellowship *program* should be operated by an entity not affiliated with a congressional office, and the organization should be willing to indicate its sponsorship of the intern or fellow in writing.

House Members and staff may not raise or disburse funds for programs which place interns or fellows in their own offices, nor may congressional offices solicit or recruit volunteers. Members do, however, have the right to select or approve those who will be working in their offices.

While intern and fellowship programs are often sponsored by educational institutions, other public or private organizations may act as sponsors, provided

⁵ An “employee” for the purposes of this letter means a person appointed to a position of employment in the House of Representatives by an authorized employing authority, whether that person is receiving a salary disbursed by the Clerk of the House, or is in a Leave Without Pay status.

the arrangement does not give undue advantage to special interests. In that regard, the Member accepting the services of an intern or fellow should not assign him or her to duties that will result in any direct or indirect benefit to the sponsoring organization.

VOLUNTEERS

A Member may accept volunteer services from his or her own immediate family, *i.e.*, spouse, children, or parents (although Federal law, at 5 U.S.C. § 3110, prohibits Members from appointing relatives to paid positions); this is consistent with regulations of the Committee on House Administration which allow Members to use their own personal resources to support the activities of their own offices.

A Member or House office may accept the temporary services of a volunteer, provided the Member or office has a clearly defined program to assure that: (1) the voluntary service is of significant educational benefit to the participant; and (2) that such voluntary assistance does not supplant the normal and regular duties of paid employees. In this regard, limitations should be imposed on the number of volunteers who may assist a congressional office at any one time, as well as the duration of services any one volunteer may provide. Voluntary assistance to a congressional office should not be solicited.

A volunteer should be required to agree, in advance and in writing, to serve without compensation and to not make any future claim for payment, and acknowledge that the voluntary service does not constitute House employment.

(Obviously, a Member or House office wishing to use the services of an individual seeking to volunteer may also place the individual in a temporary intern position on the Member's clerk hire payroll or other personnel fund, as authorized by the Committee on House Administration. The individual may also be referred to an organization which sponsors an internship.)

Volunteers, interns, and fellows should be made aware of the implications their activities have for the Member in whose office they work. The Committee recommends that Members and House offices obtain the agreement of such individuals that, although not House employees, they will conduct themselves in a manner which reflects creditably on the House. Members are also encouraged to obtain the Committee's approval for any volunteer, intern, or fellowship program in which they wish to participate.

The above guidelines do not prohibit a Member or other House office from accepting services, including detailed staff, provided on an official basis by a unit of Federal, state, or local government. (House staff and resources may not, however, be similarly used to perform the work of other governmental units, or of any private organization.)

As a related matter, House Rule 23, clause 11, part of the Code of Official Conduct, provides that a Member of the House of Representatives shall not authorize or otherwise allow a non-House individual or organization to use the words "Congress of the United States," "House of Representatives," or "official business" on any letterhead or envelope. The intent of this provision is to prevent persons who are not Members, officers, or employees of the House from represent that their activities are officially sponsored or sanctioned. This prohibition also extends to other printed matter, such as business cards. Accordingly, individuals not paid by the House of Representatives may *not* use or obtain business cards or other materials suggesting an employment relationship with the House.

Any questions concerning these matters should be directed to the Committee's Office of Advice and Education at 225-7103.

Sincerely,

JULIAN C. DIXON
Chairman

JOHN T. MYERS
Ranking Minority Member

**House Administration Committee-House Standards Committee Joint
Letter on Redistricting of May 24, 2001**

Dear Colleague:

Since the start of the redistricting process resulting from the 2000 Census, the Committees on House Administration and Standards of Official Conduct have been receiving questions on whether redistricting activities can be conducted with official resources.

We have reexamined our past policy statements, and we believe that constituents have a right to inquire about, and Members have a responsibility to respond to questions regarding the consequences of redistricting. We also recognize that Members, to stay current and fully informed, may wish to meet and communicate with other Members about redistricting, and be briefed from time to time by outside individuals or organizations.

While responding to constituent inquiries is a continuing official activity, redistricting is usually a relatively brief “once a decade” activity affecting congressional districts. As such, redistricting activities in congressional offices should be merely incidental to each day’s official business, and should be minimal in nature, frequency, time consumed, and use of resources.

We would have no reservations about redistricting activities conducted in accordance with the above criteria in congressional offices or using official resources.

Sincerely,

Bob Ney, Chairman
House Administration

Steny Hoyer, Ranking Minority Member
House Administration

Joel Hefley, Chairman
Standards of Official Conduct

Howard L. Berman, Ranking Minority Member
Standards of Official Conduct

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Gifts Guidance

Throughout this section and in other sections, this guidance refers to the “Gift Rule.” The “Gift Rule” means the gift provisions in the current Congress’s House Rule 25, clause 5.

Quick Reference Guide (page G-50)

- I. Why Have Limitations on Gifts?
- II. What is a Gift?
- III. How to Value a Gift?
- IV. Who is Subject to the Gift Rule?
- V. Source of a Gift
- VI. Recipient of a Gift
- VII. Do Not Ask for a Gift
- VIII. No Bribes, Illegal Gratuities, or Thank You Gifts
- IX. Impermissible Gifts
- X. General Gift Rule Provisions
- XI. Exceptions to the Gift Rule for Permissible Gifts
- XII. Expressly Prohibited Gifts
- XIII. Financial Disclosure Reporting for Gifts
- Endnotes

I. Why Have Limitations on Gifts?

The federal government and the House of Representatives have long recognized that public office is a public trust. ¹ The public has a right to expect that you are impartial in performing your official duties and are not influenced by gifts or favors.² However, Congress also recognizes that you will be offered gifts that do not raise any genuine ethical concerns, or that could cause needless embarrassment or hurt feelings if denied.

The limitations on gifts come from many sources, including the Constitution, federal statutes, and the House Rules.³ These sources place limits on accepting gifts, but also have exceptions to those limits.⁴

II. What is a Gift?

A gift is something with monetary value for which you do not have to pay. Gifts include gratuities, favors, discounts, entertainment, hospitality, loans, forbearances, services, training, travel expenses, in-kind contributions, advanced payments, and reimbursements after the fact.⁵ The Committee only considers the fair market value of the gift you receive, not whether the person or organization offering it to you paid full price.

- **Example.** Your friend invites you to play golf at the country club where your friend is a member. The club’s rules state that guests of club members do not pay any fee. The round of golf is still a gift to you. The value is what the country club generally charges for a round of golf. To determine whether you may accept the gift, please see Exceptions to the Gift Rule for Permissible Gifts (page G-7).

If your spouse or dependent child accompanies you to an event where a meal or refreshments are offered, only the meal or refreshments you receive is a gift.⁶

Gifts can be tangible and intangible. Examples of intangible gifts include, but are not limited to, discounts, forbearances, below fair market interest rates, selling property for more than its market value, purchasing property for less than its fair market value, and receiving compensation that is greater than the fair market value of the services you provided.

III. How to Value a Gift?

Tangible gifts are generally valued at the item's fair market value, even if the item is not typically for sale. Fair market value is the item's retail price, not the wholesale price, or the reasonable estimate of an item's cost if it were available for sale. You may use the lowest price available to the general public to value a gift.

Gifts that are offered at the same time from the same person must be aggregated to determine value.

- **Example.** You attended an awards gala and at the end of the event, the event organizer handed out a gift bag. Inside the gift bag were 5 items, each worth \$10. The gift's total value is \$50.

The Committee has different formulas to value tickets to events and honorary memberships.

- The face value of a ticket to a sporting event or show is the ticket's fair market value.⁷
 - If the ticket does not have a price printed on it, the value is the highest priced ticket for that event, in that venue, on the primary market.
- The value of tickets to charity or political fundraisers is the value of the meal.⁸ The cost to the purchaser is not the ticket's value.
- The value of honorary memberships is the total of the organization's normal initiation fee, periodic dues, and usage charges. The value does not change if you do not use the membership.

The value of an intangible gift, such as a discount or a below-market interest rate, is the difference between the market rate and what you are asked to pay.

- **Example.** Your first cousin offers to help you pay for living expenses. Your cousin is willing to loan you the money you need at 0% interest if you pay your cousin back in a year. The prevailing interest rate is 3%. The gift to you would be 3% interest for that year. You may accept the loan from your first cousin as a gift from a relative.

Attendance at a meeting or informational briefing generally does not have monetary value. But during that meeting or briefing, you may be offered a meal or packet of informational materials that does have monetary value. Please see Exceptions to the Gift Rule for Permissible Gifts (page G-7) to determine whether you may accept those additional gifts.

IV. Who is Subject to the Gift Rule?

The House Gift Rule applies to all Members, Delegates, the Resident Commissioner of Puerto Rico, officers, and employees of the House.⁹ "Officers and employees" include any individual whose pay is disbursed by the Chief Administrative Officer and those individuals providing services to the House under consultant contracts.¹⁰ The Gift Rule applies equally to full time and part time employees, employees in district offices and in the Washington, DC offices, permanent and temporary employees, and employees on Leave Without Pay status.

Interns who are not paid by the House and fellows who are not paid by the House are not House employees. Detailees, except in limited circumstances, are also not House employees.¹¹ The Committee recommends that each office using the services of a non-House employee still require the non-House employee to adhere to all the House Rules to protect the integrity of the House.

Interns and fellows who are paid by the House, including through the House Paid Internship Program, the Wounded Warrior Program, and the Gold Star Family Fellowship,¹² are House employees. The House Paid Internship Program is available at <https://cha.house.gov/member-services/house-paid-internship-program>. The Wounded Warrior Program is available at <https://cao.house.gov/wounded-warrior>. The Gold Star Family Fellowship is available at <https://cao.house.gov/gold-star>.

Members-elect are subject to the Gift Rule when their pay and allowances begin. For Members elected in a regular election, pay and allowances begin at the start of the new Congress. For Members elected in a special election, pay and allowances begin the day after the special election.

Generally the Gift Rule does not apply to spouses and family members of Members, officers, and employees. However, the gifts they, or anyone else, receive may be subject to the Gift Rule if

- the Member, officer, or employee knew about and agreed to the gift; and
- the Member, officer, or employee has reason to believe the gift was given because of the Member, officer, or employee's official position.¹³
- **Example.** Your child is getting married. A lobbyist you've met with many times, but who does not know your child personally, offers to help pay for the catering costs at the wedding. This gift was offered because of your official position and is subject to the Gift Rule.
- **Example.** Your spouse is an award-winning author. Your spouse's latest work is nominated for a prestigious award, and your spouse is invited to attend the awards dinner at no cost. This gift was offered to your spouse because of your spouse's achievements and is not subject to the Gift Rule.
- **Example.** A friend offered you two tickets to a baseball game. You cannot attend the game. You ask your friend to offer the tickets to your child's t-ball coach instead. Because you knew about the gift and suggested to whom to offer the gift, the baseball tickets are subject to the Gift Rule.

The Gift Rule applies to Members, officers, and employees at all times, even during lapses in appropriations or if you are on Leave Without Pay status, family leave, annual leave, sick leave, or administrative leave.¹⁴

V. Source of a Gift

Who provides the gift is just as important as what the gift is and why it was given. It is your responsibility to determine who the source of the gift is. If a person is using their own personal funds to provide your gift, that person is the gift's source. But, if the person will be reimbursed or receive a tax deduction for your gift, that person is not providing a personal gift. If a company, foreign government, or domestic government ultimately pays for your gift, that company, foreign government, or domestic government is the gift's source. If someone is merely passing along a gift from another person, the person passing along the gift is not the relevant source.

If a person affiliated with a company gives you a gift, both the person and the company are the gift's sources.

- **Example.** Your best friend's father works for a company with a corporate apartment. The company allows its employees to stay there while in town for business, but not for any personal use such as a vacation. The company instructs your best friend's father to offer the apartment to you the next time you are in town. The company, not your best friend's father, is the gift's source.

If multiple people or organizations give you a gift, the gift is from all of the sources collectively. You may not divide the value of a gift between sources to try to fit the gift into an exception to the Gift Rule.

- **Example.** Two nonprofit organizations that do not employ or retain registered federal lobbyists give you a gift worth \$70. You may not divide the gift's value between the organizations to say each organization gave you a gift worth \$35. The gift's total value is \$70.

VI. Recipient of a Gift

You must look to the intentions of the gift's donor to determine who is the gift's "recipient." If someone brings a gift and says it is "for the office," then the gift will be considered a gift to everyone in the office who takes advantage of the gift. If someone brings a gift and says it is for a particular person, even if that person shares with others, the gift is a gift just to the original recipient.

- **Example.** A constituent orders pizza for the office. The employees who eat the pizza are the gift's recipients. See No Thank You Gifts (page G-5) and Exceptions to the Gift Rule for Permissible Gifts (page G-7) for whether staff can accept the pizza.
- **Example.** An organization sends a box of its sample products to the Member. Even though the box's contents can be separated, because the box was addressed to the Member, the Member is the recipient.

VII. Do Not Ask for a Gift

You may not ask for a gift for yourself or someone else.¹⁵ Even if you would otherwise be able to accept the gift, you may not accept the gift if you or someone else asked for it. This restriction applies to anything that may benefit the office or you, personally. The Committee does not apply this restriction to requesting gifts from relatives or establishing a gift registry for a special occasion, if the gifts are not for official activities.

- **Example (Impermissible).** You were invited on a privately-sponsored trip. You cannot go, but your colleague can and is interested. You ask the trip sponsor to invite your colleague instead. Because you asked for the gift, your colleague may not accept it. You may, however, tell the trip sponsor that you are no longer the correct contact, but that your colleague now handles the relevant matters.
- **Example (Impermissible).** You are out of the office when a group comes to your office with stress balls for everyone. Your desk mate asks if the group could leave one for you. Because your desk mate asked for the gift, you may not accept it.
- **Example (Impermissible).** Your office is throwing a farewell party for one of your departing colleagues. You know people in the private sector who might be willing to donate refreshments. You may not request donations from those people.
- **Example (Permissible).** You are buying a new home and need \$10,000 for your down payment. You may ask your parents for the money for the down payment, and you may accept the gift if your parents give you the money.

You may be able to help with solicitation or fundraising efforts that benefit charitable endeavors. You may also be allowed to solicit a gift in connection with the Congressional Art Competition, the App Challenge, or other officially-sanctioned competitions. See Members, Officers, and Employees Participation in Fundraising Activities and Request to Solicit for Officially-Sanctioned Competitions. These forms are available at <https://ethics.house.gov/forms>.

VIII. No Bribes, Illegal Gratuities, or Thank You Gifts

A Warning. People can and do face severe criminal penalties for violating these restrictions.¹⁶ Members accused of violating these restrictions have also been expelled from the House or resigned before a final Committee decision was reached.¹⁷

You may not accept gifts offered in exchange for official actions.¹⁸ The restrictions apply to official actions you are asked to take in the future and in return for official actions you already took. The restrictions apply whether you are engaging in *quid pro quo*, or just being offered a reward for your official actions.¹⁹ The gift and the official action must have a specific link.²⁰

You may still accept gifts that are expressions of goodwill or general appreciation that are not tied to a specific official action.²¹ You may also accept token gifts in the form of perishable items like home baked goods or flowers, or decorative items for display in the office or donated to charity.²²

Additionally, you may not receive any compensation for assisting people and organizations outside the House with matters before the federal government, or in any particular matter where the federal government is a party or has a direct and substantial interest.²³ You also may not solicit or accept anything of value, including campaign contributions, for helping someone get a federal position.²⁴ See Outside Employment and Income (page 185) for more information about these prohibitions.

- **Example (Impermissible).** A lobbyist offers a Member a substantial campaign contribution if the Member introduces certain legislation. The lobbyist violated the bribery statute for the offer, and the Member would violate the bribery statute if the Member accepted.
- **Example (Impermissible).** A Member introduces legislation and manages the bill through passage solely because she believes it will benefit the country. A lawyer also favors the legislation because it will benefit his clients. The lawyer sends the Member a book valued at less than \$50 with a note that expresses appreciation for the Member's work on the bill. The Member may not accept the book from the lawyer and must return it to the lawyer.
- **Example (Additional Action Required).** A constituent sends the official office an email asking for assistance with a casework matter. In the email, the constituent also offers to make a campaign contribution to the Member's re-election campaign. The Member may not accept the campaign contribution. Additionally, the Committee recommends the Member or staff contact the constituent to let the constituent know the Member may not accept a campaign contribution associated with casework or any official actions. The Member may perform the casework after contacting the constituent.
- **Example (Additional Action Required).** During the holidays a trade association send a Member a fruit basket with a note that says, "Seasons' Greetings to you and your staff." The gift is not connected to any official action and may be accepted if it meets one of the Gift Rule exceptions.
- **Example (Impermissible).** A constituent who served on the Member's service academy nominations panel was so moved by the experience that the constituent offered to give the Member two wine glasses valued at \$40 total to the Member as a thank you. The Member may not accept the wine glasses.

- **Example (Impermissible).** An intern in the DC office gave a Capitol tour to visiting constituents. At the end of the tour, the constituents gave the intern a \$25 gift card to a local coffee shop as a thank you. The intern must return the gift card to the constituents. The Committee recommends staff who oversees the interns ensure interns are aware of these rules.
- **Example (Permissible).** A caseworker in the district receives a flower arrangement from a local flower shop, sent by a constituent the caseworker helped. The flower arrangement has a card that thanks the caseworker for the casework's successful outcome. The caseworker may accept the flower arrangement.
- **Example. (Permissible).** Following the successful outcome of a casework matter, the constituent gives the caseworker a cake the constituent baked themselves. The caseworker may accept the home baked cake.
- **Example (Permissible).** Same example as above, but instead the constituent embroidered the caseworker's name on a small piece of fabric for display in the official office. The caseworker may accept the embroidered fabric as a token decorative item.
- **Example (Impermissible).** A constituent writes to you asking for an internship in the office and includes a necktie with the internship application. The constituent owns a small business making and selling similar neckties. The necktie is not intended for display in the official office, but rather for you to wear. You may not accept the necktie in connection with the internship request.

IX. Impermissible Gifts

If you receive a gift you may not accept, you must take the appropriate action to return or pay for the gift. Which action is appropriate depends on the gift's nature. Your options are discussed below.

A. Decline the Gift

If someone offers you a gift you either may not accept, or do not want to accept, you may simply decline the gift. See Gifts from Foreign Governments and International Organizations (page G-14) if a foreign government official is offering the gift.

B. Return Gift to Donor

You may always return a gift to the person who gave it to you, whether the gift does not meet an exception to the Gift Rule, or you simply do not want it. You should return the item promptly.²⁵ If the gift came to the official office, please contact the Committee on House Administration for ways to pay for return postage.

C. Pay Fair Market Value

If you receive a gift you may not accept, you may pay fair market value for the gift and keep it.²⁶ If you pay fair market value, the item will no longer be a gift, but rather a commercial transaction. How the Committee calculates fair market value varies depending on the gift.²⁷ See How to Value a Gift (page G-2) to determine what amount you should repay.

D. Perishable or Unreturnable Gifts

If you receive a gift you do not wish to pay for and is impracticable to return because it is perishable, you

may donate the gift to a charity or throw it away.²⁸ You may also donate a tangible item or throw it away if you have made every effort to return it and you cannot find the donor.²⁹ Donating or destroying a non-perishable tangible gift is an extreme measure. You should make every possible effort to return the gift first.

If you receive cash that you cannot return, despite every effort, you must send it to the U.S. Treasury. Please contact the Committee for instructions on sending cash to the U.S. Treasury.

X. General Gift Rule Provisions

The Gift Rule starts with the premise that you may not accept a gift **unless** it meets an exception to the Gift Rule.³⁰ Both the Gift Rule and other sources, such as the Foreign Gifts and Decorations Act (FGDA) and the Mutual Education and Cultural Exchange Act (MECEA), provide many exceptions. A gift only needs to meet one exception for you to accept it.³¹

Even if you may be able to accept a gift under a technical reading of any exception discussed below, you should still be mindful of the motives behind any gift. You should always exercise discretion and be careful to avoid even the appearance of impropriety when accepting a gift.³²

You should consider the following factors when deciding whether to accept a gift.

- Whether the gift meets an exception to the Gift Rule³³
- Source and value of the gift
- Frequency of gifts from one source
- Possible motives of the donor
- Possible conflicts of interest with official duties³⁴
- Whether accepting the gift violates the spirit of the Gift Rule³⁵

XI. Exceptions to the Gift Rule for Permissible Gifts

The examples provided in this section are specific to each Gift Rule exception being discussed. If an example's conclusion is that you may not accept the gift, the analysis is limited to the exception being discussed only. You may be able to accept the gift under a different exception to the Gift Rule.

You may need to report gifts on a Financial Disclosure Statement or Foreign Gifts and Decorations Act form. Information about Financial Disclosure Statements is available at <https://ethics.house.gov/financial-disclosure>. The Foreign Gifts and Decorations Act form is available at <https://ethics.house.gov/forms/travel>.

- A. Gifts of Nominal Value
- B. Gifts Worth Less Than \$50
- C. Gifts from Relatives
- D. Gifts Based on Personal Friendship
- E. Gifts from other Members, Officers, or Employees
- F. Gifts of Personal Hospitality
- G. Gifts from Federal, State, or Local Governments
- H. Gifts from Foreign Governments and International Organizations
 - i. Tangible Gifts
 - ii. Decorations
 - iii. Medical Treatment

- iv. Educational Scholarship
 - v. Reporting Requirements
- I. Home State Products
- J. Free Attendance at Events
 - i. Receptions
 - ii. Widely-Attended Events
 - iii. Events with Constituent Groups
 - iv. Educational Events
 - v. Training in the Interest of the House
 - vi. Charity Events
 - vii. Events Sponsored by Political Organizations
 - viii. Events in Honor of Members, Officers, and Employees
 - ix. Inaugural and Swearing-In Events
 - x. Events During National Political Conventions
- K. Business Meetings
- L. Informational Materials
- M. Commemorative Items
- N. Gifts from Outside Business and Other Activities
- O. Benefits from Previous Employers
- P. Legal Expenses
 - i. Legal Expense Funds
 - ii. Pro Bono Legal Services
 - iii. Campaign Funds for Legal Expenses
- Q. Honorary Degrees
- R. Public Service Awards
- S. Widely Available Opportunities and Benefits
- T. Loans
- U. Awards, Prizes, and Raffles
- V. Campaign Contributions
- W. Bequests and Inheritances
- X. Artwork and Other Gifts of Unusual Nature on Loan to the House
- Y. General Waiver
- Z. Special Occasion Gift Waiver

A. Gifts of Nominal Value

You may accept an item valued at less than \$10 (\$9.99 or less before tax), or a greeting card, baseball cap, or t-shirt, regardless of the source, with some caveats.³⁶ The caveats are

- You may not accept cash or cash equivalents, like gift cards;
- You may not accept food or beverages in a one-on-one setting; and³⁷
- You should be mindful of potential conflicts if you are repeatedly offered nominal value gifts from a single source, even if the gifts technically satisfy the requirements of the exception.
- **Example (Permissible).** Your local baseball team won the World Series. The baseball team sends you a box with 10 World Series baseball caps with a note for everyone in the office who would like one to take one. You and your colleagues may each accept one baseball cap.
- **Example (Impermissible).** A registered federal lobbyist you work with often invites you to discuss an upcoming bill over a cup of coffee. You may not allow the registered federal lobbyist to pay for your coffee, but you may still meet with the lobbyist and pay for your own coffee.

- **Example (Impermissible).** A constituent sends you a handwritten note thanking you for all your hard work over the years and encloses a \$5 gift card. You may keep the handwritten note, but you must return the gift card.

B. Gifts Worth Less Than \$50

You may accept a gift worth less than \$50 (\$49.99 or less before tax) from someone who is not a registered federal lobbyist, foreign agent, or entity that employs or retains a registered federal lobbyist or foreign agent, with some caveats.³⁸ The caveats are

- The cumulative value of gifts you may accept under this exception in a calendar year from a single source must be less than \$100 (\$99.99 or less before tax);
- A gift worth less than \$10 (\$9.99 before tax) does not count towards the cumulative limit;
- You may not accept cash or cash equivalents, like gift cards; and
- You may not buy down the gift's value to get it below \$50.

You do not have to maintain formal records related to gifts you accept under this exception, but you must make a good faith effort to comply with these terms.³⁹

- **Example (Permissible).** You were invited to dinner by a group that does not employ or retain a registered federal lobbyist or foreign agent. Your meal and beverages before tax and tip cost \$45. You may accept the group's offer to pay for your meal.
- **Example (Impermissible).** A registered federal lobbyist invites you to dinner and offers to pay. You may not accept the offer, regardless of the meal's value. You may still go to dinner with the lobbyist and pay for your own meal.
- **Example (Impermissible).** An organization that does not employ or retain a registered federal lobbyist or foreign agent offers you tickets to a baseball game with a face value of \$65. You may not pay \$16 to buy down the value so the gift is less than \$50. You must pay the ticket's entire face value to accept it.
- **Example (Impermissible).** An organization that does not employ or retain a registered federal lobbyist or foreign agent has a monthly speaker series over dinner. The dinners are \$20 per person. In that calendar year, you already attended four dinners and would now like to attend a fifth dinner. Because the fifth dinner's value would make a total of \$100 in cumulative yearly gifts from that organization, you may not accept the fifth dinner, nor may you pay \$1 to bring the cumulative value to \$99. You may still attend the event and pay for your own dinner.

C. Gifts from Relatives

You may accept anything that a relative offers you, if your relative is the source of the gift, and not merely passing along a gift from someone else.⁴⁰ The following individuals are your relatives.

- Parent
- Child
- Sibling
- Aunt or Uncle
- Great Aunt or Great Uncle
- First Cousin
- Niece or Nephew
- Spouse⁴¹

- Fiancé(e)
- Grandparent
- Grandchild
- Mother or Father-in-Law
- Daughter or Son-in-Law
- Sister or Brother-in-Law
- Stepparent
- Stepchild
- Stepsibling
- Half sibling
- Grandparent of your spouse⁴²

If a person is not on this list, such as a second cousin or a godparent, you may be able to accept a gift under a different exception to the Gift Rule (page G-7).

- **Example (Permissible).** Your parents offer to buy you a car using their personal funds. You may accept the car.
- **Example (Permissible).** Your grandparents offer to pay off your student loans by writing you a check. You may accept the check from your grandparents.
- **Example (Permissible).** You received Committee approval to accept a trip from your significant other to whom you are not engaged or married. While on that trip, your significant other proposes and presents you with an engagement ring. Once you accept the proposal, you may also accept the engagement ring as a gift from your now fiancé(e).
- **Example (Permissible).** Your grandmother wants to give you her heirloom dining room table. You may accept the table. See Bequests and Inheritances (page G-35) if your grandmother wishes to leave you the table in her will.
- **Example (Impermissible).** Your long-time family friend gives your parents a gift to give to you. Because your long-time family friend is really the gift's source, and your parents are just passing the gift along, you may not accept the gift as one from a relative. You may be able to accept the gift under a different gift exception (page G-7).

D. Gifts Based on Personal Friendship

You may be able to accept a gift that is offered because of personal friendship and not related to your position with the House.⁴³ This exception does not require that you be friends with someone before you joined the House, nor does it prohibit friendships with registered federal lobbyists or foreign agents. But you should always be mindful of why you were offered the gift and who the true source of the gift may be.

If the gift's fair market value exceeds \$250, you must seek formal Committee approval to accept a gift offered because of personal friendship, even if the gift meets all the requirements discussed below. If the fair market value of a gift is \$250 or less, you may decide for yourself if the gift meets the requirements. The Committee views trips as a whole; therefore, the value of a trip would be the transportation expenses, lodging expenses, and meal expenses that someone else offers to pay on your behalf. You can find the form to request approval from the Committee to accept the gift based on personal friendship at <https://ethics.house.gov/forms/gift-waivers>. The Committee will consider your request through its formal advisory opinion process. If you can, please submit your request early to give the Committee enough time to review, analyze, and make a decision.

To accept a gift under personal friendship, you must consider the circumstances of the offer, including, but not limited to

- the nature of your relationship with your friend, including any past exchange of gifts;
 - if your friend paid or will pay for the gift personally, or if your friend will seek a business reimbursement or tax deduction; and
 - if the same or similar gift was or will be offered to another Member, officer, or employee.⁴⁴
- **Example (Additional Action Required).** Your former roommate is now a registered federal lobbyist. For years you have gone to basketball games together. Sometimes you would pay for the tickets and sometimes your former roommate would pay for the tickets. Your former roommate has an extra ticket to a playoff game that your roommate paid for personally and invites you to come. Because you and your former roommate have been friends for a while, have a history of exchanging gifts, and your former roommate paid for the extra ticket personally, you may be able to accept the ticket. Depending on the ticket's fair market value, you may need to seek Committee approval before accepting it.
 - **Example (Impermissible).** You are friendly with a registered federal lobbyist who often comes to your office and whom you see at official events. You do not socialize with the lobbyist outside of work. The lobbyist invites you to dinner at their personal expense. Because you do not have a friendship relationship with the lobbyist, you may not allow the lobbyist to pay for your dinner. You are welcome to still go to dinner with the lobbyist and pay for your own meal and drinks.
 - **Example (Impermissible).** A person you recently met asked you out on a first date and offers to pay. Other than meeting this person previously, you have not socialized with the person. You believe you were asked out because of where you work. You may not accept the offer to pay for the first date under personal friendship. If you develop a relationship with this person, you may be able to accept future offers to pay for dates. If the person is not a registered federal lobbyist or foreign agent, you may accept the offer if the date's total value before tax and tip is \$49.99 or less.
 - **Example (Additional Action Required).** Your significant other, to whom you are not engaged or married,⁴⁵ surprises you with a trip abroad for your birthday. Your significant other offers to pay for flights, lodging, and meals while you are on the trip. Because the trip's value likely exceeds \$250, you will need to seek Committee approval before accepting your significant other's offer.
 - **Example (Additional Action Required).** You and your significant other take a trip. You both pay your own way. While on the trip, your significant other purchases a piece of art worth more than \$250 for your birthday and has it shipped to your home. The gift was spontaneous, and you did not have the opportunity to request Committee approval beforehand. You may request retroactive approval to accept the piece of art. If the Committee does not approve your request for some reason, you may pay your significant other back for the piece of art.
 - **Example (Permissible).** Your best friend works for a lobbying firm. The lobbying firm is having their holiday party and all their employees can bring a guest. The lobbying firm does not place restrictions on whom the guest can be. Your best friend asks you to be their guest. Because your best friend can bring whomever they want, the gift is your best friend's to offer. If the per person value of the food and drinks for the holiday party is less than \$250, you may accept your best friend's offer to attend the holiday party.
 - **Example (Permissible).** Your roommate works for a downtown law firm. The law firm has a box at a major league baseball stadium. The law firm allows its staff to bring a guest to the baseball games and sit in the firm's box. The law firm does not place restrictions on whom the guest can be. Your roommate invites you to the game as their guest. Because your roommate can bring whomever they want, you may accept and sit in the law firm's box at the baseball game.

E. Gifts from other Members, Officers, or Employees

You may accept a gift from another Member, officer, or employee of the House or Senate if the person giving you the gift is either your direct or indirect supervisor or your peer.⁴⁶ You may not accept a gift from someone you supervise unless the gift is given for a special occasion.⁴⁷ Special occasions (page G-37) include birthdays, holidays, marriages, births or adoption of children, anniversaries, retirements, deaths, and other similar occasions for which gifts are traditionally given. You should never be pressured to make or contribute to a gift.

Providing personal services without compensation may also be a gift.⁴⁸ Supervisors should not accept uncompensated personal services from subordinate staff for services the supervisor would usually pay for if there is no connection to legitimate, official activity.⁴⁹

- **Example (Permissible).** You are a district caseworker working part time while also going to school. Your employing Member and your Chief of Staff would like to use their personal funds to help you pay for textbooks. You may accept that gift from your supervisors.
- **Example (Permissible).** A Member wants to give all her colleagues a copy of a book that helped inform her policy positions. The Member would like to use personal funds to purchase those books. The other Members may accept that book as a gift from their peer.
- **Example (Permissible).** Your Chief of Staff is getting married. Everyone in the office would like to contribute to a gift card to your Chief of Staff's favorite restaurant as a wedding gift. If no one feels pressured to contribute, you may pool your funds and give the gift card to your Chief of Staff. Your Chief of Staff may also accept the gift card for this special occasion.
- **Example (Impermissible).** Your employing Member completed the first session of their first term in office. The staff would like to contribute to a gift to celebrate your Member's first year in office. Your Member may not accept that gift from the staff because it is not a special occasion for which gifts are traditionally given.
- **Example (Impermissible).** Your employing Member asks you to pick up their children from school. Because this activity bears no connection to legitimate, official activity, you should not perform this service for your employing Member.

F. Gifts of Personal Hospitality

You may stay in someone's home or personally-owned facility, or eat a meal at someone's home, as long as the person who offers the personal hospitality is not a registered federal lobbyist or foreign agent.⁵⁰ You may not accept the offer of personal hospitality if the purpose is business-related or the property is used for a business purpose, such as being rented out to others.⁵¹

This exception only applies to lodging and meals in the home or personally-owned facility. The exception does not apply to meals at restaurants while visiting someone, nor to someone paying for your hotel room while visiting. Those gifts may be allowed under separate exceptions (page G-7).

- **Example (Permissible).** You are going to visit your college roommate, who offers to let you stay in their apartment. Your college roommate personally rents the apartment and is not a registered federal lobbyist or foreign agent. You may accept your college roommate's offer to stay in their apartment, and you may accept any meals your college roommate may make for you in their apartment.
- **Example (Impermissible).** Your friend owns a beach house and offers to let you and your family stay there for a week. Your friend rents out the beach house on a weekly basis. Because

the beach house is used for a business purpose, you may not accept your friend's offer as personal hospitality. See Gifts Based on Personal Friendship (page G-10) for an exception that may apply.

- **Example (Impermissible).** You were invited to an "off-the-record" dinner at a local philanthropist's home. The dinner's purpose is to discuss policy initiatives on which the philanthropist works. Even if the philanthropist is not a registered federal lobbyist or foreign agent, you may not accept the meal as personal hospitality because the dinner has a business purpose. See Free Attendance at Events (page G-17) for other ways you may be able to accept the offer.
- **Example (Permissible in Part).** You recently met someone at a party locally with whom you spent most of your time sharing your love of skiing. Your new acquaintance invited you to spend the weekend at their condominium in Colorado to go skiing. Your new acquaintance also offered to pay for your lift tickets and take you out to some local restaurants. Your new acquaintance is not a registered federal lobbyist or foreign agent and personally owns the condominium. Your new acquaintance does not rent out the condominium. You may accept the lodging in the condominium over the weekend, but you may not accept the lift tickets or the meals at the local restaurants as personal hospitality.
- **Example (Permissible).** A constituent knows that you like to duck hunt. The constituent personally owns a piece of property with a lake where the constituent often goes to duck hunt and allows his friends to duck hunt as well. The constituent does not charge others to hunt on his property. The constituent is not a registered federal lobbyist or foreign agent. The constituent offers to bring you along the next time he goes hunting. You may accept the constituent's offer.

G. Gifts from Federal, State, or Local Governments

You may accept anything that is paid for by the federal government, a state or local government, or secured under a contract with the federal government.⁵² The domestic government agency or entity must directly pay for the gift and may not merely be a conduit for someone else.⁵³

To determine if an entity is a domestic governmental entity, the Committee looks to whether the entity is treated as a government entity for other purposes. The Committee considers these entities to be government entities.

- United States federal government
- United States state and federal district governments
- United States municipal governments
- Commonwealths and territories of the United States
- Smithsonian Institute
- Washington Metropolitan Area Transit Authority (WMATA)⁵⁴
- Tennessee Valley Authority
- California Joint Powers Authorities such as the Metropolitan Water District of Southern California⁵⁵
- Public universities, including Pennsylvania state-related universities⁵⁶

The Committee does not consider these entities to be government entities.

- Native American tribes⁵⁷
- Amtrak⁵⁸
- Regional Federal Home Loan Banks

These lists are not exhaustive. Please contact the Committee if you have questions about a particular entity.

- **Example (Permissible).** A public university offers you tickets to an upcoming football game. The university uses its general funds to pay for your ticket. You would be sitting in the university president's box. You may accept the tickets.
- **Example (Impermissible).** A private university offers you tickets to an upcoming football game. You may not accept the tickets as a gift from a state government, but you may be able to accept the tickets under a different exception.
- **Example (Additional Action Required).** The company running a national lab invites you to tour its facility and offers to take you out to lunch afterwards to discuss your observations. If providing tours and meals to congressional observers is part of the company's contract with the Department of Energy, you may accept as a gift secured by a federal government contract. If not, you may be able to accept under a different exception (page G-7).

H. Gifts from Foreign Governments and International Organizations

The Emoluments Clause of the Constitution limits your ability to accept gifts from foreign governments. The Emoluments Clause prohibits you, as a federal government official, from receiving "any present . . . of any kind whatever" from a foreign government or its representatives without the consent of Congress.⁵⁹

Congress consented to gifts, including travel, from foreign governments by enacting two federal statutes, FGDA and MECEA.⁶⁰ House rules also allow you to accept gifts under these two statutes.⁶¹ See Travel Paid for by a Foreign Government (page T-17) for more information about travel allowed under FGDA and MECEA.

FGDA also allows you to accept certain tangible gifts and decorations from the following entities.

- Foreign governments;
- International or multinational organizations whose membership is made of units of foreign governments and their agents or representatives;
- Quasi-governmental organizations closely affiliated with, or funded by, foreign governments; or
- Private organizations closely affiliated with, or funded by, foreign governments.⁶²

See the Committee's FGDA Regulations for in-depth requirements.⁶³ The FGDA Regulations are available at <https://ethics.house.gov/foreign-gifts-and-decorations-act-fgda-regulations>.

FGDA also applies to your spouse or dependents.⁶⁴

*i. Tangible Gifts*⁶⁵

While you are on American soil, you may only accept tangible gifts that are of "minimal value tendered and received as a souvenir or mark of courtesy."⁶⁶ Minimal value is set by the General Services Administration on a tri-annual basis and is calculated based on the Consumer Price Index.⁶⁷ You can find the current minimal value at <https://www.gsa.gov/policy-regulations/policy/personal-property-policy-overview/special-programs/foreign-gifts>. If you are unsure of the value, the Office of the Clerk can appraise the item.⁶⁸ Tangible gifts include trinkets, meals, entertainment, or local transportation to attend an event.

If you are abroad, you may accept tangible gifts worth more than minimal value if refusing the gift would cause offense or embarrassment. But you accept those gifts on behalf of the United States government and must turn over the gifts when you return to the United States, report the gifts on the FGDA Disclosure Form, and seek Committee approval if you would like to retain the gifts for official display purposes. The FGDA Disclosure Form is available at <https://ethics.house.gov/forms/travel>.

You must aggregate the value of tangible gifts given to you in the same presentation from the same source to determine if the group of gifts is more than minimal value. You must also aggregate gifts given in the same presentation from the spouse of a foreign official as well as the foreign official themselves. And you must aggregate gifts given to your spouse in the same presentation as well as gifts given to you.

- **Example (Permissible).** You are invited to an embassy dinner and they offer to pay for your cab ride to the embassy. You may accept both the dinner at the embassy and the cab ride if those gifts combined are minimal value or less.
- **Example (Impermissible).** A foreign official meets with you in your office and presents you with a gold-plated tea kettle worth more than minimal value. You may not accept the tea kettle.
- **Example (Additional Action Required).** While on a CODEL abroad, a foreign official presents you with the same gold-plated tea kettle worth more than minimal value. If refusal would cause offense or embarrassment, you may accept the tea kettle on behalf of the United States. When you return from your trip, you must turn the gift over to the Clerk of the House and report the gift to the Committee on the FGDA Disclosure Form. If you would like to retain the tea kettle for display in your official office, you must seek written approval from the Committee.
- **Example (Impermissible).** The contract foreign agent for a foreign government invites you to dinner to discuss upcoming legislation. Because the foreign agent would be paying, even if ultimately reimbursed by the foreign government, you may not accept the offer. You may still go and pay for your own dinner.

*ii. Decorations*⁶⁹

You may accept and personally wear a decoration of minimal value from a foreign government if it was given

- In recognition of active field service in a time of combat operations, or
- For other outstanding or unusually meritorious performance.

If you are offered a decoration of more than minimal value and you would like to keep it for personal use, you must seek and receive Committee approval prior to accepting the decoration.

Without prior approval, you may only accept a decoration of more than minimal value on behalf of the United States. You would need to turn over the decoration, report the decoration on the FGDA Disclosure Form, and seek Committee approval if you would like to retain the decoration for official display purposes. The FGDA Disclosure Form is available at <https://ethics.house.gov/forms/travel>.

- **Example (Permissible).** A foreign government wants to present you with its highest civilian honor for your assistance to their country. The decoration is less than minimal value. You may accept, wear, and retain the decoration for your personal use.
- **Example (Permissible).** The same foreign government wishes to present you with the same award, but the decoration is more than minimal value. You seek and receive approval from the Committee before accepting the decoration. You may accept the decoration, wear the decoration, and retain the decoration for your personal use.

- **Example (Additional Action Required).** Same as the previous example but you did not seek and receive approval from the Committee before accepting the decoration. You may accept the decoration on behalf of the United States, but you must turn it over to the Clerk of the House or seek Committee approval to display it in your official office.

*iii. Medical Treatment*⁷⁰

You may accept medical treatment from a foreign government if the treatment is provided for an unexpected illness or injury that requires immediate attention while in the host country. You may also accept medical treatment from a foreign government if you seek and receive Committee approval prior to accepting the treatment.

- **Example (Permissible).** You break your leg while on vacation abroad. The foreign government offers to pay to have your leg set so you can fly home. You may accept the offer of medical treatment.

*iv. Educational Scholarship*⁷¹

You may accept an educational scholarship from a foreign government if you seek and receive Committee approval prior to accepting the scholarship. You may not accept transportation to and from the United States under this exception unless transportation is a term of the scholarship.

- **Example (Additional Action Required).** You are offered a scholarship to study at a foreign public academic institution abroad. The scholarship covers travel to and from the United States, plus tuition and room and board for the academic year. The public academic institution and the scholarship are funded by the foreign government. You must receive Committee approval before accepting the scholarship.⁷²

v. Reporting Requirements

If you received gifts or travel from a foreign government under FGDA, you must report those gifts on a separate form and return the form to the Committee.⁷³ If you accepted in-country travel expenses, regardless of value, you must return the form to the Committee within 30 days of returning from your trip. If you accepted gifts or decorations of more than minimal value, you must return the form to the Committee within 60 days of receiving the gift or decoration. You can find the form at <https://ethics.house.gov/forms/travel>.

If you file financial disclosure statements, you must also report tangible gifts, decorations, medical treatment, or educational scholarships of more than minimal value on your annual financial disclosure statement.

I. Home State Products

You may accept tangible products that are manufactured, produced, or grown in your home state.⁷⁴ These products must be intended to promote your state, and be for display or distribution to visitors in your office.⁷⁵ The home state products should be of nominal value, less than \$10, to each recipient. Home state products that are more than nominal value may be displayed in a public area of your office.

Home state products may not be traded between offices, including for intern or staff labor to assist with projects.

- **Example (Permissible).** Your state is known for growing peanuts. A peanut farmer in your state sends your office three large boxes of single serving sized peanuts. You may accept those peanuts and place them in your office reception area for visitors to take.
- **Example (Impermissible).** That same peanut farmer sends you a large tin of peanuts intended just for your consumption. You may not accept the peanuts as a home state product, but you may be able to accept them under a different exception to the Gift Rule (page G-7).
- **Example (Permissible).** An aerospace company makes rocket engines in your state. They send you a scale model of one of the rocket engines. You may accept the scale model and place it in your office reception area for visitors to see.
- **Example (Permissible).** The holidays are approaching, and a local tree farmer offers to send you a Christmas tree. You may accept the tree and put it on display in your office reception area for visitors to see.
- **Example (Permissible).** Your state invested heavily in its wine-producing regions and a local winery would like to send you six bottles of wine for display. You may accept the bottles and put them on display in your office reception area. Please contact the Office of General Counsel at 202-225-9700 for guidance about providing alcohol on House grounds.
- **Example (Permissible).** A soda manufacturer has a bottling plant in your state and offers you single-serving cans of the various sodas it bottles at its plant. You may accept the cans of soda.
- **Example (Additional Action Required).** A well-known ice cream producer is in your state. The company offers to provide you with single-serving sized ice cream cups and a freezer to keep them in. You may accept the ice cream as a home state product. You may also accept the freezer on loan from the company. See Artwork and Other Gifts of Unusual Nature on Loan to the House (page G-36) for the requirements of the loan agreement.

J. Free Attendance at Events

The events discussed below can be held in-person or virtually. A virtual event, including a webinar or a live-stream event, must still meet the criteria discussed below. If an event is held virtually, you may not accept a gift card or meal voucher in place of food for events under these exceptions. If you are offered free attendance at an event for yourself and a guest, which otherwise complies with the House Gift Rule, you may accept the offer for **any kind of guest**.⁷⁶

i. Receptions

You and a guest may attend an event if only nominal value food and drink that is not a meal is served.⁷⁷ Events that fall in this category are often evening receptions with light to medium appetizers or hors d'oeuvres, briefings over coffee and pastries or bagels, and afternoon briefings with snacks, such as cookies or chips.⁷⁸ The Committee does not assign a per person dollar limit, but you should be mindful of not accepting food and beverages in excess of these examples. For example, a reception serving only high-cost items like champagne and caviar or a 25-year Scotch tasting would not be nominal value. Low-cost meals, like pizza, hot dogs, or sandwiches, are still meals that you may not accept under this exception to the Gift Rule. You may be able to accept those meals under different event exceptions (page G-7).

You may not accept food and beverages under this exception in a one-on-one setting with a registered federal lobbyist or foreign agent, or an entity that employs or retains a registered federal lobbyist or a foreign agent.

Who extends the invitation to you for these events and whether the event has tables and chairs or silverware are not factors to determine whether this exception to the Gift Rule applies.

Generally, you may still attend a reception if background music is played during the event, even if the music is live. However, background music played by famous musicians, or a reception that is really a concert may change the event's nature.

- **Example (Permissible).** You receive an invitation to an evening event with cocktails and finger foods. The event will have tables and plates for your food. You may attend the event, regardless of who invited you.
- **Example (Permissible).** You receive an invitation to the same event, and the invitation includes the ability to bring one guest. You may attend the event and bring anyone you like as your guest.
- **Example (Impermissible).** Your colleague forwards you an invitation to an event they will be attending. The event will feature a carving station, salad station, and a collection of breads. Because this event will offer a meal, it is not a reception.
- **Example (Impermissible).** You are invited to lunch briefing and the organization sponsoring the briefing plans to pass out boxed lunches. Because this event will offer a meal, even though a low-cost meal, it is not a reception.
- **Example (Permissible).** You are invited to an evening reception with appetizers and background music played by a jazz quartet. You may attend the event.
- **Example (Impermissible).** You are invited to an evening reception with appetizers and music performed by last year's Grammy winner for best artist. The Grammy winner will sing for two hours. Although the food and drink are nominal value, the event's nature is a concert and is not a reception.

ii. Widely-Attended Events

You and a guest may accept an unsolicited offer of free attendance for a widely-attended event for you and one guest.⁷⁹ "Free attendance" includes all or part of the cost of admission; local transportation to and from the event; and the food, refreshments, entertainment, and instructional materials provided to all event attendees).⁸⁰ Free attendance does not include entertainment collateral to the event or food and refreshments outside the group setting of the event, such as giveaways.⁸¹ Your guest may be anyone, as long as the event organizer offered you an unsolicited second ticket.⁸²

A widely-attended event must meet three criteria. Remember, an event may be a widely-attended event for you but may not be a widely-attended event for your colleague. The three criteria are

- You are invited by the event organizer directly;
 - The event organizer is the organization(s) doing the work to put the event on, not a monetary event sponsor or table sponsor.⁸³
- The event organizer has a reasonable expectation that at least 25 people will also attend who are not Members, Senators, officers, or employees of Congress or their spouses; and⁸⁴
 - Those 25 attendees must come from a variety of backgrounds, including the Executive Branch, but may not solely be the employees of a single organization.
- Your attendance is related to your official or representational duties.
 - You could be speaking in your official capacity, learning about a topic that will assist your work with the House, or meeting with constituents.
 - Whether your participation is related to your official or representational duties is a decision for you and your superiors, if any, to make.
 - Purely entertainment, personal pleasure, professional development, or charitable activities are not related to your official or representational duties.⁸⁵
 - Merely watching a feature film, a sporting event, or show is generally purely entertainment.

Organizations that provide only financial assistance to the event organizer but are not assisting with the logistics for the event may still want to invite you. You may not accept an invitation from these organizations directly. The fiscal sponsors may instead request the event organizer invite you directly. You may only accept that invitation if

- The event organizer retains ultimate control over the guest list and seating arrangements, and
- The event organizer is the only entity listed on the invitation and the only entity extending the invitation.

You may accept an invitation to a large media-related event, such as the White House Correspondents' Association's annual White House Correspondents' Dinner or the Washington Press Club Foundation's Annual Congressional Dinner, if you are invited by a member of the media organization sponsoring the event.

- **Example (Permissible).** You are a legislative assistant focused on environmental policy. Your colleague is also a legislative assistant but focused on banking issues. You both receive an invitation to a large environmental policy conference, and the event organizer offers you free attendance. In years past, over 500 people from across government and industry have attended this conference. After discussing the conference with your supervisor, you may accept the invitation, but your colleague likely may not.
- **Example (Impermissible).** Same example as above, but a large corporation is underwriting the conference and sends you the invitation. The corporate sponsor has no role in planning, organizing, or executing the conference. You may not accept the invitation from the corporate sponsor.
- **Example (Impermissible).** While at the conference, you are invited to an after-hours dinner put on by one of the advocacy organizations active on environmental policy. The after-hours dinner is not part of the free attendance offered by the conference organizer. You may be able to accept the offer if the after-hours dinner meets a different exception to the Gift Rule (page G-7).
- **Example (Impermissible).** The owner of a local sports team offers you a ticket to an upcoming game. Although many people will be in attendance, the game is not a widely-attended event because it is purely for entertainment purposes.
- **Example (Permissible).** Your district is home to a large annual rodeo that is very important to the district's financial health. The organization that puts on the rodeo offered you two tickets and seats in a prominent location so the event organizer can recognize you. You may reasonably determine your attendance is related to your official or representational duties and accept both tickets.

iii. Events with Constituent Groups

You and a guest may attend events that include meals with constituent groups that do not meet the 25 non-Congressional attendance requirement of widely-attended events, if the events meet the following criteria.⁸⁶

- The event is regularly scheduled;
- The event is related to your official or representation duties; and
- The event is open to members of the constituent group, rather than just its officers or board members.

You may accept an invitation that meets the above criteria from the following event organizers. This list is not exhaustive.

- Civic associations
- Senior citizens organizations
- Veterans' groups
- Business, trade, or professional associations
 - For example, associations of lawyers, nurses, bankers, teachers, or farmers
- **Example (Permissible).** You are invited to a lunch meeting of a civic association in your district. The lunch meeting is a periodic meeting open to all of the civic association's members, but only 15 are expected to attend. If you determine your attendance is related to your official or representational duties, you may accept the invitation.
- **Example (Impermissible).** A veterans' group in your district would like to have an event honoring your upcoming retirement. Only 10 members of the group will be able to attend. Because the event is not regularly scheduled, you would not be able to accept the invitation under this exception. You may be able to accept it under a different exception to the Gift Rule (page G-7).
- **Example (Permissible).** Your teachers' association is hosting its annual Washington fly-in. All association members are welcome to participate in the trip, and usually about 20 members come to Washington. One of the events during the fly-in is a dinner with the congressional delegation. If you determine your attendance is related to your official or representational duties, you may accept the dinner. If offered, you may also bring one guest of your choosing.
- **Example (Impermissible).** Same example as above, but only one association member from your district attends the fly-in and would like to take you out to lunch separate from the group. Because the lunch is not an association event, you may not accept the lunch under this exception. You may be able to accept the lunch under a separate exception to the Gift Rule (page G-7).

iv. Educational Events

You and a guest may attend events that include meals designed for small group discussion that do not meet the 25 non-Congressional attendance requirement of widely-attended events, if the events meet the following criteria.⁸⁷

- The event is educational, such as a lecture, seminar, or discussion;
- The event is hosted by a university, foundation, think tank, or similar nonprofit, non-advocacy organization; and
- You are invited by the event organizer directly.

You may not accept a meal at educational events organized by registered federal lobbyists or foreign agents, organizations that employ or retain registered federal lobbyists or foreign agents, or advocacy groups. You also may not accept a meal at educational events that are legislative briefings or strategy sessions, even if the organization hosting the event has an educational status under the Internal Revenue Code.

- **Example (Permissible).** You are invited to a luncheon series hosted by a nonpartisan, nonprofit think tank. The luncheon series features distinguished speakers from academia discussing foreign policy updates. The think tank invited about 15 people, some of whom are Members and staff. You may accept the invitation and the luncheon. If offered, you may also bring one guest of your choosing.
- **Example (Permissible in Part).** A trade association establishes a nonprofit educational foundation. The foundation sponsors a monthly series at which experts from the field explain aspects of their industry and the ramifications of various legislative proposals for that industry.

You and a dozen other House staff are invited to these presentations, which occur over lunch. You may attend the event, but you may not accept the meal because these events are legislative briefings. You may be able to accept the meal under a different exception to the Gift Rule (page G-7).

v. Training in the Interest of the House

You and a guest may accept free attendance to training that is in the interest of the House.⁸⁸ You may also accept any food or refreshments offered to all attendees as part of the training.⁸⁹ Generally, trainings “in the interest of the House” are trainings like vendor trainings on how to use a product.

These trainings are generally not provided by outside organizations looking to share their views with you and influence your policy decisions. You may not accept meals in connection with presentations made by registered federal lobbyists, foreign agents, organizations that employ or retain registered federal lobbyists or foreign agents, or advocacy groups. You also may not accept meals in connection with briefings or discussions relating to issues before Congress.

- **Example (Permissible).** The company that your office uses for managing constituent communications is hosting a training session in the Rayburn Gold Room to promote its product and provide hands-on assistance to current and potential clients. The company plans to offer boxed lunches to everyone who attends. You may attend the training and accept the boxed lunch.
- **Example (Impermissible).** A think-tank would like to host an event where it shares the results from a recent poll and discusses how those results can inform policy decisions. The think tank plans to offer a boxed lunch to everyone who attends. You may not attend this event under this exception to the Gift Rule. But you may be able to attend under a different exception to the Gift Rule (page G-7).

vi. Charity Events

You and a guest may accept an unsolicited offer of free attendance for a charity fundraising event.⁹⁰ “Free attendance” includes all or part of the cost of admission; local transportation to and from the event; and the food, refreshments, entertainment, and instructional materials provided to all event attendees.⁹¹ Free attendance does not include entertainment collateral to the event or food and refreshments outside the group setting of the event, such as giveaways.⁹²

A charity fundraising event must meet the following criteria.

- You are invited by the event organizer directly, and
 - The event organizer is the organization(s) doing the work to put the event on, not a monetary event sponsor or table sponsor.⁹³
- The event’s primary purpose must be to raise funds to benefit an organization qualified under § 170(c) of the Internal Revenue Code.⁹⁴
 - The primary purpose is usually met if at least half of the proceeds are tax-deductible charitable contributions.
- **Example (Permissible).** A local company invites you to its casino night whose proceeds will be donated to a § 501(c)(3) charity in the district. Because you were invited by the event organizer and the primary purpose is to raise funds for a charity, you may accept the invitation.
- **Example (Impermissible).** A local organization has both a § 501(c)(3) arm and a § 501(c)(4) arm. The organization is hosting its annual fundraising dinner and those who purchase tickets or wish to donate more than the ticket price can choose whether their donations will benefit the §

501(c)(3) or the § 501(c)(4). Because the event's primary purpose is not to raise funds for an organization qualified under § 170(c) of the Internal Revenue Code, this event is not a charity fundraiser.

- **Example (Impermissible).** A local company invites you to its casino night. If any money is left over after the company pays its expenses, it plans to donate the excess to a local § 501(c)(3) charity in the district. Because the primary purpose of this event is not to raise funds for an organization qualified under § 170(c) of the Internal Revenue Code, this event is not a charity fundraiser.
- **Example (Impermissible).** A lobbying firm wishes to hold a dinner for Members and staff, at which it will announce that the firm made a substantial donation to a local charity. This event is not a charity fundraiser because its primary purpose is not to raise funds for that charity.
- **Example (Impermissible).** A local theater is organized as a § 501(c)(3) charity. The chairman of the board for the local theater invites you to a regular performance. This event is not a charity fundraiser because its primary purpose is not to raise funds for the charity. A separately scheduled fundraiser for the theater may be considered a charity fundraiser.
- **Example (Permissible in Part).** A § 501(c)(3) charity is hosting an evening fundraising reception, followed by a board meeting over dinner. You may accept an invitation for the fundraising reception, but not stay for the board meeting, because the board meeting's primary purpose is not to raise funds for the charity. You may be able to attend the board meeting and accept the meal under a different exception to the Gift Rule (page G-7).
- **Example (Impermissible).** An advocacy organization you work with often purchased a table at a charity fundraiser organized by another organization. The advocacy organization invites you to be its guest and sit at its table. You may not accept the ticket from the advocacy organization under this exception.
- **Example (Permissible).** An event organizer offers you two tickets to its upcoming charity fundraiser. You would like to bring your adult child as your guest. You may use the second ticket to bring your adult child.

You may be able to accept travel to attend a charity fundraiser. See Travel to Attend Charity Fundraisers (page T-13).

vii. Events Sponsored by Political Organizations

You may accept an offer of free attendance to a political fundraiser or other campaign event organized by the political organization.⁹⁵ Free attendance to a political event includes the cost of admission, food, refreshments, entertainment, and other benefits provided by the political organization, including unsolicited offers of free attendance for guests.⁹⁶ You may be able to accept transportation and lodging if the offer complies with the requirements in Travel for Political Purposes (page T-11). A "political organization" for this exception to the Gift Rule is one described in § 527(e) of the Internal Revenue Code.⁹⁷

You may accept an invitation to an event that is primarily entertainment, such as a golf outing or a sports game, if that event is a true fundraiser for the political organization.⁹⁸

A meeting with an individual who merely gives you a campaign contribution is not a true fundraiser or campaign event under this exception unless

- The event is organized and paid for by the political organization, and
- Receipts and expenditures are appropriately reported under applicable campaign finance laws and regulations.

You may only accept an invitation to a political event if you were invited by the event organizer directly.⁹⁹

As discussed in Campaign (page 121) and Prohibition Concerning Campaign Outlays and Contributions, House staff may not purchase tickets to a political event that benefits their employing Member. Prohibition Concerning Campaign Outlays and Contributions is available at <https://ethics.house.gov/campaign-activity-pink-sheets/reminder-prohibition-concerning-campaign-contributions-and-outlays>.

- **Example (Permissible).** You are invited by the state party to its upcoming fundraiser. The state party offers you three tickets. You may accept the invitation and all three tickets.
- **Example (Impermissible).** You are invited by the state party to a fundraiser for a presidential candidate. The state party purchased a table at the fundraiser and is not involved in putting the event on. You may not accept the invitation from the state party.
- **Example (Impermissible).** You are invited to a fundraiser for a § 501(c)(4) organization. Because the event does not benefit a political organization, you may not accept the invitation under this exception.
- **Example (Impermissible).** You are invited to a fundraiser for your employing Member by a campaign donor who purchased the ticket for you. You may not accept the ticket because it did not come from a political organization. You also may not pay for the ticket because it is a fundraiser for your employing Member. You may be able to accept the ticket under a different exception to the Gift Rule (page G-7).

viii. Events in Honor of Members, Officers, and Employees

Events that outside organizations put on nominally in your honor are not gifts to you, although free attendance at the event would still be a gift. To be “nominally” in your honor, the event must meet the following criteria.¹⁰⁰

- The event organizer is clear to all participants, such as at the top of the invitation;
- You are not a host or sponsor of the event;
- You do not receive any particular benefit from the event;
- You did not ask the event organizer to host the event; and
- You did not solicit support for the event.

If the event does not meet the criteria above, the event’s entire cost would be a gift to you.

- **Example (Permissible).** An advocacy group that works on environmental issues wants to host a reception in your honor because of your work on environmental issues. The advocacy group will handle all the logistics for the event. They may host the reception in your honor and you may attend if your free attendance meets the Gift Rule exceptions (page G-17) for that type of event.
- **Example (Additional Action Required).** At that same event, the advocacy group wishes to showcase your nature photography and offer it for sale. Because you would receive a benefit from the event, the event’s entire cost would be a gift to you. You may be able to accept the gift of the event under a different exception to the Gift Rule (page G-7).
- **Example (Additional Action Required).** You are retiring at the end of the Congress. A local nonprofit in your district wants to host a retirement event in your honor. The event will be a fundraiser for the nonprofit, and you will be required to help fundraise for the event. Because you are asked to solicit support for the event, the event’s entire cost would be a gift to you. You may be able to accept the gift of the event under a different exception to the Gift Rule (page G-7).

- **Example (Additional Action Required).** Your friends would like to host a retirement party in your honor. They ask to hold the event at your home, but they plan to handle all the other logistics. Because you would provide in-kind support for the event, the event's entire cost would be a gift to you. You may be able to accept the event as a gift based on personal friendship (page G-10).

ix. Inaugural and Swearing-In Events

You may wish to host or attend a Presidential Inaugural event or a Congressional Swearing-In event. The rules for hosting or attending these events are the same as for all other events. An offer of free attendance at an inaugural or swearing-in event must comply with an exception to the Gift Rule depending on the type of event—widely-attended event (page G-18), charity fundraiser (page G-21), political event (page G-22), or reception (page G-17). Additionally, if the event is nominally in your honor, you may not be involved in putting on the event. See Events in Honor of Members, Officers, or Employees (page G-23).

If you wish to host a swearing-in event or a reception for visitors from your district, see Conferences and Town Hall Meetings (page 340).

x. Events During National Political Conventions

Members may not attend some events during the national political conventions, even if attendance would otherwise meet an exception to the Gift Rule or if the Member purchased a ticket.¹⁰¹ During the dates of the national political convention to select the Presidential and Vice Presidential candidates of your party, a Member may not participate in or attend an event held in their honor, if the event is paid for by a registered federal lobbyist or organization that employs or retains a registered federal lobbyist.¹⁰² If the Member being honored is a Presidential or Vice Presidential candidate, this restriction does not apply.¹⁰³

This restriction prohibits honoring a specific Member.¹⁰⁴ Unless a Member is a Presidential or Vice Presidential candidate, the Member could not be named, even in a personal capacity, on any invitations, promotional materials, or event publicity. A Member also may not participate if the Member receives some special benefit or opportunity that others would not have, like an exclusive speaking or prominent ceremonial role. A group of Members, such as a delegation, committee, or caucus, without naming specific Members, may still be honored under this exception.¹⁰⁵ Additionally, Members of a congressional host committee could be listed if that listing also includes non-congressional host committee members.

This exception prohibits registered federal lobbyists or organizations that employ or retain registered federal lobbyists from directly paying for an event where a specific Member is honored. Members may still participate in events hosted and organized by organizations without registered federal lobbyists, even if a registered federal lobbyist, or organization that employs or retains a registered federal lobbyist, contributed funds to the event.

- **Example (Permissible).** You are the presumptive Presidential candidate. Your party's national political convention will be held from July 16-18 this year. A registered federal lobbyist wants to host a reception in your honor on July 17 and wants to specifically name you on all the reception's promotional material. The reception will meet all the requirements for a reception. Although the event will be hosted during the days of your national party convention and you will be named specifically, you may participate because you are the Presidential candidate.
- **Example (Permissible).** You are a delegate to your party's national convention. Your party's national convention will be held from July 21-23 this year. A registered federal lobbyist wants to host a charity fundraiser honoring your state's delegation to the convention on July 22. The event

will be publicized as honoring the state's delegation without naming specific names. The event meets all the requirements for a charity fundraiser. You may participate in the event.

- **Example (Permissible).** An organization that does not employ or retain registered federal lobbyists would like to host a reception in your honor during your party's national political convention. The reception will meet all the requirements for a reception. The organization has several table sponsors, including some registered federal lobbyists. Because the event organizer does not employ or retain any registered federal lobbyists, you may participate in the event.
- **Example (Permissible).** Your party's national political convention will be on July 15-17 this year. A registered federal lobbyist would like to host a reception in your honor on July 18. The reception will meet all the requirements for a reception. Because the event is not during the dates of your party's national political convention, you may participate in the event.

K. Business Meetings

You may accept nominal value food and drinks, including coffee or water and snacks, during a business meeting.¹⁰⁶ You may not accept any food or drinks from a registered federal lobbyist during a one-on-one meeting. This exception also does not allow you to accept a meal, even a small one like a hotdog or pizza. You may be able to accept a meal if it meets a different exception to the Gift Rule (page G-7).

See Business Site Visits (page T-15) for facility tours.

- **Example (Permissible in Part).** You are invited to a business meeting with the local subsidiary of a large multinational corporation. The meeting will be in the company's board room. The company offers to provide lunch and drinks during the business meeting. You may not accept the lunch. You may accept the drinks that are offered.

L. Informational Materials

You may accept informational materials, such as books, articles, magazines, newspapers, CDs, DVDs, or flash drives that are sent to your office to assist with your official duties.¹⁰⁷ You may accept one copy regardless of who sent the informational material or the value. You may not accept additional copies sent to your home, and your official copy should not be used to supplement your personal library.¹⁰⁸ You may accept informational materials from any source, including a constituent or a lobbyist. If you are offered a subscription to a periodical, you may only accept if the subscription comes from the periodical's publisher or distributor.

You may also accept informational materials provided during an event or meeting, such as an event program or one-pager about the organization or its policy position.

You may accept informational materials that come in a set, but you may not accept periodic updates to that set. Additionally, you may not accept full application software or access to a database under this exception. You may, however, accept a demonstration copy of the application software that is not fully functional, to understand how the software works. You may be able to accept full application software or access to a database under a different exception to the Gift Rule (page G-7).

If offered, you may accept multiple copies of an informational material for the purpose of distributing those materials to your colleagues or others. The purpose of the multiple copies must be for distribution to a specific group, you may not keep the multiple copies for your unrestricted use, and the materials must not be created specifically for you.

- **Example (Permissible).** A constituent sends you a copy of a bestselling book about budget reform. The book's list price is \$60. You may accept the book as an informational material.
- **Example (Permissible in Part).** You are offered a 5-part PBS documentary that is relevant to upcoming legislation, and you are offered a book series that is updated annually. You may accept the PBS documentary and the initial set of books. You may not accept annual updates to the books.
- **Example (Impermissible).** You are on the Natural Resources Committee and a constituent offers to pay for a subscription to National Geographic. You may not accept the subscription because the offer did not come from the publisher.
- **Example (Permissible in Part).** You are working on legislation involving online tax preparation. A tax preparation company offers you free access to its tax preparation website, which usually requires a \$79 annual registration fee. The company also offers you access to a free tutorial about how to use its website. You may not accept the free access to the website, but you may accept the free tutorial.

M. Commemorative Items

You may accept a plaque, trophy, or other substantially commemorative item that is presented in person.¹⁰⁹ In person presentation, alone, does not make an object substantially commemorative. The Committee looks to the following characteristics to determine whether an item is substantially commemorative. This list is not exhaustive.

- The engravings commemorate an occasion and not just a person, including the name of the event, the presenting organization, and the date; and
- The item does not have significant utility or artistic value.
- **Example (Impermissible).** After speaking at an event, the event organizer presents you with an expensive pen engraved with your name. The pen does not have any other information engraved on it. Although presented in person, the pen is not substantially commemorative.
- **Example (Permissible).** After speaking at the same event the following year, the event organizer presents you with a Waterford crystal bowl engraved with your name, the name of the event, and the date of the event. Although the bowl has utility and is decorative, it is still substantially commemorative, and you may accept it.
- **Example (Impermissible).** An organization would like to offer you a flat screen television to honor your efforts on an issue near and dear to its heart. The organization intends to put a small plaque on the television with your name, the date, and the reasons for the honor. Even if presented in person, the television is not substantially commemorative.
- **Example (Impermissible).** An event's organizers commission a famous artist to paint a picture for you that will be presented after their event. The artist plans to incorporate the name of the event in small letters in the corner of the artwork. Even if presented in person, the commissioned artwork is not substantially commemorative.
- **Example (Impermissible).** An aircraft manufacturer in your district wants to mail you a scale model of an airplane that it builds. The model will be inscribed with the date of the airplane's first build. Because it will not be presented in person, you may not accept it as a commemorative item. You may be able to accept it under a different exception to the Gift Rule (page G-7).

N. Gifts from Outside Business and Other Activities

You may accept gifts that are offered to you because of your activities or employment outside of the House or your spouse's activities or employment outside of the House.¹¹⁰ You may accept these gifts if

- The gifts were not offered or enhanced because of your position with the House, and
- The gifts are customarily provided to others in similar circumstances.
- **Example (Permissible).** An organization hosts trips abroad for young Americans to visit the countries of their heritage. The organization pays for all the travel expenses. The application for these trips only asks for your cultural background and does not ask about your current employment or ask for a resume. You applied for the trip and were accepted. Because you met the criteria for the trip and your House employment was not included in the application process at all, you may accept the trip.
- **Example (Additional Action Required).** Same example above, but the organization also hosts trips for “Young Leaders” to those countries. As part of the application process, you included your current employment, a copy of your resume, and answered essay questions about your leadership experience. Because your House employment was part of the application process, you may not accept the trip as related to your outside activities. You may, however, seek a waiver from the Committee to participate in the trip. See General Waiver (page G-36) for more information.
- **Example (Permissible).** You serve on the board of a 501(c)(3) charity. Each year the charity pays for one night’s lodging for each of its board members to attend the charity’s annual meeting. Because all the board members are offered the same lodging, you may accept the offer as well. However, you may not accept a nicer room than any of the other board members.
- **Example (Permissible).** Your spouse is a real estate agent and a top seller in the market. For being a top seller, your spouse received an all expenses paid trip to Hawaii for your spouse and a guest. Your spouse offers to bring you on this trip. Because the offer is related to your spouse’s employment and is not related at all to your position with the House, you may travel with your spouse.
- **Example (Impermissible).** Same example as above. However, although all employees at your spouse’s real estate firm may bring a guest of their choosing, the real estate firm specifically asks your spouse to invite you because you work for the House. You may not accept the trip because it was offered due to your position with the House.
- **Example (Impermissible).** A local sports team in your district established an advisory council and asks you to join. The advisory council mostly consists of area elected officials or their staff. Each advisory council member gets season tickets to the sports team’s home games. Even though you may only participate in the advisory council in your personal capacity, you were invited to participate because of your position with the House. Therefore, you may not accept the season tickets.
- **Example (Permissible).** You started looking for a new position off the Hill. You interviewed with one private company and were invited back for a second interview. All second interviews with this company take place over lunch at a restaurant, and the company pays. You may accept the lunch during the second interview.
- **Example (Impermissible).** A private company reached out to you to talk about a job offer. The company is headquartered on the other side of the country. Typically, the company flies its candidates out to meet at headquarters. The company usually only covers coach class airfare, but because they would like you to be their rainmaker, they offer to pay for first class airfare for you. You may only accept the coach class ticket from the company. You may upgrade your ticket using your own resources or accept a free upgrade from the airline if it is a widely-available benefit.

O. Benefits from Previous Employers

You may accept benefits from former employers while employed by the House, if those benefits are related to the work you performed for the former employer and not related to your position with the

House.¹¹¹ These benefits include receiving a pension, participation in a retirement plan maintained by the former employer, deferred compensation, and severance payments.

You may receive a severance package from a former employer while employed by the House if the severance package meets the following criteria.

- Your former employer regularly gives its employees a severance package as part of the employees' compensation for services performed,
- The severance package is compensation for services performed for the former employer prior to employment with the House,
- The severance package is no greater than that given to other similar employees who do not work for the House, and
- The severance package's monetary value is not enhanced because of your employment with the House.

You may accept deferred compensation for work you performed prior to starting House employment. However, you may not receive deferred compensation for representational services before the federal government, even if the work was completed prior to starting your House employment.¹¹² See Outside Employment (page 198) for information about representational services before the federal government.

If you have active contingency or referral fee agreements related to your former employer, please call the Committee for guidance on how to manage those agreements.

- **Example (Permissible).** You participated in a 401(k) plan with your former employer. Your former employer matched all employee contributions. Your former employer allows former employees to keep their investments in the company 401(k) plan but does not match contributions for former employees. You may keep your investments in the company 401(k) plan without receiving any matching contributions.
- **Example (Impermissible).** Your former employer does not routinely offer severance packages to departing employees, but it does offer a separation bonus for any departing employees who work in Congress. Because the separation bonus is tied to your House employment, you may not accept it.
- **Example (Permissible).** Prior to working for the House, you were a real estate agent. All your outstanding contracts settled the week before you started your House employment, but you received the payment from your real estate broker after you started House employment. Because the deferred payment is for work done prior to joining the House, you may accept the deferred payment.

P. Legal Expenses

Subject to many restrictions, you may be able to accept contributions to a Legal Expense Fund that the Committee approves or *pro bono* legal services.¹¹³

i. Legal Expense Funds

You may accept contributions to a legal expense fund that the Committee formally approves as long as those contributions fully comply with the requirements in the Committee's Legal Expense Fund Regulations.¹¹⁴ Legal Expense Fund Regulations are available at <https://ethics.house.gov/financial-disclosure-pink-sheets/revised-legal-expense-fund-regulations>. If you would like to establish a Legal Expense Fund, you must write to the Committee and request formal approval of the trust document and the proposed trustee. Once approved, Legal Expense Funds become public documents.

1. Purposes of a Legal Expense Fund

You may only establish a Legal Expense Fund if the relevant legal expenses arise in connection with

- Your candidacy for, or election to, federal office;
- Your official duties or position in Congress;
 - This purpose includes matters before the Committee and filing an *amicus* brief in a Member's official capacity.
- A civil action filed in a Member's official capacity challenging the validity of a federal law or regulation;
- A criminal prosecution against you; or
- A civil matter bearing on your reputation or fitness for office.

You may not establish a Legal Expense Fund for matters that are primarily personal in nature, such as matrimonial action, personal injury claims, or personal contract disputes.

2. Independent Trustee

You must find an independent trustee to manage your Legal Expense Fund. The trustee may not have any family, business, or employment relationship with you for two years before the establishment of your Legal Expense Fund. Additionally, the trustee may not delegate any duties to someone who has any family, business, or employment relationship with you. Additionally, we recommend the trustee not contribute to any of your campaigns while serving as trustee. Although the trustee provides many services to the Legal Expense Fund, you are ultimately responsible for the proper administration of the Legal Expense Fund.

The full list of trustee duties can be found in the Legal Expense Fund Regulations. Legal Expense Fund Regulations are available at <https://ethics.house.gov/financial-disclosure-pink-sheets/revised-legal-expense-fund-regulations>.

3. Contributions

Your Legal Expense Fund may only accept up to \$5,000 in a calendar year from any individual or organization, including corporations, labor unions, and political action committees.¹¹⁵ Your Legal Expense Fund may not accept any contributions from registered federal lobbyists or foreign agents.¹¹⁶ In-kind contributions, including *pro bono* legal services and waivers of trustee's fees, also count towards that \$5,000 limit.¹¹⁷ In-kind contributions must be valued at fair market value. If the organization donating to the Legal Expense Fund is a partnership, limited liability company not taxed as a corporation, or an S-corporation, the contribution is attributed to the organization itself and to each partner, member, or shareholder based on each person's share of the organization's profits.

- **Example.** A limited liability company with three equal members would like to donate \$3,000 to your Legal Expense Fund. The three members would also like to separately donate \$2,000 each to your Legal Expense Fund. In your accounting, the limited liability company will have donated \$3,000, and each member will have donated \$3,000.

If any Member, officer, or employee of the House other than you would like to help raise funds for your Legal Expense Fund, that person must separately receive approval from the Committee to assist. Any fundraising for your Legal Expense Fund must follow all the guidelines in Member, Officer, and Employee

Participation in Fundraising Activities. Member, Officer, and Employee Participation in Fundraising Activities is available at <https://ethics.house.gov/gift-pink-sheets/member-officer-and-employee-participation-fundraising-activities>.

4. Use of Funds

You may only use funds in a Legal Expense Fund for the purposes approved by the Committee. You may only use funds for the following purposes.

- Legal expenses;
- Expenses incurred while soliciting for the Legal Expense Fund;
- Expenses for administering the Legal Expense Fund;
- Federal, state, and local taxes; and
- Expenses related to preparing the reports required by the Legal Expense Fund Regulations. Legal Expense Fund Regulations are available at <https://ethics.house.gov/financial-disclosure-pink-sheets/revised-legal-expense-fund-regulations>.

Any other expenses, including legal expenses incurred prior to establishing the Legal Expense Fund, must be approved by the Committee.

5. Beneficiaries

You may use the Legal Expense Fund to pay for your own legal and other expenses, as the trustor and beneficiary of the Legal Expense Fund. You may include present and former House employees as beneficiaries of the Legal Expense Fund. If you would like to make anyone other than you a beneficiary of the Legal Expense Fund, you must receive approval from the Committee.

If you choose to make House employees beneficiaries of your Legal Expense Fund, you must follow certain requirements to ensure the House employees can engage independent and competent legal counsel. Those requirements are listed in the Legal Expense Fund Regulations. Legal Expense Fund Regulations are available at <https://ethics.house.gov/financial-disclosure-pink-sheets/revised-legal-expense-fund-regulations>.

6. Public Disclosure and Reporting

Once the Committee approves your Legal Expense Fund, you must file the trust document with the Legislative Resource Center within one week. If you do not file the trust document timely, you must seek re-approval from the Committee before formally establishing the Legal Expense Fund.

You must also file quarterly reports for the Legal Expense Fund with the Committee and the Legislative Resource Center. Legal Expense Funds follow the calendar year, not the legislative year. The reports include disclosure of certain contributions and certain expenditures. Although the trustee may assist you with preparing the quarterly reports, you are responsible for filing the quarterly reports.

You must file quarterly reports until the Legal Expense Fund has terminated or you leave the House. If you leave the House, you must also file a final departing Trustor report.

Contributions to your Legal Expense Fund are gifts to you. If you file Financial Disclosure Statements, you must also report contributions on the Gifts Schedule.

7. Changes to the Legal Expense Fund

If you would like to change the Legal Expense Fund's purpose, trustee, or beneficiaries, you must receive prior Committee approval.

8. Termination of the Legal Expense Fund

Your trustee may terminate the Legal Expense Fund at the earlier of 1) the end of the time period for which the Legal Expense Fund is established, 2) the fulfillment of the Legal Expense Fund's purpose, or 3) at the Committee's direction for non-compliance with the Legal Expense Fund Regulations. Legal Expense Fund Regulations are available at <https://ethics.house.gov/financial-disclosure-pink-sheets/revised-legal-expense-fund-regulations>.

Within 90 days after a Legal Expense Fund's termination, your trustee must distribute any remaining funds or assets in one of two ways.

- You may distribute the funds and assets to the Legal Expense Fund's contributors on a *pro rata* basis as determined by your trustee, or
- You may donate the remaining funds and assets to an organization qualified under Internal Revenue Code § 501(c)(3).

If you would like to donate the remaining funds and assets to a charitable organization, the Committee must approve the benefitting charities. No Legal Expense Fund funds or assets may be donated to a charity that was established or is controlled by you.

ii. *Pro Bono Legal Services*

You may accept unsolicited *pro bono* legal services for the following purposes.¹¹⁸

- File an *amicus* brief in your capacity as a Member;
- Participate in a civil action challenging the validity of any federal law or regulation; or
- Participate in a civil action challenging the lawfulness of an action of a federal agency, or a federal official acting in their official capacity.
 - The civil action must concern a matter of public interest, rather than one that is personal in nature.

Pro bono legal services mean the attorney or law firm providing the legal services is not charging for those services. *Pro bono* legal services do not allow an outside third party to pay for legal expenses that you incur.¹¹⁹ You may, however, be able to sign on to an *amicus* brief that is written for an outside third party in your official capacity.

If you are offered *pro bono* legal services for any other purpose, those legal services must either be allowable contributions to a Legal Expense Fund or separately approved by the Committee through its formal advisory opinion process.

- **Example (Impermissible).** You are the plaintiff in a lawsuit challenging the validity of a federal regulation. A local law firm is representing you in the action but is not charging you for the legal services. Unbeknownst to you, a third party is paying the law firm's fees. You must repay that third party for the legal fees. Even if you are unaware of a gift that is given on your behalf, you are still ultimately responsible for only accepting permissible gifts.

- **Example (Impermissible).** A law firm offers to prepare an *amicus* brief for Members. The law firm does not offer its services on a *pro bono* basis. A third party who will also provide legal services offers to pay the law firm's expenses. Because the purpose of the legal services is to write an *amicus* brief for Members, the Members may not accept the third party paying for those legal services. The law firm itself must either offer its services on a *pro bono* basis, or the Members must pay fair market value for those services.
- **Example (Additional Action Required).** You are a candidate for local elected office. Your opponent challenged your placement on the ballot. When you engaged an attorney to assist with the response, the attorney offered their services on a *pro bono* basis. Because the purpose for this *pro bono* representation does not meet one of the purposes listed above, you must receive formal Committee approval to accept the offer.
- **Example (Permissible).** An advocacy group is filing an *amicus* brief in a case challenging a federal regulation that you and other Members also disagree with. The advocacy group is paying for its own legal services and the *amicus* brief lays out the advocacy group's arguments. The advocacy group asks if you would like to also sign on to the *amicus* brief. Because the *amicus* brief is written for the advocacy group, who is paying its own legal services, you may sign on to the brief in your official capacity.

A Warning. You are responsible for complying with the Gift Rule and any other authority allowing you to accept gifts. Before entering into any arrangement where you are not paying full fair market value, and especially for expensive arrangements such as legal services, the Committee strongly recommends you have a full understanding of what is being offered and who would be providing the gift. You may not solicit for *pro bono* legal services. The Committee and the Office of General Counsel are available to review any retainer agreements. The Office of General Counsel is available at 202-225-9700.

iii. Campaign Funds for Legal Expenses

You may be able to use campaign funds to pay for certain legal expenses. See Payment of Certain Legal Expenses (page 156) for the Committee's guidance on using campaign funds for legal expenses. Please also contact the FEC's Office of Congressional Affairs at (202) 694-1006 to discuss additional limits FECA and its regulations place on the use of campaign funds.¹²⁰

Q. Honorary Degrees

You may accept the award of an honorary degree, as well as any travel, food, refreshments, and entertainment that are also provided in connection with the honorary degree.¹²¹

- **Example (Permissible).** You were asked to provide a commencement speech to your alma mater and the school plans to award you with an honorary degree. The school offers to pay for your transportation and lodging expenses, as well as two dinners during commencement weekend and a post-commencement reception. You may accept the offer from your alma mater.

R. Public Service Awards

You may accept a *bona fide*, non-monetary public service award, as well as any food, refreshments, and entertainment that are also provided in connection with the public service award.¹²²

The Committee considers the following criteria to determine if an award is a *bona fide* public service award.¹²³ This list is not exhaustive.

- The nature of the organization providing the award;
- Whether the award is part of an established program and has been awarded on a regular basis;
- Whether the award has been presented to non-congressional awardees in the past; and
- Whether there are specific, written criteria for the selection of the awardees.

If you were offered a public service award with a monetary component, you must write to the Committee for formal approval to accept the monetary award. The Committee will closely examine whether the award is a *bona fide* public service award when deciding whether to grant you a waiver of the Gift Rule. See General Waiver (page G-36) for information about the Committee's waiver authority.

- **Example (Permissible).** Before coming to the House, you were actively involved with foster children. You continued that work since joining the House. A foundation that supports foster children would like to honor your service and present you with an award. The foundation has presented this award every year for the last 20 years to someone who tirelessly works to improve the lives of foster children. The foundation has established criteria to determine whether a recipient "tirelessly works to improve the lives of foster children." A Member and a Senator received the award in previous years, but generally the award is given to someone not affiliated with Congress. The award itself is a crystal desk clock. You may accept the *bona fide* public service award and any meals or entertainment provided when you are presented with the award.
- **Example (Additional Action Required).** You were active duty military prior to joining the House and continue to serve in the Reserves. You work for the Veterans Affairs Committee and are actively involved in assisting veterans outside of your official duties. A private organization that assists veterans would like to present you with an award for your service to veterans. The organization has given this award for five years and no other awardee has been affiliated with Congress. The organization is aware that you work for the Veterans Affairs Committee, but the decision to present you with the award is mostly based on your service outside the House. The organization has written criteria for determining who should receive the award. The award itself is a crystal bowl and \$1,000. You may accept the crystal bowl as a *bona fide* public service award, but you will need to write to the Committee for formal approval to accept the \$1,000.

S. Widely Available Opportunities and Benefits

You may accept opportunities and benefits that are similarly available to others outside the House.¹²⁴ Specifically, an opportunity or benefit must meet one of the following criteria.

- Available to the public or all federal employees, regardless of geographic location;
- Offered to the members of a group or class where membership is not related to congressional employment;
- Offered to members of a group or class where membership is related to congressional employment, but similar opportunities are available to large segments of the public through similar organizations, such as credit unions or employees' associations;
- Offered to a group or class of government employees that does not distinguish between branch of government, type of responsibility, rank, or pay grade; or
- Reduced membership or other fees offered to government employees to participate in a professional organization, if the only restrictions on membership relate to professional qualifications.
- **Example (Permissible).** You would like to use free software to conduct a survey of your constituents. You've discussed the technology and cybersecurity concerns with House Information Resources and Cybersecurity, and everyone is comfortable with you using this free software. You've also cleared the survey's content with the Franking Commission. The software

is free to anyone who sends no more than 10,000 surveys at once. You plan to send 9,000 surveys. You may use the software without having to pay.

- **Example (Permissible).** A hotel chain has a government employee discount that is available to all government employees, whether or not they are on official travel. You may also accept the discount when staying at that hotel chain.
- **Example (Permissible).** You accumulated enough frequent flyer miles to earn a free first-class ticket. The frequent flyer program is available to anyone who wishes to sign up. You may accept the free first-class ticket.
- **Example (Permissible).** You are a member of the Congressional Federal Credit Union. The Congressional Federal Credit Union joined with an insurance company to offer discounted car insurance rates Congressional Federal Credit Union members. You may sign up for the discounted car insurance through the Congressional Federal Credit Union.
- **Example (Permissible).** You are a lawyer. Your state bar provides continuing legal education classes and offers a reduced rate for those classes to its members who are government employees. You may accept the reduced rate for those classes.
- **Example (Impermissible).** A local, privately-run gym offers reduced membership fees to congressional employees. You must show your congressional ID to receive the reduced rate. The gym does not extend this offer to all federal employees or all government employees. You may not accept the reduced membership fee.¹²⁵
- **Example (Permissible).** You are invited to appear on a Sunday morning talk show, which will be filmed in D.C. You live approximately 15 miles from the studio. The studio offers to send a car to pick you up. The studio usually offers car service to its guests that live locally.¹²⁶ You may accept the car service.

T. Loans

You may accept a loan from a bank or financial institution with terms generally available to the public.¹²⁷ You may also accept a loan from an entity that is not a financial institution as long as the loan has commercially reasonable terms, including requirements for repayment and a reasonable market-based interest rate.¹²⁸ If you are offered a loan from an entity other than a financial institution on generally available terms, please contact the Committee to review the terms.

- **Example (Permissible).** You and your spouse are buying your first home and shopping for mortgages. One bank offers you an interest rate that is lower than all other institutions you've contacted. The interest rate is the one they advertise on their website for applicants with high credit scores. You and your spouse have high credit scores. You may accept that loan with the interest rate.
- **Example (Impermissible).** Same as the example above, but you and your spouse do not have high credit scores and there are no other factors that could reasonably put you in the same category as applicants with high credit scores. You may not accept the loan with the lower interest rate.
- **Example (Permissible).** You are buying a car from your best friend's father. He offers to let you pay him back directly over time and will charge you the current market interest rate. You may accept the offer.
- **Example (Impermissible).** Same as the example above, but your best friend's father offers to let you pay him back directly over time without interest. You may not accept the offer as a commercially reasonable loan, but you may be able to accept the offer under a different gift exception (page G-7).

Loan forbearance may also be a gift. You may accept forbearance under the Public Service Loan Forgiveness program or other federal student loan repayment programs. If you are offered other loan forbearance opportunities, please contact the Committee to review the terms.

U. Awards, Prizes, and Raffles

You may accept an award or prize from a contest or event that is open to the public, including random drawings.¹²⁹ You may also accept a prize in a drawing or raffle that is not necessarily open to the public, if most of the entries are not from Members, officers, or employees of Congress, or their spouses or accompanying guests. See Financial Disclosure for reporting requirements. Information about Financial Disclosure is available at <https://ethics.house.gov/financial-disclosure>.

- **Example (Permissible).** You purchased a lottery ticket in a state lottery and won. You may keep the prize.
- **Example (Permissible).** You attended an invitation-only event and won the 50/50 raffle. Most of the entrants in the 50/50 raffle were not Members, officers, or employees of Congress or their guests. You may keep the prize.
- **Example (Permissible).** You attended a reception in a House office building and dropped your business card in the bowl for a prize drawing. Your business card was pulled. You may only accept the prize if most of the entrants in the drawing were not Members, officers, or employees of Congress or their guests.

V. Campaign Contributions

You may accept lawful campaign contributions, whether to federal campaign committees or leadership PACs or to state or local campaign committees.¹³⁰ You may not use those campaign contributions for your own personal use or for purposes that are not *bona fide* campaign, political, or certain official purposes.¹³¹ See Proper Use of Campaign Funds and Resources (page 152) for further guidance.

Any proceeds from testimonial dinners or other fundraising events for you must be considered campaign contributions.¹³² You must disclose them as required by FEC regulations and you may only use those proceeds for *bona fide* campaign, political, or certain official purposes.¹³³ The proceeds may not be treated as unrestricted personal gifts to you.

- **Example (Permissible).** You are running for re-election to the House and hosting a testimonial dinner with \$100 tickets. The proceeds from the dinner must be reported to the FEC and you may only use those proceeds for *bona fide* campaign, political, or certain official purposes.
- **Example (Impermissible).** You are running for re-election to the House. One very enthusiastic campaign supporter gives your campaign a check for three times the individual contribution limit. You may not accept the excess contribution. Contact the FEC for assistance with reporting and to determine whether contributions may be attributed to other election cycles.

W. Bequests and Inheritances

You may accept gifts that are left to you in someone's will or through other means of inheritance.¹³⁴ If you file financial disclosure statements, you will not need to report the acquisition of any property through the bequest or inheritance, but you may need to report assets themselves, if they meet reporting thresholds. See Financial Disclosure for more information about what and how to report. Information about Financial Disclosure is available at <https://ethics.house.gov/financial-disclosure>.

- **Example (Permissible).** In his will, your grandfather left you his antique clock worth \$5,000. You plan to put the clock in your living room. You may accept the clock and you will not need to report the gift.
- **Example (Permissible).** Your mother leaves you her house in her will. You plan to rent out the house. You may accept the gift. If you file financial disclosure statements, you will need to report the house as a rental property on your financial disclosure statement while you rent it out.

X. Artwork and Other Gifts of Unusual Nature on Loan to the House

If you are offered artwork or other unusual gifts that do not meet the requirements for any Gift Rule exception, you may still accept the artwork or unusual gift on loan to the House. Unusual gifts are tangible items that do not meet the requirements for any of the Gift Rule exceptions. To accept artwork or other unusual gifts on loan to the House, you must

- Have a written loan agreement with the item's owner;
- Be clear in that written agreement that the item is on loan to the House and not a gift;
- Be clear in that written agreement that the item will be returned to the owner the earliest of
 - the item being removed from official display,
 - the Member leaving office,
 - a date certain spelled out in the agreement, or
 - when the owner requests the item be returned;
- Include a provision in the written agreement that the House does not accept liability for any damage or loss; and
- Include the item's value in the written agreement.

The Office of General Counsel is available to help you prepare a written loan agreement. The Committee also recommends you place a sticker or other marker on the item stating that the item is on loan to the House and identifying the item's owner.

You may help facilitate donations of artwork or unusual gifts to the House Fine Arts Board or a museum in your district.¹³⁵ If you do, the House Fine Arts Board or the local museum will own the artwork or unusual gift, but you may ask the House Fine Arts Board or the local museum to allow you to display the item in your official office.

- **Example (Additional Action Required).** An artist from another state offers you a small hand carved wooden sculpture that the artist values at \$500. After consulting with the Committee, the sculpture does not meet any of the Gift Rule exceptions, but the artist insists that you take the sculpture. You may enter into a written loan agreement with the artist to display the sculpture in your official office. You should contact the Office of General Counsel to draft a written agreement that meets the requirements above. The Office of General Counsel is available at 202-225-9700.

Y. General Waiver

If the gift you were offered does not meet any of the gift exceptions, you may ask the Committee for a waiver of the Gift Rule.¹³⁶ The Committee will grant the waiver in unusual cases where there is "no potential conflict of interest or appearance of impropriety."¹³⁷ The Committee handles all requests for waivers through its advisory opinion process.

Z. Special Occasion Gift Waiver

You may request a Special Occasion Gift Waiver for gifts related to an engagement, wedding, birth or adoption of a child, or death in the family that would not meet an exception to the Gift Rule.¹³⁸ You can find the waiver form at <https://ethics.house.gov/forms/gift-waivers>. The waiver covers gifts you would receive after the Committee approves your request. Any gifts you receive prior to receiving the Committee's approval would still need to meet an exception to the Gift Rule.¹³⁹ The request for and approval of any Special Occasion Gift Waiver is a confidential communication with the Committee. If you file Financial Disclosure statements, see Financial Disclosure Reporting for Gifts for information about Financial Disclosure requirements (page G-38).

You may need to decline, return, or pay for gifts that do not meet an exception to the Gift Rule or are not covered by a waiver.¹⁴⁰

XII. Expressly Prohibited Gifts

A. Charitable Contributions from Lobbyists and Foreign Agents if You Solicited

You may not ask a registered federal lobbyist¹⁴¹ or foreign agent¹⁴² to donate to any charitable endeavor unless you asked for a donation to charity in lieu of honorarium. Any contribution that a registered federal lobbyist or foreign agent makes at your request, other than in lieu of honorarium, is considered a gift to you, and one that you may not accept.¹⁴³ See Member, Officer, and Employee Participation in Fundraising Activities for more information about charitable fundraising. Member, Officer, and Employee Participation in Fundraising Activities is available at <https://ethics.house.gov/gift-pink-sheets/member-officer-and-employee-participation-fundraising-activities>.

B. Lobbyist and Foreign Agent Contributions to Legal Expense Funds

If you have a legal expense fund, you may not accept any contributions from registered federal lobbyists or foreign agents.¹⁴⁴ See Legal Expense Funds (page G-28) for more information about contributions you may accept.

C. Lobbyist and Foreign Agent Contributions to Entities You Control or Maintain

If you control or maintain any entity, that entity may not accept anything, including monetary and in-kind contributions, provided by registered federal lobbyists or foreign agents.¹⁴⁵ You control or maintain the entity if you are an officer or director, or any similar position depending on the business structure of the organization.

- **Example (Impermissible).** You founded a nonprofit organization that provides after-school STEM education before joining the House. You continue to serve as an officer of the nonprofit. A registered federal lobbyist would like to give the nonprofit computers. Because you maintain or control the nonprofit, the nonprofit may not accept the computers.

D. Contributions from Lobbyists for Official Events

You may not accept financial or in-kind assistance from a registered federal lobbyist or foreign agent for an official conference, retreat, or similar event.¹⁴⁶ See Conferences and Town Hall Meetings (page 340) for additional restrictions on accepting outside assistance for official activities.

- **Example (Impermissible).** An official congressional member organization, or caucus, is hosting its annual two-day policy meeting. Many Members and staff plan to attend the meeting. A lobbyist offers to pay for dinner one night during the meeting. The caucus may not accept the contribution from the lobbyist.
- **Example (Impermissible).** A Member wants to host a retreat for the Member's personal office staff to discuss policy planning for the upcoming Congress. A foreign agent offers to let the Member use the foreign agent's vacation home for free for the staff retreat. The Member may not accept the use of the vacation home.

XIII. Financial Disclosure Reporting for Gifts

If you file Financial Disclosure Statements, you may need to report gifts that you receive throughout the calendar year. See Financial Disclosure for information about what to report and how to report it. Information about Financial Disclosure is available at <https://ethics.house.gov/financial-disclosure>.

If you received a Special Occasion Gift Waiver (page G-37), you may also request a Financial Disclosure Gift Disclosure Waiver. You can find the form at <https://ethics.house.gov/financial-disclosure/financial-disclosure-forms-and-filing>. This waiver allows you not to report any special occasion gifts you received on your annual Financial Disclosure statement. Unlike other requests to the Committee, both the request for a Financial Disclosure Gift Disclosure Waiver and the response from the Committee will both be made public.¹⁴⁷

Endnotes

¹ Code of Ethics for Government Service ¶10, H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat. pt 2, B12 (1958). Both the House and Senate concurred that all federal government employees and officeholders should follow this code.

² *Id.* at ¶ 5. See also 135 CONG. REC. H8764 (daily ed. Nov. 16, 1989) (debate on Ethics Reform Act of 1989, quoting Paul Volcker, Chairman of the National Commission on the Public Service); *United States v. Podell*, 436 F. Supp. 1039, 1042 (S.D.N.Y. 1977), *aff'd* 572 F.2d 31 (2d Cir. 1978).

Over the years, both the House and Senate regularly recognized the concerns that arise from Members, officers, and employees accepting gifts. Special Subcomm. on the Establishment of a Comm'n on Ethics in Gov't, Senate Comm. on Labor and Public Welfare, 82d Cong., Ethical Standards in Government 23 (Comm. Print 1951) ("What is proper to offer to public officials, and what is it proper for them to receive? . . . Even small gratuities can be significant if they are repeated and come to be expected . . . The difficulty comes in drawing the line between the innocent or proper and that which is designing or improper. At the moment a doubt arises as to propriety, the line should be drawn."); House Bipartisan Task Force on

Ethics, 101st Cong. *Report on H.R. 3660*, 101st Cong., 1st Sess. 6 (Comm Print 1989), *reprinted in* 135 CONG. REC. 30740, 30742 (daily ed. Nov. 21, 1989) (hereinafter “*Bipartisan Task Force Report*”) (“Regardless of any actual corruption or undue influence upon a Member or employee of Congress, the receipt of gifts or favors from private interests may affect public confidence in the integrity of the individual and in the institution of the Congress. Legitimate concerns of favoritism or abuse of public position may be raised by disclosure of frequent or expensive gifts from representatives of special interests, or valuable gifts from anyone other than a relative or personal friend.”); S. Comm. on Gov’t Affairs, Congressional Gifts Reform Act, S. Rep. No. 103-255, at 3-4 (1994) (“[I]t seems appropriate to single out registered lobbyists and foreign agents for special treatment, because this category includes people who are, by definition, in the business of seeking to influence the outcome of public policy decisions. Because registered lobbyists and foreign agents are paid to influence the actions of public officials, including legislative branch officials, their gifts are uniquely susceptible to the appearance that they are intended to purchase access or influence.”).

³ General statutory authority for the House Gift Rule comes from 5 U.S.C. § 7353. That statute gives the supervising ethics office the authority to issue rules or regulations implementing the statute. *Id.* at § (b)(1). The Committee and the House as a whole are the supervising ethics office for the House. *Id.* at (d)(1)(A). Therefore, the House votes on the Gift Rule at the beginning of every Congress in the House Rules. The current House Gift Rule can be found in House Rule 25, clause 5. All provisions of the Gift Rule are interpreted and enforced solely by the Committee. House Rule 25, cl. 5(h).

⁴ The Gift Rule has gone through many iterations over the years. The first version was included in the first House Code of Official Conduct and approved in 1968 limited gifts from people who had a direct interest in legislation. That version largely remained in place until the Bipartisan Task Force on Ethics reviewed the rule and found it “often impractical, if not impossible” to determine a donor’s interest in legislation. *Bipartisan Task Force Report*, 135 CONG. REC. 30742; *see also* House Comm’n on Admin. Review, Financial Ethics, H.R. Rep. No. 95-73, at 13-14 (1977) (expressing similar concerns and recommending changes to the Gift Rule that ultimately were not included in the following Congress’s House Rules). The subsequent Ethics Reform Act of 1989, as amended by the Legislative Branch Appropriations Act for fiscal year 1992, amended the rule to instead place an annual monetary limit on many gifts, with exceptions for gifts of minimal value, gifts from relatives, personal hospitality, and “local meals,” rather than requiring a determination about the donor’s interest in legislation. *See* Ethics Reform Act of 1989, Pub. L. 101-194, §801(a), 103 Stat. 1716, 1771 (1989), *amended by* Pub. L. 102-90, §314(d), 105 Stat. 447, 469 (1991).

In 1995, the House overhauled the Gift Rule, placing new, significant limits on the gifts Members, officers, and employees may accept. H.R. Res. 250, 104th Cong. (1995) (amending House Rule 52 to add Gift Rule reforms); *see also* 141 Cong. Rec. H13064-95 (daily ed. Nov. 16, 1995); *id.* H13844-45 (daily ed. Nov. 30, 1995). The House Rules Committee cited three main reasons for the Gift Rule revisions. First, “a perception that special interest groups maintain undue influence over the legislative process, and Members of Congress are granted perquisites and privileges unavailable to average Americans” degraded the public’s trust in Congress. Second, “Congress [had] fallen behind the executive branch in the area of gift reform.” And third, the Senate had already enacted a comprehensive gift rule revision in July 1995. Comm. on Rules, Amending the Rules of the House of Representatives to Provide for Gift Reform, H.R. Rep. No. 104-337, at 8 (1995). One proponent described the subtle and problematic ways that gifts from lobbyists buy access and ultimately power through building goodwill. “It can mean the difference between getting your calls returned or your letter taken seriously, and that can translate into millions, even billions of dollars, at the expense of ordinary Americans who have no lobbyists to represent them.” *To Limit the Acceptance of Gifts, Meals, and Travel by Members of Congress and Congressional Staff, and for Other Purposes: Hearing on S. 885 Before the Subcomm. on Oversight of the Senate of the S. Comm. on Gov’t Affairs*, 103d Cong., 5-6 (1993) (statement of Sen. Lautenberg). The House made a few changes to the Gift Rule between the 104th and 108th Congresses, including provisions addressing gifts valued below \$50, perishable foods sent to House offices, and travel to charity events. *See* H.R. Res. 9, 106th Cong. (1999); 145 Cong. Rec. H208-211 (daily ed. Jan. 6, 1999) (adding the less than \$50 limit to mirror the Senate gift rule); H.R. Res. 5, 108th Cong. (2003) (adding rules related to how to allocate perishable food and accepting travel to attend charity event).

In the 110th Congress, the House amended the Gift Rule in the wake of several public corruption investigations and prosecutions. The amendments to the Gift Rule included 1) prohibiting gifts under \$50 from registered federal lobbyists, agents of a foreign principal (“foreign agent”), and the private entities that employ or retain registered federal lobbyists or foreign agents; 2) limiting involvement by, and the length of trips sponsored by, registered federal lobbyists, foreign agents, and private entities that employ or retain registered federal lobbyists or foreign agents for privately-sponsored, officially-connected travel; 3) requiring the Committee to pre-approve all privately-sponsored, officially-connected travel; 4) instructions on how to value tickets; and 5) clarifying events for which free attendance may be accepted. H.R. Res. 6, 110th Cong (2007); H.R. Res. 437, 110th Cong. (2007); *see also* 153 Cong. Rec. H23 (daily ed., Jan. 4, 2007) (statement of Rep. Steny H. Hoyer) (“[T]his rules package includes sweeping ethics reforms that begin to address some of the most egregious transgressions of the recent past.”).

⁵ House Rule 25, cl. 5(a)(2)(A).

⁶ House Rule 25, cl. 5(a)(2)(B)(ii).

⁷ House Rule 25, cl. 5(a)(1)(B)(ii).

⁸ Select Comm. on Ethics, *Final Report*, H.R. Rep. No. 95-1837, at 9 (1979).

⁹ House Rule 23, cl. 4; House Rule 25, cl. 5(a)(1)(A)(i). For the purposes of all guidance in the Ethics Manual, the term “Members” includes all Members, Delegates, and the Resident Commissioner of Puerto Rico.

¹⁰ House Rule 23, cl. 19.

¹¹ *See* 2 U.S.C. § 72a(f). Detailees should contact their Designated Agency Ethics Official for gift questions relating to detailees personally. Any questions that relate to the office or the Member, however, are still governed by the House Rules.

¹² For more information about the Gold Star Family Fellowship, please call the Chief Administrative Officer (CAO) at 202-226-1965.

¹³ House Rule 25, cl. 5(a)(2)(B)(i).

¹⁴ *See* Comm. on Ethics, *Ethics Guidance Related to Operations During a Lapse in Appropriations* (Jan. 19, 2018).

¹⁵ 5 U.S.C. § 7353(a). Specifically, you may not solicit anything of value from someone who is seeking official action from or doing business with Congress, or whose interests may be impacted by your official duties. This prohibition does not include solicitations for campaign contributions. *See* 136 Cong. Rec. H1647 (daily ed. Apr. 24, 1990) (regarding technical corrections to the Ethics Reform Act of 1989); Comm. on Ethics, *Member, Officer, and Employee Participation in Fundraising Activities* (May 2, 2019). Members and staff may assist with fundraising to benefit political organizations registered under section 527 of the Internal Revenue Code, including federal and state political organizations. Members and staff may also fundraise directly for state level ballot measure committees that are qualified under state law, but not fundraise for an organization that intends to donate all or some of its proceeds to a state level ballot measure committee. Comm. on Ethics, *Member, Officer, and Employee Participation in Fundraising Activities*.

¹⁶ Punishments for bribery include a fine of up to three times the amount of the bribe, imprisonment up to fifteen years, and disqualification from holding any federal office. *See* 18 U.S.C. § 201 (b). Punishments for seeking or receiving an illegal gratuity also include a fine and imprisonment up to two years. *Id.* at (c).

¹⁷ Congressman Duke Cunningham resigned from the House after pleading guilty to engaging in tax evasion and criminal conspiracy to violate, among other things, the bribery statute through his acceptance of a wide variety of extravagant items and millions of dollars’ worth of payments, travel, and other benefits. Even after his retirement, there were continuing reports concerning possible violations of House rules and standards, including that he accepted hotel rooms, limousines, and other services in exchange for performing official acts. Information, *United States vs. Randall “Duke” Cunningham*, No. 05-CR-2137 (S.D. Cal. 2005); Comm. on Standards of Official Conduct, *Summary of Activities, 109th Congress*, H.R. Rep. No. 109-744, at 20 (2007).

Although not prosecuted under the bribery statute, Congressman Robert Ney resigned from the House after pleading guilty to conspiracy to commit honest services fraud, making false statements, and aiding and abetting his former chief of staff's post-employment restrictions. As part of his plea agreement, he admitted that he corruptly solicited and accepted trips, meals, concert and sporting tickets, thousands of dollars in gambling chips, and tens of thousands of dollars of campaign contributions and in-kind contributions with the intent to be influenced and induced to take official actions. Plea Agreement Attachment A, *United States v. Robert W. Ney*, No. 06-CR-272 (D.D.C. 2006); Comm. on Standards of Official Conduct, *Summary of Activities, 109th Congress*, H.R. Rep. No. 109-744, at 16-17 (2007).

Congressman James Traficant was expelled from the House after he was convicted of conspiracy to violate the bribery statute by agreeing to and performing official acts for various individuals in exchange for free labor, materials, supplies, and equipment for use at his farm. *United States v. James A. Traficant, Jr.*, 368 F.3d 646 (6th 2004), *aff'd* No. 4:01-CR-207 (N.D. Ohio 2002). During its investigation, the Committee stated that some of those official acts included intervening in matters pending before federal and state authorities. The Committee found that Congressman Traficant's actions were "of the most serious character meriting the strongest possible Congressional response" and recommended that the House adopt a resolution to expel Congressman Traficant, which the House did. Comm. on Standards of Official Conduct, *In the Matter of Representative James A. Traficant, Jr.*, H.R. Rep. No. 107-594, at 2 (2002); H.R. Res. 495, 107th Cong. (2002); 148 Cong. Rec. H5375-5393 (daily ed. July 24, 2002).

In the 1980s, the Committee conducted many investigations into alleged bribes and illegal gratuities. The Committee recommended expulsion for Congressman Mario Biaggi for accepting free vacation trips from the creditor of a government contractor on whose behalf Congressman Biaggi intervened with local authorities. Congressman Biaggi resigned before the House could act. Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H.R. Rep. No. 100-506 (1988). The Committee also investigated three Members on charges of accepting money in exchange for promising to aid purportedly wealthy foreigners seeking to immigrate to the United States, part of the Department of Justice's "ABSCAM" probe. See Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H.R. Rep. No. 96-1387 (1980); Comm. on Standards of Official Conduct, *In the Matter of Representative John W. Jenrette, Jr.*, H.R. Rep. No. 96-1537 (1980); Comm. on Standards of Official Conduct, *In the Matter of Representative Raymond F. Lederer*, H.R. Rep. No. 97-110 (1981). Congressman Myers was expelled from the House and Congressmen Jenrette and Lederer resigned. See H.R. Res. 794, 96th Cong. (1980), *reprinted in* 126 CONG. REC. 28953-28978 (Oct. 2, 1980). Finally, the Committee investigated Congressman Daniel Flood for receiving payments, either directly or through an assistant, from a series of individuals over a five-year period, in exchange for agreements to attempt to influence various government agencies. Comm. on Standards of Official Conduct, *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, at 5-16 (1980). Congressman Flood also resigned his position with the House.

¹⁸ See 5 U.S.C. § 7353(b)(2)(B); 18 U.S.C. § 201. The Committee is aware of recent court decisions that further define the types of official actions covered under 18 U.S.C. § 201. See *e.g.*, *McDonnell v. United States*, 576 U.S. ___, 136 S. Ct. 2355 (2016); *United States v. Jefferson*, 289 F. Supp. 3d 717 (E.D.V.A. 2017) (vacating a portion of Congressman Jefferson's convictions following *McDonnell v. United States*). The Department of Justice enforces this statute; however, the Committee has the authority to investigate actions that violate the House Code of Conduct, House Rule 23, clauses 1 and 2, even if those actions are not prosecuted by the Department of Justice.

¹⁹ Bribery occurs when a federal official "directly, or indirectly, corruptly" receives or asks for "anything of value personally or for any other person or entity, in return for . . . being influenced in the performance of any official act." *Id.* at (b)(2)(A). An illegal gratuity results when an official directly or indirectly seeks or receives personally anything of value other than "as provided by law . . . for or because of any official act performed or to be performed." *Id.* at (c)(1)(B). Bribery requires a *quid pro quo*, or "a specific intent to give or receive something of value *in exchange* for an official act[.]" and illegal gratuity "may constitute merely a reward for some future act that the public official will take (and may have already determined to take), or for a past act that he has already taken." *United States v. Sun-Diamond Growers*, 526 U.S. 398, 404-405 (1999).

²⁰ *Sun-Diamond Growers*, 526 U.S. at 405-408.

²¹ A true “gift” is a “voluntary transfer” of property, made “without compensation.” *Gift*, Black’s Law Dictionary (11th ed. 2019).

²² This view is similar to that in the regulations of the Executive Branch’s Office of Government Ethics. See 5 C.F.R. § 2536.206(a)(2) (Example 1).

²³ House Members and employees may not accept compensation for representing anyone before a federal department, agency, officer, or court in any particular matter in which the United States is a party or has a direct and substantial interest. 18 U.S.C. § 203. Officers and employees have similar restrictions even if they are not receiving compensation. See 18 U.S.C. § 205. These statutes are administered by the Department of Justice, and any advice the Committee provides about these statutes is advisory only.

²⁴ 18 U.S.C. § 211.

²⁵ The Gift Rule restrictions do not apply to anything a Member, officer, or employee does not use and promptly returns to the donor. House Rule 25, cl. 5(a)(3)(A).

²⁶ The Gift Rule does not apply to anything for which a Member, officer, or employee pays market value. House Rule 25, cl. 5(a)(3)(A).

²⁷ Generally, the Committee looks to what would be a reasonable price for something similar in an arms’-length transaction. Any difficulty the recipient may have in paying the fair market value is not a factor in determining how much would need to be repaid. See Comm. on Ethics, *In the Matter of Allegations Relating to Representative Jean Schmidt*, H.R. Rep. No. 112-195, at 19 (2011).

²⁸ House Rule 25, cl. 5(a)(6).

²⁹ House Rule 25, cl. 5(a)(6); Comm. on Ethics, *In the Matter of Officially-Connected Travel by House Members to Azerbaijan in 2013*, H.R. Rep. No. 114-239, at 10-11 (2015).

³⁰ House Rule 25, cl. 5(a)(1)(A)(i).

³¹ For example, if you may accept a book under the informational materials exception, you may accept that book even if the fair market value is more than \$50. Because the book meets the exception for informational materials, you would not also have to apply the exception for gifts less than \$50 and that book would not count towards the annual limit of less than \$100 that goes with the less than \$50 per instance exception.

³² The Office Code of Conduct for the House prohibits Members, officers, and employees from receiving any benefit “by virtue of influence improperly exerted from the position of such individual in Congress.” House Rule 23, cl. 4. Additionally, the Code of Ethics for Government Service states you should “never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for [yourself] or [your] family, favors or benefits under circumstances [that] might be construed by reasonable persons as influencing the performance of [your] governmental duties.” Code of Ethics for Government Service ¶ 5. See also Comm. on Standards of Official Conduct, *Investigation of Financial Transactions Participated in and Gifts of Transportation Accepted by Representative Fernand J. St. Germain*, H.R. Rep. No. 100-46, at 3, 9, 43 (1987) (“[T]he Committee would admonish all Members to avoid situations in which even an inference might be drawn suggesting improper action.”).

³³ See Comm. on Ethics, *In the Matter of Allegations Relating to Representative Don Young*, H.R. Rep. No. 113-487, at 4 (2014) (issuing a letter of reproof despite repayment because the Member’s acceptance of impermissible gifts “demonstrated a lack of appropriate safeguards and an inattention to the relevant standards of conduct”).

³⁴ See Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H.R. Rep. No. 96-930, at 4-5, 19-20 (1980) (knowingly accepting gifts from individuals with direct interests in legislation before Congress); Comm. on Standards of Official Conduct, *In the Matter of Representative Daniel J. Flood*, H.R. Rep. No. 96-856, at 5-15 (1980) (alleging Congressman Flood accepted payments to influence official actions).

³⁵ House Rule 23, cl. 2.

³⁶ House Rule 25, cl. 5(a)(3)(W). Through the 105th Congress, the Committee allowed Members and staff to accept a variety of low value, tangible items under this provision. At the start of the 106th Congress, however, the House determined that such a broad reading of the nominal value provision was no longer appropriate and instituted the less than \$10 limit. H.R. Res. 9, 106th Cong. (1999).

³⁷ Under the Gift Rule prior to the 110th Congress, Members and staff were allowed to accept gifts, including food and refreshments, from virtually anyone under the less than \$50 provision, even if the source was a registered federal lobbyist, foreign agent, or organization that employs or retains a registered federal lobbyist. With the Gift Rule amendments in the 110th Congress, the House determined food and refreshments of a nominal value offered by a registered federal lobbyist, foreign agent, or organization that employs or retains a registered federal lobbyist may only be accepted at business meetings, receptions, and similar events that are not one-on-one encounters. H.R. Res. 6, 110th Cong. (2007); Comm. on Standards of Official Conduct, *Gift Rule Amendments at the Beginning of the 110th Congress* (Feb. 6, 2007).

³⁸ House Rule 25, cl. 5(a)(1)(B)(i). “Registered federal lobbyist” means a lobbyist who is registered under the Lobbying Disclosure Act (LDA). House Rule 25, cl. 5(g). The LDA is the successor statute to the Federal Regulation of Lobbying Act cited in House Rule 25, clause 5(g). Because the LDA defines “lobbyist” to mean “any individual” who engages in certain activities set forth in the LDA, the Committee interprets the prohibitions for registered federal lobbyists to include both the individuals who are registered and lobbying firms. More information about the LDA and its searchable database can be found at <https://lobbyingdisclosure.house.gov/>.

“Foreign agent” means an agent of a foreign principal who is registered with the Department of Justice under the Foreign Agent Registration Act (FARA). More information about the FARA and the database can be found at <https://www.justice.gov/nsd-fara>.

³⁹ *Id.*

⁴⁰ House Rule 25, cl. 5(a)(3)(C) (incorporating 5 U.S.C. app. § 109(16)).

⁴¹ A spouse is someone to whom you are legally married.

⁴² House Rule 25, cl. 5(a)(3)(C); 5 U.S.C. app. § 109(16).

⁴³ House Rule 25, cl. 5(a)(3)(D).

⁴⁴ *Id.* at (D)(ii). The second and third prong consider whether the recipient has actual knowledge of the donor’s circumstances.

⁴⁵ Fiancé(e)s are considered relatives. Therefore, if your fiancé(e) makes the same offer of a trip abroad, you may accept it as a gift from a relative. See Gifts from Relatives (page G-9) for more information.

⁴⁶ House Rule 25, cl. 5(a)(3)(F).

⁴⁷ See 5 U.S.C. § 7351(a) (a federal employee may not give a give a superior a gift, solicit a contribution from another employee for a gift to a superior, or accept a gift from an employee receiving less pay). The Committee has the authority to implement this section, including to allow for gifts to superiors for special occasions. *Id.* at (c).

⁴⁸ See Staff of Comm on Ethics, 115th Cong., *In the Matter of Allegations Relating to Representative Thomas Garrett* 5, 32-34 (Comm. Print 2019).

⁴⁹ *Id.* at 34.

⁵⁰ House Rule 25, cl. 5(a)(3)(P) (incorporating 5 U.S.C. app. § 109(14)). If the individual providing the gift is reimbursed by a business or seeks a business expense deduction for the hospitality, that hospitality is a business expense and not personal hospitality. *Bipartisan Task Force Report*, 135 CONG. REC. 30743. Similarly, any property or facilities owned by a corporation or a firm, even if the individual providing the gift is the sole owner of the corporation or firm, are not personally owned by the individual and may not be used for personal hospitality.

⁵¹ *Id.*; 5 U.S.C. app. § 109(14) (“[H]ospitality extended for a non-business purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or

facilities owned by that individual or his family.”). *See, e.g.*, Comm. on Ethics, *In the Matter of Allegations Relating to Representative Don Young*, H.R. Rep. No. 113-487, at 38, 57, 61 (2014) (discussing various trips taken by Representative Young that did and did not meet the exception for personal hospitality).

⁵² House Rule 25, cl. 5(a)(3)(O). “Government contracts” under this provision mean federal government contracts. *See, e.g.*, 5 C.F.R. § 2635.203(7); 57 Fed. Reg. 35,014 (Aug. 7, 1992) (“The exclusion is intended to cover items the Government procures for use by its employees under a Government contract or knowingly obligates itself to pay for.”).

⁵³ *See* Comm. on Rules, Amending the Rules of the House of Representatives to Provide for Gift Reform, H.R. Rep. No. 104-337, at 11 (1995).

⁵⁴ An interstate compact entered into by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia, and was approved by Congress, established WMATA as a governmental agency, with funding derived from the federal government and state governments, as well as from rider fares.

⁵⁵ *See* Cal. Gov’t Code §§ 6500-6599.3 (joint powers authorities).

⁵⁶ *See* 22 Pa. Code § 31.2 (Pennsylvania state-related universities are instrumentalities of the commonwealth).

⁵⁷ The Committee carefully considered the matter of Native American tribes and found nothing in the legislative history of the current gift rule or its predecessors indicating an intent to treat Native American tribes as state or local government entities for these purposes. The Committee also does not consider Native American tribes to be foreign governments. Additionally, many Native American tribes employ or retain registered federal lobbyists. Your ability to accept gifts from those Native American tribes will be limited by the Gift Rule exceptions relevant to organizations that employ or retain registered federal lobbyists.

⁵⁸ “Amtrak is not a department, agency, or instrumentality of the United States Government . . .” 49 U.S.C. § 24301(a)(3).

⁵⁹ U.S. Const. Art. I, § 9, cl. 8.

⁶⁰ Congress consented to other programs outside of FGDA and MECEA, including the U.S.-Korea National Assembly Exchange Program. However, FGDA and MECEA are the most commonly used methods that foreign governments offer Members, officers, and employees gifts and travel.

⁶¹ Members, officers, and employees may accept “[a]n item, the receipt of which is authorized by the [FGDA], the [MECEA], or any other statute.” House Rule 25, cl. 5(a)(3)(N).

⁶² 5 U.S.C. § 7342(a)(2). To determine whether an organization is part of a foreign government, the Committee looks to a number of factors including the level to which the organization is funded by the federal government, whether the organization is controlled by a foreign government, and whether another U.S. government agency determined the organization is part of a foreign government. Members, officers, and employees may only accept gifts from organizations that meet this definition under FGDA or MECEA. *See* Comm. on Ethics, *In the Matter of Officially-Connected Travel by House Members to Azerbaijan in 2013*, H.R. Rep. No. 114-239 (2015); Comm. on Ethics, *In the Matters of Allegations Relating to Travel to Taiwan by Representatives William Owens and Peter Roskam in 2011*, H.R. Rep. No. 113-226 (2013).

⁶³ The Committee’s implementing regulations are issued pursuant to 5 U.S.C. § 7342(a)(6)(A), (g)(1) and apply to House Members, officers, and employees. The regulations were first published on January 23, 1978. 124 Cong. Rec. 452-53.

⁶⁴ 5 U.S.C. § 7342(a)(1)(G).

⁶⁵ 5 U.S.C. § 7342(c).

⁶⁶ 5 U.S.C. § 7342 (c)(1)(A).

⁶⁷ 5 U.S.C. § 7342(a)(5).

⁶⁸ 5 U.S.C. § 7342(g)(2)(B); (a)(6)(A).

⁶⁹ 5 U.S.C. § 7342(d).

⁷⁰ 5 U.S.C. § 7342(c)(1)(B).

⁷¹ *Id.*

⁷² Although rare, educational scholarships are offered to federal government officials from foreign academic institutions. This provision of FGDA applies only to educational scholarships offered or funded by foreign governments, or provisions of foreign governments, including public institutions. *See, e.g.*, Letter from Robert B. Shanks, Deputy Assistant Attorney General, O.L.C., to Walter T. Skallerup, General Counsel, Department of the Navy (Mar. 17, 1983), <https://www.justice.gov/olc/page/file/936131/download> (allowing a scientist employed by the Naval Research Laboratory to accept an educational scholarship from the German Alexander von Humboldt Foundation, which is funded by the German government, to conduct research in Germany).

⁷³ The Department of State makes FGDA disclosures public in the Federal Register each year. 5 U.S.C. § 7342(f)(1).

⁷⁴ House Rule 25, cl. 5(a)(3)(V). Home state products can be manufactured, produced, or grown anywhere in your state, not just your district. This provision does not include items that are merely distributed in your state, but are manufactured, produced, or grown elsewhere.

⁷⁵ The Committee understands Members and staff may occasionally avail themselves of individually packaged home state products. The home state product exception does not prohibit occasional use, but individually packaged home state products must be intended for, and actually distributed to, visitors to your office.

⁷⁶ Comm. on Ethics, *Guest Policy Change and Reminder of Gift Rules for Attendance at Events* (Sept. 19, 2022).

⁷⁷ House Rule 25, cl. 5(a)(3)(U); Comm. on Ethics, *Guest Policy Change and Reminder of Gift Rules for Attendance at Events* (Sept. 19, 2022).

⁷⁸ *See* Comm. on Rules, Amending the Rules of the House of Representatives to Provide for Gift Reform, H.R. Rep. No. 104-337, at 11 (1995) (“Food and refreshments of nominal value not offered as part of a meal (reception food)”); Comm. on Standards of Official Conduct, *New Gift Rule*, at 3 (Dec. 7, 1995) (allowing “coffee and donuts, [and] hors d’oeuvres at a reception”); Comm. on Standards of Official Conduct, *Gifts and Travel* booklet, at 32 (April 2000) (specifically describing the kinds of food and refreshments that may be accepted, including coffee, juice, pastry, or bagels usually offered at a breakfast reception or meeting, and hors d’oeuvres, appetizers, and beverages usually offered at an evening reception).

⁷⁹ House Rule 25, cl. 5(a)(4)(A); (B); Comm. on Ethics, *Guest Policy Change and Reminder of Gift Rules for Attendance at Events* (Sept. 19, 2022).

⁸⁰ House Rule 25, cl. 5(a)(4)(D).

⁸¹ *Id.* Giveaways may be accepted if they meet the requirements of another exception to the Gift Rule. The most commonly used exceptions are the less than \$50 exception and the nominal value exception.

⁸² House Rule 25, cl. 5(a)(4)(B).

⁸³ “Event organizer” and “event sponsor,” as those terms related to events, mean “the person, entity, or entities that are primarily responsible for organizing the event. An individual who simply contributes money to an event is not considered to be a sponsor of the event.” Comm. on Rules, Amending the Rules of the House of Representatives to Provide for Gift Reform, H.R. Rep. No. 104-337, at 12 (1995). Gold or silver level sponsors or table sponsors are not included in the definition of event organizer or event sponsor for the purposes of these exceptions to the Gift Rule. But, there may be more than one event organizer if those entities “play[] significant, active role[s] in organizing the event in a manner that is roughly comparable” to another event organizer or sponsor. S. Comm. on Gov’t Affairs, Congressional Gifts Reform Act, S. Rep. No. 103-255, at 14 (1994) (Senate committee report on revisions to the Senate gift rule).

⁸⁴ Attendance can be open to individuals from throughout a given industry or profession, or to a range of people interested in the issue. *See* Comm. on Rules, Amending the Rules of the House of Representatives to Provide for Gift Reform, H.R. Rep. No. 104-337, at 12 (1995).

⁸⁵ Comm. on Rules, Amending the Rules of the House of Representatives to Provide for Gift Reform, H.R. Rep. No. 104-337, at 12 (1995).

⁸⁶ The Committee granted this general waiver pursuant to its waiver authority in House Rule 25, cl. 5(a)(3)(T). The Committee did so because it recognized the Gift Rule was not intended to interfere with Members carrying out their conventional representational duties, and that meetings or events with constituent organizations may sometimes be attended by only a few constituents, particularly when the organization is from a state with a small or diffuse population. The Committee also used its waiver authority to allow Members and staff to bring one guest, if invited. Comm. on Ethics, *Guest Policy Change and Reminder of Gift Rules for Attendance at Events* (Sept. 19, 2022).

⁸⁷ The Committee granted this general waiver pursuant to its waiver authority in House Rule 25, cl. 5(a)(3)(T). The Committee did so because it recognized there are certain events that are worthwhile for Members and staff to attend, but that do not meet the numeric requirements for widely-attended events. The Committee also used its waiver authority to allow Members and staff to bring one guest, if invited. Comm. on Ethics, *Guest Policy Change and Reminder of Gift Rules for Attendance at Events* (Sept. 19, 2022).

⁸⁸ House Rule 25, cl. 5(a)(3)(L); Comm. on Ethics, *Guest Policy Change and Reminder of Gift Rules for Attendance at Events* (Sept. 19, 2022).

⁸⁹ *Id.*

⁹⁰ House Rule 25, cl. 5(a)(4)(C); Comm. on Ethics, *Guest Policy Change and Reminder of Gift Rules for Attendance at Events* (Sept. 19, 2022). This exception extends to charity events such as lunches, dinners, golf or tennis tournaments, races, and cook-offs. The purpose of this exception to the Gift Rule is to enable Members and staff “to lend their names to legitimate charitable enterprises and otherwise promote charitable goals.” Comm. on Rules, Amending the Rules of the House of Representatives to Provide for Gift Reform, H.R. Rep. No. 104-337, at 12 (1992).

⁹¹ House Rule 25, cl. 5(a)(4)(D).

⁹² *Id.* Giveaways may be accepted if they meet the requirements of another exception of the Gift Rule. The most commonly used exceptions are the less than \$50 exception and the nominal value exception.

⁹³ “Event organizer” and “event sponsor,” as those terms related to events, mean “the person, entity, or entities that are primarily responsible for organizing the event. An individual who simply contributes money to an event is not considered to be a sponsor of the event.” Comm. on Rules, Amending the Rules of the House of Representatives to Provide for Gift Reform, H.R. Rep. No. 104-337, at 12 (1995). Gold or silver level sponsors or table sponsors are not included in the definition of event organizer or event sponsor for the purposes of these exceptions to the Gift Rule. But, there may be more than one event organizer if those entities “play[] significant, active role[s] in organizing the event in a manner that is roughly comparable” to another event organizer or sponsor. S. Comm. on Gov’t Affairs, Congressional Gifts Reform Act, S. Rep. No. 103-255, at 14 (1994) (Senate committee report on revisions to the Senate gift rule).

⁹⁴ Organizations qualified under § 170(c) of the Internal Revenue Code include organizations qualified under § 501(c)(3) of the Internal Revenue Code, government entities, and certain veterans’ organizations and fraternal orders. 26 U.S.C. § 170(c). Organizations qualified under § 501(c)(4) of the Internal Revenue Code are not included in this list.

⁹⁵ House Rule 25, cl. 5(a)(3)(G)(iii).

⁹⁶ The political organization must directly pay for your meal. You may not accept a meal that an outside third-party provided to the political organization through in-kind donations under this exception to the Gift Rule. You may be able to accept the meal under a different exception to the Gift Rule.

⁹⁷ Briefly stated, under that statute, a political organization is an entity organized and operated primarily for the purpose of accepting contributions or making expenditures for the purpose of influencing the election of any individual to a public or political office.

⁹⁸ The term “bona fide” means “made in good faith; without fraud or deceit,” sincere, or genuine. *Bona fide*, Black’s Law Dictionary (11th ed. 2019).

⁹⁹ “Event organizer” and “event sponsor,” as those terms related to events, mean “the person, entity, or entities that are primarily responsible for organizing the event. An individual who simply contributes money to an event is not considered to be a sponsor of the event.” Comm. on Rules, Amending the Rules of the House of Representatives to Provide for Gift Reform, H.R. Rep. No. 104-337, at 12 (1995). Gold or silver level sponsors or table sponsors are not included in the definition of event organizer or event sponsor for the purposes of these exceptions to the Gift Rule. But, there may be more than one event organizer if those entities “play[] significant, active role[s] in organizing the event in a manner that is roughly comparable” to another event organizer or sponsor. S. Comm. on Gov’t Affairs, Congressional Gifts Reform Act, S. Rep. No. 103-255, at 14 (1994) (Senate committee report on revisions to the Senate gift rule).

¹⁰⁰ An event could nominally be in honor of a single Member, officer, or employee, or a group. For example, an event could be in honor of a caucus or a staff association.

¹⁰¹ This provision only applies to Members, not to officers or employees who may also attend the national party conventions.

¹⁰² See Honest Leadership and Open Government Act of 2007 (HLOGA), Pub. L. No. 110-81, § 305, 121 Stat. 735, 753-754 (Sept. 14, 2007); House Rule 25, cl. 8. The term “participate” is not defined in HLOGA or the House Rule. In the Committee’s view, the prohibition on participation in these events concerns Member attendance at the event. Members should contact the Committee with any questions regarding whether activities other than attendance may constitute participation in such events.

¹⁰³ *Id.*

¹⁰⁴ See 153 CONG. REC. E1759 (daily ed. Aug. 4, 2007) (statement of Rep. John Conyers, Jr.) (“This provision will have the effect of preventing lobbyists or an entity employing such lobbyists from directly paying for a party to honor a specific Member.”).

¹⁰⁵ There is no numerical requirement on the size of the delegation or caucus participating in the event.

¹⁰⁶ House Rule 25, cl. 5(a)(3)(U).

¹⁰⁷ House Rule 25, cl. 5(a)(3)(I). You should consider whether the material you were offered truly is informational and will benefit you in your official capacity. For example, a copy of a tax law textbook may be informational if you are considering revisions to the tax code, but the latest fiction murder mystery may not be informational.

¹⁰⁸ Comm. on Rules, Amending the Rules of the House of Representatives to Provide for Gift Reform, H.R. Rep. No. 104-337, at 11 (1995).

¹⁰⁹ House Rule 25, cl. 5(a)(3)(S).

¹¹⁰ House Rule 25, cl. 5(a)(3)(G).

¹¹¹ House Rule 25, cl. 5(a)(3)(H).

¹¹² See 18 U.S.C. § 203 (prohibiting federal employees, including Members, officers, and employees of the House, from accepting, “directly or indirectly,” compensation for representational services before federal agencies).

¹¹³ House Rule 25, cl. 5(a)(3)(E).

¹¹⁴ *Id.*

¹¹⁵ Gifts from relatives of any amount or gifts from personal friends that are less than \$250 are not considered contributions to the Legal Expense Fund and do not count towards the \$5,000 annual limit,

even if you intend to use those gifts to pay for legal services. Gifts from relatives and gifts from personal friends are considered under separate exceptions to the Gift Rule.

¹¹⁶ House Rule 25, cl. 5(e)(3).

¹¹⁷ You may accept unlimited *pro bono* legal services for certain legal assistance, outlined in *Pro Bono Legal Services* (page G-31). *Pro bono* legal services for any other purpose are in-kind contributions to the Legal Expense Fund and subject to the annual limit.

¹¹⁸ Unsolicited *pro bono* legal services that fit these categories are considered a gift to the House, not to an individual Member. Members do not need to report the value of these services on their annual Financial Disclosure statements.

¹¹⁹ Comm. on Ethics, *In the Matter of Allegations Relating to Representative Jean Schmidt*, H.R. Rep. No. 112-195, at 16-19 (2011).

¹²⁰ Specifically, restrictions on converting campaign funds to personal use. See 11 C.F.R. pt. 113.

¹²¹ House Rule 25, cl. 5(a)(3)(K).

¹²² *Id.*

¹²³ Whether a public service award is a *bona fide* public service award is particularly important when the award is an item with significant monetary value, such as a crystal sculpture. If an award does not meet the criteria for a *bona fide* public service award, the Committee may consider whether the item being awarded meets the requirements for a commemorative item or may consider the gift under a general waiver.

¹²⁴ House Rule 25, cl. 5(a)(3)(R).

¹²⁵ This example does not preclude membership in the fitness centers provided on House grounds, reduced childcare rates at the House daycare center, or any other discounts that the House procures under contract. You may accept the discounts the House procures under contract as services provided under contracts with the federal government. See Gifts from Federal, State, or Local Governments (page G-13) for more information.

¹²⁶ Local transportation means within 35 miles of the Capitol or the closest district office.

¹²⁷ Members, officers, and employees may accept loans from banks or other financial institutions on terms generally available to the public. House Rule 25, cl. 5(a)(3)(R)(v).

¹²⁸ Members, officers, and employees may also accept loans from an entity that is not a financial institution if the Member, officer, or employee is paying fair market value. House Rule 25, cl. 5(a)(3)(R)(v); House Rule 25, cl. 5(a)(3)(A).

¹²⁹ House Rule 25, cl. 5(a)(3)(J).

¹³⁰ House Rule 25, cl. 5(a)(3)(B).

¹³¹ House Rule 23, cl. 6; House Rule 24, cls. 1-3.

¹³² House Rule 23, cls. 6-7. This provision was a recommendation of the House Commission on Administrative Review. See House Comm'n on Admin. Review, Financial Ethics, H.R. Rep. No. 95-73, at 14 (1977).

The Committee determined that a direct mail solicitation by a Member or a Member's spouse was a fundraising event, and all proceeds had to be treated as campaign contributions. Select Comm. on Ethics, *Advisory Opinion No. 4* (Apr. 6, 1977), reprinted in H.R. Rep. No. 95-1837, at 61-62 (1977). The Committee also found that a Member may not accept proceeds from a fundraiser conducted by a group independent of the Member for the Member's unrestricted personal use. Select Comm. on Ethics, *Advisory Opinion No. 11* (May 11, 1977), reprinted in H.R. Rep. No. 95-1837, at 76. The Committee noted that a major purpose of the revisions to the Official Code of Conduct was to prevent Members from "cashing in" on their official position in Congress. Select Comm. on Ethics, *Advisory Opinion No. 4*, at 62 (Apr. 6, 1977).

¹³³ House Rule 23, cl. 6. Visit FEC.gov or call the FEC’s Office of Congressional Affairs at 202-694-1006 for information about FEC reporting requirements and additional limitations on expenditures.

¹³⁴ House Rule 25, cl. 5(a)(3)(M).

¹³⁵ The House Fine Arts Board has the authority to accept, on behalf of the House, gifts of works of fine art, historical objects, and similar property. 2 U.S.C. § 2122.

¹³⁶ House Rule 25, cl. 5(a)(3)(T).

¹³⁷ *Bipartisan Task Force Report*, 135 CONG. REC. 30743.

¹³⁸ Or another exception such as under FGDA.

¹³⁹ Or another exception such as under FGDA.

¹⁴⁰ The Committee may, in special circumstances, grant retroactive approval to accept a gift.

¹⁴¹ “Registered federal lobbyist” means a lobbyist who is registered under the Lobbying Disclosure Act (LDA). House Rule 25, cl. 5(g). The LDA is the successor statute to the Federal Regulation of Lobbying Act cited in House Rule 25, clause 5(g). Because the LDA defines “lobbyist” to mean “any individual” who engages in certain activities set forth in the LDA, the Committee interprets the prohibitions for registered federal lobbyists to include both the individuals who are registered and lobbying firms. More information about the LDA and its searchable database can be found at <https://lobbyingdisclosure.house.gov/>.

¹⁴² “Foreign agent” means an agent of a foreign principal who is registered with the Department of Justice under the Foreign Agent Registration Act (FARA). More information about the FARA and the database can be found at <https://www.justice.gov/nsd-fara>.

¹⁴³ House Rule 25, cl. 5(e)(2).

¹⁴⁴ House Rule 25, cl. 5(e)(3).

¹⁴⁵ House Rule 25, cl. 5(e)(1).

¹⁴⁶ The Gift Rule expressly prohibits “[a] financial contribution or expenditure made by a registered lobbyist or an agent of a foreign principal relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of Members, . . . officers, or employees of the House.” House Rule 25, cl. 5(e)(4); Comm. on Rules, Amending the Rules of the House of Representatives to Provide for Gift Reform, H.R. Rep. No. 104-337, at 14 (1995) (explaining the provision prohibits “a donation to an official conference or retreat”). Other House rules also prohibit official congressional organizations from accepting outside supplementation. House Rule 24, cls. 1-3.

¹⁴⁷ Gifts above the Financial Disclosure reporting threshold do not need to be disclosed if a publicly available request for a waiver is granted. Ethics in Government Act (EIGA), 5 U.S.C. app. § 102(a)(2)(C).

Commonly-Used Gift Rule Exceptions

Nominal Value	Less than \$50	Gifts from Relatives	Personal Friendship
<p>1) May accept an item valued at less than \$10 (\$9.99 before tax) or a greeting card, baseball cap, or t-shirt regardless of the source.</p> <p>2) May not accept cash or cash equivalents, like gift cards</p> <p>3) May not accept food or beverages in a one-on-one setting</p> <p>4) Should be mindful of potential conflicts if you are repeatedly offered nominal value gifts from a single source, even if the gifts technically satisfy the requirements</p>	<p>1) May accept a gift worth less than \$50 (\$49.99 or less before tax) from someone who is not a registered federal lobbyist, foreign agent, or entity that employs or retains a registered federal lobbyist or foreign agent</p> <p>2) The cumulative value of gifts you may accept under this exception in a calendar year from a single source must be less than \$100 (\$99.99 or less before tax)</p> <p>3) A gift worth less than \$10 (\$9.99 before tax) does not count towards the cumulative limit</p> <p>4) You may not accept cash or cash equivalents, like gift cards</p> <p>5) You may not buy down the value of the gift to get the value below \$50</p>	<p>1) May accept anything that a relative offers you, if your relative is the source of the gift, and not merely passing along a gift from someone else</p> <p>2) Relatives include: Parent, Child, Sibling, Aunt or Uncle, Great Aunt or Great Uncle, First Cousin, Niece or Nephew, Spouse, Fiancé(e), Grandparent, Grandchild, Mother or Father-in-Law, Daughter or Son-in-Law, Sister or Brother-in-Law, Stepparent, Stepchild, Stepsibling, Half sibling, Grandparent of your spouse,</p> <p>3) Gifts from persons other than listed above, such as second cousins or godparents, may fall under other gift rule exceptions</p>	<p>1) To accept a gift under personal friendship, you must consider the circumstances of the offer, including, but not limited to</p> <ul style="list-style-type: none"> - the nature of your relationship with your friend, including any past exchange of gifts; - if your friend paid or will pay for the gift personally, or if your friend will seek a business reimbursement or tax deduction; and - if the same or similar gift was or will be offered to another Member, officer, or employee <p>2) If the fair market value of the gift exceeds \$250, you must seek formal Committee approval to accept a gift offered because of personal friendship</p> <p>3) If the fair market value of a gift is \$250 or less, you may decide for yourself if the gift meets the requirements</p>

Widely-Attended Events	Receptions	Charity Events	Events Sponsored by Political Organizations
<p>1) Directly invited by event organizer - may not be invited by additional event sponsor who only provides financial assistance to event organizer.</p> <p>2) Reasonable expectation that 25+ non-congressional attendees of diverse professional backgrounds will also be in attendance</p> <p>3) Subject matter must be related to official duties</p> <p>4) Guest may be anyone if event organizer offers unsolicited second ticket</p> <p>4) “Free attendance” includes all or part of the cost of admission; local transportation to and from the event; and the food, refreshments, entertainment, and instructional materials provided to all event attendees</p>	<p>1) Nominal value food and drink only Examples: - light/medium appetizers or hors d’oeuvres - briefings over coffee & bagels - briefings with snack such as cookies or chips</p> <p>2) May not be meals, even low cost meals such as pizza, hot dogs, or sandwiches.</p> <p>3) May not be one-on-one setting with registered lobbyists or foreign agents, or entity that employs registered lobbyist or foreign agent</p> <p>4) Guest may be anyone if event organizer offers unsolicited second ticket</p>	<p>1) Directly invited by the event organizer who is working to put on the event</p> <p>2) Primary purpose of event is to raise funds for organization qualified under §170(c) of Internal Revenue Code</p> <p>3) May accept unsolicited offer of free attendance for anyone</p> <p>4) “Free attendance” does not include entertainment collateral to the event or food and drink outside the group setting of the event, such as giveaways</p>	<p>1) Directly invited by event organizer</p> <p>2) This exception applies to “political organizations” as described in § 527(e) of the Internal Revenue Code</p> <p>3) “Free attendance” includes cost of admission, food, refreshments, entertainment, and other benefits provided by the political organization, including unsolicited invitations for guests</p> <p>4) You may accept an invitation to an event that is primarily entertainment, such as a golf outing or a sports game, if that event is a true fundraiser for the political organization</p> <p>5) A meeting with an individual who merely gives you a campaign contribution is not a true fundraiser or campaign event under this exception</p>

Travel Guidance

Travel paid for, or reimbursed, by a person or entity other than you is considered a gift and subject to the House Gift Rule and the prohibition on soliciting gifts.¹ Topics discussed in this section are

- I. Prohibition on Solicitation
- II. Additional Requirements and Fees
- III. Officially-Connected Travel Paid for by a Private Source
- IV. Official Travel
- V. Travel for Political Purposes
- VI. Mixed-Purpose Travel
- VII. Travel for Personal Purposes
- VIII. Business Site Visits
- IX. Point A to Point A Travel
- X. Travel Paid for by Federal, State, or Local Governments
- XI. Travel Allowed by Other Gift Rule Exceptions
- XII. Travel Paid for by a Foreign Government
- XIII. Travel on Non-Commercial Aircraft
- XIV. Miscellaneous Considerations
- Endnotes

I. Prohibition on Solicitation

You may not solicit anything of value for yourself or others, including travel.² If you asked to attend a trip, or someone else asked for you, you may not participate in the trip. Additionally, you may not invite others to participate in a trip sponsored by an outside organization or allow your name to be used to solicit travelers.³ If you have any questions on this prohibition, please contact the Committee's Advice and Education staff at 202-225-7103 or ethicscommittee@mail.house.gov.

II. Additional Requirements and Fees

Trip sponsors may have additional requirements, including an application or specific timeframes to book travel. Be sure to follow any additional requirements the trip sponsors have, in addition to following the requirements here.

Trip sponsors may occasionally ask you to pay for your own travel expenses upfront and then be reimbursed by the trip sponsor. As long as you are reimbursed for the full amount you spent, even if after the fact, the trip sponsor is the one paying for your travel.

If you are asked to spend personal funds for travel in your official capacity, and you will not be reimbursed, please call the Committee for further guidance.

III. Officially-Connected Travel Paid for by a Private Source Ethics Committee Travel Regulations⁴

A. Ethics Committee Pre-Approval

- You must submit your travel requests to the Committee no later than 30 days before the start of the trip. The Committee has a travel calculator to calculate your due date. The travel calculator is available at <https://ethics.house.gov/travel-information/travel-calculator>.
- You are responsible for submitting your travel requests. The Committee does not accept travel requests directly from a trip sponsor.
- You must submit a complete submission to be considered “on time.” Changes or revisions that must be made during the review process do not change the initial submission date.
- A “complete submission” is the Traveler Form, the Primary Trip Sponsor Form and its attachments, Additional Sponsor Forms, and your invitation.
- The Committee will only accept travel requests through the Committee’s email at travel.requests@mail.house.gov or hand-delivered to the Committee’s office. If you would like to hand-deliver your submission, you must submit two copies of your request.
- Late travel requests are only allowed in limited circumstances.
 - Officers and staff may submit late requests only for exceptional circumstances
 - Exceptional circumstances include
 - Media request
 - Request to be a substitute speaker at an event
 - Staffer accompanying a Member who submitted a permissible late request
 - An office closing due to inclement weather
 - Exceptional circumstances are not
 - Late invitation from the trip sponsor except for media requests
 - Forgetting to submit a travel request on time
 - Waiting for complete forms
- The Committee will only approve travel requests that comply with the Committee’s Travel Regulations.⁵ The Travel Regulations are available at <https://ethics.house.gov/travel-regulations>.
- You must receive Committee pre-approval before accepting privately-sponsored, officially-connected travel.
- If you do not receive Committee pre-approval before accepting privately-sponsored, officially-connected travel, either your office will need to pay for the trip or you could request retroactive approval. The Committee does not guarantee that retroactive approval will be granted, and all requests are highly fact-specific.
- If your office must pay, the Member may be able to use the MRA or committee funds, principal campaign committee funds, or the Member’s own personal funds.⁶
- Officers and employees may not use their own personal funds to pay for an officially-connected trip.

B. Post-Travel Disclosure

Within 15 days after returning from your trip, you must file post-travel disclosures with the Legislative Resource Center for public disclosure. Forms that must be submitted are

- Traveler Post-Travel Disclosure Form
- Trip Sponsor Post-Travel Disclosure Form
- Approved version of the Traveler Form
- Approved version of the Primary Trip Sponsor Form and its attachments
- Approved version of any Additional Sponsor Form
- Letter approving travel request signed by Ethics Committee Chairman and Ranking Member
- Approved version of the trip agenda
- Updated trip agenda showing any changes made since receiving Committee pre-approval
- Approved version of the invitee list
- List of confirmed attendees
- Copy of the invitation

Adjustments to your travel after you received Committee pre-approval, such as shortening the trip or not bringing an accompanying relative, should be reflected on the Traveler Post-Travel Disclosure Form. If you would like to make changes to your travel request, you must contact the Committee prior to making any adjustments.

If you file annual financial disclosure statements, you may also need to report privately-sponsored, officially-connected travel on Schedule H ("Travel Payments and Reimbursements") of your statement.

C. Travel Related to Official Responsibilities

All privately-sponsored, officially-connected travel must relate to the traveler's official or representational duties.⁷ The Committee reviews each request on a case-by-case basis based on the information provided in the travel request and additional communications with the traveler and trip sponsor.

- The Committee looks to
 - The traveler's official responsibilities
 - Whether the trip relates to matters within Congress's legislative or policy interests
 - The amount of officially-connected activities during the trip, not including any recreational activities⁸
 - Whether the traveler's employing Member certifies the relationship to official duties
- Examples of activities related to official duties include
 - Attendance at a meeting or conference
 - Speaking at a conference or on a panel
 - Participating in a fact-finding trip
 - Delivering a speech or accepting an award in your official capacity

The Committee will not approve privately-sponsored, officially-connected travel to conduct official business⁹ or personal activities.

- Official business includes
 - Conducting field hearings
 - Conducting general oversight functions
 - Performing a core function of official duties
 - Attending meetings where only congressional Members and staff are present
- Personal activities include
 - Recreational activities
 - Personal travel
 - Charitable or political fundraising
 - Professional development activities, including continuing education courses
 - Networking activities

Your employing Member must certify that your travel request is related to your official responsibilities.

- For a Member, the Member certifies.¹⁰
- For personal office staff, the Member certifies.
- For majority-side committee staff, the chairman of the full committee certifies.
- For minority-side committee staff, either the chairman or the ranking member of the full committee certifies.
- For staff of a non-partisan or bipartisan committee, the chairman of the full committee certifies.
- For staff of a joint committee, the highest ranking House Member certifies.
- For staff of an office not overseen by a Member, the House Officer, or highest-ranking employee if not overseen by an Officer, certifies.

D. Length of Travel

i. General Time Limits

Travel within the continental United States may not exceed 96 hours, wheels up to wheels down.

Travel outside the continental United States may not exceed 7 days, not including travel to and from the destination. Travel outside the continental United States includes travel to Alaska, Hawaii, Puerto Rico, and any other U.S. territory or commonwealth. Days spent in whole or part traveling to or from the destination do not count towards the 7 day limit. Travel within a foreign country or between foreign countries does count to the 7 day limit.

Travel sponsored by an organization that employs or retains a registered federal lobbyist or foreign agent is limited to events on a single calendar day.¹¹ You may accept travel to and from the destination and a single night's lodging. The Committee may approve a second night's lodging if needed for you to practically participate in the one-day event.¹²

Generally each day must include a full day of programming. Officially-connected programming means meetings or sessions related to the primary purpose of the trip. Officially-connected programming does not include entertainment or recreational activities, time for personal telephone calls, "executive" or personal time, or meals without substantive programming.

ii. Further Considerations for Time Limits

The Committee will only approve necessary travel expenses.¹³ Necessary travel expenses are expenses reasonably necessary to accomplish the purpose of the trip. The Committee may require adjustments to travel plans based on the trip's agenda.

On rare occasions, the Committee may approve extensions of the 96 hour or 7 day limit.¹⁴ The Committee will not extend the time limit for trips sponsored by organizations that employ or retain registered federal lobbyists or foreign agents. Any request to extend the time limit must be for truly exceptional circumstances such as travel from a destination so remote it only receives air service every 10 days. An extension for convenience or because a larger conference may last longer than the time limit is not an exceptional circumstance.¹⁵

E. Private Sponsors in General

Generally any non-governmental entity may be a trip sponsor. A trip sponsor is any private entity that

- Plans or organizes trip activities;
- Pays for all trip expenses with its own funds; or
- Pays for trip expenses using funds from other organizations, in whole or part.

A Primary Trip Sponsor is the organization that is primarily responsible for planning, organizing, and paying for the travelers' expenses and activities. Trips may have multiple Primary Trip Sponsors.

Additional Sponsors are organizations that assist the Primary Trip Sponsor. Assistance can be monetary or in-kind. Examples of assistance from Additional Sponsors are

- Providing a grant to the Primary Trip Sponsor to support the trip
- Providing funds to the Primary Trip Sponsor that are earmarked or specifically designated for the trip or congressional travel in general

- Paying for individual events or activities during the trip
- Assisting with planning or organizing the trip or activities during the trip

Registered federal lobbyists, foreign agents, and lobbying firms may not be trip sponsors.¹⁶

Private Foundations have limits on their ability to sponsor travel.¹⁷ Those limits are

- May not be the Primary Trip Sponsor for an international trip, including travel to territories or possessions of the United States; and
- May not have a role in selecting trip participants for an international trip, including travel to territories or possessions of the United States.

F. Private Sponsors with Lobbyists/Foreign Agents

Organizations that employ or retain registered federal lobbyists or foreign agents may sponsor travel, with limits.

The limits do not apply to sponsors that are public or not-for-profit private colleges or universities, even if those colleges or universities employ or retain a registered federal lobbyist.¹⁸ These limits also do not apply to sponsors where lobbyists are involved with the organization, as long as those lobbyists are not registered to lobby for that organization.¹⁹

Limits for trips sponsored by organizations with registered federal lobbyists or foreign agents are

- Travelers may only participate in one calendar day's worth of activities,
- Lobbyist or foreign agent involvement may only be *de minimis*, and
- Lobbyists or foreign agents may not accompany travelers on any segment of the trip.²⁰
 - Accompanying travelers between the city of departure and the destination is prohibited.
 - Accompanying travelers on local transportation to events or locations within the destination is allowed.

De minimis involvement in planning or organizing a trip is

- Responding to a trip sponsor's request for names of House Members, officers, or employees who might be interested in an issue; or
- Sitting on the board of, or volunteering for, the trip sponsor, without any involvement in planning or organizing the trip.

Involvement that is more than *de minimis* includes

- Determining or suggesting, without request, which House travelers should be invited on a trip
- Extending or following up on invitations to House travelers
- Signing the trip sponsor forms provided to House travelers
- Being mentioned in or on an invitation extended by another individual or entity
- Setting or recommending, without request, any part of the trip agenda
- Making travel arrangements for House travelers

G. Additional Sponsors

Additional Sponsors assist the Primary Trip Sponsor with planning, organizing, or paying for the trip.

Only Additional Sponsors that are organized under § 501(c)(3) of the Internal Revenue Code may provide monetary assistance without having a direct role in planning or organizing the trip.²¹

All Additional Sponsors that provide assistance to the Primary Trip Sponsor without receiving a tangible benefit in return must complete Additional Sponsor Forms and be disclosed. Examples of tangible benefits include

- Receiving advertising at an event and free tickets in return for sponsorship
- Paying for and receiving booth space at a trade show
- Being named publicly as a sponsor of a large conference

H. Involvement of United States Governments or Foreign Governments

If a federal, state, or local government entity is assisting a trip sponsor with paying for, planning, or organizing a privately-sponsored, officially-connected trip, that government entity does not need to be disclosed as an additional sponsor.

If a foreign government is assisting a trip sponsor with paying for in-country expenses, or assisting with planning or organizing a privately-sponsored, officially-connected trip, the foreign government's assistance must be disclosed. Specifically,

- The Foreign Gifts and Decorations Act must allow the in-country expenses, and
- The Primary Trip Sponsor must disclose the foreign government and the type of assistance on the Primary Trip Sponsor Form.

For more information about foreign government involvement, see Travel Paid for by a Foreign Government (page T-17).

I. Locations of and Events during Travel

i. Purpose of Travel

Privately-sponsored, officially-connected travel will either be arranged or organized **without regard** to congressional participation or **with regard** to congressional participation.

Without regard to congressional participation means travel where your participation is incidental to the larger purpose of the event. Examples include

- Business or trade association annual conferences
- Meetings of professional societies
- Symposiums, seminars, roundtables

With regard to congressional participation means travel that is specifically for your participation, or where your participation is crucial to the success of the event. Examples include

- Fact-finding trips
- Site visits
- Educational conferences or briefings designed for congressional attendance
- An evening or interview with a Member as the sole event

For travel without regard to congressional participation, the location of the trip is presumptively valid. You must still demonstrate your participation is related to your official or representational duties and attend sufficient activities on each day of the trip.

For travel with regard to congressional participation, the trip destinations must be directly related to the officially-connected purpose of the trip.

ii. Distance of Travel

Generally privately-sponsored, officially-connected travel may not be used for local travel.²²

- Local travel is travel to a destination that is
 - Within 35 miles of the U.S. Capitol, or
 - Within 35 miles of the nearest district office.
- The Committee measures distance in a direct line, or “as the crow flies.”

You may accept privately-sponsored, officially-connected travel within the district if House travelers from at least two other districts are also attending.

J. Acceptable Travel Expenses

You may only accept reasonable and necessary expenses actually incurred for privately-sponsored, officially-connected travel.²³ Generally you may accept 1) transportation expenses, 2) food and lodging expenses, and 3) miscellaneous expenses.

- Transportation Expenses
 - You may accept economy or business class air or train travel
 - If you wish to accept first class air or train fare or charter airfare, your travel must meet certain conditions laid out in the Travel Regulations²⁴
 - If you drive your own vehicle, you must be reimbursed for mileage²⁵
 - You may pay to upgrade to a higher class of travel by using
 - Personal funds
 - Travel promotional awards or points
 - Principal campaign committee funds, as permitted by the FEC²⁶
- Lodging and Meal Expenses
 - For travel without regard to congressional participation
 - Lodging and meals commensurate with what the other attendees will receive
 - For travel with regard to congressional participation
 - Lodging expenses are reviewed based on
 - Maximum *per diem* rate for that location²⁷
 - Proximity of the lodging to the sites being visited
 - Availability of lodging to accommodate the number of participants or conference requirements
 - Security concerns
 - Special needs of House travelers
 - Recommendation of a U.S. embassy for international travel
 - Meals expenses are reviewed based on
 - Maximum *per diem* rate for that location
- Miscellaneous Expenses
 - Room rental fees
 - Conference admission fees and materials
 - Interpretation fees
 - Visa fees
 - Security costs
 - Traveler’s insurance

- Informational materials

K. Accompanying Relatives

You may bring one accompanying relative at the trip sponsor's expense if that relative was invited by the Primary Trip Sponsor.²⁸ Accompanying relatives are over the age of 18 and

- Spouses
- Children or step-children
- Parents or step-parents
- Siblings or half-siblings
- Grandchildren
- Mother- or father-in-law

If you would like to bring anyone else at the trip sponsor's expense, you must write to the Committee for formal approval.

Even if the overall expense would be less for the trip sponsors to bring multiple relatives, you may only bring one accompanying relative at the trip sponsor's expense.

- **Example.** A Member is invited by organization Y to give a speech in Dallas on Saturday. Organization Z issues an unrelated invitation to the Member to address its members in Dallas on Sunday. Each group offers to pay expenses for the Member and one family member. The Member may bring only one family member to Dallas at the sponsors' expense. The Member may not bring the Member's spouse at the expense of organization Y and a child at the expense of organization Z. This arrangement would violate the allowance for one accompanying relative.
- **Example.** A Member is invited to give a speech. The sponsoring organization offers the Member and the Member's spouse business class airfare. The Member would also like to bring the Member's child. The Member may not trade in the two business class tickets for three economy class tickets. Even if the total expense for the trip sponsor would be less, the Member may not bring two accompanying relatives at the trip sponsor's expense. The Member would need to pay all of the travel expenses related to the child.

You may bring guests at your expense without formal approval from the Committee. You or your guest is responsible for all expenses related to the guest. You must receive approval from the Primary Trip Sponsor to bring additional guests.

Accompanying relatives must travel with you.²⁹ Therefore, an accompanying relative may not take more personal days, as discussed below, than you do. Accompanying relatives may depart from and return to a different location than you, or arrive after or depart before you, but otherwise must accompany you during the trip.³⁰

L. Changes at Personal Expense

i. Extending at Personal Expense

You may add personal days to the beginning or the end of a privately-sponsored, officially-connected trip. To extend at personal expense, the primary purpose of the trip must remain officially-connected.

- To accept round-trip airfare from the trip sponsors, the maximum number of calendar days you may extend must be equal to or less than the number of full calendar days of programming with the trip sponsor.
- If you would like to extend longer, you will be responsible for half of the transportation expenses.

- In all cases, you must pay for lodging and meals on the additional days.³¹
- If you add personal days to the start of a trip, the 30 day deadline will move up.
- **Example.** On an international trip, all of the travelers arrive at the destination on Monday afternoon. Monday evening the travelers participate in a two hour dinner with the trip sponsor. Tuesday through Friday the travelers spend 6-8 hours a day engaged in activities with the trip sponsor. Saturday morning the rest of the travelers will return home, but Traveler A would like to stay a few extra days. Because the trip had 4 full days of programming, Traveler A may stay 4 days and still accept roundtrip airfare from the trip sponsor. However, if the roundtrip airfare is more expensive than for the other travelers because of the new travel dates, Traveler A must pay the difference personally. Traveler A must request this extension on Traveler A's Traveler Form due no later than 30 days before the start of the trip.
- **Example.** On a domestic trip where the trip sponsors employ a lobbyist, the travelers arrive at the destination Thursday evening before the officially-connected events begin Friday morning. The rest of the travelers will return home Friday evening, but Traveler B would like to stay at the destination through the weekend. Because Traveler B will be extending for more than one calendar day, Traveler B must pay for the return transportation, as well as the meals and lodging during the additional two days. Traveler B must request this extension on Traveler B's Traveler Form due no later than 30 days before the start of the trip.

ii. *Changes to Travel Itinerary at Personal Expense*

You may depart from or return to a different location than the rest of the travelers. You are responsible for any increase in trip costs, including any change fees, over what the trip sponsor is paying for the other travelers.

M. Stacking Trips

You may travel beyond the 96 hour or 7 day limit for multiple trips that are consecutive but distinct. The Committee calls these consecutive but distinct trips "stacked." To stack trips, the sponsors, the purpose, and participants must truly be distinct. Common examples include

- Participating in two privately-sponsored, officially-connected trips where the first trip ends the same day that the second trip begins.
- Participating in a privately-sponsored, officially-connected trip, then leaving for personal vacation.
- Participating in a trip paid for by a state government agency and then a privately-sponsored, officially-connected trip, where the state agency's trip ends the day the privately-sponsored, officially-connected trip begins.
- Participating in a CODEL or STAFFDEL and a privately-sponsored, officially-connected trip, where the private sponsor offers to pay for a side trip, and the purpose of the side trip is completely unrelated to the purpose of the CODEL or STAFFDEL.

If you are invited on, or plan to take, two or more trips that abut each other, please contact the Committee's Office of Advice and Education at 202-225-7103 for guidance on what to report and how.

N. Travel for Members and Staff Leaving Office

Departing Members or staff wishing to travel after adjournment *sine die* should contact the Committee to determine whether a particular trip would still be related to the traveler's official or representational duties. For example, travel to give a speech may still be related, but travel for a fact-finding mission may not.

IV. Official Travel

A. General Provisions

Official travel is travel paid for or authorized by the House. Official travel includes travel paid for with the Members' Representational Allowance (MRA) or committee funds, CODELs, and STAFFDELS.

The Committee on House Administration oversees travel paid for with MRA or committee funds. If you or your Member would like to travel within the United States and use House funds, you may contact the Democratic staff at 202-225-2061 or the Republican staff at 202-225-8281. The Committee and the Committee on House Administration also issued joint guidance about official travel.

CODELs and STAFFDELS are official travel to a foreign country and must be authorized by the Speaker or a committee chair.³² For questions about CODELs and STAFFDELS, please call the Office of Interparliamentary Affairs at 202-226-1766.

Travel paid for with official funds does not need to be pre-approved by the Committee or reported on your annual financial disclosure statement.³³

B. No Private Subsidy of Official Travel

As discussed in the privately-sponsored, officially-connected travel section (page T-1), outside entities may not pay for official travel, whether monetary or in-kind.³⁴

House funds and privately-sponsored, officially-connected travel may not be co-mingled. For example

- **Example.** A committee chairman decided to fund Member travel to a conference with committee funds. The sponsor of the conference offers to provide lodging and meals for the Members without charge. The Members may not accept the sponsor's offer. Because official funds will be used for the airfare, the trip is an official trip. Therefore, acceptance of the sponsor's offer would be an impermissible private subsidy of official activity.
- **Example.** A Member plans to travel to a conference using MRA funds. The sponsor of the conference invites one of the Member's employees to travel to the conference at the sponsor's expense. The employee may not travel to the conference at the sponsor's expense. Because the Member is using official funds, the Member determined that attendance at the conference is an official activity.

You may accept gifts that are allowed under the House Gift Rule, even while on official travel.

- **Example.** At the same conference as the previous example, the conference sponsor instead offers to comp the Member and employee's registration fees. Assuming attendance at the conference meets the requirements for a widely-attended event, the Member and employee may accept the comped registration fees, but still pay for transportation, lodging, and meals outside the conference using official funds.

Please see the Committee's guidance on Gifts (G-1) for further information.

C. Official Travel Using Campaign Funds

Generally, a Member may pay for official travel for the Member or the Member's employees using the Member's principal campaign committee funds.³⁵ The Member may pay for travel for personal office staff and for committee staff using principal campaign committee funds.

D. Official Travel Using Personal Funds

Members may use their own personal funds to pay for official travel. Members may pay for their own travel, or travel of their employees.

Employees may not use personal funds to pay for official travel.³⁶ The employee's Member must reimburse any expenses that employee incurs for official travel.

V. Travel for Political Purposes

You may accept travel paid for by a political organization for a political fundraiser or campaign event sponsored by that political organization.³⁷ For the purpose of the House Gift Rule, political organizations are those recognized under § 527(e) of the Internal Revenue Code.³⁸

If you are traveling for a campaign or political purpose and your campaign committee, or another candidate's campaign committee is paying for travel expenses, you may not make the travel arrangements in the official, congressional office or using any congressional resources.

- **Example.** A Member is traveling for a campaign fundraiser. The Member asks the official, congressional scheduler to help make travel arrangements. The official, congressional scheduler may not make those arrangements while on House grounds (including the district office), or using congressional resources. The official, congressional scheduler may, in his or her own time, schedule the Member's campaign-related travel. The congressional scheduler must be willing to assist the campaign and may not be told to schedule that campaign-related travel as a condition of the scheduler's congressional employment.

If you are a financial disclosure filer, you will only need to report travel paid for by a federal political organization on your annual financial disclosure statements if that federal political organization did not properly report the travel on its FEC expenditure reports. You will, however, have to report travel paid for by a state or local political organization on annual financial disclosure statements.

If you are offered travel on a non-commercial aircraft for campaign purposes, please call the Committee and the FEC. As discussed in Travel on Non-Commercial Aircraft (page T-19), travel on private planes for campaign purposes is very restricted.

If you are traveling for a campaign or political purpose, but a third party offers to pay for the travel, please contact the FEC, or the state's election authority if for a state campaign purpose. Payment by the third party could be considered a campaign contribution.

VI. Mixed-Purpose Travel

You may participate in travel with more than one purpose. For example, you may want to extend a privately-sponsored, officially-connected trip at personal expense, or you may want to participate in campaign activity at the end of an official trip paid for with House funds. To determine which funds pay for which activity, you should determine which purpose is the primary purpose of the trip.

The funds associated with the primary purpose should pay for the transportation to and from the destination, and the other travel expenses related to that purpose. The funds associated with the secondary purpose should pay for the expenses related to that secondary purpose.

Although you may determine the primary purpose and any additional purposes, you should make that decision in a reasonable manner. Possible ways to make that determination include

- The number of days devoted to each purpose

- The main reason for taking the trip
- Whether you would be in that location if not for the trip

You may also stack trips together that have separate and distinct purposes. If you would like to stack trips, please contact the Committee to determine how to split expenses. You may also need to contact the Committee on House Administration or the FEC.

As discussed in privately-sponsored, officially-connected travel (page T-1), you may not stack campaign-related travel with privately-sponsored, officially-connected travel. You also may not extend a privately-sponsored, officially-connected trip for a campaign purpose.

- **Example.** You plan to travel to the district for official meetings. During one evening of that trip, you plan to assist with a political fundraiser for your Member. You would like to know whether you may use the MRA to pay for any portion of your travel expenses, including your plane ticket and your hotel room. You should call the Committee on House Administration to ask whether and for what you may use the MRA. You might be able to use your Member's principal campaign committee funds for any expenses the MRA may not cover. You should also call the FEC's congressional liaisons to ask whether you could also use principal campaign funds.

VII. Travel for Personal Purposes

A. Travel Paid for by Relatives

You may accept travel offered by a relative.³⁹

If, however, your relative is only the conduit, meaning another entity offers you travel, but through your relative, the gift would still come from the other entity. In that instance, you may not rely on the gift exception for gifts from a relative. But, you may be able to accept the travel under a different gift exception.

B. Travel Offered on the Basis of Personal Friendship

Personal friends may offer to pay for your travel expenses for personal purposes. Personal purposes do not include conducting House business or campaign activity.

Just like with other gifts of personal friendship, if the travel is more than \$250, you must write in to the Committee for formal permission to accept the gift. If the travel is \$250 or less, you may determine for yourself that your friend offered it based on personal friendship. The Committee expects you to use the same criteria the Committee does to determine if the offer was made based on personal friendship.⁴⁰ When determining the value for travel, you should look at the trip as a whole. Consider the transportation and any lodging or meals not covered by the personal hospitality exception.

If you file financial disclosure statements and you accept a trip based on personal friendship that is above the reporting threshold, you must report that trip on Schedule G ("Gifts") of your annual statement.

C. Lodging and Meals under Personal Hospitality

You may accept lodging and meals in someone's home in certain circumstances.⁴¹ The home or building may not belong to a registered federal lobbyist or foreign agent.⁴² Additionally, the home or building may not be used for business purposes, including for official meetings or if the residents rent out the home for vacation rentals.

This exception only applies to staying in the home and meals eaten in the home. The exception does not apply to going out to dinner while staying at someone's house. A meal outside the home would need to meet a different gift exception.

D. Travel for Professional Development Opportunities or Fellowships

You may be able to participate in professional development or fellowship opportunities that pay for travel expenses or scholarships. Common examples of professional development and fellowships include

- Young Leaders programs
- Continuing education opportunities
- Networking opportunities
- Exchange programs

Travel that is completely unrelated to your House employment is discussed in Travel Related to Outside Activities (page T-14).

If your House position was a factor in the decision to offer you travel for professional development or a fellowship, you must write in to the Committee and receive formal permission to accept the travel expenses.⁴³ Examples of your House position potentially being a factor include

- Submitting your resume with your application
- Listing your House position on an application
- Being nominated by someone you've worked with officially
- Submitting letters of a recommendation from a Member, officer, or employee with your application

The Committee recommends you request approval as soon as the program's sponsor offers to pay for your expenses to ensure the Committee has sufficient time to review your request.

E. Travel to Attend Charity Fundraisers

You may be able to accept lodging and transportation in connection with a charity fundraiser. To accept, the event and the offer of travel expenses must meet the following criteria.

- All of the net proceeds of the event must benefit a § 501(c)(3) organization,
- The transportation and lodging expenses must be paid by the benefitting § 501(c)(3) organization, and
- The offer to attend the event must be extended by the benefitting § 501(c)(3) organization.⁴⁴

You may accept expenses that are reasonably necessary to participate in the event. Generally that means you may accept one night's lodging.

You may only accept transportation and lodging expenses directly from the benefitting § 501(c)(3) organization, not from a sponsor or participant at the fundraiser. Additionally, you may not accept transportation and lodging expenses from the benefitting § 501(c)(3) organization if those expenses would be paid for using donations that are earmarked for congressional participants.⁴⁵

Although organizations that are not § 501(c)(3) organizations may organize events that meet the charity fundraiser exception to accept an offer of free attendance and a meal, those non-§ 501(c)(3) event organizers could not pay for your travel expenses under this exception.⁴⁶

- **Example.** You are invited to a charity fundraiser in another city. The event organizer is a corporate sponsor, but the event will benefit an organization that is recognized under § 501(c)(3) of the Internal Revenue Code. The event organizer offers to pay for your airfare and lodging to participate in the event. Although you may accept the offer of free attendance, you may not accept the transportation and lodging expenses because the event organizer is not a § 501(c)(3) organization.
- **Example.** A nationally-recognized charity is having its annual gala in another city. The charity offers you two tickets to the fundraiser and lodging and airfare to attend the event. The charity also offers lodging and airfare to your spouse. You and your spouse may accept the lodging and airfare, in addition to the offer of free attendance at the event.

F. Travel to Accept Honorary Degrees

If you are offered an honorary degree, you may also accept travel expenses that may be offered for the degree's presentation.⁴⁷ The travel expenses you may accept include transportation, lodging, meals, refreshments, and entertainment.

G. Travel Related to Outside Activities

If you are offered travel that is unrelated to your official position, you may be able to accept the offer if it was not offered or enhanced because of your position with the House.⁴⁸

i. Outside Activities

You may accept travel expenses related to your outside activities.⁴⁹ The travel expenses must be the same that are offered to others similarly situated.

- **Example.** You are on the board of a charitable organization. Each quarter the charitable organization pays for its board members to travel to its headquarters for the quarterly board meeting. All of the board members are offered the same travel expenses. You may accept those travel expenses.
- **Example.** You recently wrote and published a book. The Committee approved your publishing contract.⁵⁰ Now your publisher is planning a book tour to promote your book and will pay for your travel expenses. The publisher plans to pay for the same travel expenses it would for any other author of similar fame and stature. You may accept those travel expenses.
- **Example.** Same example as before, but you would like to stay a few extra days before returning home. You may extend your trip if the publisher allows other similarly-situated authors to extend their travel on similar terms.
- **Example.** Your child is a scout. All of the local scout troops are going to the Grand Canyon for a weeklong trip. The regional scout organization offers to pay your airfare if you will chaperone the scouts during the trip. You may accept those travel expenses.

If you file annual financial disclosure statements, you must report these travel expenses on Schedule H ("Travel Payments and Reimbursements") if the value of the travel expenses exceeds the reporting threshold.

ii. Prospective Employers

You may accept travel expenses from a prospective employer that are customarily provided by that employer for *bona fide* employment discussions.⁵¹ If you file annual financial disclosure statements, you must report these travel expenses on Schedule H ("Travel Payments and Reimbursements") if the value of the travel expenses exceeds the reporting threshold.⁵²

iii. *Accompanying Spouses*

You may accept travel expenses to accompany your spouse on trips related to your spouse's employment or outside activities.⁵³

- **Example.** Your spouse is a lawyer with a private law firm. Each year, the firm invites all of its lawyers and their spouses to a weekend retreat at a resort hotel. This retreat is offered to your spouse regardless of who you are. You may accompany your spouse and accept the law firm's payment of travel expenses.
- **Example.** Your spouse is a flight attendant with an airline that offers free travel all of its employees and their immediate families when seats are available. You may accept the free flights.

If you file annual financial disclosure statements, you must report these travel expenses on Schedule H ("Travel Payments and Reimbursements") if the value of the travel expenses exceeds the reporting threshold.⁵⁴

VIII. Business Site Visits

You and a guest may accept local transportation to visit a business site in your official capacity.⁵⁵ Specifically, you may accept

- Local transportation, outside of the District of Columbia, to the business site
 - The travel must not start or end in the District of Columbia
 - Includes travel from the local airport or other terminus to the business site
 - Local transportation means within 35 miles
- Meals offered by the management of the site being visited
 - Meal must be on that business's premises
 - Meal must be in a group setting with employees of the organization, not just board members
- **Example.** A local business invites you to tour its facility. Part of the tour includes a cafeteria where all of the facility's employees eat lunch together. You may eat lunch in the facility's cafeteria with the other employees as part of the business site visit.
- **Example.** A local business invites you to tour its facility. The invitation includes an offer to staff to tour the facility, as well as guests that anyone may want to bring. You may bring one guest of your choosing.
- **Example.** Your district relies heavily on the local waterways, including an extensive locks system. The company that manages the locks invites you to tour the locks system. To see the entire system, you must travel by boat through the locks. You will board the boat at the north end of the system and disembark at the south end of the system. You may accept that local transportation as part of the business site visit.

For travel expenses that are more than just local transportation and an on-site meal, you may need to seek pre-approval for privately-sponsored, officially-connected travel (page T-1).

IX. Point A to Point A Travel

You may accept Point A to Point A travel. Point A to Point A travel is travel that begins and ends in the same location, without any intermediary stops. To accept Point A to Point A travel, you must be traveling in your official capacity on behalf of the House. Point A to Point A travel that complies with these restrictions does not have monetary value.

- **Example.** A local organization invites House staff to tour a local river to see how federal funds have helped the health of the river improve. The local organization offers to take the staff on its

boat, which will depart and return to the same dock without disembarking during the tour. Because the staff will participate in their official capacities and the boat tour will not make intermediary stops, staff may accept this Point A to Point A travel.

- **Example.** A lumber company in the district invites a Member to tour its operations. Because the lumber company's land is so vast, the best way to view it is from the air. The lumber company offers to take the Member in the company's helicopter to view the site. The helicopter will depart from and return to the same location, without any stops. The Member may accept this Point A to Point A travel.
- **Example.** A local non-profit is planning a whistle-stop tour across the district to recognize the 100th anniversary of a regional railroad. The tour will be on a restored train and will stop at local train depots throughout the region. The non-profit invites a Member to travel with them on the tour. Because the train will make stops along the way, the Member may not accept this travel as Point A to Point A travel. The Member may be able to accept the travel under a different section discussed in this manual.
- **Example.** A Member is invited to an aircraft test facility in her district. The test facility offers to let the Member ride in the cockpit during a test flight, which will take off and return to the same location. She may accept travel on the private aircraft during the test flight because it is Point A to Point A. Because the test flight will take off and land in the same location, she may accept travel on the private aircraft during the test flight.

The mode of transportation for Point A to Point A travel does not change this guidance. As long as the travel meets these requirements, the Point A to Point A travel can be in a car, on an airplane, in a boat, on a helicopter, or on a train. Point A to Point A travel can be on privately-owned modes of transportation, including privately-owned aircraft.

X. Travel Paid for by Federal, State, or Local Governments

You may accept travel that is paid for by a federal, state, or local governmental entity, or secured under a government contract.⁵⁶ You do not need to seek prior approval from the Committee to accept this travel. Under this exception, you may accept transportation, meals, and lodging from the government entity. If you file financial disclosure reports, you do not need to report travel paid for by a federal, state, or local governmental entity, or secured under a government contract.

You may only accept these travel expenses directly from the government entity, not through a third party such as a registered federal lobbyist, or where the government entity is merely a conduit for the third party.⁵⁷

To determine if an entity is a governmental entity, the Committee looks to whether the entity is treated as a government agency for other purposes.

The Committee considers these entities to be government entities.

- United States federal government
- United States state governments
- United States municipal governments, including municipal airports
- Commonwealths and territories of the United States
- Smithsonian Institute
- Washington Metropolitan Area Transit Authority (WMATA)
- Tennessee Valley Authority
- California Joint Powers Authorities such as the Metropolitan Water District of Southern California⁵⁸
- Public universities, including Pennsylvania state-related universities⁵⁹

The Committee does not consider these entities to be government entities.

- Native American tribes⁶⁰
- Amtrak⁶¹
- Regional Federal Home Loan Banks

These lists are not exhaustive. Please contact the Committee if you have any questions about whether an entity is part of the government.

XI. Travel Allowed by Other Gift Rule Exceptions

A. Local Transportation for Widely-Attended Events and Charity Fundraisers

You may accept local transportation from the event organizer of a widely-attended event or a charity fundraiser, assuming the event meets all of the requirements.⁶² Local transportation means within 35 miles of the U.S. Capitol or the nearest district office.

B. Widely-Available Opportunities

You may accept local transportation that is routinely offered to a group or class unrelated to your House position.⁶³

- **Example.** You were invited to speak on a weekly news show. The television station routinely sends a car to pick up its guests staying nearby. The television station offers to pick you up from your home that is near the station. You may accept the offer of local transportation from the television station.

C. Less than \$50

You may accept travel expenses, including transportation and meals, if the total for the travel expenses is less than \$50 per person, and the organization sponsoring the travel does not employ or retain a registered federal lobbyist.⁶⁴

- **Example.** You were invited on a tour of healthcare facilities in the immediate DC area. The sponsoring organization does not employ or retain a registered federal lobbyist. The sponsoring organization would like to pay for a bus for the day and provide lunch. The total value of the bus and lunch per person is \$40. You may accept the offer.

XII. Travel Paid for by a Foreign Government

A. General Provisions

The Emoluments Clause of the Constitution limits your ability to accept travel from foreign governments. The Emoluments Clause prohibits you, as a federal government official, from receiving “any present . . . of any kind whatever” from a foreign government or its representative without the consent of Congress.⁶⁵

Congress consented to travel from foreign governments in two main ways, the Foreign Gifts and Decorations Act (FGDA) and the Mutual Educational and Cultural Exchange Act (MECEA).⁶⁶ House rules also allow you to accept travel from a foreign government under FGDA or MECEA.⁶⁷

A trip under FGDA or MECEA may not be turned into a privately-sponsored, officially-connected trip by changing who manages the trip planning.⁶⁸ If a foreign government contracts with a private organization to plan or organize travel, the private organization operates at the direction of the foreign government. As a reminder, you, as a Member, officer, or employee, are subject to the Emoluments Clause and other Constitutional provisions discussed throughout. Therefore, you are responsible for ensuring you only accept permissible gifts.

Foreign government entities can mean much more than just the foreign federal government. Foreign governments include foreign state or municipal governments, quasi-governmental organizations that are closely affiliated with or funded by foreign governments, and private organizations that are closely affiliated with or funded by foreign governments.⁶⁹

B. Travel under FGDA

The FGDA gave the Committee the authority to issue regulations that apply to all House Members, officers, and employees.⁷⁰ The FGDA Regulations are available at <https://ethics.house.gov/foreign-gifts-and-decorations-act-fgda-regulations>.

Under FGDA, “foreign government” means

- Any unity of a foreign government, including national, state, local, and municipal governments
- Any international or multinational organization whose membership is comprised of units of foreign governments, including
 - United Nations
 - European Union
 - North Atlantic Treaty Organization, NATO-PA
 - Organization for Security and Cooperation in Europe
- An agent or representative of the government or organization while acting in that capacity
- Quasi-governmental organizations closely affiliated with, or funded by, foreign governments⁷¹

You may only accept travel from a foreign government under FGDA if you are already outside the United States and you are traveling in your official capacity.

You may accept

- In-country travel expenses, including lodging, meals, and in-country transportation; or
- Transportation leaving or returning to different a foreign country to visit the host country.
- **Example.** You may accept local transportation from the host country to inspect a site near where you are traveling on a CODEL or STAFFDEL.
- **Example.** You may accept lodging and a meal from the host country before addressing that country’s legislature.
- **Example.** You may accept in-country airfare from the host country to visit another area of the country for fact-finding purposes while on a STAFFDEL.
- **Example.** You may accept transportation from the host country to leave or return to a different foreign country to visit the host country.

You may not accept

- Travel leaving from or returning to the United States to visit the host country;
- Transportation or lodging in the United States;
- Travel expenses, including in-country expenses, from the host country while on personal travel, campaign travel, or an academic exchange; or
- Travel expenses from a registered federal lobbyist or foreign agent.⁷²

You may not circumvent the limitations on travel under FGDA by traveling to a location just outside the United States and having the foreign government then pay for your transportation. You must have an official reason for being in the location where the foreign government begins paying for your travel expenses.

Your spouse or dependent children may also accept travel expenses from a foreign government under FGDA if they are traveling with you.⁷³ Your spouse and dependent children also may not accept travel for purely personal purposes.

You do not need Committee pre-approval, but you must report any FGDA travel within 30 days of leaving the foreign country. You must report FGDA travel regardless of the value of those travel expenses. When you return from your trip, you must complete the FGDA Disclosure Form and return it to the Committee. The FGDA Disclosure Form is available at <https://ethics.house.gov/forms/travel>. The Department of State makes FGDA disclosures public in the Federal Register each year.⁷⁴ If you file annual financial disclosure statements, you do not need to disclose FGDA travel on your annual statement that is properly reported to the Committee on the FGDA Disclosure Form.

- **Example.** The Chinese Agricultural Ministry invites the Members of the Agriculture Committee on a ten-day tour of Chinese farm cooperatives. The tour is not part of an approved MECEA program. The Members may, consistent with FGDA, accept expenses for themselves and their spouses while they are in China. The Members and the spouses may not accept airfare to and from China at the expense of the Chinese government. The Members must disclose the receipt of these expenses for themselves and their spouses on the FGDA disclosure form within 30 days of leaving China. The Members do not need to report the trip on their annual financial disclosure statements.

C. Travel under MECEA

You may accept travel to a foreign country from a foreign government that has a MECEA agreement with the United States.⁷⁵ MECEA travel is for cultural exchanges. The Department of State negotiates MECEA agreements with foreign governments. Therefore, any travel offered under MECEA must comport with the agreement on file with the Department of State. You may not accept MECEA travel within the United States.

You do not need Committee pre-approval for MECEA travel and MECEA travel is not subject to the same time limits as privately-sponsored, officially-connected travel. You should, however, contact the Department of State to ensure the travel you were offered is covered by the MECEA agreement with that foreign government. If you file annual financial disclosure statements, you must report any MECEA trips on Schedule H ("Travel Payments and Reimbursements") of your annual statement.

Only you may accept MECEA travel. MECEA agreements do not allow your spouse, children, or any other accompanying guests to travel with you at the expense of the foreign government.⁷⁶

- **Example.** A public university in Germany invites a Member to attend a two-week seminar and discussion series with German leaders at the school. The trip falls under an approved MECEA agreement. The Member may accept expenses for travel to and from Germany and related expenses for the Member's two-week stay. If the Member would like to bring a family member, the Member must do so at personal expense. The Member must disclose the trip on the Member's annual financial disclosure statement.

XIII. Travel on Non-Commercial Aircraft

Generally, you may not travel on non-commercial aircraft unless the House Rules allow it.⁷⁷

Travel on non-commercial aircraft is very strictly regulated, and **very** fact-specific. Non-commercial aircraft includes chartered aircraft, leasing services such as NetJets, and privately- or corporate-owned aircraft. Additionally, candidates for the House may be even more limited in their ability to accept travel on non-commercial aircraft.⁷⁸ Although ways to accept travel on non-commercial aircraft are discussed in this section, we highly recommend you call the Committee before accepting any travel on non-commercial aircraft.

A. Reimbursement for Travel on Non-Commercial Aircraft

House Rule 23, clause 15 governs reimbursement for travel on non-commercial aircraft. Although this rule allows reimbursement in certain circumstances, you may still need to check with the Committee on House Administration or the FEC if you would like to use something other than personal funds to reimburse for travel on a non-commercial aircraft.

Under House Rules, you may reimburse for travel on a non-commercial aircraft when⁷⁹

- The aircraft is operated by an air carrier or commercial operator with a proper license from a government (*e.g.*, travel on a commercial airline or chartered aircraft);
- The flight is offered to the Member, in the Member's personal capacity, by a personal friend or another Member;
- The aircraft is operated by a federal, state, or local government;
- The aircraft is owned or leased by a Member or a family member⁸⁰ of a Member; or
 - Including an aircraft owned by an entity that is not a public corporation where the Member or the family member has an ownership interest, provided that the Member does not use the aircraft any more than the Member or family member's proportionate share of ownership allows
- The owner or operator of the aircraft is paid a pro rata share of the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size as determined by dividing the cost by the number of Members, Delegates, or the Resident Commissioner, officers, or employees of Congress on the flight.
 - For example, if a non-commercial aircraft flight cost \$25,000 and only one Member is on the flight, the Member's pro rata share of the flight is \$25,000, regardless of the number of non-congressional travelers on the plane.

B. Gifts of Travel on Non-Commercial Aircraft

Gifts of travel on non-commercial aircraft are considered gifts under the House Gift Rule. Therefore, you may only accept travel on non-commercial aircraft without reimbursement if the gift meets one of the gift exceptions (page G-7).⁸¹

i. Acceptance of Travel Provided by a Relative

You may accept gifts from your relatives.⁸² If you are a candidate for the House traveling for campaign purposes, however, "relatives" means only the candidate and the candidate's immediate family, including a spouse, parent, child, sibling, or parent-in-law.⁸³

- **Example.** Your father owns a private plane and offers the use of that plane for commuting back and forth to the district. You may accept the flights on that private aircraft from your relatives.

ii. *Acceptance of Travel Provided on the Basis of Personal Friendship*

You may accept travel on non-commercial aircraft that meets the requirements for gifts based on personal friendship. Additional considerations include

- As a general matter, the personal friendship provision only applies if the aircraft is owned by the individual, and does not apply to a flight on an aircraft owned by a corporation or other entity, where the individual does not have access to the aircraft for personal purposes.
- The Committee must formally approve gifts based on personal friendship that exceed \$250. Practically any flight on a non-commercial aircraft will exceed \$250 in value and will require Committee approval.⁸⁴
- A flight may not be accepted on the basis of personal friendship when the primary purpose of the trip is either to conduct House business or engage in campaign activity.
- **Example.** Your personal friend owns a private plane and asks you to accompany her on vacation. The travel will occur between two airports that have regularly-scheduled commercial service. You may accept the flight on the private aircraft to go on vacation with your personal friend, if the Committee approves. Because the travel will occur between two airports with regularly-scheduled air service, the value of that flight will be the cost of the first-class ticket between those two airports. If the value of that first-class ticket is more than \$250, you must receive written permission from the Committee.
- **Example.** Your personal friend owns a private plane and asks you to accompany him on vacation. Although you could get to the general location of the vacation on regularly-scheduled air service, the particular airport where your friend will depart does not have regularly-scheduled air service to the destination airport, even through connecting flights. You may accept the flight on the private aircraft to go on vacation with your personal friend, if the Committee approves the request. Unlike the example above, the value of this flight will be the full cost of chartering the same or similar aircraft for the flight. This is because the two airports do not have regularly-scheduled air service.

iii. *Acceptance of Travel Provided by Another Member or Employee*

You may accept a flight on a non-commercial aircraft from another Member, officer, or employee of the U.S. House of Representatives or U.S. Senate that is not related to travel for, or on behalf of, a candidate for the House. Remember, generally superiors may not accept gifts from their employees unless those gifts are for special occasions such as marriage, retirement, birth of a child, birthdays, anniversaries, or holidays.⁸⁵

- **Example.** A Member owns a private plane and would like to invite other Members or staff to fly on that plane in order to attend an official meeting. Members and staff may accept gifts from other Members, including travel on non-commercial aircraft owned by the other Member for official purposes.
- **Example.** Instead, the Member would like to invite other Members or staff to fly on his plane for personal purposes. Members and staff may also accept gifts from other Members for purely personal purposes, including travel on non-commercial aircraft.
Example. A Member owns a private plane and offers it to a Senator to go on vacation, as long as the Senator pays for the costs associated with the flight. If the Senator would like to accept the Member's offer, the Senator should contact the Senate Ethics Committee for further guidance. Conversely, if you would like to accept travel on a Senator's private plane, please contact the Committee for further guidance.

iv. Acceptance of Travel Resulting from Outside Business, Employment, or Other Activities

You may accept travel on a non-commercial aircraft while participating in travel resulting from outside business, employment, or other activities if two conditions are met.

- The non-commercial aircraft was not provided or enhanced because of your official position, and
- Such travel is customarily provided to others in similar circumstances.⁸⁶

v. Acceptance of Travel Paid for by Federal, State, or Local Governments

You may accept a flight on a non-commercial aircraft that is paid for by a federal, state, or local governmental entity.⁸⁷

- **Example.** The governor would like to fly the state's congressional delegation to the state to view an area impacted by a natural disaster. The governor would provide transportation on a state-owned plane for the Members. Members and staff may accept travel on a non-commercial aircraft owned by a federal, state, or local government.

vi. Acceptance of Travel Paid for by a Foreign Government

You may accept a flight on a non-commercial aircraft that is paid for by a foreign government if the flight complies with the requirements of either the Foreign Gifts of Decorations Act (FGDA) or the Mutual Educational and Cultural Exchange Act (MECEA). The requirements of those statutes, including that travel paid for under the FGDA must take place totally outside the United States and be related to an official purpose, must be met for you to accept the travel.

For more information, see Travel Paid for by a Foreign Government (page T-17).

vii. Privately-Sponsored Travel

Members, officers, and employees participating in privately-sponsored, officially-connected travel may not accept travel on a non-commercial, private, or chartered flight unless the trip sponsor demonstrates exceptional circumstances in writing. See Acceptable Travel Expenses (page T-7).

viii. Acceptance of Travel under Committee's Waiver Authority

In special circumstances, you may ask the Committee to exercise its waiver authority to allow travel on private aircraft.⁸⁸ You must seek and receive permission before traveling on the private aircraft.⁸⁹

- **Example.** A natural disaster ravaged a Member's district. Due to the extent of the damage, commercial and chartered flights are not available. The Member is invited to travel on a private aircraft, for free, to survey the damaged areas of his district. After consultation with the Committee, it does not appear that any exception to the House gift rule would apply. However, the Member may write in to the Committee and request a waiver. Both House Rule 23, clause 15(c) and House Rule 25, clause 5(a)(3)(T) allow the Committee to grant a waiver to these rules in unusual circumstances.

C. Honest Leadership and Open Government Act Prohibitions

Acceptance of Travel for Campaign Activity

House candidates, and those traveling on behalf of a House candidate, generally may not fly on private aircraft, whether reimbursed or not.⁹⁰ If you are not acting in your capacity as a candidate for the House, or in support of a House candidate, you may accept travel on a non-commercial aircraft if offered by a political organization in connection with a fundraiser or campaign event sponsored by that political organization.⁹¹ The question of travel on non-commercial aircraft for a campaign purpose is very fact-specific, and you should consult with the Committee and the FEC before accepting travel.

- **Example.** A Member is traveling to a fundraiser for her re-election campaign. One of her supporters offers her travel on the supporter's private plane to that fundraiser. The Member may not accept travel on that private plane. Generally, candidates for the House may not accept travel on private aircraft for campaign purposes. Please contact the FEC congressional liaisons for additional information concerning travel on private aircraft for campaign-related purposes.

XIV. Miscellaneous Considerations

A. Use of Government Rate

As a general matter, you may only book plane tickets, hotel rooms, rental cars, etc., at the “government rate” if you are traveling in your official capacity and your travel is being paid for with House funds.

You may not use the government rate if you are paying for your travel with personal or campaign funds. Additionally, if you are participating in a privately-sponsored, officially-connected trip, the trip sponsor may not book travel using the government rate.

Only Members, officers, and employees may use the government rate for travel. For example, Members' spouses and children may not use the government rate.

Members may make multiple reservations for official travel, using the government rate, if the airline allows.⁹²

You may, however, accept a discount that is offered to all government employees, or all federal employees, as a widely-available benefit.⁹³

B. Frequent Flier Miles Earned Through Official Travel

Please contact the Committee on House Administration for questions about using frequent flier miles earned through official travel.

Endnotes

¹ House rule 25, cl. 5; 5 U.S.C. § 7353

² 5 U.S.C. § 7353.

³ *Id.*; 31 U.S.C. § 1301(a); Comm. on House Admin., *Members' Congressional Handbook* (official resources may only be used for official purposes).

⁴ All guidance related to Privately-Sponsored, Officially-Connected Travel can be found in the Ethics Committee's Travel Regulations. Following an intensive review, the Committee revised its Travel Regulations on December 27, 2012. The Committee subsequently revised the Travel Regulations on December 9, 2020. The 2020 Travel Regulations will be effective for all trips starting on or after April 1, 2021. The current version is available at <https://ethics.house.gov/travel-regulations>.

⁵ The Committee highly recommends that anyone wishing to sponsor privately-sponsored, officially-connected travel read the Committee's Travel Regulations.

⁶ For requests to use the MRA or committee funds, please call the Committee on House Administration. To use principal campaign committee funds, please call the FEC's congressional liaisons.

⁷ "[T]ravel [must be] in connection with the duties of [the] individual as an officeholder and would not create the appearance that the [Member, officer or employee] is using public office for private gain." House Rule 25, cl. 5(b)(3)(G).

⁸ "[E]vents, the activities of which are substantially recreational in nature, are not considered to be in connection with the duties of [the individual] as an officeholder." *See* House Rule 25, cl. 5(b)(1)(B).

⁹ House Rule 24, cls. 1-3 prohibit outside supplementation, both monetary and in-kind, for official House business. For guidance on proper funding sources for official travel, please see Official Travel (page ____).

¹⁰ A Member may authorize an employee to sign for the Member, but in no instance should that employee authorize the employee's own travel.

¹¹ House Rule 25, cl. 5(b)(1)(C).

¹² *Id.*

¹³ House Rule 25, cl. 5(b)(1)(A).

¹⁴ House Rule 25, cl. 5(b)(4)(A).

¹⁵ Time limits for privately-sponsored, officially-connected travel were imposed out of concern for "the public perception that such trips often may amount to paid vacations for the Member and his family at the expense of special interest groups." House Bipartisan Task Force on Ethics, 101st Cong. *Report on H.R. 3660*, 101st Cong., 1st Sess. (Comm Print 1989), *reprinted in* 135 Cong. Rec. 30740, 30742 (daily ed. Nov. 21, 1989).

¹⁶ House Rule 25, cl. 5(b)(1)(A). The gift rule provides that the term "registered lobbyist" means "a lobbyist registered under the Federal Regulation of Lobbying Act or any successor statute," and the term "agent of a foreign principal" means "an agent registered under the Foreign Agents Registration Act." House Rule 25, cl. 5(g).

Because you may not accept travel from an individual who is a registered lobbyist, you likewise may not accept travel from a lobbying firm. As a general matter, the Committee does not consider a corporation, trade association, labor union, or other entity that retains or employs lobbyists to represent **only** the interests of the organization or its members to be a "lobbyist" for purposes of the prohibition.

An organization with registered federal lobbyists or foreign agents who only sit on its board or volunteer for the organization, but are registered to represent **other** organizations, is not considered an organization that employs or retains a registered federal lobbyist or foreign agent. 2020 Travel Regulations § 204. The restrictions discussed in this section apply to organizations with registered federal lobbyists or foreign agents registered to represent those organizations.

¹⁷ *See* 26 U.S.C. § 4941.

¹⁸ House Rule 25, cl. 5(b)(1)(C)(i). These colleges and universities must meet the definition of "institutions of higher education" under the Higher Education Act of 1965. For-profit colleges and universities do not meet this definition. *See* 20 U.S.C. § 1001.

¹⁹ Lobbyists themselves still may not be involved in more than *de minimis* activities, but the one day rule would not apply.

²⁰ A trip segment is transportation to or from the city of departure, or return, and the trip destination. Local transportation to attend events or visit locations at the trip destination itself is not included in the definition of a trip segment.

²¹ In previous versions of the Committee's guidance and travel regulations, the Committee only allowed sponsors who played "a significant role in organizing and conducting a trip, and that also have a clear and defined organizational interest in the purpose of the trip or location being visited." Comm. on Standards of Official Conduct, *Travel Guidelines and Regulations*, at 3-4 (Feb. 20, 2007), reprinted in 2008 House Ethics Manual at 399-400; see Comm. on Standards of Official Conduct, *Investigation of Financial Transactions participating in and Gifts of Transportation Accepted by Representative Fernand J. St. Germain*, H.R. Rep. 100-46, at 5-6 (1987).

On December 27, 2012, the Committee issued new travel regulations that allowed additional sponsors to provide monetary assistance, as long as the sponsors 1) are recognized under IRC § 501(c)(3) and audit or review their grants to the primary trip sponsors to ensure compliance with the grant terms, and 2) are publicly disclosed. Comm. on Ethics, *Travel Guidelines and Regulations* § 104(i) (Dec. 27, 2012) [hereinafter 2012 Travel Regulations]. The current Travel Regulations continue this practice.

²² See House Rule 24, cls. 1-3. Because official allowances are available to cover travel expenses for Members and staff within Washington, D.C., and between Washington, D.C. and the district offices, House travelers may not accept private subsidy for that official travel. However, you may accept local transportation expenses under other exceptions to the House Gift Rule (*e.g.*, local transportation for a widely-attended event).

²³ House travelers may not accept *per diem* payments. If an outlay is given, any unused portion must be returned. This requirement is similar to the rules under which Members and staff travel on CODELs or STAFFDELS. See House Rule 10, cl. 8(c)(2); see also Letter from Speaker Nancy Pelosi to Chairman of the House Committee on Armed Services (May 13, 2010) in Comm. on Standards of Official Conduct, *In the Matter of Allegations Relating to the Use of Per Diems on Official Trips Staff Report*, app. A, ex. 1 (Dec. 30, 2010) (Staff Report).

²⁴ First class travel, or travel on chartered aircraft, is permitted for exceptional circumstances, such as 1) the cost of the business or first class ticket is not more expensive than the economy class ticket, 2) the upgraded travel is necessary to accommodate a disability or special need, 3) genuine security circumstances require the travel, 4) scheduled travel time including layovers exceeds 14 hours, 5) a domestic flight departs before midnight and lands after 5am the following day, or 6) exceptional circumstances exist. Exceptional circumstances do not include the unavailability of business or economy class seats or that first class or charter travel is more convenient for the House traveler's schedule.

²⁵ House Rule 24 prohibits staff from supplementing officially-connected activity. If, however, you choose to drive yourself for your own convenience, rather than accept the trip sponsor's transportation offer, you are personally responsible for those expenses.

²⁶ Leadership PAC funds may not be used to pay for travel upgrades for privately-sponsored, officially-connected travel.

²⁷ *Per diem* rates are set by the Department of State for international travel and the General Services Administration for domestic travel.

²⁸ House Rule 25, cl. 5(b)(4)(D). The provision allowing relatives to accompany you was added on January 4, 2005. See H. Res. 5, 109th Cong. (2005). Previously the gift rule permitted a Member, officer, or employee to be accompanied by a "spouse or child" but not by any other relative.

²⁹ The Committee previously allowed spouse only privately-sponsored, officially-connected travel through its waiver authority in the House Gift Rule. See 2008 House Ethics Manual at 102. However, now all privately-sponsored, officially-connected travel is covered by the current Travel Regulations, and the Committee will not approve spouse-only travel that is offered because of the Member, officer, or employee.

³⁰ If the cost of the transportation for the accompanying relative to depart from or return to a different destination is more than what the trip sponsor is paying for other accompanying relatives, the traveler or the accompanying relative must pay the difference personally.

³¹ When traveling at your personal expense, you will not be able to use any rates that the trip sponsor may have negotiated for the rest of the privately-sponsored, officially-connected trip, because those discounts would be a gift to you that do not meet a gift exception.

³² See House Rule 1, cl. 10 (Speaker authorized travel); House Rule 10, cl. 8 (funding of foreign travel); House Rule 24, cl. 10 (prohibiting travel by Member not re-elected after general election or adjournment *sine die*; 22 U.S.C. § 1754(b) (funding for foreign travel).

³³ Travel paid for with official funds is not subject to the Committee's Travel Regulations and does not need to be reported within 15 days of return. Additionally, travel paid for with official funds does not need to be reported on annual financial disclosure statements.

³⁴ House Rule 24, cls. 1-3 prohibit outside supplementation, both monetary and in-kind, for official House business. However, local transportation expenses that Members, officers, and employees may accept under the House Gift Rule are permitted (*e.g.*, local transportation for a widely-attended event). See generally House Rule 25, cl. 5.

³⁵ House Rule 24, cl. 1(b)(1) allows Members to use principal campaign committee funds to defray official expenses. Members, however, may not use principal campaign committee funds to defray certain enumerated official expenses. Those specific exclusions are 1) mail or other communications, 2) compensation for services, 3) office space, 4) office furniture, 5) office equipment, or 6) any associated information technology services, excluding handheld communications devices. House Rule 24, cl. 1(b)(2).

Additionally, because the Committee has overlapping jurisdiction with the Federal Election Commission (FEC) over the use of principal campaign committee funds for official expenses, anyone wishing to use principal campaign committee funds for official expenses allowed under House Rule 24 should also confer with the FEC's congressional liaisons at 202-694-1006 to ensure that it meets the FEC's relevant tests. The Committee understands that travel for an official purpose generally meets the FEC's test, but travel questions are fact-specific and changes in facts could change the guidance you receive.

³⁶ House Rule 24, cl. 1 prohibits the use of staff's personal funds for official activities. Members, however, are personally responsible for expenses that exceed the MRA. See Comm. on House Admin., *Members' Congressional Handbook*. Therefore, Members' use of their personal funds for official activities is not considered private subsidy of official business.

³⁷ House Rule 15, cl. 5(a)(3)(G)(iii).

³⁸ § 527 organizations are organized and operated primarily for the purpose of accepting contributions or making expenditures for the purpose of influencing the election of any individual to a public or political office. See 26 U.S.C. § 527.

³⁹ House Rule 25, cl. 5(a)(3)(C). "Relative" means your father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, the grandfather or grandmother of your spouse, or your fiancé(e). 5 U.S.C. app. § 109(16). This list is a much more exhaustive than the list of relatives that may accompany you on privately-sponsored, officially-connected travel. For that list, please see the Committee's Travel Regulations.

⁴⁰ Specifically you should consider 1) the nature of your relationship, including any previous exchanges of gifts; 2) whether your friend will use personal funds to pay for the trip; and 3) whether your friend made the same offer to any other Member, officer, or employee. House Rule 25, cl. 5(a)(3)(D). Gifts offered because of your official position, or where your friend will be seeking a tax deduction or business reimbursement, are not gifts offered based on personal friendship. *Id.*

⁴¹ Gifts of personal hospitality include lodging and meals "extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or

on property or facilities owned by that individual or his family,” where the individual is not a registered federal lobbyist or foreign agent. 5 U.S.C. app. § 109(14); House Rule 25, cl. 5(a)(3)(P).

⁴² The Committee looks to who resides in the home. For example, if someone is renting an apartment or house, the renter may not be a lobbyist or foreign agent, regardless of who may own that building. If, however, the home is owner-occupied, then the owner of the home may not be a lobbyist or foreign agent.

⁴³ If you cannot say for certain that your House employment was not a factor in the decision-making process, then the gift exception for travel related to outside activities would not apply. *See, e.g.*, House Rule 25, cl. 5(a)(3)(G)(i) (allowing food, refreshments, lodging, transportation, and other benefits for outside business or employment activities if not offered or enhanced because of the Member, officer, or employee’s official position). The Committee may be able to give you a waiver of the gift rule to accept the opportunity. House Rule 25, cl. 5(a)(3)(T).

⁴⁴ House Rule 25, cl. 5(a)(4)(C)(i)-(iii).

⁴⁵ The prohibition on the 501(c)(3) organization using funds earmarked for congressional participants includes that are formally and informally earmarked for the payment of expenses related to congressional participants. Consistent with this interpretation, for example, a Member, officer, or employee traveling to a charity event under these rules may not accept a flight on a corporate aircraft that is flying corporate officials to the event, even if the charity reimburses the corporation for the flight. Aside from concerns on whether a corporation may lawfully accept such a reimbursement under Federal Aviation Administration regulations, a donor to a charity event should have no role in providing travel to a participating Member, officer, or employee.

⁴⁶ House Rule 25, cl. 5(a)(4)(C). As discussed in the Gifts section of the Committee’s guidance (page G-21), you may accept an offer of free attendance at a charity fundraiser, as long as you are invited by the event organizer directly and the event is to benefit an organization qualified under § 170(c) of the Internal Revenue Code. Free attendance includes waiver of the ticket price; the food, refreshments, and entertainment at the event; local transportation; and a second ticket for a guest of your choosing. Therefore it is possible to accept free attendance at an event but not be able to accept an offer of long-distance transportation and lodging for that same event.

⁴⁷ House Rule 15, cl. 5(a)(3)(K). Although the rule allows you to accept *bona fide* non-monetary public service awards, the rule only allows you to accept travel expenses related to honorary degrees.

⁴⁸ House Rule 25, cl. 5(a)(3)(G).

⁴⁹ *Id.* at (i).

⁵⁰ As discussed in the Outside Activity section of the Committee’s guidance, the Committee must review and approve publishing contracts for Members and senior staff. Staff who are not paid at the senior staff rate do not need Committee approval of a publishing contract, but may still accept travel expenses to promote the book, as long as those travel expenses are not offered or enhanced because of the staff’s House position and are the same expenses offered to other similarly situated authors. Members and senior staff who may have written books prior to joining the House may also accept travel expenses to promote their books, if the offer conforms with all of the same requirements. Travel expenses, whether reimbursed or paid upfront, are not the same as honoraria. Members and senior staff still may not accept honorarium, regardless of the source or purpose. House Rule 25, cl. 1(a)(2). Staff who are not senior staff are also restricted in their ability to accept honoraria. *Id.*

⁵¹ House Rule 25, cl. 5(a)(3)(G)(ii).

⁵² Even if you accept the prospective employer’s offer of employment, you would still need to report those travel expenses on your annual or termination financial disclosure statement, if the travel expenses were accepted while you were still on House payroll and exceed the reporting threshold.

⁵³ House Rule 25, cl. 5(a)(3)(G)(iii).

⁵⁴ To determine value when accompanying spouses, you should look to the extra expenses the outside organization paid on your behalf. For example, if your spouse’s company would have paid for a hotel room whether you went on the trip or not, the hotel room is not a gift to you. However, your airfare, your meals, and any additional expenses related to the lodging would need to be added to determine whether

the value exceeds the reporting threshold. You may include a comment on your financial disclosure statement that you accompanied your spouse.

⁵⁵ Although not enumerated in the House Gift Rule, the Committee exercised its waiver authority to allow for local transportation outside of the District of Columbia and meals incident to a business site visit. The Committee also exercised its waiver authority to allow an unsolicited guest of your choosing. Comm. on Ethics, *Guest Policy Change and Reminder of Gift Rules for Attendance at Events* (Sept. 19, 2022).

⁵⁶ House Rule 25, cl. 5(a)(3)(O). This rule also allows Members, officers, and employees to accept gifts, including travel, that are “secured by the Government under a Government contract.” “Government contracts” under this provision mean federal government contracts. *See, e.g.*, 5 C.F.R. § 2635.203(7); 57 Fed. Reg. 35,014 (Aug. 7, 1992) (“The exclusion is intended to cover items the Government procures for use by its employees under a Government contract or knowingly obligates itself to pay for.”).

⁵⁷ *See* Comm. on Rules, Amending the Rules of the House of Representative to Provide for Gift Reform, H.R. Rep. No. 104-337, at 11 (1995).

⁵⁸ *See* Cal. Gov’t Code §§ 6500-6599.3.

⁵⁹ *See* 22 Pa. Code § 31.2 (Pennsylvania state-related universities are instrumentalities of the commonwealth).

⁶⁰ The Committee considered this matter carefully and found nothing in the legislative history of the current gift rule or its predecessors indicating an intent to treat Native American tribes as state or local government entities for these purposes. The Committee also does not consider Native American tribes to be foreign governments.

⁶¹ “Amtrak is not a department, agency, or instrumentality of the United States Government. . .” 49 U.S.C. § 24301(a)(3).

⁶² House Rule 25, cl. 5(a)(4)(D). The requirements for a widely-attended event and a charity fundraiser are discussed further in the gifts section.

⁶³ House Rule 25, cl. 5(a)(3)(R).

⁶⁴ House Rule 25, cl. 5(a)(1)(B)(i). Gifts under the “less than \$50” exception have an annual limit of less than \$100. The limit is per donor, per recipient. *Id.* Gifts that are allowed under different exceptions to the House Gift Rule are not rolled into the less than \$100 limit.

⁶⁵ U.S. Const. Art. I, § 9, cl. 8.

⁶⁶ Congress consented to other programs outside of FGDA and MECEA, including the U.S.-Korea National Assembly Exchange Program. However, FGDA and MECEA are the most common methods that foreign governments use to offer Members, officers, and staff travel.

⁶⁷ Members, officers, and employees may accept “[a]n item, the receipt of which is authorized by [FGDA], [MECEA], or any other statute.” House Rule 25, cl. 5(a)(3)(N).

⁶⁸ *See* Comm. on Ethics, *In the Matters of Allegations Relating to Travel to Taiwan by Representatives William Owens and Peter Roskam in 2011*, H.R. Rep. 113-226 (2013).

⁶⁹ To determine whether an organization is part of a foreign government, the Committee looks to a number of factors including the level to which the organization is funded by a foreign government, whether the organization is controlled by a foreign government, and whether another U.S. government agency determined the organization is part of a foreign government. Organizations that meet the definition of foreign government may not offer privately-sponsored, officially-connected travel. Members, officers, and employees may only accept travel expenses from organizations that meet this definition under FGDA or MECEA. *See* Comm. on Ethics, *In the Matter of Officially-Connected Travel by House Members to Azerbaijan in 2013*, H.R. Rep. 114-239 (2015); Comm. on Ethics, *In the Matters of Allegations Relating to Travel to Taiwan by Representatives William Owens and Peter Roskam in 2011*, H.R. Rep. 113-226 (2013).

⁷⁰ 5 U.S.C. § 7342(g)(1). The Committee is the House’s “employing agency” for the purposes of FGDA. *Id.* at (a)(6)(A).

⁷¹ To determine whether an organization is part of a foreign government, the Committee looks to a number of factors including the level to which the organization is funded by a foreign government, whether the organization is controlled by a foreign government, and whether another U.S. government agency determined the organization is part of a foreign government. Organizations that meet the definition of foreign government may not offer privately-sponsored, officially-connected travel. Members, officers, and employees may only accept travel expenses from organizations that meet this definition under FGDA or MECEA. *See* Comm. on Ethics, *In the Matter of Officially-Connected Travel by House Members to Azerbaijan in 2013*, H.R. Rep. 114-239 (2015); Comm. on Ethics, *In the Matters of Allegations Relating to Travel to Taiwan by Representatives William Owens and Peter Roskam in 2011*, H.R. Rep. 113-226 (2013).

⁷² If a foreign government is directly paying for the travel, the foreign government is the donor and the travel must comply with FGDA or MECEA. If a registered federal lobbyist or foreign agent is using funds from its own account to pay for travel expenses or reimbursement, you may not accept those expenses or reimbursement.

⁷³ 5 U.S.C. § 7342(a)(1)(G).

⁷⁴ 5 U.S.C. § 7342(f)(1).

⁷⁵ 22 U.S.C. § 2458a.

⁷⁶ *Id.* at (a)(1)(C).

⁷⁷ House Rule 23, cl. 15(a).

⁷⁸ 52 U.S.C. § 30114(c).

⁷⁹ House Rule 23, cl. 15(b).

⁸⁰ “Family member” for purposes of this rule is defined as the Member’s spouse, parents, children, siblings, and parents-in-law. House Rule 23, cl. 15(d)(2).

⁸¹ House Rule 25, cl. 5(a)(1)(A)(i). Impermissible travel on non-commercial aircraft has been the subject of Committee investigations over the years. *See* Comm. on Ethics, *In the Matter of Allegations Relating to Representative Don Young*, H.R. Rep. 113-487 (2014) (improper personal use of campaign funds for and improper gifts of travel on private aircraft for personal travel); Comm. on Standards of Official Conduct, *Investigation of Travel on Corporate Aircraft Taken by Representative Dan Daniel*, H.R. Rep. 99-470 (1986) (improper acceptance of travel on corporate aircraft for official travel). The Committee issued guidance concerning travel on non-commercial aircraft that is incorporated in this manual. Comm. on Ethics, *Non-Commercial Aircraft Travel* (Apr. 10, 2019).

⁸² House Rule 25, clause 5(a)(3)(C).

⁸³ Candidates for the House, traveling as candidates, may only accept travel on non-commercial aircraft if that aircraft is owned by the candidate or the candidate’s immediate family, including a spouse, parents, children, siblings, and parents-in-law. 52 U.S.C. § 30114(c)(3)(B).

⁸⁴ The value of a flight on a non-commercial aircraft is to be determined as follows. *When the travel is via a previously or regularly-scheduled flight by the owner or operator of the aircraft*, and the airports between which the Member or staff person is flying have regularly-scheduled air service (regardless of whether such service is direct), the value of the use of the aircraft is the cost of a **first-class ticket** from the airport of departure to the airport of destination. If only the coach rates are provided between those points, the value is the coach rate. If more than one first-class rate is available, the lowest fare may be used. However, no discount fares may be used for valuation purposes.

When the flight is scheduled specifically for Member or staff person use, or when either the airport of origin or destination does not have regularly-scheduled air service, the value of the use of the aircraft is the full cost of **chartering** the same or similar aircraft for that flight, divided by the number of Members, Delegates, or the Resident Commissioner, officers, or employees of Congress on the flight.

⁸⁵ 5 U.S.C. § 7351; House Rule 25, cl. 5(a)(3)(F).

⁸⁶ House Rule 25, cl. 5(a)(3)(G).

⁸⁷ House Rule 25, cl. 5(a)(3)(O).

⁸⁸ House Rule 23, cl. 15(c).

⁸⁹ *Id.*

⁹⁰ *See* 52 U.S.C. §30114(c); 11 C.F.R. § 100.93.

⁹¹ House Rule 25, cl. 5(a)(G)(iii). Although allowed by the gift rule, HLOGA prohibits Members, officers, and employees from accepting travel on a non-commercial aircraft paid for by a House candidate's principal campaign committee or leadership PAC. *See* 11 C.F.R. § 100.93.

⁹² *See* Comm. on Official Standards of Conduct, *Multiple Reservations on Commercial Flights* (Feb. 21, 2008).

⁹³ House Rule 25, cl. 5(a)(3)(R).