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ONE HUNDRED SIXTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

Thomas A. Rust
Staff Director and Chief Counsel

David W. Arrojo
Counsel to the Chairman

Christopher A. Doneso
Counsel to the Ranking Member

1015 Longworth House Office Building
Washington, D.C. 20515-6328
Telephone: (202) 225-7103
Facsimile: (202) 225-7392

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MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Reminder: Prohibition Concerning Campaign Contributions and Outlays

The purpose of this memorandum is to remind House Members¹ and employees of the federal criminal statute prohibiting campaign contributions to an employing Member, including making outlays on behalf of that Member's authorized campaign committee. The memorandum includes illustrative examples of how the federal prohibition applies, as well as best practices to help House employees avoid violating the criminal statute.

In general, and as discussed in depth below:

- **House employees may not make a contribution to any campaign committee authorized by their employing Member;**
- **An “outlay,” or the use of personal funds (or personal credit) to make a purchase on behalf of a campaign committee, is a type of campaign contribution;**
- **Non-travel outlays by House employees on behalf of their employing Member’s campaign are prohibited even in cases where the monetary value of the outlay is minor and/or the employee is fully reimbursed;**
- **Employee outlays for ordinary and necessary expenses related to the duties of an officeholder are permissible, with some exceptions; and**
- **Members are liable for outlays made to an authorized campaign committee by their employees.**

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

I. Overview of Employee Contribution Prohibition

A federal criminal statute prohibits a House employee from making a political contribution to their employing Member of Congress or a campaign committee authorized by their employing Member.² The prohibition extends to any campaign committees *authorized* by an employing Member and not merely the Member's *principal* campaign committee.³ Further, the statutory definition of "contribution" includes more than just financial donations.

Generally, a contribution includes any gift, loan, advance, or anything of value, for the purpose of influencing any election for Federal office.⁴ A loan or advance is commonly called an "outlay." Similar to other types of contributions, an outlay is impermissible, except in certain instances.⁵ As discussed in Committee training, guidance, and [recent investigative reports](#), when a House employee makes an outlay, or pays for a campaign expense from their own funds, that expenditure is a contribution even if the employee later gets reimbursed for the expense.

There are three main principles to keep in mind concerning a contribution in the form of a loan or advance. First, there is no method for reversing or undoing an impermissible loan or advance. Once a House employee uses his or her funds for a campaign expense, the outlay has already occurred. Reimbursement, while appropriate, does not fully cure the infraction because the funds have already been loaned or advanced to the campaign. Second, the prohibition is straightforward; there is no way to circumvent the prohibition. Using a personal credit card or single-member LLC funds does not avoid the prohibition. Finally, although it is each House employee's responsibility to know and understand the law, ultimately, Members are responsible for ensuring their authorized campaign committees operate in compliance with the law and may be liable for outlay violations by their staff that they fail to prevent.

- ❖ *Best Practice*: Each Member should provide a copy of this memorandum to their House employees and campaign treasurer or Federal Election Commission (FEC) compliance team to ensure everyone is aware of the prohibition.
- ❖ *Best Practice*: Members should never, under any circumstance, solicit or request a campaign contribution from their congressional employees.

² 18 U.S.C. § 603.

³ Authorized campaign committees include any political committees authorized by a candidate under 11 C.F.R. § 102.13 to receive contributions or make expenditures on behalf of such a candidate. As explained below, this does not include, for example, a joint fundraising committee.

⁴ 52 U.S.C. § 30101(8)(A).

⁵ There are *limited* instances in which a House employee may pay personally for campaign travel expenses, discussed later in this memorandum.

I. What Is A Contribution?⁶

A contribution is “any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”⁷

Perhaps one of the first things that may come to mind in the context of the prohibition is a financial contribution, in the form of a check written or an online contribution. However, contributions may also take the form of in-kind goods or services. Additionally, financial contributions made by people with whom you commingle funds can, in some instances, be imputed to you. Simply volunteering for your employing Member is *not* considered a contribution to his or her campaign.⁸

Example 1: Employee Ross works for Congressman Portal. The re-election campaign for Congressman Portal sends Employee Ross’ spouse a solicitation. Employee Ross may not write a check to Congressman Portal’s campaign. However, Employee Ross’ spouse may send a check from her personal account. Alternatively, Employee Ross’ spouse may send a check from a jointly-held account with Employee Ross. She should indicate in the memorandum line on the check that the funds being used are her own funds, rather than commingled funds.

Example 2: Employee Foster wants to attend her employing Member’s upcoming campaign fundraiser. The tickets cost \$100 per person. Employee Foster may not pay to attend her employing Member’s campaign fundraiser. If offered, Employee Foster could accept an unsolicited offer of free attendance at the fundraiser from the political organization sponsoring the event.

- ❖ *Best Practice:* If someone is on a joint account with you, and wishes to make a financial contribution to your employing Member, he or she should take an affirmative step to indicate that he or she is using their own funds, rather than commingled funds.

II. What Is An “Outlay?”

The use of personal funds (or personal credit) to make a purchase on behalf of a campaign committee, sometimes referred to as an “outlay,” is similarly a contribution, and in most circumstances, is prohibited by the statute. Once the outlay is made, reimbursement, while appropriate to make an employee whole, does not “cure” the infraction caused by the loan or advance. In addition, the value of an outlay is immaterial for purposes of the criminal statute. An outlay, whether \$2.60 or \$2,600, equally falls within the prohibition. Perhaps most important to remember is that there is simply no way to circumvent the prohibition. Paying for campaign

⁶ The statutory definition of a contribution also includes the use of personal funds (or personal credit) to make a purchase on behalf of a campaign committee. However, to further clarify the extent of the prohibition, this section will focus solely on monetary and in-kind contributions. So-called “outlays” will be addressed specifically in the next section of the memorandum.

⁷ 52 U.S.C. § 30101(8)(A).

⁸ *Id.* at (B)(i). The statute provides that among the items that do **not** constitute a contribution for purposes of the Federal Election Campaign Act (FECA) are “the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee.”

expenses through a single-member LLC, or paying for campaign expenses with a personal credit card, debit card, check, or cash, is similarly prohibited.

Example 3: Employee Appleman works for Congresswoman Donahue, and volunteers for her campaign. Employee Appleman has been asked to get pizza for campaign staff who are working late. The bill for the pizza is \$42.36. Employee Appleman may not use personal funds of any kind to pay for the campaign expense. Employee Appleman also established a single-member LLC for certain business expenses. Employee Appleman may not pay for the pizza through her single-member LLC.

- ❖ *Best Practice:* If you intend to volunteer or work for your employing Member's campaign regularly, ask for a campaign-issued credit card to be issued in your name or to be added as an authorized user on a campaign-issued credit card. Alternatively, ask for a campaign credit card any time you are asked to run an errand.

III. What is Not an Outlay

There are certain limited exceptions in which outlays to benefit an employing Member's campaign are permitted, the most notable of which is that you *may* pay for travel related to your employing Member's campaign with personal funds, provided you are reimbursed appropriately, or your total transportation expenses do not exceed \$1,000 with respect to a single election, whether reimbursed or not. Failure to be reimbursed timely or spending more than the \$1,000 travel expenditure limit will result in the outlay becoming impermissible.

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,⁹ 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.¹⁰

Further, in some situations, campaign funds may be used to reimburse employees who make outlays for ordinary and necessary expenses incurred in connection with a Member's duties as a federal officeholder. In these instances, because the original outlay was not made for the purpose of influencing a federal election, the House employee may be reimbursed by their employing Member's campaign. Members should exercise caution when using campaign funds to reimburse staff who incur expenses in connection with the Member's duties as a federal officeholder. House Rule XXIV, with some limited exceptions, prohibits the use of outside funds towards the operation of a House office.¹¹

Example 4: Employee Wambold works for Congresswoman Seo, and volunteers for her campaign. Employee Wambold has been asked to travel to staff a campaign fundraiser. The cost of transportation is \$382. Employee Wambold has already spent \$974 on campaign travel for his

⁹ 11 C.F.R. § 116.5(b)(1), (2).

¹⁰ *Id.* § 100.79(a).

¹¹ *See* House Rule XXIV; *House Ethics Manual* at pp. 326-330.

employing Member during this election cycle. Employee Wambold may use his personal credit card to pay for the travel. However, *he must be reimbursed by the campaign within 60 days after he incurs the expenses or the \$382 becomes an impermissible outlay*. If Employee Wambold instead uses his debit card to pay for the transportation, *he must be reimbursed by the campaign within 30 days after he incurs the expenses, or the \$382 similarly becomes an impermissible outlay*.

Example 5: Employee Jansen works for Congressman Bedmarz, and volunteers for his campaign. Employee Jansen has been asked to travel to staff Congressman Bedmarz at a campaign event. The cost of transportation is estimated to be \$825. Employee Jansen has not incurred any prior travel expenses while volunteering for the campaign and does not plan to travel for the campaign for the rest of this election cycle. Employee Jansen may use personal funds (check, debit card, credit card) to pay for the travel. If Employee Jansen does not travel for the rest of the election cycle, he is not required to be reimbursed.

Example 6: Congressman Korn intends to hold a meeting in his congressional office with constituents who have been negatively impacted by a recent policy change made by the Small Business Administration. Congressman Korn asks Employee Taylor to purchase coffee and donuts for the constituent meeting. Employee Taylor may purchase the refreshments using her own funds, and she may be reimbursed by the campaign for her expenditure. Employee Taylor's use of personal funds and reimbursement by the campaign is not a contribution, and thus not an impermissible outlay, since the expenses were related to the duties of an officeholder.

- ❖ *Best Practice:* If traveling for your employing Member's campaign and you have or are likely to personally incur travel expenses in excess of \$1,000 during a single election cycle, set reminders for campaign reimbursement. The timing of your reminders should be at least a week before the appropriate deadline for reimbursement, depending on your method of payment (60 days for credit card purchases or 30 days for all other types of purchases).
- ❖ *Best Practice:* If you anticipate traveling for your employing Member's campaign often, ask the campaign to book or pay for your travel directly.
- ❖ *Best Practice:* If you are unsure whether a request to expend your personal funds is related to the duties of an officeholder, as opposed to being for the benefit of the campaign, confirm the purpose of the expenditure prior to using personal funds. Remember that you *may* make an outlay for ordinary and necessary expenses incurred in connection with a Member's duties as a federal officeholder.¹²
- ❖ *Best Practice:* If your campaign reimburses an employee in your Congressional office for an allowable expenditure the employee made related to your duties as a federal officeholder, the person responsible for reporting the purpose of the campaign reimbursement on FEC filings should consider making clear that the expenditure was not made for the purpose of influencing your election. Otherwise, the reporting of the

¹² See House Rule XXIV, cl. 1(b)(2) for a list of goods and services which may never be paid for with campaign funds, whether related to an outlay or not.

campaign reimbursement to a staffer of an employing Member's campaign could result in scrutiny by the Committee.

IV. Who Is An Employing Member?

To better understand to whom a House employee may not make a contribution or outlay, it is crucial for House employees to know who qualifies as their employing Member.¹³ For staff serving solely in a personal office, your employing Member is the Member for whom you work. However, many House employees who work for Members of Congress have more than one employing Member.

House employees who work for both a personal office and for a committee may have two employing Members; their personal office Member, and the Chair or Ranking Member of their committee, if the officeholders are different people. In addition, shared employees, as defined by the Committee on House Administration (CHA), may be employed by several Members at the same time.¹⁴ Finally, House employees who work for a caucus may rotate the Member of the caucus for which they work in order for the caucus to share expenses among the caucus Members; the employing Member will be determined by which office(s) payroll includes the caucus employee.

Example 7: Employee Opachan works for Congresswoman Giattino in her personal office. Employee Opachan's employing Member is Congresswoman Giattino. The prohibition applies only to Congresswoman Giattino.

Example 8: Same example as above; however, Employee Opachan also works for the Committee on Natural Resources, minority. The Ranking Member is Congressman Rowland. Employee Opachan's employing Members are Congresswoman Giattino and Congressman Rowland. The prohibition applies to both Congresswoman Giattino and Congressman Rowland.

Example 9: Employee Myers is a shared employee, pursuant to CHA's definition. She performs financial administrative work for seven Members in their personal offices and two committee Chairs in their committee offices. The prohibition applies to all nine Members.

Example 10: Employee Baker works for a caucus that has been officially -recognized by CHA. To share expenses, Employee Baker is paid by Congressman Walker for April and May, then Congresswoman Bethea for June and July. The prohibition applies to Congressman Walker during April and May; and to Congresswoman Bethea for June and July.

¹³ Staff who work for employing authorities other than Members of Congress—for example, employees of the Chief Administrative Officer, Office of the Clerk, etc.—do not have an employing Member. Similarly, officers of the House, such as the Chaplain, do not have an employing Member, as they are their own employing authority.

¹⁴ See *Comm. on House Admin., Members' Congressional Handbook*, <https://cha.house.gov/member-services/handbooks/members-congressional-handbook#Members-Handbook-Staff-Shared> (last accessed on August 27, 2020).

- ❖ *Best Practice*: Ensure that you fully understand on whose payroll you appear from month-to-month by checking your pay disbursement statements.

V. What Is An Employing Member's Campaign?

While House employees may easily recognize their employing Member's principal campaign committee as off-limits, they may not be aware that the prohibition applies to any campaign committee *authorized by their employing Member*. House employees should bear in mind that Members may have more than one authorized campaign committee and each of those committees similarly fall within the prohibition. A joint fundraising committee may also be covered by this prohibition, but only if it has been designated by the employing Member as an authorized committee. Staff should contact the Committee for guidance prior to making a contribution to their employing Member's leadership political action committee (PAC).¹⁵

For House employees who are unsure whether a committee has been authorized by your employing Member, contact the Committee for assistance, ask your Member, or visit the FEC's website, where you can look-up your employing Member's Statement of Candidacy, which includes a list of the Member's authorized committees.¹⁶

Example 11: Congressman Mason's principal campaign committee is called Mason for Congress. Congressman Mason's employees may not make a contribution to Mason for Congress.

Example 12: Same example as above; however, Congressman Mason also utilizes the Mason Victory Committee, which is a joint fundraising committee authorized by Congressman Mason. Congressman Mason's employees may not make a contribution to Mason for Congress or to the Mason Victory Committee.

Example 13: Employee Szabo is contemplating a contribution to We, the Welders, a Super PAC that supports specific policies. Employee Szabo works for Congressman Etihad, who also supports the same policies. Employee Szabo may make a contribution to We, the Welders.

- ❖ *Best Practice*: House employees should check FEC filings, such as a candidate's Statement of Candidacy, and seek further information from their employing Member to determine which campaign committees were authorized by the employing Member before making a contribution to a campaign or PAC.
- ❖ *Best Practice*: Members should not suggest to or imply that staff make donations to other, allowable, political committees.

Further explanation of this prohibition and advice on specific questions are available from the Committee's Office of Advice and Education at extension 5-7103.

¹⁵ The analysis concerning entities that qualify as leadership PACs and whether a contribution to one would be likely to violate 18 U.S.C. § 603 is highly technical and fact-specific.

¹⁶ <https://www.fec.gov/data/>.