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ONE HUNDRED SEVENTEENTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON ETHICS

Thomas A. Rust  
*Staff Director and Chief Counsel*

David W. Arrojo  
*Counsel to the Chairman*

Kelle A. Strickland  
*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 OF THE HOUSE OF REPRESENTATIVES

FROM: Committee on Ethics  
Theodore E. Deutch, Chairman  
Jackie Walorski, Ranking Member

SUBJECT: Ethics Guidance Regarding Financial Interest in Funding Requests

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House Rule 23, clause 17, requires that a Member, Delegate, or Resident Commissioner<sup>1</sup> who requests an earmark or a limited tax or tariff benefit provide certain information regarding the request and its purpose to the committee of jurisdiction, including a certification that neither the Member nor the Member's spouse has a financial interest in the request. Congressionally Directed Funding and Community Project Funding are examples of funding requests<sup>2</sup> that trigger the certification requirement. In addition to requirements in the House rules, each committee with jurisdiction over a funding request, as well as the Democratic Caucus or Republican Conference may establish supplemental policies or restrictions for funding requests. For example, House Members may also have to certify that their *immediate family* does not have a financial interest in the funding request.<sup>3</sup> This advisory memorandum is intended to provide some general guidance based on questions the Committee has received concerning the certification requirement. Members with specific questions should contact the Committee's Office of Advice and Education at (202) 225-7103.

#### Certification Requirement

House Rule 23, clause 17 imposes a disclosure requirement on a 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)." The committees with jurisdiction over funding requests shall determine whether any particular funding request triggers the certification

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<sup>1</sup> Hereinafter, Members, Delegates, and the Resident Commissioner are referred to collectively as "Members."

<sup>2</sup> Hereinafter, this memorandum will refer to all relevant requests as "funding requests."

<sup>3</sup> Comm. on Appropriations, Appropriations Requests, at <https://appropriations.house.gov/appropriations-requests> (last visited Apr 7, 2021).

requirement. Congressionally Directed Funding and Community Project Funding are examples of funding requests that trigger the certification requirement. A Member who submits a funding request must provide a written statement to the chair 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
- a certification that both the Member and the Member’s spouse have no financial interest in the earmark or limited tax or tariff benefit.

Application of the rule to funding requests is determined by a number of key terms, including “financial interest,” “earmark,” “limited tax benefit,” and “limited tariff benefit.” The latter three terms are defined in House Rule 21, clauses 9(d), (e), and (f).<sup>4</sup>

### **“Financial Interest” in a Funding Request**

Whether a Member or a Member’s spouse has a financial interest in a funding request will most frequently depend on the specific facts and circumstances regarding both the proposed spending 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

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<sup>4</sup> The terms “earmark,” “limited tax benefit,” and “limited tariff benefit” are defined below. The term “financial interest” will be discussed in detail in this memorandum.

(d) For the purpose of this clause, the term “congressional earmark” means a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

(e) For the purpose of this clause, the term “limited tax benefit” means--

(1) any revenue-losing provision that--

(A) provides a Federal tax deduction, credit, exclusion, or preference to 10 or fewer beneficiaries under the Internal Revenue Code of 1986, and

(B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; or

(2) any Federal tax provision which provides one beneficiary temporary or permanent transition relief from a change to the Internal Revenue Code of 1986.

(f) For the purpose of this clause, the term “limited tariff benefit” means a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

interest. **Members are encouraged to consult the Ethics Committee for guidance with any fact-specific questions they may have concerning whether they or their spouse have a financial interest in a funding request.**<sup>5</sup> The Ethics Committee nevertheless provides the following general guidance.

A financial interest would exist in a funding request when it would be reasonable to conclude that the provision would have a direct and foreseeable<sup>6</sup> effect on the pecuniary interests of the Member or the Member's spouse.

Such interests may relate to one's financial assets, liabilities, or other interests of the Member or spouse, such as ownership of certain financial instruments or 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. Many of these interests are required to be reported on the Member's annual Financial Disclosure Statement.

A financial interest would not include remote, inconsequential, or speculative interests. For example, if a Member proposed a funding request benefiting 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 or Member's spouse with a majority ownership interest in a certain company seeking funding likely does have a financial interest in the funding.

As a general matter, a contribution to a Member's principal campaign committee or leadership PAC does 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 a funding 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 (*e.g.*, *quid pro quo*).<sup>7</sup>

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<sup>5</sup> As noted later in this Memorandum, Members should consult with the Committee on Appropriations and the relevant committee of jurisdiction for questions concerning policies or restrictions that are supplemental to House Rule 23, clause 17.

<sup>6</sup> An effect is foreseeable if it is anticipated or predictable. For additional guidance, see 5 C.F.R. § 2640.103(a)(3), which defines a similar term, "predictable," as "a real, as opposed to a speculative, possibility that the matter will affect the financial interest." This regulation also defines the term "direct" as "a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest," and states that a "particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this part."

<sup>7</sup> See 5 U.S.C. § 7353; 18 U.S.C. § 201; see also House Rule 23, clause 3 (providing that a Member "may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress").

If a Member determines that they or their spouse have a financial interest in a funding request, the Member should not request the provision nor ask another Member to request the measure on their behalf.

### **Other Requirements**

In addition to requirements in the House rules, each committee of jurisdiction may establish supplemental policies or restrictions for funding requests.<sup>8</sup> Members should consult with the particular committee of jurisdiction for guidance concerning any supplemental policies or restrictions before making a funding request. Members should also consult with the Democratic Caucus or Republican Conference, as applicable, to seek additional requirements before submitting a funding request.

Using the Appropriations Committee’s FY 2022 Community Project Funding as an example, in making such funding requests, Members are *further* required to do the following:

- post their requests and certifications of no financial interest on their official websites (*i.e.*, house.gov) simultaneously when their requests are made to the Committee on Appropriations;
- prioritize their requests (maximum of 10 requests per Member) when submitting to the Member database;
- provide evidence of community support that were compelling factors in their decision to select the requested projects; and
- certify that they, their spouse, and their *immediate family* have no financial interest in the projects they request. For purposes of the certification requirement, the Committee on Appropriations has defined *immediate family* as father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law.<sup>9</sup>

### **Frequently Asked Questions**

**Q. Do I have a financial interest in a funding request for a public university’s medical research study where my spouse is chair of the English department?**

**A.** A financial interest in a funding request exists “when it would be reasonable to conclude that the provision would have a direct and foreseeable effect on the pecuniary interests of the

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<sup>8</sup> Comm. on Appropriations, “DeLauro Announces Community Project Funding in Fiscal Year 2022,” at <https://appropriations.house.gov/news/press-releases/delauro-announces-community-project-funding-in-fiscal-year-2022> (last visited April 7, 2021).

<sup>9</sup> Comm. on Appropriations, Appropriations Requests, at <https://appropriations.house.gov/appropriations-requests> (last visited Apr 7, 2021).

Member or the Member's spouse."<sup>10</sup> The outside employment of a Member's spouse may constitute a financial interest in a funding request benefiting the spouse's employer when, for example, the funding request would affect the spouse's salary, the employer's ability to pay the salary, or the existence of the position (or where the spouse held an ownership interest in the employer). Your spouse's compensation will not be affected by the funding request, nor will your spouse receive any other financial gain or benefit from the funding request. Therefore, there is no financial interest.

**Q. A public university in my district has requested funding for a medical study where my spouse is the principal investigator and has intellectual property rights. Do I have a financial interest?**

**A.** It is reasonable to conclude that the funding request will directly and foreseeably affect your spouse's financial interest, given that your spouse is the principal investigator and has intellectual property rights. Therefore, there is a financial interest.

**Q. Do I have a financial interest in a funding request if my spouse's company bids on a government contract that may receive funding if awarded the contract?<sup>11</sup>**

**A.** In this scenario, it is not conclusive that the spouse's company will win the government contract. As stated above, the Committee has determined a financial interest does not include a "remote, inconsequential, or speculative interest."<sup>12</sup> Therefore, there is no financial interest.

**Q. Do I have a financial interest in a funding request for an airport if I own property near the airport?**

**A.** The Committee has previously advised a financial interest does not exist if (1) the upgrades to the airport will not affect the property's use or provide any other direct or unique benefits to the property; and (2) any change in the value of the property resulting from the funding would be incremental and indirect, and would be experienced as a member of a class of area property owners, merely as a consequence of the airport's general effect on the economy.

**Q. Does my board membership on a non-profit prohibit me from seeking funding on its behalf? I do not have a financial interest.**

**A.** Generally, Members may seek funding requests for entities in which they have an affiliation provided there is no financial interest. However, Members are prohibited from

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<sup>10</sup> See Comm. on Ethics, *2008 Ethics Manual* at 239, available at [https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008\\_House\\_Ethics\\_Manual.pdf](https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf) [hereinafter *2008 House Ethics Manual*].

<sup>11</sup> We note that the criminal statute prohibiting Members from entering into a contract with the United States does not appear to apply to contracts between a Member's spouse and the U.S. government. 18 U.S.C. § 431. See *2008 House Ethics Manual* at 201.

<sup>12</sup> See *2008 House Ethics Manual* at 239.

dispensing special favors or privileges to anyone, whether for remuneration or not.<sup>13</sup> Accordingly, any requests on behalf of an organization with which you have an affiliation should be based on its merits and in relation to requests made on behalf of other similar entities located in the district.

**Q. Can I make a funding request on behalf of a non-profit whose director donated to my campaign?**

A. Generally, a contribution to a Member’s campaign or leadership PAC does not constitute “financial interest” under House 23, clause 17. However, Members should be mindful of appearance and *quid pro quo* concerns with any connection between political contributions and official actions.<sup>14</sup>

**Q. Is signing a letter of support for funding considered a formal “request” for funding?**

A. The committees with jurisdiction over funding requests are responsible for determining whether any particular spending provision constitutes a “request” for funding. Accordingly, Members with questions regarding whether their proposed conduct constitutes a “request” should consult with the particular committee of jurisdiction for guidance.

**Q. Besides the House rules, are there any other requirements for requesting funding?**

A. Each committee of jurisdiction may establish supplemental policies or restrictions regarding funding requests in addition to the House rules (*e.g.*, the Committee on Appropriations in FY22 requiring Members to certify that their immediate family has no financial interest in the funding request).<sup>15</sup> For questions regarding guidelines for submitting a funding request, please contact the particular committee of jurisdiction for guidance. Members should also consult the Democratic Caucus or Republican Conference for additional requirements for funding requests.

Committee staff are available to provide advice to House Members and employees. Please direct questions to the Committee’s Advice and Education staff at (202) 225-7103. It may also be necessary to consult with the Committee on Appropriations and/or the specific committee of jurisdiction.

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<sup>13</sup> Code of Ethics for Government Service ¶ 5, H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat. pt 2, B12 (1958).

<sup>14</sup> *See supra* note 7 and accompanying text.

<sup>15</sup> Comm. on Appropriations, “DeLauro Announces Community Project Funding in Fiscal Year 2022,” at <https://appropriations.house.gov/news/press-releases/delauro-announces-community-project-funding-in-fiscal-year-2022> (last visited April 7, 2021).