

Jo Bonner, Alabama
Chairman
Linda T. Sánchez, California
Ranking Member

Michael T. McCaul, Texas
K. Michael Conaway, Texas
Charles W. Dent, Pennsylvania
Gregg Harper, Mississippi

John A. Yarmuth, Kentucky
Donna F. Edwards, Maryland
Pedro R. Pierluisi, Puerto Rico
Joe Courtney, Connecticut



ONE HUNDRED TWELFTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

Daniel A. Schwager
Staff Director and Chief Counsel

Joanne White
Administrative Staff Director

Kelle A. Strickland
Counsel to the Chairman

Daniel J. Taylor
Counsel to the Ranking Member

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

November 29, 2011

MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics
Jo Bonner, Chairman *JB*
Linda T. Sánchez, Ranking Member *AS*

SUBJECT: Rules Regarding Personal Financial Transactions

The purpose of this memorandum is to summarize various rules and standards of conduct that may apply to personal financial transactions of Members, officers, and House employees.¹ The matters discussed here include the use of nonpublic information when engaging in a personal financial transaction, conflicts of interest, gifts, and financial disclosure.

The Use of Nonpublic Information

Information Obtained Outside Official Duties

Members and employees may obtain material nonpublic information about a public company outside of their official duties from family, friends, acquaintances, or from their own involvement with a company. If the Member or employee chooses to trade on this information, they may have engaged in insider trading. Members and employees could also incur liability through a practice known as tipping.² Tipping is passing along inside information in violation of a duty of confidentiality; the recipient of a tip (the “tippee,” in this case the Member or employee) becomes subject to a duty not to trade while in possession of that information. A tip occurs when an insider (the “tipper”) discloses inside information to another person, who knows or should know that the tipper was breaching a duty by disclosing the information and that the tipper was providing the information for an improper purpose. Both tippees and tippers may be subject to liability for insider trading.

¹ The terms “staff” and “employee” are used interchangeably throughout this memorandum to refer to persons who are employed by a Member, committee, leadership office, or other legislative branch office.

² See 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5.

Material nonpublic information is any information concerning a company, security, industry or economic sector, or real or personal property that is not available to the general public and which an investor would likely consider important in making an investment decision. A good rule of thumb to determine whether information may be material nonpublic information is whether or not the release of that information to the public would have an effect on the price of the security or property.

For example, a House employee has a friend who works for the Food and Drug Administration (FDA). During a personal conversation, the friend, in violation of FDA rules on confidentiality, informs the House employee that a new miracle weight loss drug is going to be approved by the FDA. That information is not public. The House employee buys shares in the company that manufactures the drug. Once the news of the drug approval is made public, the company share price increases and the employee sells at a profit. The employee may be subject to liability for violation of federal civil and criminal insider trading statutes. However, if the House employee waits to purchase the shares until the information regarding the FDA decision becomes public, the employee would not be subject to liability.

Information Obtained in the Course of Official Duties

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.³ The Code of Ethics for Government Service, which was adopted by the 85th Congress in 1958, states that no one in government service shall use “information coming to him confidentially in the performance of governmental duties as a means for making private profit.”⁴ The Code of Ethics for Government Service was adopted by the House as a concurrent resolution and this Committee concluded that the ethical standards set forth in the code “represent continuing traditional standards of ethical conduct to be observed by Members of the House at all times.”⁵ Therefore, the Committee’s guidance has been that House Rules prohibit Members and employees from entering into personal financial transactions to take advantage of any confidential information obtained through performing their official governmental duties.

Moreover, clause 1 of the Code of Official Conduct requires Members and staff to “behave at all times in a manner that shall reflect creditably on the House.”⁶ Whether or not the traditional statutes and regulations governing insider trading apply,⁷ Members

³ House Rule 23, cl. 3.

⁴ Code of Ethics for Government Service ¶ 8, reprinted in *2008 House Ethics Manual* at 355.

⁵ 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, at 3 (1976) (hereinafter *Sikes Report*).

⁶ House Rule 23, cl. 1.

⁷ For instance, in addition to violating House Rules and guidance as indicated above, the misappropriation (such as, use of information covered by some policy or agreement of confidentiality) of material nonpublic information for the purpose of trading in public securities may subject any person to

and employees who engage in trading with the benefit of material nonpublic information gained in congressional service may be investigated for, and may be found in violation of, clause 1.

Much information about the work of Congress, such as information obtained during public briefings or hearings, is considered public information. Examples of material nonpublic information gained during the course of government service may include, but are not limited to, legislation and amendments prior to their public introduction, information from conference or caucus meetings regarding votes or other issues, and information learned in private briefings from either the public or private sector.

For example, a House employee learns during a closed hearing that a bomber contract is going to be awarded to a particular aircraft company. Following the hearing, the House employee buys shares in the company that manufactures the plane. Once the news of the contract award is made public, the company share price increases and the employee sells at a profit. The employee may be subject to liability for violating Code of Ethics for Government Service and clauses 1 and 3 of the Code of Conduct. However, if the House employee, in this example waits to purchase the shares until the information regarding the contract award becomes public, the employee would not be subject to liability.

Conflicts of Interest⁸

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.⁹ Thus, as a general matter, the decision on whether to refrain from voting on a particular matter on the floor 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.

Certain matters go to the very heart of a Member's official responsibilities. Chief among them is voting on legislation. Clause 1 of House Rule 3 provides: "Every

liability under the federal civil and criminal insider trading statutes. For further discussion on this topic, see Congressional Research Service memorandum, "Insider Trading and Members of Congress" (November 18, 2011).

⁸ For a fuller discussion of the conflicts of interest issue, please see the *2008 House Ethics Manual* at pages 233 to 238.

⁹ John V. Sullivan, *Parliamentarian, Constitution, Jefferson's Manual and Rules of the House of Representatives*, 112th Cong., 2d Sess. (2010), § 672, at 375; *5 Hinds' Precedents of the House of Representatives* § 5952, at 506 (1907).

Member . . . shall vote on each question put, unless having a direct personal or pecuniary interest in the event of such question.”

No statute or rule requires the divestiture of private assets or holdings by Members, officers, or employees of the House upon entering their official position. Since legislation considered by Congress affects 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 situation 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 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 affects a class of people or entities, as distinct from individuals, a Member may vote.¹⁰ Thus, in the past, Members who were bar owners were permitted to vote on Prohibition and Members who were veterans were permitted to vote on government benefits for former military personnel.¹¹ However, 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.¹²

However, while the 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,” it has, in the past, investigated allegations that a Member had violated the rule by not refraining from voting in a particular instance.¹³ It has also occasionally provided confidential advice to Members that it would be inappropriate for them to vote or to introduce legislation that directly affected significant and uniquely held financial interests. This analysis must necessarily depend on the facts of a particular situation.

The provisions of House Rule 3, clause 1, discussed in this section, apply only to Members 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 the Member’s 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.

¹⁰ See *5 Hinds’ Precedents of the House of Representatives* § 5952, at 504 (1907).

¹¹ See *2008 House Ethics Manual* at 235.

¹² See, e.g., *Sikes Report*, *supra* note 6, at 4-5, 15-16.

¹³ *Sikes Report*, *supra* note 6, at 15-16; see also 121 Cong. Rec. 38135 (Dec. 2, 1975).

Whenever a Member is considering taking any such action on a matter that may affect the Member's personal financial interests, it is advisable for the Member to first contact the 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.

Gifts

House rules define the term "gift" to mean:

a gratuity, favor, discount, entertainment, hospitality, loan forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.¹⁴

Members, officers, and employees may not accept any gift, except as specifically permitted by House rules.¹⁵

House rules permit a Member or employee to accept anything for which they pay the "market value."¹⁶ If a Member or employee is provided with the opportunity to make an investment at below fair market value, taking advantage of that opportunity may constitute the Member or employee accepting an impermissible gift. If the Member or employee is receiving an opportunity at a discount or receiving a special price, they must be aware that the discount or special price might be an impermissible gift and should exercise caution prior to accepting it.

Members and employees may accept opportunities, like discounted investments, that are "available to the public or to a class consisting of all Federal employees."¹⁷ For example, a developer is selling houses next to a golf course. The public may purchase a house prior to July 1 at a discounted price. If an employee purchases a house on June 15, the discounted price is a permissible gift because the offer was available to the public.

Members and employees may also accept opportunities that are "[o]ffered to members of a group or class in which membership is unrelated to congressional employment."¹⁸ For example, assume that the developer in the prior example is a country club in which the employee became a member prior to House employment. All members of the club are permitted to purchase a house on a new golf course at a discounted price. If the employee purchases a house, the discounted price is a permissible gift because the

¹⁴ House Rule 25, cl. 5(a)(2)(A).

¹⁵ House Rule 25, cl. 5(a)(1)(A)(i); *see also* House Rule 23, cl. 4.

¹⁶ House Rule 25, cl. 5(a)(3)(A).

¹⁷ House Rule 25, cl. 5(a)(3)(R).

¹⁸ *Id.*

offer was available to a group of people in which the employee was a member unrelated to congressional employment.

If, however, the Member or employee took advantage of an investment opportunity received solely because of their congressional status and the opportunity was offered and accepted at less than fair market value, then the Member or employee received an impermissible gift.¹⁹ In the example above, if the developer offered the employee the discounted price after the generally-available July 1 cutoff date solely because the person works for the House, it would constitute an impermissible gift.

Financial Disclosure Requirements

As discussed above, the private financial interests and investments of Members and employees may present potential conflicts of interest with official duties. In addition, all Members 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 of interest.

Under Title I of the Ethics in Government Act of 1978, Members, senior staff, and principal assistants are required to file annual Financial Disclosure Statements that report all transactions or groups of transactions in real property or securities which exceed \$1,000. For each transaction, the filer must report a description of the asset, the date, type of transaction, and the category reflecting the amount of the transaction.²⁰ Based on the information provided in the Statements, which are publicly available, the public can make a determination regarding whether a Member or employee may have a conflict with any public matter before the House.

* * *

This memorandum summarizes some of the key rules and standards that apply to personal financial transactions of Members, officers, and employees. It is not an exhaustive compilation of all rules or standards that could conceivably apply. In addition, analysis of proposed conduct under these standards must be done on a case by case basis. The Committee is available to provide confidential advice to Members, officers, and employees on these and other issues. Any questions on these matters should be directed to the Committee's Office of Advice and Education at (202) 225-7103.

¹⁹ See *2008 House Ethics Manual* at 27, 32.

²⁰ See 5 U.S.C. app. 4 § 104(a)(5).