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ONE HUNDRED SIXTEENTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON ETHICS

April 13, 2020

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### MEMORANDUM FOR ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES

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

SUBJECT: Ethics Guidance – Coronavirus Aid, Relief, and Economic Security (CARES) Act

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This memorandum serves as a reminder of the conflicts of interest rules, laws, and regulations that apply to Members.<sup>1</sup>

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, enacted on March 27, 2020, contains several provisions providing emergency relief for individuals and businesses.<sup>2</sup> One of those provisions is § 4003 of the CARES Act, which allocates \$500 billion in emergency relief and authorizes the Secretary of U.S. Department of Treasury to provide liquidity to eligible businesses, states, and municipalities related to losses incurred as a result of the COVID-19 pandemic. Members, their families, or businesses in which Members or certain parts of their immediate family have an ownership interest may be interested in applying for or receiving relief through the CARES Act. The Committee recommends caution before applying for or receiving relief under the CARES Act.

In particular, the CARES Act has a conflict of interest provision applicable to businesses in which senior government officials or their immediate family have an ownership interest.<sup>3</sup> Specifically, § 4019 of the CARES Act prohibits companies in which Members (*or their spouse, child, daughter-in-law, or son-in-law*) own 20 percent or more equity interest from receiving any loans, loan guarantees, or other investments described in § 4003 of the Act.<sup>4</sup> Further, for *any* company that receives emergency funds described in § 4003, the principal executive officer and

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

<sup>2</sup> Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136.

<sup>3</sup> *Id.* at § 4019.

<sup>4</sup> *Id.*

financial officer, or individuals performing similar functions, are required to certify that the entity is eligible under § 4003, including that the conflict of interest provision does not apply.<sup>5</sup>

The prohibition in § 4019 of the CARES Act is limited to the emergency relief funds described in § 4003. Thus, Members or businesses in which Members or certain individuals in their immediate family have an ownership interest may be able to apply for assistance under other parts of the CARES Act, such as the Paycheck Protection Program.<sup>6</sup> However, other conflicts of interest rules and regulations (*e.g.*, criminal conflicts of interest, see below) may limit a Member’s participation in those other provisions of the CARES Act. For example, Members may be prohibited from entering into contracts (including loans and loan guarantees) with federal agencies to secure emergency relief. Accordingly, Members are encouraged to review their financial holdings and familiarize themselves with the conflicts of interest rules and laws summarized below before availing themselves of any provision of the CARES Act or any future related legislation.

### **Criminal Conflicts of Interest**<sup>7</sup>

A criminal prohibition at 18 U.S.C. § 431 provides a penalty for any Member of Congress who “undertakes, executes, holds or enjoys” a contract or agreement entered into with the United States.<sup>8</sup> Government loans and loan guarantees may be contracts with the United States for purposes of § 431, but contracts made, entered into, or accepted on behalf of an incorporated company for the general benefit of the corporation are excluded from the prohibition.<sup>9</sup> This is true even where a Member of Congress has a substantial interest in the corporation.<sup>10</sup> However, this exception does not apply to partnerships, limited liability companies (LLC), or to corporations designed specifically to allow Members of Congress to avoid such restrictions.<sup>11</sup>

In addition, 41 U.S.C. § 6306 requires that every government contract include an express condition that no Member of Congress “be admitted to any share or part of such contract or agreement, or any benefit to arise thereunder.” Finally, under 18 U.S.C. § 203, House Members, officers, and employees are prohibited 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 in this provision are proceedings before any federal government agency, department, or bureau.

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at § 1102.

<sup>7</sup> Please be advised federal criminal law is enforced by the U.S. Department of Justice, and the Committee’s guidance is advisory only.

<sup>8</sup> 18 U.S.C. § 431. The statute specifically exempts some government contracts, such as certain farm loan programs and crop insurance. *See e.g.*, 18 U.S.C. § 433.

<sup>9</sup> 33 Op. Att’y Gen. 44 (1921) (applying § 431 to loan from War Finance Corporation to company in which Member was a stockholder, but concluding loan was permissible because loan was to corporation not Member individually).

<sup>10</sup> *See* 33 Op. Atty. Gen. 44 (Oct. 29, 1921).

<sup>11</sup> *See* 22 Op. Off. Legal Counsel 33, 38 (Feb. 17, 1998).

**Example 1:** Member A owns Buffet Restaurant, LLC (Buffet), a small family-owned business. She receives annual compensation based on profits from the restaurant. She is considering applying for a disaster loan on behalf of Buffet through the U.S. Small Business Administration (SBA). Buffet is not incorporated, and thus, the prohibition on Members contracting with the federal government may still apply. Member A should contact the SBA and outside counsel to ensure she is not prohibited from receiving such a loan under 18 U.S.C. § 431.

**Example 2:** Member B works part-time at Moonlight Bakers, Inc. (Bakers) and receives a salary. The manager of Bakers asks Member B to contact U.S. Department of Treasury about the loan program under § 4003. Member B should not do so because this may be considered a prohibited representation under 18 U.S.C. § 203.

### **Avoiding Potential Conflicts of Interest**

All House Members, officers, and employees must conduct themselves at all times in a manner that reflects creditably on the House.<sup>12</sup> General ethical standards and rules restrict a Member's ability to engage in undertakings inconsistent with congressional responsibilities. Because even the appearance of a conflict of interest may adversely affect public perceptions and confidence, a close examination should be made into the circumstances and possible relation to official acts of any proposed activity. To start, a Member may neither receive compensation nor allow a benefit to accrue, "by virtue of influence improperly exerted from the position of such individual in the Congress."<sup>13</sup> Similarly, paragraph 5 of the Code of Ethics for Government Service calls on government officials never to dispense special favors or privileges, nor to accept any favors or benefits "under circumstances which might be construed by reasonable persons as influencing the performance" of official duties. These standards of ethical conduct prohibit the use of official position for personal gain or providing a special advantage to an outside organization with which a Member is affiliated.

**Example 3:** Member C's fiancée is employed by an agricultural trade association. The fiancée asks Member C to schedule a meeting for her and U.S. Department of Agriculture officials to request financial assistance for farmers under the CARES Act. Member C should not schedule such a meeting to avoid the appearance of a conflict of interest.

### **Voting on Legislation**

The rule governing voting on legislation on the House floor provides that a Member has a duty to "vote on each question put, unless having a *direct personal or pecuniary interest* in the event of such question."<sup>14</sup> Longstanding House precedents provide that "where legislation affected a class as distinct from individuals, a Member might vote."<sup>15</sup> This provision has been interpreted to require a Member to abstain from voting only on a matter that would impact the Member in a direct and

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<sup>12</sup> House Rule 23, cl. 1.

<sup>13</sup> House Rule 23, cl. 3.

<sup>14</sup> House Rule 3, cl. 1 (emphasis added).

<sup>15</sup> 2008 *House Ethics Manual* at 234 (quoting 5 *Hinds' Precedents of the House of Representatives* § 5952, at 504 (1907)).

distinct manner, rather than merely as a member of a class.<sup>16</sup> For example, when the issue of Prohibition was before the House, it was found that Members who owned breweries or distilleries could vote on the issue because it affected a class of businesses.<sup>17</sup> However, with respect to sponsoring legislation or taking other official action that may affect your financial interests, the Committee's guidance is that such actions are subject to stricter standards than those governing voting on legislation on the House floor.<sup>18</sup>

**Example 4:** Member D has a financial interest in a vodka distillery. Member D has decided to use the distillery to produce hand sanitizer instead. Member D should not introduce or sponsor legislation to provide tax incentives to such businesses that have transitioned to hand sanitizer production. Still, Member D may vote on the tax incentives.

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Committee staff are available to provide advice to 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 specific agencies of jurisdiction or with outside counsel.

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<sup>16</sup> *See id.* at 234-235.

<sup>17</sup> *Id.* at 235 (citing 8 Clarence Cannon, *Cannon's Precedents of the House of Representatives* § 3071, at 620 (1936)).

<sup>18</sup> *See id.* at 237.