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ONE HUNDRED SIXTEENTH CONGRESS

U.S. House of Representatives
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MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Guidance on House Staff Assisting in the Presidential Transition¹

Consistent with past practice, the Committee is issuing this guidance after the conclusion of Election Day, and independent of any formal resolution. The Committee explicitly takes no position as to the outcome of any Presidential election. In addition to the guidance provided below, House staff interested in working on the Presidential transition may also wish to contact the Committee on House Administration and employing authorities may wish to consult with the Office of House Employment Counsel to ensure that any arrangements with the Transition Team comply with the statutes and regulations within their respective jurisdictions.

Consistent with guidance offered by the Committee relating to past transitions of new and re-elected Administrations, there are three alternatives under which House employees may assist the transition of the new or re-elected Administration.

1. Assist the Transition as Part of Congressional Duties. Members and officers of Congress are given wide latitude in the deployment of their official staffs, though certain restrictions do apply. The Code of Official Conduct instructs Members and officers to retain no one on their staffs “who does not perform duties for the offices of the employing authority commensurate with the compensation he receives.”² House rules also state that professional staff members of the standing committees of the House “(A) may not engage in any work other than committee business during congressional working hours; and (B) may not be assigned a duty other

¹ Note that for purposes of this memorandum, the term “transition” refers to the period immediately following a Presidential election.

² House Rule 23, clause 8.

than one pertaining to committee business.”³ Moreover, appropriated funds may be used only for the purposes for which they were appropriated.⁴ Congressional funds, therefore, may not be used to pay any personal, political, or campaign-related expenses.⁵ The Ethics Committee has construed post-election transition work (*i.e.*, work performed after the new or re-elected Administration has been officially recognized by the U.S. Government Services Administration (GSA)) to be governmental rather than political in nature.

Within the parameters described above, Members have wide discretion in establishing the duties of their staffs. Members could reasonably determine that having staff assist the incoming or re-elected Administration would inure to the long-term benefit of their committee, their constituents, or their leadership office, and such assistance could, therefore, appropriately be deemed to pertain to official congressional business. The closer House employees’ duties with the transition relate to their regular duties with the House, the more reasonable it would be for their employing Members to make that determination. Assisting the transition is, of course, by definition, a temporary assignment.

Under this alternative, House employees would remain responsible to and under the direction of their employing Members. They would *not* become employees of the President-elect, the transition, or any person working for the transition. By signing the monthly salary certification, their employing Members would vouch that they continue to perform official congressional business. Subject to these conditions, House employees may assist the transition and continue to receive their House salaries and benefits while doing so. They would remain subject to all House rules, including the House gift rule, while they work on matters related to the transition.

2. Assist the Transition as a Reimbursed Detailee. House employees may, with the consent of their employing Members, be formally detailed to the transition of the incoming or re-elected Administration. The Presidential Transition Act of 1963, as amended, provides in pertinent part:

[A]ny employee of any agency of any branch of the Government, or an employee of a committee of either House of Congress, a joint committee of the Congress, or an individual Member of Congress, may be detailed to such [transition] staffs on a reimbursable basis with the consent of the head of the agency, or in the case an employee in a position in the legislative branch, with the consent of the supervising Member of Congress; and while so detailed such employee shall be responsible only to the President-elect or Vice-President-elect for the performance of his duties: Provided further, [t]hat any employee so detailed shall continue to receive the compensation

³ House Rule 10, clause 9(b)(1).

⁴ 31 U.S.C. § 1301(a).

⁵ See *Comm. on House Admin., Members’ Congressional Handbook*, <https://cha.house.gov/member-services/handbooks/members-congressional-handbook#Members-Handbook-MRA-General>, (last accessed August 27, 2020).

provided pursuant to law for his regular employment, and shall retain the rights and privileges of such employment without interruption.⁶

The legislative history of the 1976 amendments to the Presidential Transition Act indicates that “on a reimbursable basis” means that reimbursement of the employees’ salaries by the transition is required. One purpose of the amendments, according to the Senate report accompanying the amendments, was to “require that when personnel is detailed to the office staffs of the incoming and outgoing Presidents and Vice Presidents from a federal department or agency, *reimbursements must be made* to the appropriate agency for such services.”⁷

House employees detailed to the transition retain full House salary and benefits but become responsible to the President- or Vice President-elect for that period, rather than to their employing Member. The Office of the President-elect, however, must reimburse the House for the salaries of the detailed employees.

3. Assist the Transition as a Volunteer. As long as employees do not engage in activities inconsistent with House rules and congressional duties, they are free to spend non-working hours doing whatever they choose, subject to the approval of their employing Members. Thus, House employees may use vacation time accrued pursuant to established office policy or take Leave Without Pay (LWOP) to assist the transition.⁸ House employees who assist the transition under this alternative would be responsible to the transition rather than to their employing Members for work performed for the transition. Employees should note that they are not permitted to perform any official House duties while they are on leave without pay from their House position.

House employees who choose to assist the transition under this alternative should be aware that they may be prohibited from receiving compensation from the transition for the services they render while on vacation or LWOP. Under the dual government compensation statute, House employees may not receive compensation from a non-House, federal job if the combined salaries of the two positions exceed \$38,061 during calendar year 2020.⁹ Thus, even if House employees take LWOP to work for the transition, they could not accept compensation from the transition if their *combined* House and transition salaries would exceed \$38,061 for the calendar year.¹⁰

⁶ 3 U.S.C. § 102 note (as amended by Pub. L. No. 116-121, 2019).

⁷ S. Rep. No. 94-1322, 94th Cong., 2d Sess., at 1 (1976) (emphasis added).

⁸ Any staff members wishing to go on LWOP status may do so only in accordance with the guidelines on LWOP issued by the Committee on House Administration.

⁹ 5 U.S.C. § 5533(c)(1).

¹⁰ Please note, the Act, as amended, allows eligible candidates to solicit for and collect private funds to supplement funds Congress appropriates for Presidential transition activities. For those former House employees who are subject to the one-year post-employment restrictions and serve on the transition team within that one year period, it is unclear how the provisions at 18 U.S.C. § 207 apply. See 12 U.S. Op. Off. Legal Counsel 264, 1988 WL 391020 (O.L.C.). Whether and how 18 U.S.C. §207 applies may depend on whether a former House employee subject to the one-year post-employment restrictions is compensated from the private funds solicited under the Act, or funds appropriated by the Congress to support transition activities.

In addition, House employees who are considered “senior staff”¹¹ and are compensated by the transition team may be subject to a limit on the cumulative amount of income they may receive from an outside source in a calendar year. Currently, the outside earned income limit for senior staff is \$28,845. Further, outside employment restrictions define certain activities for which senior staff 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, senior staff, as defined above, may not receive any compensation for either providing legal or accounting services to the transition in their personal capacities.

Under any of these scenarios, House employees working on the transition would remain subject to all House rules, including the House gift rule, during their service to the President-elect. Moreover, the Presidential Transitions Enhancement Act of 2019¹² requires all Transition employees and volunteers to sign an ethical code of conduct. Employees with questions concerning the effect of the Transition ethical code of conduct as it relates to House rules are encouraged to seek guidance from the Committee.

In conclusion, House employees may assist the Presidential transition team so long as their activities on behalf of the transition comply with the guidance given above. Further explanation of these rules and advice on specific questions are available from the Committee’s Office of Advice and Education at extension 5-7103.

¹¹ Senior staff are subject to the outside earned income limit are those employees whose rate of basic pay is equal to or greater than \$131,239 annually, or \$10,936 per month for any 90-day period in 2020.

¹² 3 U.S.C. § 102 note, Pub. L. No. 116-121, 2019.