

APPENDIX II

U.S. House of Representatives

COMMITTEE ON ETHICS
Washington, DC 20515

February 08, 2019

MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Reminder of Ethics Requirements for Financial Disclosure Filers

All Members of the House and certain House employees are subject to financial disclosure filing requirements. In general, Members and staff who are subject to financial disclosure filing requirements must file two types of reports: 1) annual reports, which must be filed regardless of a filer's holdings or financial activity and that are due by May 15 of each year, as well as upon beginning and terminating House employment, and 2) periodic reports that a filer may be required to file throughout the year on an ongoing basis throughout the year, depending on their actual financial activity. The purpose of this memorandum is to summarize these requirements, including who must file, what types of reports they must file, when they must be filed, and how to file. This memorandum also discusses the penalties for noncompliance with the filing requirements and other restrictions on financial activity, including restrictions on participating in Initial Public Offerings (IPOs) and insider trading.

WHO MUST FILE FINANCIAL DISCLOSURE STATEMENTS

Title I of the Ethics in Government Act of 1978 (EIGA) requires Members, officers, and certain employees of the House to file annual Financial Disclosure Statements (FD Statements) with the Clerk of the House of Representatives.¹ The financial disclosure requirements apply to Members, officers, "senior staff," as defined by the EIGA, principal assistants, and shared employees. All Members and any employee who is required to file an FD Statement must do so, regardless of the level of reportable activity (e.g. amount of assets, transactions, etc.). *It is each employee's responsibility to know if you are senior staff and to comply with the ethics requirements that attach to that designation.*

"Senior staff" are those House officers and employees whose "rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15

¹ 5 U.S.C. app. §§ 101-111. Candidates for the House are also required to file FD Statements, but their filing obligations are not discussed here. For more information, see Comm. on Ethics, *Instruction*

of the General Schedule” for at least 60 days at any time during a calendar year.² For 2019, the annual threshold rate of pay is **\$126,148**,³ or a monthly salary at or above \$10,512.⁴ If your gross base salary was increased to more than the senior staff rate, \$10,512, for any two months⁵ in a calendar year, then you are senior staff for that calendar year for financial disclosure (FD) purposes. This often happens when House employees are awarded year-end bonuses in the form of a temporary increase in base rate of pay, where the bonus is paid out over two paychecks.

At least one employee in every Member’s personal office must file an annual FD Statement.⁶ Most offices will have at least one employee who is paid at or above the senior staff rate and therefore is required to file an FD Statement. If a Member does not have an employee paid at or above the senior staff rate, the Member must designate at least one current employee as a “**principal assistant**” to file an FD Statement. To designate a principal assistant, the Member must sign and transmit to the Clerk of the House a letter that identifies the designee. A form for this purpose is available on the Clerk’s website, www.clerk.house.gov.

Except in the case of a new Member, an employee who has been designated as a principal assistant must have been employed in the Member’s office for more than 60 days in the previous calendar year covered by the report and still be employed by the Member on the May 15, 2019, filing deadline. Neither an FD Statement filed by a new employee nor one filed by a terminated employee of the Member will satisfy the requirement that at least one person in each Member’s office must file an annual FD Statement.

Some **shared employees** are also required to file financial disclosure statements pursuant to a Committee on House Administration Resolution. Each House employee who is employed simultaneously by three or more offices for more than 60 days in a calendar year is required to file an FD Statement on May 15 of the following year regardless of their rate of pay.

Guide, Financial Disclosure Statements and Periodic Transaction Reports (Calendar Year 2017) at 3, available at <https://ethics.house.gov/forms/information-and-forms>.

² 5 U.S.C. app. §§ 109(13) & 101(d).

³ This amount is referred to as the “senior staff rate.”

⁴ This amount is subject to change based on changes to the General Schedule. In the event that it does change, the Committee will announce the new amount. Comm. on Ethics, *The 2019 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees*, Feb. 08, 2019, available at <https://ethics.house.gov/reports/financial-disclosure-pink-sheets>.

⁵ The House payroll department operates on a 30-day payroll cycle, meaning that each monthly pay period, regardless of its actual length, is counted as 30 days. Thus, a change to an employee’s base rate of pay in any two months during the calendar year (even non-consecutive months) may trigger financial disclosure filing requirements. This is true even if the pay change affects only part of a month.

⁶ 5 U.S.C. app. §§ 101(d), 101(f)(10), and 109(13).

WHO MUST FILE PERIODIC TRANSACTION REPORTS (PTRs)

The Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) amended the EIGA to add a requirement for Members, officers, and certain employees of the House to report certain securities transactions over \$1,000 within 30 days of notice of the transaction, but in no case later than 45 days after the transaction.⁷ These STOCK Act filings are known as Periodic Transaction Reports (PTRs). Members and employees who are subject to PTR filing requirements must file PTRs if they have reportable activity as described below, but unlike an annual FD Statement, do not need to file if they have no reportable activity.

In general, filers must report on their annual FD Statement each purchase, sale, or exchange transaction involving real property held for investment, stocks, bonds, commodities futures, or other securities (including cryptocurrencies⁸ and options) made by the filer, their spouse, or dependent child when the amount of the transaction exceeds \$1,000. For sales transactions, the \$1,000 threshold is based on the total dollar value of the transaction, not the gain or loss made on the sale.

Additionally, the STOCK Act requires Members, officers, and senior staff to also file a PTR for the purchase, sale, or exchange of stocks, bonds, and other securities.⁹ PTRs are not required for widely held investment funds such as mutual funds and exchange traded funds.¹⁰ A PTR must be filed within 30 days of receiving notice that a reportable transaction has been made, but no later than 45 days after the transaction has occurred. Principal assistants and shared employees (who are not also senior staff) are not required to file PTRs.

For all Members and staff who are subject to PTR filing requirements, securities transactions must be reported twice: for the first time on a PTR no later than 45 days from the transaction, and then a second time on the annual FD Statement covering that calendar year.¹¹ Transactions in certain types of widely held investment funds (e.g. mutual funds, exchange traded funds, bond funds, and similar assets) only have to be reported on the

⁷ STOCK Act (Pub. L. 112-105, as amended by Pub. L. 112-173, Pub. L. 112-178 & Pub. L. 113-7).

⁸ Comm. on Ethics, *Cryptocurrencies: Financial Disclosure Requirements and Other Ethics Ramifications*, June 18, 2018, available at <https://ethics.house.gov/reports/financial-disclosure-pink-sheets>.

⁹ 5 U.S.C. app. §§ 101(c), 109(f) and 103(l).

¹⁰ See the chart on page 45 of [this document](#) for more information concerning transactions in assets that will, will not, or may trigger the requirement to file a PTR.

¹¹ Also note that purchase, sales, and exchange transactions involving stocks, bonds, commodities futures, and other securities held within retirement accounts such as 401(k) plans and IRAs must be disclosed on both a PTR and your annual FD Statement if they exceed \$1,000 in value or generate more than \$200 in income for any one asset. Further, a reinvestment of a dividend generated by one of these assets, whether in a retirement account or otherwise, where the value of the reinvestment exceeds \$1,000 must be reported on both a PTR and your annual FD Statement.

annual FD Statement.¹² Any filer who has a question about whether a particular assets is considered widely diversified for this purpose should contact the Committee for guidance.

DEADLINES FOR FILING AND REQUESTS FOR EXTENSIONS

Annual FD Statements are due on May 15th of each calendar year. Members must file a FD Statement Form A (Schedules A-I) on or before May 15th of each calendar year. New Members sworn in between November 6, 2018, and April 15, 2019, must file FD Statement Form B (Schedules A, C, D, E, F, and J) on or before May 15, 2019. In addition, all Members must file a termination FD Statement Form A within 30 days of leaving the House.¹³

For new employees hired at the senior staff rate, an FD statement must be filed within 30 days of beginning employment. Terminating employees subject to financial disclosure requirements must also file a termination FD statement within 30 days of leaving House payroll.¹⁴ The Clerk of the House will send notice of filing deadlines to both new and terminating employees.

The EIGA permits the Committee to grant an extension of time (up to 90 days) for the filing of an FD Statement.¹⁵ However, the extension request must be received by the Committee no later than the original deadline for the FD Statement. An extension can be requested in the electronic filing system at <https://fd.house.gov> or by filing a paper extension request form found on the Committee's website at <https://www.ethics.house.gov>. The Committee will submit all granted extension requests to the Clerk for public filing.

PTRs must be filed within 30 days of notice of a relevant transaction, but no later than 45 days after the transaction. No extensions are permitted for PTRs.

¹² Comm. on Ethics, *Periodic Reporting of Personal Financial Transactions Pursuant to the STOCK Act, as amended*, Aug. 17, 2012, available at <https://ethics.house.gov/reports/financial-disclosure-pink-sheets>; Comm. on Ethics, *Instruction Guide, Financial Disclosure Statements and Periodic Transaction Reports (Calendar Year 2017)* at 42, available at <https://ethics.house.gov/forms/information-and-forms>.

¹³ See 5 U.S.C. app. § 101(e). The only exception is for filers who, within 30 days of their termination from the House, accept a position with the federal government that requires the filing of a publicly-available FD statement. Departing Members or staff who are exempt from filing under these circumstances must notify the Clerk of the House of that fact in writing, by sending a letter, completing a form available for that purpose, or filing a notice through the electronic financial disclosure filing system.

¹⁴ *Id.*

¹⁵ 5 U.S.C. app. § 101(g).

HOW AND WHERE TO SUBMIT FINANCIAL DISCLOSURE FILINGS

There are two ways to complete both an FD Statement and a PTR: (1) by using the electronic filing system, or (2) by hand, using a preprinted form. The electronic filing system can be accessed by visiting <https://fd.house.gov>. Copies of the paper forms can be obtained by visiting the Committee's website at <https://www.ethics.house.gov>. The forms must be submitted to the Clerk of the House, via the Legislative Resource Center, located in B-81, Cannon House Office Building.

The Committee strongly encourages filers to use the electronic filing system for completing both FD Statements and PTRs. Utilizing the electronic filing system can significantly increase accuracy and reduce some of the most common errors. In addition, filers using the electronic filing system can import PTR transactions into annual FD Statements, and import certain prior year annual FD Statement schedules into current filings.

FEES FOR LATE FILINGS

An individual who files an FD Statement or PTR more than 30 days after the later of (1) the date the filing is required to be filed, or (2) the last day of any filing extension period that has been granted, must pay a late filing fee of \$200. For late PTRs, there is a \$200 late fee for the 1st late PTR filing no matter how many missed transactions are included. For other late PTR filings, the late fee can increase to a maximum of \$200 per late transaction. Late filing fees must be submitted to the Clerk of the House at the Legislative Resource Center, checks payable to the United States Treasury. Late filing fees must be submitted with the late report(s).

Any FD Statement or PTR that is submitted more than 30 days after the due date without the required late filing fee shall be deemed procedurally deficient and not properly filed. In addition, payment of the fee does not preclude the Committee from taking other disciplinary action authorized by law or the rules of the House of Representatives.

FAILURE TO FILE OR FALSIFYING DISCLOSURE STATEMENTS

Each individual must file their own report, certify its accuracy, and is responsible for the completeness and accuracy of the information contained in the individual's FD Statement or PTR, even if someone else prepared, or assisted in preparing, all or part of it. The EIGA provides that the Attorney General may pursue either civil or criminal penalties against an individual who knowingly and willfully falsifies a Statement or fails to file a Statement required by the EIGA. The maximum civil penalty is \$59,028. The maximum criminal penalty is up to one year in prison and a fine of up to \$59,028.

In addition, 18 U.S.C. § 1001, as amended by the False Statements Accountability Act of 1996, is applicable to FD Statements and PTRs. That criminal statute provides for a fine of up to \$250,000 and/or imprisonment for up to five years for knowingly and willfully making any materially false, fictitious, or fraudulent statement or representation, or falsifying, concealing, or covering up a material fact, in a filing under the EIGA.

House Rule 26 provides that Title I of the EIGA shall be deemed to be a rule of the House with regard to House Members, officers, and employees. As such, in addition to the penalties noted above, a Member, officer, or employee who violates these provisions is subject to additional action by the Committee and/or the House.

BAN ON PARTICIPATION IN INITIAL PUBLIC OFFERINGS

The STOCK Act bans Members, officers, and employees who file FD statements from participating in Initial Public Offerings¹⁶ (IPO) in a manner “other than is available to members of the public generally.”¹⁷ IPO participation, however, is often unavailable to the general public at all. This limitation took effect immediately upon enactment of the STOCK Act on April 4, 2012.

As a result of the ban, filers will be required to indicate whether they purchased any shares that were allocated as part of an IPO on the PTR form. If you answer “yes” to the question because you received an IPO allocation, or if you would like to participate in an IPO, please contact Committee staff to discuss the matter.¹⁸ Shared employees and principal assistants are not subject to the IPO restriction.

PROHIBITION AGAINST INSIDER TRADING

The STOCK Act explicitly affirmed that Members, officers, and **all** employees are subject to the insider trading prohibitions arising under the securities laws, which include Section 10(b) of the Securities Exchange Act of 1934 and 17 C.F.R. § 240.10b-5 (popularly known as Rule 10b-5). The prohibition applies to information learned both in an official capacity and in a personal capacity.

Members, officers, and employees may obtain material nonpublic information about a public company or economic sector (*e.g.*, energy, telecommunications, or healthcare) during the course of their official duties or in their personal capacity from family, friends, acquaintances, or from their own involvement with a company. If the Member, officer, or employee chooses to trade on this information, they may have engaged in insider trading.

¹⁶ Please be advised that it is currently unclear if the Securities and Exchange Commission (SEC) will treat Initial Coin Offerings as IPOs for purposes of the STOCK Act. Comm. on Ethics, *Cryptocurrencies: Financial Disclosure Requirements and Other Ethics Ramifications*, June 18, 2018, available at <https://ethics.house.gov/reports/financial-disclosure-pink-sheets>. See *infra* note 18.

¹⁷ 15 U.S.C. § 78u-1(i).

¹⁸ While interpretation and enforcement of the STOCK Act regarding participation in IPOs is chiefly within the jurisdiction of the SEC and Department of Justice, the opinion of the Committee is that, as drafted, the STOCK Act prohibits only the filer from participating in IPOs, but not the filer’s spouse or dependent child, assuming the assets used for the purchase and the securities purchased are wholly owned by the spouse or dependent child, separate and independent of the filer. See STOCK Act § 13.

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 learns in a meeting with Food and Drug Administration (FDA) staff that a new miracle weight loss drug is going to be approved by the FDA. The staffer is informed at the meeting that this information is confidential. The House employee then 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. As the STOCK Act explains, the employee would 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. Committee staff is available to discuss these matters.

FREQUENTLY ASKED QUESTIONS

1. Who must file FD Statements?

Members, officers, senior staff, principal assistants, and shared employees of three or more offices must file FD Statements.

2. Who must file PTRs?

Only Members, officers, and senior staff are subject to PTR filing requirements.

3. A Member owns \$5,000 of stock in Company A. Company B purchases Company A. Thereafter, the Member receives notice in a monthly statement that he no longer owns Company A stock, but as of January 15, 2019, owns \$5,000 in Company B stock. Does the Member have a financial disclosure reporting requirement?

Yes. The Member must file a PTR to disclose an exchange transaction of Company A stock for Company B stock. The PTR must be filed no later than March 1, 2019, which is 45 days from January 15, 2019, the date of the transaction. In addition, the Member must report the exchange transaction on the calendar year 2019 FD Statement, which will be due on May 15, 2020.

4. A senior staff employee holds a \$100,000 mortgage on her primary residence. Her primary residence is not rented out and does not generate

income in any other manner. Is she required to disclose the mortgage on her primary residence on her financial disclosure statement?

No. Only Members are required to disclose a mortgage on a primary residence. Staff filers must report a mortgage on a residence that is either held for investment purposes or rented out in whole or part for rental income. In that case, ownership of the home would be required to be reported on Schedule A (both the value of the home and the amount of rental income received), and the employee would need to disclose the mortgage on Schedule D.

5. Do I need to report my spouse's retirement account (e.g., 401(k), 403(b), SEP, etc.)?

Yes. You are required to report any retirement plan of your spouse. You should report the underlying assets in the account as separate line items on Schedule A. For funds held in the account; you should determine whether they meet the definition of the "Excepted Investment Fund" (EIF), so you can report them correctly.

6. May I use my Members Representational Allowance (MRA) to pay my accountant to prepare my FD Statement or PTRs?

Yes. Members may use their MRA to pay for the preparation of their own FD Statement or PTRs. They may also use their MRA to pay for the preparation of FD Statements or PTRs of an employee in their personal offices. Committee staff may use committee funds to pay for the preparation of a FD Statement for a committee employee if approved by that committee.

AVAILABLE ASSISTANCE

The Committee will offer a series of Financial Disclosure Training sessions before the May 15, 2019, filing deadline. A list of upcoming ethics training sessions is available at <https://ethics.house.gov/events> and is regularly updated. The training sessions will cover general information about the requirement to file FD Statements and PTRs. They are an hour long and will satisfy either the annual ethics training requirement for 2019 or the additional hour of training required for senior staff for the 116th Congress (staff must choose one or the other). In order to receive credit for these trainings, staff are ***required to pre-register***. To register: (1) Visit <https://registerme.house.gov>; (2) Click on "Ethics," then "All Staff"; (3) Add desired Financial Disclosure Training; (4) Select "Register" on the left of the page; and (5) Login and Submit. More information, including a list of upcoming training dates, is available on the Committee's website, <https://ethics.house.gov>.

In addition, filers are encouraged to carefully read the instructions on each form and the "Instruction Guide: Financial Disclosure Statements and Periodic Transaction Reports, Calendar Year 2017" found on the Committee's website at <https://www.ethics.house.gov>. Any filer who has questions concerning financial

disclosure requirements should call the Committee at (202) 225-7103. Committee staff is available to review FD Statements and PTRs before filing (pre-screen). To have your filings pre-screened, please email your request to financial.disclosure@mail.house.gov.

* * * * *

U.S. House of Representatives

COMMITTEE ON ETHICS

Washington, DC 20515

February 8, 2019

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics

Theodore E. Deutch, Chairman

Kenny E. Marchant, Ranking Member

SUBJECT: The 2019 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees

All Members of the House are subject to certain public disclosure requirements and employment restrictions both during and after their service in the House, including:

1. Financial disclosure filing requirements, including both annual financial disclosure (FD) statements and Periodic Transaction Reports (PTRs);
2. Restrictions on outside employment;
3. Notification requirements for disclosure of negotiations for private employment and related recusals; and
4. Post-employment restrictions.

House employees may also be subject to these requirements and restrictions, depending on their salary level. This memorandum provides details on the current triggering salary figures for Calendar Year (CY) 2019 for each of the categories noted above, and summarizes them in a table on page 5 of this Memorandum. It is each individual employee's responsibility to know whether their salary level subjects them to these standards of conduct and, if so, to comply with them. Please note that this memorandum is not a comprehensive list of every rule or standard of conduct that applies to House staff, but an overview of key standards that are triggered by salary level. Any Member, officer, or employee who has questions about whether their rate of pay triggers these requirements or restrictions or about the various rules is encouraged to contact the Committee's Office of Advice and Education at extension 5-7103.

FINANCIAL DISCLOSURE

House officers and employees whose “rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule” for at least 60 days at any time during a calendar year are subject to financial disclosure filing requirements, provided that the officer or employee “performs the duties of his [or her] position or office for a period in excess of sixty days in that calendar year.”¹ The GS-15, step 1, basic pay rate for CY 2019 is \$105,123.² The applicable 120% calculation for that rate is therefore **\$126,148**, or a monthly salary above \$10,512. This rate is referred to as the “senior staff rate.

As a result, House officers and employees whose basic rate of pay is equal to or greater than the senior staff rate (\$126,148) for at least **60 days**³ during **2019** must file an FD statement on or before May 15, 2020.⁴ (Temporary increases in an employee’s basic rate of pay – such as to pay out a bonus – count toward this threshold, but “lump sum” payments do not.⁵) In addition, any new employee paid at or above the senior staff rate must file a “new employee” FD statement within 30 days of assuming employment with the House.⁶ A new employee may request an extension of the new employee FD filing deadline of up to 90 days, but the request must be received by the Committee or on before the original filing deadline.⁷ Finally, any staff who are paid at or above the senior staff rate on January 3, 2019 (or their first day of employment, if later in the year) must file reports (PTRs) on an ongoing basis throughout the year regarding certain financial transactions.⁸ PTRs are not annual filings, but must be filed within 30 days of a purchase, sale, or exchange of more than \$1,000 in stocks, bonds, and other securities.⁹

¹ Ethics in Government Act (EIGA) §§ 109(13) and 101(d), 5 U.S.C. app. §§ 109(13) and 101(d) (hereinafter all citations to the EIGA will be to the appropriate federal code citation). In addition, all House Members are subject to financial disclosure filing requirements. 5 U.S.C. app. §§ 101(d) and (f).

² Exec. Order No. 13,856, 84 Fed. Reg. 67 (Jan. 8, 2019). This amount is unchanged from 2018. In the event that this amount changes during 2019, the Committee will update its written guidance.

³ The House payroll department operates on a 30-day payroll cycle, meaning that each monthly pay period, regardless of its actual length, is counted as 30 days. Thus, a change to an employee’s base rate of pay in any two months during the calendar year (even non-consecutive months) may trigger the requirement to file an FD. This is true even if the pay change affects only part of a month.

⁴ 5 U.S.C. app. §§ 101(d) and (f).

⁵ See Comm. on Ethics *2008 Ethics Manual* at 283-84, available at https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf; Comm. on Ethics, *Instruction Guide, Financial Disclosure Statements and Periodic Transaction Reports*, at p. 2 (Calendar Year 2017), available at <https://ethics.house.gov/forms/information-and-forms>.

⁶ See 5 U.S.C. app. § 101(a). The only exception to this filing requirement is for new employees who assume employment with the House within 30 days of leaving a position with the federal government in which they filed a publicly-available FD statement. Individuals who are exempt from filing under these circumstances must notify the Clerk of the House of that fact in writing by letter or through the e-filing system for filing FD statements.

⁷ A request for an extension must be made using either a form available on the Committee’s web site or through the electronic financial disclosure filing system.

⁸ 5 U.S.C. app. § 103(f).

⁹ For detail on the PTR requirement, see the Committee’s August 17, 2012, advisory memorandum “Periodic Reporting of Personal Financial Transactions Pursuant to the STOCK Act, as amended,” which is available on the Committee website (<https://ethics.house.gov>), under the links for Reports/General Advisories. Note that the STOCK Act may require the filing of PTRs as often as once per month for Members and any staff who are

Please note that the requirement to file an FD statement covering calendar year 2018 applies to officers and employees whose basic rate of pay for at least 60 days in **2018** was **\$126,148** or more (a monthly salary at or above \$10,512). Annual FD statements covering CY 2018 are due on Wednesday, May 15, 2019, for those individuals who continue to be Members, officers, or employees of the House on that date.¹⁰ A filer may request an extension of the annual FD filing deadline of up to 90 days, but the request must be received by the Committee or on before the original filing deadline.¹¹

In addition, House Members, officers, and employees paid at or above the senior staff rate for 60 days or more in a calendar year who terminate their House employment during that calendar year are required to file an FD statement within 30 days of their termination.¹² A filer may request an extension of the termination FD filing deadline of up to 90 days, but the request must be received by the Committee or on before the original filing deadline.¹³

THE OUTSIDE EARNED INCOME LIMIT AND OUTSIDE EMPLOYMENT RESTRICTIONS

House officers and employees whose rate of basic pay is equal to or greater than the senior staff rate for **more than 90 days** are subject to limits on the amount of outside earned income¹⁴ attributable to each calendar year.¹⁵ As noted above, the senior staff rate for CY 2019 is **\$126,148**, or a monthly salary above \$10,512. The limit on outside earned income attributable to a calendar year is 15% of the rate of basic pay for Executive Schedule Level II in effect on January 1 of the year. As of January 1, 2019, the rate of basic pay for Executive Level II was \$189,600.¹⁶

paid at the senior staff rate on the first day of the 2019 pay cycle (January 3, 2019). Staff who are paid at or above the senior staff rate for more than 60 days later in 2019 – even if on a temporary basis – will also be subject to the PTR requirement for the remainder of the calendar year and will be required to file an annual FD in 2020.

¹⁰ FD statements are due May 15 annually. In the event that May 15 or another filing deadline under the EIGA falls on a weekend or a holiday, the filing deadline shall be on the next business day.

¹¹ See *supra* note 7.

¹² See 5 U.S.C. app. § 101(e). The only exception is for filers who, within 30 days of their termination from the House, accept a position with the federal government that requires the filing of a publicly-available FD statement. Departing employees who are exempt from filing under these circumstances must notify the Clerk of the House of that fact in writing, by sending a letter, completing a form available for that purpose, or filing a notice through the electronic financial disclosure filing system.

¹³ See *supra* note 7.

¹⁴ The term “outside earned income” means any “wages, salaries, fees, and other amounts received or to be received as compensation for personal services actually rendered” by a House Member, officer, or employee. House Rule 25, cl. 4(d)(1). It does not include, among other things, the individual’s salary from the House, nor does it include income for services rendered before the individual was employed by the House. *Id.* at cls. 4(d)(1)(A), (B).

¹⁵ 5 U.S.C. app. § 501(a)(1); House Rule 25, cls. 1(a)(1) and 4(a)(1).

¹⁶ Exec. Order No. 13,856, 84 Fed. Reg. 70 (Jan. 8, 2019).

Accordingly, the outside earned income limit for House Members, officers, and employees paid at or above the senior staff rate for CY 2019 is **\$28,440**.¹⁷

Members, officers, and House employees paid at or above the senior staff rate for more than 90 days are also subject to a number of specific limitations on the substantive types of outside employment for which they may receive compensation and must receive prior approval to receive certain types of compensation.¹⁸ These include prohibitions on receiving any compensation for practicing a profession that involves a fiduciary relationship, receiving any compensation for affiliating with a firm that provides professional services involving a fiduciary relationship, or permitting such a firm to use one's name.¹⁹ Receipt of compensation for service as an officer or member of a board of directors is also prohibited.²⁰ Prior written approval from the Committee on Ethics is required to accept compensation for teaching and to receive copyright royalties.²¹ Detailed information regarding these limitations may be found on pages 213 to 238 of the *2008 House Ethics Manual*, which is available on the Committee's website (<https://ethics.house.gov>).

DISCLOSURE OF EMPLOYMENT NEGOTIATIONS AND RECUSALS

House Members, officers, and employees paid at the senior staff rate must notify the Committee within three (3) business days after they commence any negotiation or agreement for future employment with a private entity.²² In addition, House Members, officers, and senior staff must recuse themselves from "any matter in which there is a conflict of interest or an appearance of a conflict" with the private entity with which they are negotiating or have an agreement for future employment or compensation, and they must notify the Ethics Committee in writing of such recusal.²³ As noted above, the senior staff rate for CY 2019 is **\$126,148**, or a monthly salary above \$10,512.

Information on the disclosure and recusal requirements related to seeking private employment applicable to Members, officers, and senior staff is available in two Committee advisory memoranda, one for Members and officers and one for staff. Copies of both memoranda, which are dated January 2, 2019, are available on the Committee's website (<https://ethics.house.gov>) under "Reports/General Advisories," and forms for making the notifications regarding job negotiations or recusal are available under "Forms/Post-Employment."

¹⁷ This amount is proportionally reduced when an individual becomes a Member, officer, or senior employee during the calendar year. For example, an individual who is hired into a senior staff position on July 1 has an outside earned limit that is one-half of the full amount, or \$14,025. The outside earned income limit for 2019 will not change even if the General Schedule changes later in 2019 because it is based on the amount as of January 1, 2019. *See* 5 U.S.C. app. § 501(a)(2); House Rule 25, cl. 1(b).

¹⁸ *See* 5 U.S.C. app. § 502(a); House Rule 25, cls. 1-4.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² House Rule 27, cl. 2; Stop Trading on Congressional Knowledge Act, Pub. L. No. 112-105 (Apr. 4, 2012) (hereinafter STOCK Act) § 17.

²³ House Rule 27, cl. 4; STOCK Act § 17.

POST-EMPLOYMENT RESTRICTIONS

House Members and officers, as well as certain other House employees, are subject to post-employment restrictions on lobbying.²⁴ In general, a former employee of a Member, committee, or leadership office is subject to the restrictions if, for at least **60 days** during the one-year period preceding termination of House employment, the employee was paid at a rate equal to or greater than 75% of the basic rate of pay for Members at the time of termination. This amount is referred to as the “very senior staff rate.”

The basic rate of pay for Members in 2019 will remain \$174,000.²⁵ Therefore, the post-employment threshold for employees who depart from a job in a Member, committee, or leadership office in CY 2019 remains **\$130,500**, or a monthly salary of \$10,875 or more. However, the triggering salary for employees of other House offices (such as the Chaplain, Chief Administrative Officer, Clerk, General Counsel, Historian, Inspector General, Law Revision Counsel, Legislative Counsel, Office of Congressional Ethics, Parliamentarian, and Sergeant of Arms) is Executive Schedule Level IV.²⁶ For 2019, that salary is **\$164,200**, or a monthly salary above \$13,683.

Information on the post-employment restrictions applicable to Members, officers, and very senior staff is available in the two Committee advisory memoranda referenced in the previous section.²⁷

* * * * *

²⁴ 18 U.S.C. § 207.

²⁵ See Section 212 of Title II of the Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019, Pub. L. No. 115-244 Sep. 21, 2018), prohibiting a scheduled cost-of-living pay raise for Members. As a result, Member pay will remain at \$174,000 for 2019.

²⁶ “[O]ther legislative offices” also includes employees of the Architect of the Capitol, United States Botanic Garden, Government Accountability Office, Government Publishing Office, Library of Congress, Congressional Budget Office, and Capitol Police. See 18 U.S.C. § 207(e)(9)(G).

²⁷ Most of the post-employment restrictions apply to very senior staff. As discussed in the general advisory memorandum for former staff, however, one provision applies to all former House staff – regardless of rate of pay – and restricts use of confidential information obtained during personal and substantial participation in ongoing trade or treaty agreements.

CALENDAR YEAR 2019

Item	2019 Amount
Outside earned income & outside employment threshold - Outside employment fiduciary restrictions if paid at rate for more than 90 days during 2019	\$126,148 (\$10,512/mo)
Outside earned income limit	\$28,440
Financial Disclosure/PTR threshold - Annual FD required in May 2020 if paid at rate for 60 days or more in CY 2019 - PTRs required during CY 2019 if: - Paid at rate on first day of calendar year or first day of House employment (if later); <i>or</i> - Paid at rate for any two pay periods during CY 2019 (e.g., if get bonus or pay raise during calendar year), subject to PTR requirement for remainder of year	\$126,148 (\$10,512/mo)
Written disclosure of job negotiations and recusals required	\$126,148 (\$10,512/mo)
Post-Employment threshold for employees of Member, committee, or leadership offices	\$130,500 (\$10,875/mo)
Post-Employment threshold for employees of "other legislative offices" (see p. 4)	\$164,200 (\$13,683/mo)

Theodore E. Deutch, Florida
Chairman
Kenny Marchant, Texas
Ranking Member

Grace Meng, New York
Susan Wild, Pennsylvania
Dean Phillips, Minnesota
Anthony Brown, Maryland

John Ratcliffe, Texas
George Holding, North Carolina
Jackie Walorski, Indiana
Michael Guest, Mississippi



ONE HUNDRED SIXTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

Thomas A. Rust
Staff Director and Chief Counsel

David Arrojo
Counsel to the Chairman

Chris Donesa
Counsel to the Ranking Member

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

April 10, 2019

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Upcoming Financial Disclosure Clinics & Training

The Committee on Ethics will offer three Financial Disclosure Clinics in April in advance of the upcoming May 15, 2019, due date for the filing of all annual Financial Disclosure Statements (FD Statements). In addition, the Committee will hold two Senior Staff Financial Disclosure Trainings before the May 15th deadline.

As a reminder, all Members are subject to financial disclosure filing requirements. House staff may be subject to financial disclosure filing requirements for a number of reasons, including 1) they are paid at or above the senior staff rate for 60 days or more during the calendar year, even if on a temporary basis; 2) they are designated a “principal assistant” for financial disclosure filing purposes by their employing Member; or 3) they are a shared employee of three or more offices, regardless of their rate of pay.¹

In addition to the Clinics and Training sessions, the Committee’s nonpartisan staff is available to review forms in advance of filing for House Members, Officers, and employees. Employees, however, must submit their forms to the Committee for prescreening no later than Wednesday, May 1, 2019, to ensure that the prescreening is completed by the filing deadline. You may email your prescreen request to financial.disclosure@mail.house.gov.

Financial Disclosure Clinics give filers a chance to work closely with financial disclosure staff to address individual filers’ questions. Financial Disclosure Clinics also serve to help filers use the online filing system to input and submit Statements and Periodic Transaction Reports.

Senior staff training provides additional ethics guidance to staff who are required to file Statements pursuant to the Ethics in Government Act (EIGA). Attendance at Senior Staff Training

¹ House officers and employees who were paid at the rate of \$126,148 (\$10,512 monthly salary) for at least 60 days during 2018 will be required to file a Statement by May 15, 2019. For 2019, senior staff are House officers and employees whose basic rate of pay is equal to or greater than \$127,914 for at least 60 days during 2019.

will satisfy either the annual ethics training requirement or the requirement that senior staff complete an additional hour of specialized training per Congress. **Please note that participation in the Clinics will not satisfy any House-mandated training requirements.**

The date, time, and location for each Clinic are included below. Committee staff will be available for the entire time for each Clinic, attendees are welcome to walk in at any time, and may stay for as long as they need. You can find this and additional information about financial disclosure requirements on the Committee’s website at <https://ethics.house.gov>.

Clinics		
Date	Time	Location
Tuesday, April 16	10:30am – 11:30am	B249 Longworth HOB, Rooms B-C
Wednesday, April 24	10:30am – 11:30am	B249 Longworth HOB, Rooms B-C
Tuesday, April 30	2:00pm – 3:00pm	216 Ford HOB

Members, officers, and employees are invited to attend these Clinics. We recommend that interested participants pre-register for the Clinics as space is limited.

To register:

1. Visit <https://registerme.house.gov>
2. Click on “Ethics,” then “All Staff”
3. Add desired Financial Disclosure Clinic
4. Select “Register” on the left of the page
5. Login and Submit

In addition to the Clinics, the Committee will offer senior staff training that **will** satisfy either the annual ethics training requirement or the additional hour of training required for senior staff for the 116th Congress (staff must choose one or the other). This training will cover general information about the requirement to file Financial Disclosure and Periodic Transaction Reports. These trainings will take place on the following dates, at the listed times, and in the listed locations:

Trainings		
Date	Time	Location
Wednesday, April 17	11:00am – 12:00pm	224 Ford HOB
Monday, April 29	2:00pm – 3:00pm	HVC-215, Capitol

In order to receive credit for this training, senior staff are **required to pre-register** by following the same directions as above and adding the desired Financial Disclosure Training in step three.

Financial Disclosure Clinics and Training sessions are offered as an additional service to the House. The Committee’s nonpartisan staff is also available to provide one-on-one assistance. This includes meeting with a filer’s spouse, accountant, or attorney to answer any filing questions. For assistance with financial disclosure questions or to schedule a meeting, please call the Committee at (202) 225-7103.

The Committee strongly recommends that filers use the online filing system to make all filings, but will provide assistance to both paper filers and online filers. Filers (and designated third-party preparers) can log onto the system at <https://fd.house.gov>. You can also download a blank copy of the paper form on the Committee's website at <https://ethics.house.gov>. If you need to make a filing, but did not receive login information, or if you have lost your temporary password, please contact the Legislative Resource Center at (202) 226-5200 for assistance.

* * *

If you have any questions, please contact the Committee at (202) 225-7103.

Theodore E. Deutch, Florida
Chairman
Kenny Marchant, Texas
Ranking Member

Grace Meng, New York
Susan Wild, Pennsylvania
Dean Phillips, Minnesota
Anthony Brown, Maryland

John Ratcliffe, Texas
George Holding, North Carolina
Jackie Walorski, Indiana
Michael Guest, Mississippi



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. Donesa
Counsel to the Ranking Member

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

April 10, 2019

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Non-Commercial Aircraft Travel

The Committee has received numerous inquiries regarding travel on non-commercial aircraft. The Committee, by this memorandum, reminds Members and staff of the House rules and Committee guidance regarding the acceptance and use of non-commercial or private aircraft travel.

A Member may accept travel on non-commercial aircraft by paying or reimbursing the donor for such travel pursuant to House Rule 23, clause 15 or as a gift if permissible under House Rule 25, the House gift rule. The Honest Leadership and Open Government Act of 2007 (HLOGA),¹ however, places significant restrictions on the ability of candidates for the U.S. House of Representatives, and people who travel on behalf of those candidates, to accept travel on non-commercial aircraft. Therefore, the circumstances under which Members and staff are permitted to accept a flight on a non-commercial aircraft are very fact specific, and you are encouraged to contact the Committee to discuss your particular circumstance.

REIMBURSEMENT FOR NON-COMMERCIAL TRAVEL

House Rule 23, clause 15, governs the payment for use of non-commercial aircraft by House Members. Members are prohibited from using personal, official, and campaign funds for a flight on a non-commercial aircraft unless one of the rule's exceptions applies. A Member may use personal, official, or campaign funds to pay for or reimburse the cost of a flight on a non-commercial aircraft when the flight is provided under one of the following circumstances:

- 1) the aircraft is operated by an air carrier or commercial operator with a proper license from a government (*e.g.*, travel on a commercial or chartered airline);²

¹ Pub. L. 110-81 (2007).

² House Rule 23, cl. 15(b)(1).

- 2) the flight is offered to the Member, in the Member's personal capacity, by a personal friend or another Member;³
- 3) the aircraft is operated by the federal, state, or local government;⁴
- 4) the aircraft is owned or leased by a Member or a family member⁵ of a Member (including an aircraft owned by an entity that is not a public corporation in which the Member or the family member has an ownership interest, provided that the Member does not use the aircraft any more than the Member or family member's proportionate share of ownership allows);⁶ or
- 5) the owner or operator of the aircraft is paid a pro rata share of the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size as determined by dividing such cost by the number of Members, Delegates, or the Resident Commissioner, officers, or employees of Congress on the flight.⁷ For example, if a non-commercial aircraft flight cost \$25,000 and only one Member is on the flight, the Member's pro rata share of the flight is \$25,000, regardless of the number of non-congressional participants.

Although this rule allows a Member to reimburse for travel on non-commercial aircraft, if the Member would like to use official or campaign funds for that travel, the Member should consult the Committee on House Administration or the Federal Election Commission (FEC), as discussed below.

Use of Official Resources for Non-Commercial Aircraft Travel. The rules and regulations governing official travel paid for with funds from the Members' Representational Allowance, or with committee funds, are established by the Committee on House Administration. Members wishing to use official funds for non-commercial travel should consult the Committee on House Administration at (202) 225-2061 (majority) or (202) 225-8281 (minority).

Use of Campaign funds for Non-Commercial Aircraft Travel. There are certain activities that Members may, at their discretion, designate as either official or political. When Members designate an activity as political, they may not use campaign funds to pay for travel on a non-commercial aircraft. HLOGA generally prohibits candidates for the House from using campaign funds to pay for campaign-related travel on non-commercial aircraft.⁸ Therefore, Members generally may not use campaign funds to pay for travel on a non-commercial aircraft if the travel is for campaign

³ *Id.* at (b)(3).

⁴ *Id.* at (b)(4).

⁵ "Family member" for purposes of this rule is defined as the Member's spouse, parents, children, siblings, and parents-in-law. House Rule 23, cl. 15(d)(2).

⁶ House Rule 23, cl. 15(b)(2).

⁷ *Id.* at (b)(5).

⁸ 52 U.S.C. § 30114(c).

purposes.⁹ However, Members may use campaign funds for officially-connected travel in connection with their duties as officeholders.¹⁰

Please contact the congressional liaisons at the FEC at (202) 694-1006 for further guidance on campaign-related travel.¹¹

NON-COMMERCIAL AIRCRAFT TRAVEL WITHOUT REIMBURSEMENT

Members, officers, and employees of the House are prohibited from knowingly accepting any gifts, except as specifically provided in the House gift rule.¹² The term “gift,” as used in the gift rule, means “a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value,” and includes gifts of transportation.¹³ There are limited circumstances under which a Member or staff may be permitted to accept travel on a non-commercial aircraft as a gift; that is, without having to reimburse the donor the cost of the travel.

Acceptance of Travel Paid for by Federal, State, or Local Governments. Members, officers, and employees may accept a flight on a non-commercial aircraft that is paid for by a federal, state, or local governmental entity.¹⁴

Acceptance of Travel Provided by a Relative. Members, officers, and employees are permitted to accept gifts from relatives.¹⁵

Acceptance of Travel Provided on the Basis of Personal Friendship. Members, officers, and employees may be offered a flight on an aircraft that is personally-owned by an individual whom the official knows. If the requirements of the personal friendship provision of the gift rule are satisfied, the offer of a flight to the Member, officer, or staff person may be accepted as a gift. Several points to bear in mind regarding this type of travel are as follows:

- As a general matter, the personal friendship provision can apply only if the aircraft is owned by the individual, and cannot apply to a flight on an aircraft owned by a corporation or other entity, where the individual does not have access to the aircraft for personal purposes.
- When the value of a gift proposed to be accepted under the personal friendship provision exceeds \$250, written approval of the Committee on Ethics is required before the gift can be

⁹ Candidates for the House of Representatives may use their campaign funds to pay for travel on private aircraft owned by the candidate or the candidate’s immediate family members. *See id.* at (c)(3). Please note this is a very narrow exception and you are encouraged to contact the FEC for further guidance.

¹⁰ House Rule 23, cl. 15.

¹¹ HLOGA provisions govern travel for federal candidates. If a Member, officer, or employee is running for state-elected office, that Member, officer, or employee should contact the state’s election authority to determine whether state campaign funds may be used for travel on non-commercial aircraft.

¹² House Rule 25, cl. 5.

¹³ House Rule 25, cl. 5(a)(2)(A).

¹⁴ House Rule 25, cl. 5(a)(3)(O).

¹⁵ House Rule 25, cl. 5(a)(3)(C). Candidates for the House, traveling as candidates, may only accept travel on non-commercial aircraft if that aircraft is owned by the candidate or the candidate’s immediate family, including a spouse, parents, children, siblings, and parents-in-law. 52 U.S.C. § 30114(c)(3)(B).

accepted. Practically any flight on a non-commercial aircraft will exceed \$250 in value and hence will require Committee approval.¹⁶

- A flight may not be accepted on the basis of personal friendship when the primary purpose of the trip is either to conduct House business or engage in campaign activity.

Acceptance of Travel Provided by Another Member or Employee. Members, officers, or employees may accept a flight on a non-commercial aircraft from another Member, officer, or employee of the U.S. House of Representatives or U.S. Senate that is not related to travel for, or on behalf of, a candidate for the House. However, federal law prohibits a federal employee from giving gifts to a superior and superiors may not accept gift from their employees.¹⁷ The Committee, however, has given permission for subordinates to give gifts to superiors, when such gifts are given voluntarily on special occasions where gifts are traditionally given, such as marriage, retirement, birth of a child, birthdays, anniversaries, or holidays.¹⁸

Acceptance of Travel from Point A to Point A. Members, officers, or employees may accept a flight on a non-commercial aircraft if the travel is from Point A to Point A. The Committee has determined that travel from Point A to Point A, without stops, does not have monetary value. This limited exception only applies to travel for an official purpose that departs and returns to the same location, without any intermediary stops.

Acceptance of Travel Resulting From Outside Business, Employment, or Other Activities. While participating in travel resulting from outside business, employment, or other activities, Members, officers, and employees may accept a flight on a non-commercial aircraft provided by the business or other entity, if two conditions are satisfied: (1) the non-commercial aircraft was not provided or enhanced because of the individual's official position, and (2) such travel is customarily provided to others in similar circumstances.

Acceptance of Travel for Campaign Activity. House candidates and those traveling on behalf of a House candidate are generally prohibited from flying on private aircraft, whether reimbursed or not.¹⁹ Members, officers, and employees who are not acting in their capacities as candidates for the House, or in support of a House candidate, may accept travel on a non-commercial aircraft if offered by a political organization in connection with a fundraiser or campaign event

¹⁶ The value of a flight on a non-commercial aircraft is to be determined as follows. *When the travel is via a previously or regularly-scheduled flight by the owner or operator of the aircraft*, and the airports between which the Member or staff person is flying have regularly-scheduled air service (regardless of whether such service is direct), the value of the use of the aircraft is the cost of a *first-class ticket* from the airport of departure to the airport of destination. If only the coach rates are provided between those points, the value is the coach rate. If more than one first-class rate is available, the lowest fare may be used. However, no discount fares may be used for valuation purposes.

When the flight is scheduled specifically for Member or staff person use, or when either the airport of origin or destination does not have regularly-scheduled air service, the value of the use of the aircraft is the full cost of *chartering* the same or similar aircraft for that flight, divided by the number of Members, Delegates, or the Resident Commissioner, officers, or employees of Congress on the flight.

¹⁷ 5 U.S.C. § 7351.

¹⁸ House Rule 25, cl. 5(a)(3)(F).

¹⁹ See 52 U.S.C. §30114(c); 11 C.F.R. § 100.93.

sponsored by that political organization.²⁰ The question of travel on non-commercial aircraft for a campaign purpose is very fact specific and you are highly encouraged to consult with the Committee and the FEC before accepting travel.²¹

Acceptance of Travel Paid for by a Foreign Government. A flight on a non-commercial aircraft that is paid for by a foreign government may be accepted, provided that the flight complies with the requirements of either the Foreign Gifts of Decorations Act (FGDA) or the Mutual Educational and Cultural Exchange Act (MECEA). The requirements of those statutes, including that travel paid for under the FGDA must take place totally outside the United States and be related to an official purpose, must be met for the travel to be permissible.

Privately-Sponsored Travel. Members, officers, and employees participating in privately-sponsored, officially-connected travel may not accept travel on a non-commercial, private, or chartered flight unless exceptional circumstances are demonstrated in writing by the private sponsor. All privately-sponsored, officially-connected travel is governed by the Committee's Travel Regulations.²²

Acceptance of Travel under Committee's Waiver Authority. In special circumstances, a Member, officer, or employee may ask the Committee to exercise its waiver authority to allow travel on private aircraft.²³ The Member, officer, or employee must seek and receive permission before traveling on the private aircraft.²⁴

FINANCIAL DISCLOSURE REQUIREMENTS

Members, officers, and certain staff²⁵ are required to file an annual financial disclosure (FD) statement.²⁶ Financial disclosure filers must report the value of all gifts received in the calendar year worth a total of more than \$390 from a single source on Schedule G ("Gifts") on the FD statement, including Member-to-Member gifts. Gifts worth less than \$156 need not be counted toward the \$390 amount that triggers the disclosure requirement.²⁷ In addition, financial disclosure filers are required to report travel expenses more than \$390 on Schedule H ("Travel Payments and Reimbursements"), including MECEA travel and travel paid for by political organizations that do not file reports with the

²⁰ House Rule 25, cl. 5(a)(G)(iii). Although allowed by the gift rule, HLOGA prohibits Members, officers, and employees from accepting travel on a non-commercial aircraft paid for by a House candidate's principal campaign committee or leadership PAC. *See* 11 C.F.R. § 100.93.

²¹ *See supra* note 11.

²² *See* Comm. on Ethics, *Travel Guidelines and Regulations* § 305.1 (Dec. 27, 2012).

²³ House Rule 23, cl. 15(c).

²⁴ *Id.*

²⁵ 5 U.S.C. app. § 102(a)(2)(B). House staff may be subject to financial disclosure filing requirements for a number of reasons, including 1) they are paid at or above the annual senior staff rate (\$127,914 for 2019, subject to change in future calendar years) for 60 days or more during the calendar year, even if on a temporary basis; 2) they are designated as a "principal assistant" for financial disclosure filing purposes by their employing Member; and 3) they are a shared employee of three or more offices, regardless of their rate of pay. Please contact the Committee if you have further questions about financial disclosure.

²⁶ *See* 5 U.S.C. app. § 102(a)(2)(A).

²⁷ FD Statement reporting thresholds for gifts and travel are based on the valuation of "minimal value" under FGDA and are subject to change every three years. *Id.* at (a)(2). The next re-calculation will be in 2020.

FEC.²⁸ Finally, gifts from relatives and expenses properly reported to the FEC do not need to be reported on annual FD statements.

Members, officers, and employees are encouraged to contact the Committee to seek assistance on properly reporting non-commercial aircraft travel on the annual FD statement.

FREQUENTLY ASKED QUESTIONS

Question 1. The governor would like to fly the state’s congressional delegation to the state to view an area impacted by a natural disaster. The governor would provide transportation on a state-owned plane for the Members. May the Members accept that travel?

Answer. Yes, Members may accept travel on a non-commercial aircraft owned by a federal, state, or local government. Financial disclosure filers are not required to report on their FD statements travel provided by a federal, state, or local government.

Question 2. Congressman Albert owns a private plane and would like to invite other Members or staff to fly on that plane in order to attend an official meeting. May the invited Members or staff accept the gift of flight on the private aircraft?

Answer. Yes, Members and staff may accept gifts from other Members, including travel on non-commercial aircraft owned by the other Member for official purposes. Financial disclosure filers are not required to report on their FD statements travel provided by another Member or staff for official business.

Question 3. What if the travel is for personal purposes?

Answer. Yes, Members and staff may also accept gifts from other Members for purely personal purposes, including travel on non-commercial aircraft. Financial disclosure filers must report gifts they receive from non-relatives with a value of more than \$390 on their annual FD statements, including Member-to-Member, Member-to-staff, and staff-to-staff gifts.

Question 4. A personal friend of Congresswoman Patel owns a private plane and asks Congresswoman Patel to accompany her on vacation. The travel will occur between two airports that have regularly-scheduled commercial service. May Congresswoman Patel accept the flight on the private aircraft to go on vacation with her personal friend?

Answer. Yes, if the Ethics Committee approves, Members and staff may accept gifts on the basis of personal friendship. Because the travel will occur between two airports with regularly-scheduled air service, the value of that flight will be the cost of the first-class ticket between those two airports. If the value of that first-class ticket is more than \$250, the Member must receive written

²⁸ FGDA travel expenses must be disclosed within 30 days after leaving the host country. Copies of the FGDA disclosure form are available on the Committee’s website, <https://ethics.house.gov>. FGDA travel is not disclosed on Schedule H (“Travel Payments and Reimbursements”) of the annual FD Statement.

permission from the Ethics Committee. If the value of the first-class ticket exceeds the reporting threshold of \$390, Congresswoman Patel will need to report that value as a gift on Schedule G (“Gifts”) of her annual FD Statement.

Question 5. A personal friend of Congressman Myers owns a private plane and asks Congressman Myers to accompany him on vacation. Although Congressman Myers could get to the general location of the vacation on regularly-scheduled air service, the particular airport where the Congressman’s friend will depart does not have regularly-scheduled air service to the destination airport, even through connecting flights. May Congressman Myers accept the flight on the private aircraft to go on vacation with his personal friend?

Answer. Yes, if the Ethics Committee approves the request. Unlike the example above, the value of this flight will be the full cost of chartering the same or similar aircraft for the flight. This is because the two airports do not have regularly-scheduled air service. If the full cost of chartering the same or similar aircraft exceeds the reporting threshold of \$390, Congressman Myers will need to report that value on Schedule G (“Gifts”) of his annual FD Statement.

Practically speaking, most flights on non-commercial aircraft will be valued above \$250. Therefore, please contact the Ethics Committee as soon as you receive the invitation to ensure you receive timely guidance from the Committee.

Question 6. Congresswoman Colvin owns a private plane and offers it to Senator Dale to go on vacation, as long as Senator Dale pays for the costs associated with the flight. May Senator Dale pay for that flight?

Answer. If Senator Dale would like to accept Congressman Colvin’s offer, Senator Dale should contact the Senate Ethics Committee for further guidance. Conversely, if a Member would like to accept travel on a Senator’s private plane, please contact the Committee for further guidance.

Question 7. Congressman Ellie’s father owns a private plane and offers the use of that plane for commuting back and forth to the district. May Congressman Ellie accept the flights on that private aircraft?

Answer. Yes, Members, and staff, may accept gifts from their relatives. Gifts from relatives do not need to be reported on annual FD Statements.

Question 8. Congresswoman Johns is invited to an aircraft test facility in her district. The test facility offers to let Congresswoman Johns ride in the cockpit during a test flight, which will take off and return to the same location. May she accept travel on the private aircraft during the test flight?

Answer. Yes, Members, officers, and employees may accept travel that is Point A to Point A. Because the test flight will take off and land in the same location, the Committee does not consider the travel to have any value. Therefore, participating in the test flight does not implicate the gift rule.

Question 9. Congresswoman Anthony is traveling to a fundraiser for her re-election campaign. May she accept travel on a private aircraft owned by one of her supporters?

Answer. No, generally candidates for the House may not accept travel on private aircraft for campaign purposes. Please contact the FEC congressional liaisons for additional information concerning travel on private aircraft for campaign-related purposes.

Question 10. A natural disaster ravaged Congressman Bradford's district. Due to the extent of the damage, commercial and chartered flights are not available. Congressman Bradford is invited to travel on a private aircraft, for free, to survey the damaged areas of his district. After consultation with the Ethics Committee, it does not appear that any exception to the House gift rule would apply. What may Congressman Bradford do?

Answer. Congressman Bradford may write in to the Ethics Committee and request a waiver. Both House Rule 23, clause 15(c) and House Rule 25, clause 5(a)(3)(T) allow the Ethics Committee to grant a waiver to these rules in unusual circumstances. The Committee will make every attempt to review these requests timely.

If you have any questions regarding this guidance, please feel free to contact the Ethics Committee's Office of Advice and Education at (202) 225-7103.

* * * * *

Theodore E. Deutch, Florida
Chairman
Kenny Marchant, Texas
Ranking Member

Grace Meng, New York
Susan Wild, Pennsylvania
Dean Phillips, Minnesota
Anthony Brown, Maryland

John Ratcliffe, Texas
George Holding, North Carolina
Jackie Walorski, Indiana
Michael Guest, Mississippi



ONE HUNDRED SIXTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

May 2, 2019

Thomas A. Rust
Staff Director and Chief Counsel

David W. Arrojo
Counsel to the Chairman

Christopher A. Donesa
Counsel to the Ranking Member

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

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Member, Officer, and Employee Participation in Fundraising Activities

The purpose of this memorandum is to remind Members, officers, and employees of the federal statutes, House rules, and Committee guidance on fundraising activities. This memorandum also introduces a simplified form for requesting permission to assist with fundraising activities when written pre-approval from the Committee is required. Frequently asked questions are also provided at the end of this memorandum. Please note, the circumstances under which Members, officers, and employees may engage in fundraising activities are very fact specific, and we encourage you to contact the Committee to discuss your particular circumstance.

LIMITS ON SOLICITATION

The Anti-Solicitation Statute (5 U.S.C. § 7353) generally prohibits Members, officers, and employees from soliciting for anything of value from a person seeking official action from the House, doing business with the House, or having interests that may be substantially affected by the performance or nonperformance of that Member or employee's official duties. The statute covers solicitation regardless of whether the Member, officer, or employee personally benefits from it, and regardless of whether the solicitation is on behalf of other individuals or organizations.¹

However, Members, officers, and employees may assist with fundraising activities under the circumstances discussed below.

WHAT ARE "FUNDRAISING ACTIVITIES"?

"Fundraising activities" is a broad term that means soliciting directly or indirectly for something of value from another individual or organization. Fundraising activities include asking for money; asking for in-kind contributions or memberships; using a Member, officer, or employee's name for a fundraising event on an invitation, on social media, on letterhead, or in a

¹ 5 U.S.C. § 7353(a); Comm. on Standards of Official Conduct, *Solicitation Under the Ethics Reform Act of 1989* (Oct. 9, 1990) [hereinafter 1990 Committee Solicitation Memo].

letter; and making phone calls or in-person appearances asking for donations. Fundraising activities also include donating an item like a flag, lunch with the Member, or a Capitol tour to a silent auction; raising funds to participate in a charitable walk or run; participating in an annual gala; or even helping raise funds for an individual in need.

POLITICAL FUNDRAISING ACTIVITIES

The Committee has determined that the Anti-Solicitation Statute does not apply to solicitations on behalf of campaigns and other political entities.² Therefore, Members, officers, and employees may fundraise, without written Committee approval, for some political organizations including Members' campaign committees, political action committees (PACs), political parties, and all other organizations registered under section 527 of the Internal Revenue Code (IRC).³ Members, officers, and employees may also fundraise for state or local candidates under this carve-out. Additionally, Members, officers, and employees may fundraise directly for state level ballot measure committees that are qualified under state law.⁴ Please contact the Committee in advance if you have questions on whether an individual or organization qualifies under this exception.

The Committee understands that the Federal Election Campaign Act (FECA) imposes certain limitations on the ability of federal officeholders, including Members, to assist with fundraising activities on behalf of outside organizations, whether political or charitable. Therefore, the Committee recommends that any Member wishing to assist with political or charitable fundraising consult with the Federal Election Commission (FEC) congressional liaison office at (202) 694-1006 to ensure that the solicitations are not problematic under the FECA.

CHARITABLE FUNDRAISING ACTIVITIES

The Committee has established a general exception to the Anti-Solicitation Statute to permit Members, officers, and employees to solicit on behalf of organizations recognized under IRC § 170(c).⁵ IRC § 170(c) includes organizations recognized under IRC § 501(c)(3), as well as state or local governmental entities, including public schools, and certain veterans organizations.⁶

The general exception granted by the Committee does not extend to fundraising activities on behalf of an organization, regardless of tax status, that was established or is controlled by current Members, officers, or employees. In such circumstances, the Member, officer, or

² See 136 CONG. REC. H1647 (daily ed. Apr. 24, 1990) (regarding technical corrections to the Ethics Reform Act of 1989); 1990 Committee Solicitation Memo.

³ *Id.*

⁴ This exception applies only to soliciting directly for state ballot measure or referendum committees that are qualified under state law, registered with the appropriate state authority, and authorized to accept political contributions, regardless of the federal tax status of the committees. Please note, fundraising to benefit an organization that intends to donate some or all of the money raised to a ballot measure committee would not qualify for this exception.

⁵ See 1990 Committee Solicitation Memo; 2008 House Ethics Manual at 348.

⁶ See 26 U.S.C. § 170(c).

employee must receive written approval from the Committee before making any solicitations on the organization's behalf. Permission will be granted for organizations that exist for the primary purpose of conducting activities that are unrelated to the individual's official duties.⁷

This general exception also does not apply to fundraising for individuals or organizations other than those recognized under IRC § 170(c). Common examples include organizations qualified under IRC §§ 501(c)(4) or (c)(6), as well as fundraising for more personal purposes. Any Member, officer, or employee seeking to engage in fundraising activities for an individual or organization that falls outside the general exception must request written approval from the Committee before assisting with those fundraising efforts. Please note, and as discussed below, the Committee will not approve requests for fundraising activities that provide a direct personal or financial benefit to the requestor or the requestor's immediate family.

FUNDRAISING GENERAL GUIDELINES

All permissible fundraising must comply with the following rules.

- No official resources may be used. Official resources include House staff while working on official time, telephones, office equipment and supplies, official social media, official mailing lists, and official photos.⁸
- Members may only use their personal titles, including "Member of Congress," "Representative," "Congressman or Congresswoman," and "the Honorable," or by using a leadership title. No official endorsement by the House of Representatives may be expressed or implied. This means no official titles, letterhead, or envelope used in a solicitation may bear the words "Congress of the United States," "House of Representatives," or "Official Business," nor may the letterhead or envelope bear the Great Seal of the United States, the Congress, or the House.⁹
- No direct personal or financial benefits may result to the soliciting official.
- No fundraising activities may occur in facilities of the House of Representatives.¹⁰
- No suggestion may be made either that donors will be assisting with the performance of official duties or that they will receive favorable consideration in official matters. For example, a House Member, officer, or employee who

⁷ See 1990 Committee Solicitation Memo; *2008 House Ethics Manual* at 348.

⁸ See 31 U.S.C. § 1301(a); see generally Comm. on House Admin., *Members' Congressional Handbook*.

⁹ See House Rule 23, clause. 11; 18 U.S.C. § 713. In contrast, official titles are "U.S. Congressman," "U.S. Congresswoman," or "U.S. Representative." Additionally, a Member's district number is part of the Member's official title.

¹⁰ House Building Comm'n, *Rules and Regulations Governing the House Office Buildings, House Garages and Capitol Power Plant* (Feb. 1999).

solicits for a program that places interns in their own office generally may not accept an intern from that program for one year from the date of the last solicitation.¹¹

- House Members, officers, and employees may not directly target registered federal lobbyists or agents of foreign principals with a solicitation.¹² Therefore, *no* employee of a lobbying firm should be targeted in a solicitation. However, a company, association, or other entity that employs registered lobbyists to lobby only for itself or its members may be targeted if the solicitation is sent to an officer or employee who is not a lobbyist.

When the Member, officer, or employee engaging in charitable activities fully complies with these requirements, any donations made to the benefitting organization will not be considered a gift to the soliciting Member, officer, or employee.¹³ Violations of the Anti-Solicitation Statute are punishable by “appropriate disciplinary and other remedial action in accordance with any applicable laws, . . . and rules or regulations.”¹⁴

SIMPLIFIED PROCESS FOR FUNDRAISING REQUESTS

The Committee is introducing a new “Solicitation Waiver Request” form to request permission to assist with fundraising activities for individuals and organizations not recognized under IRC § 170(c), or those that were established or are controlled by current Members, officers, or employees. A copy of the new “Solicitation Waiver Request” form is attached to this memorandum. Instructions are as follows.

1. Any Member, officer, or employee who seeks Committee approval to assist with fundraising efforts for an individual or organization not recognized under IRC § 170(c), or for an organization established or controlled by current Members, officers, or employees, should fill out the new “Solicitation Waiver Request” form (available on the Committee’s website at <https://ethics.house.gov/forms>) and attach any additional relevant information.
2. The Committee will review the request and all supplemental information and, if appropriate, approve the request.
3. If approved, the Committee will provide the Member, officer, or employee with a letter signed by the Committee’s Chairman and Ranking Member.
4. The “Solicitation Waiver Request,” and any Committee response, will remain confidential.

¹¹ See *2008 House Ethics Manual* at 286; Comm. on Standards of Official Conduct, *Guidance on Intern, Volunteer, and Fellow Programs* (June 29, 1990), reprinted in *2008 House Ethics Manual* at 402-404.

¹² A charitable contribution made by a federal registered lobbyist or foreign agent on the basis of a designation, recommendation, or specification of a Member or House employee is a prohibited gift to that Member or House employee. See House Rule 25, clause. 5(e)(2).

¹³ 5 U.S.C. § 7353(b)(1).

¹⁴ *Id.* at (c).

As discussed above, Members, officers, and employees wishing to engage in political fundraising activities do not need formal permission from the Committee.

FREQUENTLY ASKED QUESTIONS

Question 1. A local organization asks a Member to donate a flag flown over the Capitol for its upcoming silent auction. The entry for the silent auction would state that the flag was donated by the Member. The organization is recognized under IRC § 501(c)(3); was not founded or controlled by any current Member, officer, or employee; nor would the Member receive any personal or financial benefit from the silent auction. May the Member donate that flag without written Committee approval?

Answer. Yes. Members, officers, and employees may allow their names to be used for fundraising activities for organizations recognized under IRC § 170(c), which includes organizations recognized under IRC § 501(c)(3), so long as the fundraising does not provide a personal or financial benefit to the person named, and the benefitting organization was not founded or controlled by current Members, officers, or employees. The Member does not need written approval from the Committee prior to assisting with the fundraising efforts and allowing her name to be used.

Question 2. May a Member use official funds to purchase items to be donated for fundraising activities?

Answer. No. Donations for fundraising activities may not use official resources, including not using the Member's Representational Allowance to purchase a flag, official staff to assist with the logistics, nor using the Member, officer, or employee's official title. The Member may use personal funds to purchase the flag. If the Member would like to use their principal campaign committee funds, the Member should consult with the FEC.

Question 3. A Member is asked to donate a Capitol tour and a White House tour for a local public school's fundraiser. May the Member donate both of those tours?

Answer. Yes for the Capitol tour and no for the White House tour. The Member may donate a tour of the Capitol for a fundraiser, but the Member must give the Capitol tour him or herself. The Member may not ask official staff to assist with any logistical efforts for the Capitol tour, including giving a Dome tour. The Member may not donate a White House tour because requests for White House tours must occur through official channels.

Question 4. An organization that is recognized under IRC § 501(c)(7), but not IRC § 527 or § 170(c), and engages in political grassroots lobbying invites a Member to be a keynote speaker at its upcoming fundraiser. The organization would like to list the Member's name on the invitations

to the fundraiser. May the Member be the keynote speaker and be listed on the invitation without written Committee approval?

Answer. No. The Member must write in to the Committee for permission to assist with the organization's fundraising efforts. Although the organization is engaged in political activity, it is not recognized under IRC § 527, and therefore is not considered a political organization for the purposes of fundraising. Additionally, the organization is not recognized under IRC § 170(c), and therefore does not fall under the Committee's general exception to the Anti-Solicitation Statute. The Member should complete the new Solicitation Waiver Request form and send it to the Committee, with additional documentation as necessary, for review.

Question 5. A person seeking election to be the Chairman of a Member's state political party asked the Member for the Member's endorsement and for assistance with fundraising calls and letters. The person does not have a formal campaign committee. May the Member assist with those fundraising efforts?

Answer. Yes. The Member may fundraise for this candidate for the Chairman position because it is a state level political office. Even though the candidate does not have a formal campaign committee, fundraising for this purpose fits within the exception for political solicitations. The Member does not need formal permission from the Committee.

Question 6. A personal friend of an employee was recently diagnosed with a serious illness. The employee would like to set up a GoFundMe page and ask friends and family on social media to help offset the costs of the treatment that are not covered by her friend's health insurance. May the employee help raise funds for the friend's care without written Committee approval?

Answer. No. If the funds raised would go directly to the friend, and not an organization qualified under IRC § 170(c), the employee must write in to the Committee for permission to help raise funds for her friend's care. The employee should complete the new Solicitation Waiver Request form and send it to the Committee, with additional documentation as necessary, for review.

Question 7. A Member would like to be the honorary chairperson for a fundraiser benefitting an organization recognized under IRC § 501(c)(4). The Member understands that Committee approval is needed to assist with the fundraising activities, but the organization needs to send out the invitations as soon as possible. May the organization send out invitations while the Committee reviews the Member's request?

Answer. No. The organization may not use the Member's name on the invitations, or to advertise the event in general, until the Committee approves the Member's request to assist with the organization's fundraising efforts. The Committee recommends that all requests to assist with fundraising activities be sent to the Committee well in advance of any deadlines.

Question 8. A local chapter of a national organization asks a Member to be the keynote speaker at their upcoming fundraiser. The national organization is recognized under IRC § 501(c)(3), but the local chapter is recognized under IRC § 501(c)(4). May the Member be the keynote speaker and be listed on the invitation without written Committee approval?

Answer. No. The Member must write in to the Committee for permission to assist with the local chapter's fundraising efforts. Although fundraising on behalf of the national organization would comply with the Committee's general exception to the Anti-Solicitation Statute, the local chapter that will benefit from these fundraising efforts does not fall under the general exception.

If you have any questions regarding this guidance, please feel free to contact the Committee's Office of Advice and Education at (202) 225-7103.

* * * * *

Enclosure: Solicitation Waiver Request



U.S. House of Representatives

COMMITTEE ON ETHICS

SOLICITATION WAIVER REQUEST

This form should be submitted by House Members, officers, and employees seeking permission to fundraise on behalf of organizations or individuals not qualified under section 170(c) of the Internal Revenue Code (IRC), such as an IRC § 501(c)(3) organization, or organizations that are founded or controlled by current Members, officers, or employees. Please complete this form and submit it along with additional supporting documents to the Committee at 1015 Longworth House Office Building, or e-mailed to ethicscommittee@mail.house.gov.

1. Name: _____
2. Official Title: _____
3. (For Staff) Name of employing Member or Committee: _____
4. Contact information (e-mail address, office address, telephone number, point-of-contact):

5. Name of organization or individual that will benefit from your fundraising:

6. Contact person and phone number of the individual or organization:

7. Tax status of organization (e.g., IRC § 501(c)(4)): _____
8. Yes No Do you or your family have any connection to the individual or organization?
If yes, please explain: _____

9. Please describe how the individual or organization would like to use your name:

10. Date(s) of the event/when would you assist with fundraising: _____
11. Please describe how you will participate in the fundraising efforts:

12. Yes No Did the individual or organization offer to cover any travel expenses in connection with the fundraising?
13. Yes No Do you have a sample invitation or sample language you would like to use?
If yes, please provide a copy.
14. Yes No Is the organization founded or controlled by current Members, officers, or employees?
If yes, what is the purpose of the organization?

I certify that the information contained on this form is true, complete, and correct to the best of my knowledge.

SIGNATURE OF REQUESTOR: _____ **DATE:** _____

Theodore E. Deutch, Florida
Chairman
Kenny Marchant, Texas
Ranking Member

Grace Meng, New York
Susan Wild, Pennsylvania
Dean Phillips, Minnesota
Anthony Brown, Maryland

John Ratcliffe, Texas
George Holding, North Carolina
Jackie Walorski, Indiana
Michael Guest, Mississippi



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

June 13, 2019

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: The 2019 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees

This memorandum supersedes the Committee's February 8, 2019 Memorandum to include updated information based on Public Law 116-6 and guidance on how to calculate outside earned income. All Members of the House are subject to certain public disclosure requirements and employment restrictions both during and after their service in the House, including:

1. Financial disclosure filing requirements, including both annual financial disclosure (FD) statements and Periodic Transaction Reports (PTRs);
2. Restrictions on outside employment;
3. Notification requirements for disclosure of negotiations for private employment and related recusals; and
4. Post-employment restrictions.

House employees may also be subject to these requirements and restrictions, depending on their salary level. This memorandum provides details on the current triggering salary figures for Calendar Year (CY) 2019 for each of the categories noted above, and summarizes them in a table on page 8 of this Memorandum. It is each individual employee's responsibility to know whether their salary level subjects them to these standards of conduct and, if so, to comply with them. Please note that this memorandum is not a comprehensive list of every rule or standard of conduct that applies to House staff, but an overview of key standards that are triggered by salary level. Any Member, officer, or employee who has questions about whether their rate of pay triggers these requirements or restrictions or about the various rules is encouraged to contact the Committee's Office of Advice and Education at extension 5-7103.

FINANCIAL DISCLOSURE

House officers and employees whose “rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule” for at least 60 days at any time during a calendar year are subject to financial disclosure filing requirements, provided that the officer or employee “performs the duties of his [or her] position or office for a period in excess of sixty days in that calendar year.”¹ The GS-15, step 1, basic pay rate for CY 2019 is \$106,595.² The applicable 120% calculation for that rate is therefore **\$127,914**, or a monthly salary above \$10,659. This rate is referred to as the “senior staff rate.”

As a result, House officers and employees whose basic rate of pay is equal to or greater than the senior staff rate (\$127,914) for at least **60 days**³ during **2019** must file an FD statement on or before May 15, 2020.⁴ (Temporary increases in an employee’s basic rate of pay – such as to pay out a bonus – count toward this threshold, but “lump sum” payments do not.⁵) In addition, any new employee paid at or above the senior staff rate must file a “new employee” FD statement within 30 days of assuming employment with the House.⁶ A new employee may request an extension of the new employee FD filing deadline of up to 90 days, but the request must be received by the Committee or on before the original filing deadline.⁷ Finally, any staff who are paid at or above the senior staff rate on January 3, 2019 (or their first day of employment, if later in the year) must file reports (PTRs) on an ongoing basis throughout the year regarding certain financial transactions.⁸ PTRs are not annual filings, but must be filed within 30 days of a purchase, sale, or exchange of more than \$1,000 in stocks, bonds, and other securities.⁹

¹ Ethics in Government Act (EIGA) §§ 109(13) and 101(d), 5 U.S.C. app. §§ 109(13) and 101(d) (hereinafter all citations to the EIGA will be to the appropriate federal code citation). In addition, all House Members are subject to financial disclosure filing requirements. 5 U.S.C. app. §§ 101(d) and (f).

² Exec. Order No. 13,866, 84 Fed. Reg. 12853 (March 28, 2019). The new senior staff rate is retroactive to January 1, 2019.

³ The House payroll department operates on a 30-day payroll cycle, meaning that each monthly pay period, regardless of its actual length, is counted as 30 days. Thus, a change to an employee’s base rate of pay in any two months during the calendar year (even non-consecutive months) may trigger the requirement to file an FD. This is true even if the pay change affects only part of a month.

⁴ 5 U.S.C. app. §§ 101(d) and (f).

⁵ See Comm. on Ethics *2008 House Ethics Manual* at 283-84, available at https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf; Comm. on Ethics, *Instruction Guide, Financial Disclosure Statements and Periodic Transaction Reports*, at 2 (Calendar Year 2017), <https://ethics.house.gov/forms/information-and-forms>.

⁶ See 5 U.S.C. app. § 101(a). The only exception to this filing requirement is for new employees who assume employment with the House within 30 days of leaving a position with the federal government in which they filed a publicly-available FD statement. Individuals who are exempt from filing under these circumstances must notify the Clerk of the House of that fact in writing by letter or through the e-filing system for filing FD statements.

⁷ A request for an extension must be made using either a form available on the Committee’s web site or through the electronic financial disclosure filing system.

⁸ 5 U.S.C. app. § 103(l).

⁹ For detail on the PTR requirement, see the Committee’s August 17, 2012, advisory memorandum “Periodic Reporting of Personal Financial Transactions Pursuant to the STOCK Act, as amended,” which is available on the Committee website (<https://ethics.house.gov>), under the links for Reports/General Advisories. Note that the STOCK Act may require the filing of PTRs as often as once per month for Members and any staff who are paid at the senior staff rate on the first day of the 2019 pay cycle (January 3, 2019). Staff who are paid at or above

Please note that the requirement to file an FD statement covering calendar year 2018 applies to officers and employees whose basic rate of pay for at least 60 days in **2018** was **\$126,148** or more (a monthly salary at or above \$10,512). Annual FD statements covering CY 2018 were due on Wednesday, May 15, 2019, for those individuals who continued to be Members, officers, or employees of the House on that date.¹⁰ A filer may request an extension of the annual FD filing deadline of up to 90 days, but the request must be received by the Committee or on before the original filing deadline.¹¹

In addition, House Members, officers, and employees paid at or above the senior staff rate for 60 days or more in a calendar year who terminate their House employment during that calendar year are required to file an FD statement within 30 days of their termination.¹² A filer may request an extension of the termination FD filing deadline of up to 90 days, but the request must be received by the Committee or on before the original filing deadline.¹³

THE OUTSIDE EARNED INCOME LIMIT AND OUTSIDE EMPLOYMENT RESTRICTIONS

House officers and employees whose rate of basic pay is equal to or greater than the senior staff rate for **more than 90 days** are subject to limits on the amount of outside earned income¹⁴ attributable to each calendar year.¹⁵ As noted above, the senior staff rate for CY 2019 is **\$127,914**, or a monthly salary above \$10,659. The limit on outside earned income attributable to a calendar year is 15% of the rate of basic pay for Executive Schedule Level II in effect on January 1 of the year. As of January 1, 2019, the rate of basic pay for Executive Level II was \$189,600.¹⁶

the senior staff rate for more than 60 days later in 2019 – even if on a temporary basis – will also be subject to the PTR requirement for the remainder of the calendar year and will be required to file an annual FD in 2020.

¹⁰ FD statements are due May 15 annually. In the event that May 15 or another filing deadline under the EIGA falls on a weekend or a holiday, the filing deadline shall be on the next business day.

¹¹ *See supra* note 7.

¹² *See* 5 U.S.C. app. § 101(e). The only exception is for filers who, within 30 days of their termination from the House, accept a position with the federal government that requires the filing of a publicly-available FD statement. Departing employees who are exempt from filing under these circumstances must notify the Clerk of the House of that fact in writing, by sending a letter, completing a form available for that purpose, or filing a notice through the electronic financial disclosure filing system.

¹³ *See supra* note 7.

¹⁴ The term “outside earned income” means any “wages, salaries, fees, and other amounts received or to be received as compensation for personal services actually rendered” by a House Member, officer, or employee. House Rule 25, cl. 4(d)(1). It does not include, among other things, the individual’s salary from the House, nor does it include income for services rendered before the individual was employed by the House. *Id.* at cls. 4(d)(1)(A), (B).

¹⁵ 5 U.S.C. app. § 501(a)(1); House Rule 25, cls. 1(a)(1) and 4(a)(1).

¹⁶ Exec. Order No. 13,856, 84 Fed. Reg. 70 (Jan. 8, 2019).

Accordingly, the outside earned income limit for House Members, officers, and employees paid at or above the senior staff rate for CY 2019 is **\$28,440**.¹⁷

Members, officers, and House employees paid at or above the senior staff rate for more than 90 days are also subject to a number of specific limitations on the substantive types of outside employment for which they may receive compensation and must receive prior approval to receive certain types of compensation.¹⁸ These include prohibitions on receiving any compensation for practicing a profession that involves a fiduciary relationship, receiving any compensation for affiliating with a firm that provides professional services involving a fiduciary relationship, or permitting such a firm to use one's name.¹⁹ Receipt of compensation for service as an officer or member of a board of directors is also prohibited.²⁰ Prior written approval from the Committee on Ethics is required to accept compensation for teaching and to receive copyright royalties.²¹ Detailed information regarding these limitations may be found on pages 213 to 238 of the *2008 House Ethics Manual*, which is available on the Committee's website (<https://ethics.house.gov>).

In addition, the Committee would like to take this opportunity to clarify what income is subject to the annual outside earned income limitation. "Earned" income is compensation for personal services, unlike "unearned" income, which is a return on capital.²² According to long-standing Committee policy, payment for personal services, where the personal services are the only material income-producing factor, is considered "earned" income for the purposes of financial disclosure reporting and the outside earned income limit.²³ Although a Member, officer, or employee paid at the senior staff rate may choose to establish a business entity for liability purposes, any income attributable to the personal services performed by that Member, officer, or employee, whether or not it passes through the business entity, is still considered earned income.²⁴

As a general matter, gross income earned from performing personal services is subject to the outside earned income limit. Thus most expenses, whether reimbursed or unreimbursed, may not be deducted to determine what earned income is subject to the outside earned income limit.²⁵

¹⁷ This amount is proportionally reduced when an individual becomes a Member, officer, or senior employee during the calendar year. For example, an individual who is hired into a senior staff position on July 1 has an outside earned limit that is one-half of the full amount, or \$14,220. The outside earned income limit for 2019 will not change even if the General Schedule changes later in 2019 because it is based on the amount as of January 1, 2019. *See* 5 U.S.C. app. § 501(a)(2); House Rule 25, cl. 1(b).

¹⁸ *See* 5 U.S.C. app. § 502(a); House Rule 25, cls. 1-4.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *See 2008 House Ethics Manual* at 212. "Unearned" income generally consists of dividends, rents, interest, and capital gains. *See* Ethics in Government Act, 5 U.S.C. § 102(a)(1)(B).

²³ *See* House Select Comm. On Ethics, Advisory Opinion No. 13 (October 1978), reprinted in *2008 House Ethics Manual* at 366.

²⁴ *Id.* at 368-369. Regardless of how payment may be characterized, the real facts control. *Id.* at 365.

²⁵ The Committee may consider written agreements addressing reimbursements for expenses entered into before personal services are provided as an exception to this guidance. Any request to consider something other than gross income for the purposes of the outside earned income limit must be submitted in writing. If, however, the reimbursements are for expenses paid for a campaign, the candidate and the employee should seek guidance from the Federal Election Commission's congressional liaisons at (202) 694-1006.

However, expenses for a Member, officer, or employee's own travel are not considered compensation.²⁶ Therefore expenses for a Member, officer, or employee's own travel, whether reimbursed or unreimbursed, are not included in the calculation of earned income.

Nothing in this guidance changes the Committee's guidance concerning family businesses. In general, if a Member, officer, or employee engages in the "general oversight and management or protection of his or her investment [in a business], such services would not be deemed to generate significant income."²⁷ However, if the Member, officer, or employee performs services for the business that "actually generate any significant income for the business," then some part of the payments the Member, officer, or employee receives from the business may be deemed earned income.²⁸ As a reminder, participation in advertising is not "general oversight and management," and it is not "protection of his or her investment."²⁹ Advertising, by definition, is a driver of revenue for a company.³⁰

Finally, federal statutes and regulations prohibit staff from making campaign contributions to their employing Members.³¹ Outlays are contributions, even if reimbursed.³² Reimbursements for an employee's own personal travel expenses are permitted.³³ For further questions regarding reimbursements for personal campaign travel, please contact the Federal Election Commission (FEC) congressional liaisons at (202) 694-1006.

EXAMPLES

1. A senior staffer is an employee of a Member's campaign and receives a W-2 at the end of the year listing the staffer's salary. All of the salary listed on the W-2 is reportable on Schedule C ("Earned Income") on the staffer's financial disclosure statement for that year and subject to the outside earned income limit. The staffer must also report the position on Schedule E ("Positions")
2. A senior staffer establishes a single-member LLC through which to run salary earned from a Member's campaign. Even though a business entity was formed, LLCs and S-Corporations are pass-through entities. Therefore, all income the staffer earned from providing personal services to the Member's campaign is reportable on Schedule C

²⁶ See, e.g., House Rule 25, cl. 5(a)(3)(G)(i) (gifts of travel resulting from outside employment are permissible so long as not offered or enhanced because of the Member, officer, or employee's House position); *2008 House Ethics Manual* at 222 (reimbursement of travel expenses for a Member or senior staffer's board service is permitted, although compensation for that board service is not permitted). Travel related to outside activities that exceeds the reporting threshold must be disclosed on Schedule H ("Travel Payments and Reimbursements") of the annual financial disclosure statement. 5 U.S.C. § 102(a)(2)(B).

²⁷ See House Select Comm. On Ethics, Advisory Opinion No. 13 (October 1978), reprinted in *2008 House Ethics Manual* at 364.

²⁸ *Id.*

²⁹ Comm. on Ethics, *Guidance on Personal Endorsement or Promotion by Members of the House of Representatives* at 2 (Aug. 24, 2018).

³⁰ *Id.*

³¹ See 18 U.S.C. § 603.

³² See 52 U.S.C. § 30101(8)(A)(i).

³³ See *id.* at (8)(B)(iv).

- (“Earned Income”) on the staffer’s financial disclosure statement for that year and subject to the outside earned income limit. If the LLC has a value over \$1,000 or generates income over \$200, the staffer must also report the LLC on Schedule A (“Assets and Unearned Income”).
3. A Member has a side business, where the Member repairs computers and technology equipment. To further the Member’s business, the Member purchased a laptop using the income from the business. Although the Member may be able to deduct the laptop for the Member’s annual taxes, only personal travel expenses may be excluded for the purposes of the outside earned income limit. Therefore, all the income earned is reportable on Schedule C (“Earned Income”) on the financial disclosure statement for that year, and the income is subject to the outside earned income limit. If the side business has a value over \$1,000 or generates income over \$200, the Member must report the business on Schedule A (“Assets and Unearned Income”).
 4. A Member is a stockholder in a C-corporation. The Member receives \$201 in dividends from that C-corporation in a calendar year. The dividends the Member receives are unearned income and should be reported on Schedule A (“Assets and Unearned Income”) of the Member’s financial disclosure statement. If the value of the Member’s shares in the C-corporation exceeds \$1,000 on the last day of the reporting period, the value must also be reported on Schedule A.

DISCLOSURE OF EMPLOYMENT NEGOTIATIONS AND RECUSALS

House Members, officers, and employees paid at the senior staff rate must notify the Committee within three (3) business days after they commence any negotiation or agreement for future employment with a private entity.³⁴ In addition, House Members, officers, and senior staff must recuse themselves from “any matter in which there is a conflict of interest or an appearance of a conflict” with the private entity with which they are negotiating or have an agreement for future employment or compensation, and they must notify the Ethics Committee in writing of such recusal.³⁵ As noted above, the senior staff rate for CY 2019 is **\$127,914**, or a monthly salary above \$10,659.

Information on the disclosure and recusal requirements related to seeking private employment applicable to Members, officers, and senior staff is available in two Committee advisory memoranda, one for Members and officers and one for staff. Copies of both memoranda, which are dated January 2, 2019, are available on the Committee’s website (<https://ethics.house.gov>) under “Reports/General Advisories,” and forms for making the notifications regarding job negotiations or recusal are available under “Forms/Post-Employment.”

³⁴ House Rule 27, cl. 2; Stop Trading on Congressional Knowledge Act, Pub. L. No. 112-105 (Apr. 4, 2012) (hereinafter STOCK Act) § 17.

³⁵ House Rule 27, cl. 4; STOCK Act § 17.

POST-EMPLOYMENT RESTRICTIONS

House Members and officers, as well as certain other House employees, are subject to post-employment restrictions on lobbying.³⁶ In general, a former employee of a Member, committee, or leadership office is subject to the restrictions if, for at least **60 days** during the one-year period preceding termination of House employment, the employee was paid at a rate equal to or greater than 75% of the basic rate of pay for Members at the time of termination. This amount is referred to as the “very senior staff rate.”

The basic rate of pay for Members in 2019 will remain \$174,000.³⁷ Therefore, the post-employment threshold for employees who depart from a job in a Member, committee, or leadership office in CY 2019 remains **\$130,500**, or a monthly salary of \$10,875 or more. However, the triggering salary for employees of other House offices (such as the Chaplain, Chief Administrative Officer, Clerk, General Counsel, Historian, Inspector General, Law Revision Counsel, Legislative Counsel, Office of Congressional Ethics, Parliamentarian, and Sergeant of Arms) is Executive Schedule Level IV.³⁸ For 2019, that salary is **\$166,500**, or a monthly salary above \$13,875.

Information on the post-employment restrictions applicable to Members, officers, and very senior staff is available in the two Committee advisory memoranda referenced in the previous section.³⁹

* * * * *

³⁶ 18 U.S.C. § 207.

³⁷ See Section 212 of Title II of the Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019, Pub. L. No. 115-244 Sep. 21, 2018), prohibiting a scheduled cost-of-living pay raise for Members. As a result, Member pay will remain at \$174,000 for 2019.

³⁸ “[O]ther legislative offices” also includes employees of the Architect of the Capitol, United States Botanic Garden, Government Accountability Office, Government Publishing Office, Library of Congress, Congressional Budget Office, and Capitol Police. See 18 U.S.C. § 207(e)(9)(G).

³⁹ Most of the post-employment restrictions apply to very senior staff. As discussed in the general advisory memorandum for former staff, however, one provision applies to all former House staff – regardless of rate of pay – and restricts use of confidential information obtained during personal and substantial participation in ongoing trade or treaty agreements.

CALENDAR YEAR 2019

Item	2019 Amount
Outside earned income & outside employment threshold - Outside employment fiduciary restrictions if paid at rate for more than 90 days during 2019	\$127,914 (\$10,659/mo)
Outside earned income limit	\$28,440
Financial Disclosure/PTR threshold - Annual FD required in May 2020 if paid at rate for 60 days or more in CY 2019 - PTRs required during CY 2019 if: - Paid at rate on first day of calendar year or first day of House employment (if later); <i>or</i> - Paid at rate for any two pay periods during CY 2019 (<i>e.g.</i> , if get bonus or pay raise during calendar year), subject to PTR requirement for remainder of year	\$127,914 (\$10,659/mo)
Written disclosure of job negotiations and recusals required	\$127,914 (\$10,659/mo)
Post-Employment threshold for employees of Member, committee, or leadership offices	\$130,500 (\$10,875/mo)
Post-Employment threshold for employees of “other legislative offices” (see p. 7)	\$166,500 (\$13,875/mo)



Important Information Relating to Hurricane Dorian

Sending Office: Committee on House Administration

Sent By: Daniel.Taylor@mail.house.gov

August 30, 2019

Important Information Relating to Hurricane Dorian

Dear Colleague:

Several offices have contacted the Committee on House Administration, the Commission on Congressional Mailing Standards (Franking Commission), and the Committee on Ethics to inquire about the extent to which official resources may be used to help those impacted by Hurricane Dorian. We would like to take this opportunity to provide a review of the applicable rules, regulations, and procedures.

When a state of emergency is declared, Members whose districts are directly affected may provide constituents with information to assist those impacted. This information may include addresses and telephone numbers of entities involved in relief efforts being coordinated by the federal government. In the past, Members have provided contact information for blood drives conducted by the American Red Cross in conjunction with the Federal Emergency Management Agency (FEMA). However, referrals to organizations or links to sites whose primary purpose is the solicitation of goods, funds, or services on behalf of individuals or organizations are not permitted under the rules of the House. **To summarize, for Members directly affected, contact information for government entities, as well as private entities directly involved in relief efforts organized by the federal government, may be sent as a mass communication (emails, advertisements, flyers for handout, and posters) and posted on your official website and social media accounts. However, any such unsolicited mass communications must be reviewed by the Franking Commission prior to distribution.**

The Committee on House Administration recommends use of these government established websites for information on the relief efforts:

www.usa.gov/disasters-and-emergencies

www.fema.gov/

www.ready.gov/

www.nhc.noaa.gov/

www.nws.noaa.gov/om/hurricane/index.shtml

<https://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/hurricane-guidance/>

Members have asked to what extent they may use their official resources to solicit or collect donations of goods, funds, or services on behalf of charities and other private organizations involved in such efforts. We understand the good intentions of those making such inquiries, but the rules of the House preclude Members from using official resources for any purpose other than in support of the conduct of the Member's official and representational duties on behalf of the district the Member currently represents. This rule has been interpreted to mean that charitable solicitations using official resources are not permitted. Please contact the Committee on Ethics with any questions surrounding this rule. **To summarize, Members and staff may not use official resources to solicit anything for charities.**

While official resources may not be used to solicit contributions for charitable organizations or to imply that such organizations or purposes have been endorsed by the House of Representatives, Members and staff may solicit in their personal capacities on behalf of organizations that are qualified under § 170(c) of the Internal Revenue Code – including, for example, § 501(c)(3) charitable organizations such as the Red Cross or Team Rubicon – without first obtaining Committee on Ethics approval. These personal efforts may not use official resources (including official staff time; office telephones, e-mail, and equipment; and official mailing lists). Other restrictions also apply. Solicitations on behalf of non-qualified entities or individuals are decided on a case-by-case basis through the submission to the Committee on Ethics of a written request for permission to make such solicitations. For example, solicitations of donations directly for individuals suffering as a result of the crisis, as opposed to § 501(c)(3) charities assisting sufferers, would need prior Committee on Ethics approval. For more information about solicitations for § 501(c)(3) or other entities, please review pages 347-49 of the *2008 House Ethics Manual* or contact the Committee on Ethics at 5-7103. **To summarize, Members and staff may solicit for charities in their personal capacities only.**

If you have any questions regarding the use of your:

1. Official resources in general, please contact the Committee on House Administration at (202) 225-2061 (majority) or (202) 225-8281 (minority);
2. Communications resources, please contact the Franking Commission at (202) 225-9337 (majority) or (202) 226-0647 (minority); or
3. Personal or campaign resources, or the loan of your name and personal title to private solicitations or initiatives in support of the relief efforts, please contact the Committee on Ethics at (202) 225-7103.

Sincerely,

Chairperson Zoe Lofgren
Committee on House Administration

Ranking Member Rodney Davis
Committee on House Administration

Chairman Ted Deutch
Committee on Ethics

Ranking Member Kenny Marchant
Committee on Ethics

 [Manage Your Subscriptions](#)



e-Dear Colleague version 2.0



[Contact eDC Support](#)

e-Dear Colleagues are intended for internal House use only.

Theodore E. Deutch, Florida
Chairman

Kenny Marchant, Texas
Ranking Member

Grace Meng, New York
Susan Wild, Pennsylvania
Dean Phillips, Minnesota
Anthony Brown, Maryland

John Ratcliffe, Texas
George Holding, North Carolina
Jackie Walorski, Indiana
Michael Guest, Mississippi



ONE HUNDRED SIXTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

November 14, 2019

Thomas A. Rust
Staff Director and Chief Counsel

David W. Arrojo
Counsel to the Chairman

Christopher A. Donesa
Counsel to the Ranking Member

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

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Access to Classified Information and Controlled Areas

This memorandum serves as a reminder to all House Members, officers, and employees about the ongoing obligation to safeguard classified information and areas.

House rules require that all House Members and staff, before accessing classified information, shall execute an oath stating that he or she will not disclose any classified information received in the course of their service with the House of Representatives, except as authorized by the House of Representatives or in accordance with its rules.¹ When a Member should be aware of or is uncertain about the classification of sensitive information in their possession, they must make a good faith effort to ascertain its classification with the appropriate executive branch agency before disclosing it to the public.

To facilitate its work, the House has multiple sensitive compartmented information facilities (SCIFs) or controlled areas. Each controlled area is governed by the appropriate committee of jurisdiction or the Sergeant at Arms. However, there are basic tenets regarding access to classified information and controlled areas that all House Members and employees should adhere to.

Access to classified information and areas, even for cleared personnel, is granted on a “need to know” basis. As such, House personnel should not attempt to gain access to classified information or controlled areas unless they have a need to access the area or information. Multiple overlapping safeguards exist to protect against different types of intrusion. However, the protections rely on the cooperation of those entering a SCIF to ensure countermeasures are not compromised. Thus, portable electronic devices (PEDs) should generally not be taken into any controlled area. PEDs include, but are not limited to, cell phones, laptops, smartwatches, tablets, or any other devices capable of transmitting or receiving an electronic signal.

¹ House Rule 23, clause 13.

House controlled areas are accredited for operation by the intelligence community and are subject to periodic inspections to recertify their accreditation. Breaches of security protocols or unauthorized disclosures could result in the decertification of these facilities. This would significantly impair the House's ability to conduct its business.

Inadvertent breaches of security protocols or unauthorized disclosures may be handled as a matter of security by the committees of jurisdiction over the relevant classified information or controlled areas. However, attempts to gain unauthorized access to classified areas or purposeful breaches of basic security protocols may cause classified information to be improperly disclosed, and may reflect discreditably on the House as a legislative body. The Committee has jurisdiction to investigate violations of House rules, regulations, laws, or other standards of conduct, including violations of House rules regarding disclosure of classified information and other potential violations of the Code of Official Conduct.²

If you have any questions regarding this guidance, please feel free to contact the Committee's Office of Advice and Education at (202) 225-7103.

* * * * *

² House Rule 23.

Theodore E. Deutch, Florida
Chairman

Kenny Marchant, Texas
Ranking Member

Grace Meng, New York
Susan Wild, Pennsylvania
Dean Phillips, Minnesota
Anthony Brown, Maryland

John Ratcliffe, Texas
George Holding, North Carolina
Jackie Walorski, Indiana
Michael Guest, Mississippi



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

November 26, 2019

MEMORANDUM FOR ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES

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

SUBJECT: Reminder about Annual Ethics Training Requirements for 2019

This memorandum is a reminder to all offices about ethics training requirements. The Committee on Ethics is required to provide annual ethics training to each Member, Delegate, Resident Commissioner, officer, and employee of the House.¹ The Committee offers ethics training both through online video courses and in-person training sessions. For the 116th Congress to date, the Committee has held 80 in-person ethics training sessions and provided in-person ethics training to more than 3,200 Members², officers, and employees. Additional in-person ethics training sessions for 2019 are included later in this memorandum.

New House Members and employees must complete a specifically designated ethics training session within 60 days of joining the House.³ Existing House Members, officers, and employees are required to take one hour of general ethics training each calendar year. In addition, the Committee requires all senior staff⁴ – whether new or existing employees – to complete an additional hour of specialized training at least once per Congress.

¹ House Rule 11, clause 3(a)(6)(A). The Committee defines an “officer or employee” as an individual appointed to a position of employment in the U.S. House of Representatives by an authorized employing authority who is receiving a salary disbursed by the Chief Administrative Officer or is on a leave without pay or furlough status.

² For all purposes in this memorandum, “Member” is defined to include any current Member, Delegate, or Resident Commissioner of the House of Representatives.

³ House Rule 11, clause 3(a)(6)(B)(i).

⁴ “Senior staff” for training purposes are employees who are paid at the “senior staff annual salary rate” for at least 60 days in either (or both) calendar years of a Congress. For 2019, the senior staff annual salary rate is \$127,914, or a monthly pay rate at or above \$10,512. Please note that the senior staff annual salary rate is subject to change in 2019.

By January 31 of each year, all House Members and employees must certify to the Ethics Committee that they have completed ethics training during the preceding calendar year.⁵ Employees who pre-register for and sign the attendance sheet at a live training *or* fully complete one of the online training options available through the Congressional Staff Academy will have made their necessary certification to the Committee. The following are the ethics training requirements for 2019 for Members, officers, and employees of the House, as well as the details of how to complete the registration and/or certification process for both live and online ethics training programs.

2019 ETHICS TRAINING REQUIREMENTS

Members

New House Members must complete a training session specifically designated for new Members within 60 days of joining the House. A “new” Member for the purposes of the 2019 training requirement is an individual who was *first* sworn in on or after January 3, 2019. Before each Congress, the Committee on Ethics provides ethics training for incoming new Members at the New Member Orientation organized by the Committee on House Administration. The Committee on Ethics also provides this training for new Members elected through a special election within the new Members’ first 60 days.

Existing Members are required to take annual ethics training, either by completing the training online, attending a live ethics training session, or requesting a briefing for their office. For 2019, this means all existing House Members must complete one hour of training by **December 31, 2019**. If Members would like to complete ethics training online, please have a staff member contact the Committee for a password.

“New” House Employees

All new employees must complete ethics training within 60 days of beginning House employment. A “new” House employee for purposes of the 2019 training requirement is an individual who first began employment with the House on or after January 3, 2019. Any former House employee who returns to House employment after a gap of more than 90 consecutive calendar days is considered to be a “new” employee. Interns paid by the House for more than 60 days also must comply with this requirement.⁶ New employees, depending on their work location, may satisfy their training requirement in the following manner:

- New employees who work in Capitol Hill offices are required to attend a *live* training session. The schedule of upcoming new employee live ethics training sessions is available on the Committee website: <https://ethics.house.gov>.

⁵ House Rule 11, clause 3(a)(6)(B)(ii).

⁶ Detailees, fellows, unpaid interns, and any individuals who are employed by the House and paid for fewer than 60 days are not required to attend ethics training in 2019. The Ethics Committee nonetheless encourages these individuals to complete ethics training, so they become familiar with the House ethics rules while working in a House office or for a House committee.

- New employees who do not work in Capitol Hill offices may either attend a live training session *or* watch the “2019 New District Staff” training video online through the Congressional Staff Academy website under the Annual Training tab. No other video satisfies the training requirement for new employees.

New employees will *not* receive credit for attending or watching any training sessions other than those specifically designated “New Employee” or “New District Staff.” New employees in Capitol Hill offices will not receive credit for completing online, rather than live, training. Note that new employees who are senior staff have an additional hour of training to complete, as explained more fully below under “Senior Staff Training.”

Existing House Employees

“Existing” (*i.e.*, not new) House employees must complete one hour of training before the end of the calendar year. For 2019, this means all existing House employees must complete one hour of training by **December 31, 2019**. **There are no extensions to this deadline, for any reason.** In addition, employees who are senior staff may have an additional hour of training to complete, as explained more fully in the next section. Employees are responsible for knowing whether they are considered senior staff.

As a general matter, existing employees will fulfill their general ethics training requirement by completing an online session designated for general ethics training through the Congressional Staff Academy website. The Ethics Committee will also offer some live training sessions that fulfill the general ethics training requirement. Note that attending a live training session for *new* employees does not satisfy the annual ethics requirement for *existing* House employees.

Senior Staff Training

All employees who are “senior staff”⁷ are required to take an additional hour of training at least once per Congress on issues primarily of concern to senior staff or supervisors. For the 116th Congress, this means all senior staff must complete one hour of training by **January 3, 2021**. This “senior staff” hour is required *in addition to* the one hour of general ethics training all officers and staff are required to complete annually. Senior staff employees may fulfill the requirement for an additional hour by attending a live senior staff training session or completing an online senior staff training session through the Congressional Staff Academy website.

Briefings that satisfy the senior staff training requirement include general sessions on issues of concern to senior staff, sessions on completing financial disclosure (FD) statements or Periodic Transaction Reports (PTRs), or sessions on the post-employment restrictions. However, employees may *not* complete more than one hour of senior staff training in lieu of completing their annual general ethics training requirement.

⁷ See *supra* note 3.

ONLINE REGISTRATION & CERTIFICATION PROCESS

For live ethics training

Employees who plan to attend any live training session *must* preregister at <https://house.csod.com/samldefault.aspx> (found under “annual trainings”) *and* sign-in on the attendance form prior to the start of the training. Even if employees preregister, they must sign in and attend the full hour to fulfill their ethics training requirement. Attendees must arrive within five minutes of the start of the training to be able to sign the attendance sheet. **Any late arrivals who miss the sign-in period will not receive credit.** After their attendance, employees who have signed the attendance sheet and attended the full hour of training will receive email confirmations, which they should preserve for their own records. Employees can download training certificates on the Congressional Staff Academy website under the “learning” tab and by clicking “view my transcript.” On this page, click the “active” drop-down box and select “completed.” The certificates are confirmation for employees that they have satisfied the annual training and certification requirement. Any employee who has received this email confirmation statement has made the necessary certification to the Committee that they have completed their ethics training requirement.

The list of upcoming live training sessions for the remainder of 2019 is listed below and also available on the Ethics Committee website: <https://ethics.house.gov>. All staff scheduled training sessions – whether for new, existing, or senior staff – will be listed on the Committee calendar on an ongoing basis.

Name of Training	Location	Date and Time
Senior Staff	HVC 201 A&B	December 2, 2019 at 10:30 AM
New Employee	HVC 201 A&B	December 2, 2019 at 2:00 PM
Members-Only	HVC 201 A&B	December 3, 2019 at 4:00 PM
Senior Staff	HVC 201 A&B	December 9, 2019 at 10:30 AM
New Employee	HVC 201 A&B	December 9, 2019 at 2:00 PM
Members-Only	HVC 201 A&B	December 9, 2019 at 4:00 PM
Senior Staff	HVC 201 A&B	December 16, 2019 at 10:30 AM
New Employee	HVC 201 A&B	December 16, 2019 at 2:00 PM

For online ethics training

Employees who want to complete ethics training online can access the training through the Congressional Staff Academy website: <https://house.csod.com/samldefault.aspx>. Ethics training can be found under the “annual training” tab. Employees must complete the entire online training program to receive credit. Employees must use a House computer to access the Congressional Staff Academy website. Employees who do not have access to a House computer or do not have a House email account should contact the Ethics Committee to make alternate arrangements for completing their training.

After completing an online training program, the system will automatically log the employee as “complete.” This information is automatically transmitted to the Ethics Committee.

Thus, once the system labels an employee as “complete,” the employee has satisfied the annual training and certification requirement. Employees will be able to check their Congressional Staff Academy transcript at any time to verify the completion of their own annual ethics training requirement.

Each individual House employee is responsible for completing their ethics training requirement and certifying completion. Employees can view past training history on the Congressional Staff Academy website under the “learning” tab and by clicking “view my transcript.”

A chief of staff (or staff director or other supervisors) can confirm employee ethics training completion by requesting each staff person to provide either the email they received after attending an in-person training or a print out their Training Completion Certificate from the Congressional Staff Academy website: <https://house.csod.com/samldefault.aspx>.

FAILURE TO COMPLY WITH THE TRAINING REQUIREMENTS

Failure to satisfy the annual training requirement is a violation of House rules⁸ and may result in any of the specified disciplinary sanctions for House Members and employees, including the publication of noncompliant House Members and employees’ names, additional ethics training, or other actions the Committee deems appropriate. If you have any questions regarding this guidance, please feel free to contact the Committee’s Office of Advice and Education at (202) 225-7103.

* * * * *

⁸ See House Rule 11, clause 3(a)(6)(B)(ii).

Theodore E. Deutch, Florida
Chairman

Kenny Marchant, Texas
Ranking Member

Grace Meng, New York
Susan Wild, Pennsylvania
Dean Phillips, Minnesota
Anthony Brown, Maryland

John Ratcliffe, Texas
George Holding, North Carolina
Jackie Walorski, Indiana
Michael Guest, Mississippi



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

December 11, 2019

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Outside Position Regulations

House Resolution 6 (H. Res. 6), created a new clause in the Code of Official Conduct effective January 1, 2020. H. Res. 6 also requires that, “Not later than December 31, 2019, the Committee on Ethics shall develop regulations addressing other types of prohibited service or positions that could lead to conflicts of interest.” To assist the Committee on Ethics (Committee) in fulfilling this mandate, the Committee established a working group, consisting of Representative Susan Wild and Representative Van Taylor. After extensive research, a public session, and solicitation of input from Members¹ of the House of Representatives, the Committee voted to adopt the Outside Position Regulations (OPR) issued today by unanimous vote.

Sections VIII and X of the OPR restate existing restrictions from the Ethics in Government Act, 5 U.S.C. app. §§ 102 and 502(a); House Rule 25, clauses 1 and 2; and House Rule 26. **As such, those prohibitions and reporting requirements have been and remain in effect pursuant to the underlying authorities and previous Committee guidance. However, the remainder of the OPR will be effective on January 1, 2020.** Forms related to the OPR will be issued prior to the effective date. The Committee will incorporate the OPR standards into its annual training starting in 2020 and is available to provide guidance concerning compliance through the Office of Advice and Education, at (202) 225-7103.

While the OPR are extensive, they are not exclusive. Members, officers, and employees of the House are reminded that Constitutional provisions and federal statutes may place additional restrictions on outside employment, positions, and activities.² Members, officers, and employees of the House are further reminded that House Rule 23, clause 1 requires that they “shall behave at all times in a manner that shall reflect creditably on the House;” and House Rule 23, clause 2 requires that they “shall adhere to the spirit and the letter of the Rules of the House.”

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

² Some of these additional restrictions on outside activities and positions include the Emoluments Clause and Incompatibility Clause of the Constitution, the Dual Compensation statute, the statute prohibiting Members from contracting with the federal government, and federal criminal conflict of interest statutes. Members and staff with questions about any of these additional restrictions are encouraged to contact the Committee and/or the Office of General Counsel for guidance.

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ETHICS**

OUTSIDE POSITION REGULATIONS

December 2019

Effective January 1, 2020

I. Authority

The Committee on Ethics is authorized to issue regulations on this subject pursuant to H. Res. 6, 116th Congress.

II. Effective Date

These regulations are effective January 1, 2020. To the extent that these regulations restate an existing standard, for example, Sections VIII and X, those standards have been and remain in effect pursuant to the underlying authorities and related Committee guidance.

III. Construction

In construing these regulations, Members, Delegates, Resident Commissioners, officers, and employees of the U.S. House of Representatives are instructed to take into consideration their obligations under House Rule XXIII, clause 1, that they “shall behave at all times in a manner that shall reflect creditably on the House,” and House Rule XXIII, clause 2, that they “shall adhere to the spirit and the letter of the Rules of the House.”

IV. General Rules:

- a. A Member, Delegate, Resident Commissioner, officer, or employee of the U.S. House of Representatives may not serve as an officer or director of an entity in circumstances described in section VII of these regulations.
- b. A Member, Delegate, Resident Commissioner, officer, or employee paid at or above the senior staff rate of the U.S. House of Representatives is subject to additional restrictions, described in section VIII of these regulations.
- c. A Member, Delegate, or Resident Commissioner of the U.S. House of Representatives may not serve as an officer or director of an entity in circumstances described in section IX of these regulations.

V. Scope

- a. Nothing in these regulations should be interpreted to supersede statutory restrictions pursuant to 5 U.S.C. app. § 502(a).
- b. These regulations do not address positions with political organizations.
- c. These regulations do not address positions that are advisory or honorary in nature.

VI. Definitions

- a. **Advisory or honorary position.** The term ‘advisory or honorary position’ means a position in name only, with no decision-making responsibilities, no fiduciary responsibilities, and no requirement to fulfill prerequisites to be bestowed the advisory or honorary title.

- b. **Charitable trust.** The term ‘charitable trust’ means a trust pursuant to 26 U.S.C. § 4947(a), and includes split-interest trusts.
- c. **Committee.** The term ‘Committee’ means the Committee on Ethics of the U.S. House of Representatives.
- d. **Company traded on a foreign market.** The term ‘company traded on a foreign market’ means a security that *only* trades on a foreign publicly traded exchange; e.g. the Tokyo Stock Exchange or Paris Stock Exchange.
- e. **Entity that receives funding from a federal agency.** The term ‘entity that receives funding from a federal agency’ means an entity that seeks, spends, or administers appropriated funds provided by a federal agency, jurisdiction of which falls within the committee on which a Member, Delegate, or Resident Commissioner sits.
- f. **Entity that is regulated by a federal agency.** The term ‘entity that is regulated by a federal agency’ means an entity that is subject to regulations promulgated by a federal agency, which falls within the jurisdiction of the committee on which a Member, Delegate, or Resident Commissioner sits.
- g. **Family business.** The term ‘family business’ means a partnership, corporation, limited liability company; or other similar commercial organization, in which members of the family, as defined by 26 U.S.C. § 2704(c)(2), exercise control, as defined by 26 U.S.C. § 2701(b)(2), over the business entity. ‘Family business’ does not include sole proprietorships.
- h. **Family trust.** The term ‘family trust’ means a trust established for the benefit of persons in the same family, as defined by state law.
- i. **Political organization.** The term ‘political organization’ means an organization qualified under § 527(e) of the Internal Revenue Code.
- j. **Public company.** The term ‘public company’ means an issuer as defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. § 78c)—(1) the securities of which are required to be registered under section 12 of such Act (15 U.S.C. § 78l); or (2) that is required to file reports under section 15(d) of such Act (15 U.S.C. § 78o(d)).
- k. **Senior staff rate.** The term ‘senior staff rate’ means a basic rate of pay equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule. Employees who receive the senior staff rate for 60 days in a calendar year must file financial disclosure statements and periodic transaction reports pursuant to 5 U.S.C. app. § 101 *et seq.* Employees who receive the senior staff rate for 90 days in a calendar year are subject to additional restrictions, pursuant to 5 U.S.C. app. § 502(a).

VII. Prohibitions for Members, Delegates, the Resident Commissioner, Officers, and Employees

- a. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not serve as an officer or director of any:
 - i. Public company; or
 - ii. Company traded on a foreign market.

VIII. Prohibitions for Members, Delegates, the Resident Commissioner, Officers and Employees Who Receive the Senior Staff Rate for 90 Days or More in A Calendar Year

- a. A Member, Delegate, Resident Commissioner, officer or employee paid at or above the senior staff rate for 90 days or more in a calendar year may not:
 - i. Receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity that provides professional services including a fiduciary relationship, except for the practice of medicine;
 - ii. Permit his name to be used by such a firm, partnership, association, corporation or other entity;
 - iii. Receive compensation for practicing a profession that involves a fiduciary relationship, except for the practice of medicine;
 - iv. Serve for compensation as an officer or member of the board of an association, corporation, or other entity; or
 - v. Receive compensation for teaching without the prior approval of the Committee.

IX. Prohibitions for Members, Delegates, and the Resident Commissioner only

- a. A Member, Delegate, or Resident Commissioner may not serve as an officer or director of any
 - i. Entity that receives funding from a federal agency, jurisdiction of which falls within a committee on which the Member, Delegate, or Resident Commissioner sits, or
 - ii. Entity that is regulated by a federal agency, jurisdiction of which falls within a committee on which the Member, Delegate, or Resident Commissioner sits.
- b. Exceptions:
 - i. Section IX(a) shall not apply if:
 - 1. The Member, Delegate, or Resident Commissioner had served continuously as an officer or director for at least two years prior to their initial election to the House of Representatives, and the amount of time required to perform such service is minimal;
 - 2. The entity is a family business, family trust, or charitable trust;
 - 3. The entity is qualified under § 170(c) of the Internal Revenue Code;
 - 4. The entity maintains an active registration; however, it is for all purposes dormant, and does not engage in any trade or business;
 - 5. The position is conferred solely by virtue of an ownership interest in the entity, and involves no active participation in the entity's operations; e.g., to become an investor in an LLC that owns restaurant franchises, the Member must become a member of the LLC;
 - 6. Service as an officer or director is specifically authorized by statute; or
 - 7. The entity is primarily available to Members, Delegates, the Resident Commissioner, officers, and employees of the House of Representatives, or their families; e.g., the House Childcare Center or Congressional Federal Credit Union.

- c. Waiver or Suspension: *Available only for prohibitions in this section*
 - i. The Committee may issue a waiver or a suspension for a period of time (not to exceed 120 days) of the prohibitions contained in this section upon written request, in exceptional circumstances only.
 - ii. The presumption when reviewing requests is that exceptional circumstances rarely exist. When reviewing requests, the Committee may consider the following as evidence of an exceptional circumstance:
 - 1. The entity faces demonstrable and specific imminent, emergent, or dire consequences if the requester steps down from the position;
 - 2. (suspension only) The entity has made a diligent search, but has been unable to appoint a successor before the Member, Delegate, or Resident Commissioner is scheduled to take a position with a committee; or
 - 3. The articles of incorporation or similar document establishing the entity specify that the requester is the only party who is legally able to serve in the position, and the organizing document cannot be modified by law.
 - iii. Waivers granted by the Committee shall be made available to the public in the same manner as waivers of financial disclosure statement reporting requirements.

X. Reporting Requirements

- a. A Member, Delegate, Resident Commissioner; or officer or employee who receives the senior staff rate for 60 days or more in a calendar year, must file financial disclosure statements and periodic transaction reports pursuant to 5 U.S.C. app. § 101 *et seq.* Among the items that must be disclosed are:
 - i. Outside earned income on Schedule C, “Earned Income”, and
 - ii. Certain positions on Schedule E, “Positions”.

EXAMPLES

Example 1. A Member serves as an uncompensated Board Member for a bank that is traded on the New York Stock Exchange. Prior to his election, his position had been compensated, but he moved to an uncompensated position upon swearing in pursuant to the Ethics in Government Act (EIGA), restated in section VIII(a)(iv) of the OPR. Pursuant to House Resolution 6 and Section VII(a)(i) of the OPR, the Member *must* cease to serve as a Board Member for the bank, effective January 1, 2020.

Example 2. A staff person commences working for the House of Representatives on February 10, 2020. The staff person serves as President of a corporation that is publicly traded on the Bombay Stock Exchange; the corporation's stock is not publicly traded on any other country's stock exchange. As President, the staff person has a fiduciary duty to the corporation and has voting rights concerning the company's operations. Pursuant to Section VII(a)(ii) of the OPR, the staff person *must* step down from his position as President of the corporation upon commencing work with the House of Representatives.

Example 3. A senior staff person began working as an administrative assistant for a small candle-making business owned by a family friend in January of 2019. He received \$25,000 in compensation in 2019. The senior staff person may continue to work for the small business as its administrative assistant for compensation because (1) his compensation is below the outside earned income limit for 2019 of \$28,440, and (2) he does not serve as a fiduciary for the candle-making business.

Example 4. A senior staff person who is an attorney began working for the House of Representatives in 2011. In 2018, she was asked to re-join her former law firm as an ex officio Board Member. In that role, she would be compensated at \$18,000 per year. Although the amount proposed is less than the outside earned income limit for 2018 of \$28,050, the senior staff person may not accept any compensation for her service as an ex officio Board Member due to the restrictions on her affiliating with a firm that provides professional services including a fiduciary relationship, pursuant to the EIGA, and restated in section VIII(a)(i) of the OPR. The law firm also may not use her name on its website or on firm letterhead.

Example 5. A Member who was sworn into the House of Representatives in a special election in 2019 is a medical doctor. She would like to continue to practice medicine now that she is a sitting Member of Congress. The Member may receive compensation for practicing medicine only up to the amount necessary to cover the costs of her licensure fees, continuing education units, medical office expenses, and medical malpractice insurance premiums. The Member must file the [appropriate form](#) for practicing medical doctors with the Committee on Ethics, no later than May 15 of each calendar year, detailing her costs and compensation for the prior calendar year. She may not accept compensation in excess of her actual costs.

Example 6. A Member who was first sworn into office in 2011 sits on the Committee on Natural Resources in the 116th Congress. Since 2015, he has been serving as an uncompensated Secretary for a private oil and gas corporation in his state. The Committee on Natural Resources has jurisdiction over federal agencies that regulate the oil and gas industry. As a result, effective January 1, 2020, the Member *must* step down as Secretary for the private oil and gas corporation.

Example 7. A Member who sits on the Committee on Energy and Commerce began an uncompensated position as Director for a private medical research corporation after she became a Member of Congress. The private medical research corporation receives grant funding from a federal agency, jurisdiction of which falls within the Committee on Energy and Commerce. The Member *must* cease to serve as Director for the private medical research corporation, effective January 1, 2020.

Example 8. A Member was President of a private tool and dye S-Corporation before he was elected. He currently serves on the Committee on Small Business, which has jurisdiction over, among other industries, manufacturing companies, generally. Upon his election, he ceased the company's operations to focus on his constituents. The Member maintains the company's registration as a business entity with the state, but it does not engage in any business or trade and instead remains dormant. Although the company was previously regulated by a federal agency that falls within the jurisdiction of the Committee on which the Member sits, he may continue to serve as the company's President, because the company is not engaged in business.

Example 9. A Member who serves on the Committee on Foreign Affairs has been actively serving as an uncompensated Board Member for the International Relations Council since one year before he was sworn into the House of Representatives. The International Relations Council is qualified as 501(c)(3) nonprofit under § 170(c) of the Internal Revenue Code, is engaged in international relations, and receives federal funding from USAID, over which the Committee on Foreign Affairs has jurisdiction. Although the nonprofit receives federal funding from a federal agency over which the Committee on Foreign Affairs has jurisdiction, the Member may continue to serve as an uncompensated Board Member, since the entity is a 501(c)(3) nonprofit organization.

Example 10. A Member was first sworn into the Congress in 2015, and she currently serves on the Committee on Financial Services. Since 2001, she has been an uncompensated Vice President for a private micro-lending corporation, which is regulated by a federal agency, jurisdiction of which falls within the Committee on Financial Services. The amount of time required to perform services as Vice President of the micro-lending corporation is minimal; the Member spends at most two calendar days per year performing work for the corporation, does it on her own time, without using House resources, and performs all work for the corporation off House grounds. Because the position is uncompensated, the Member held the position at least two years prior to her first election to the House, and the time to perform the duties of Vice President are minimal, she may continue to serve as the private micro-lending corporation's uncompensated Vice President.

Example 11. A Member was recently selected to serve on the Committee on Agriculture. He is the uncompensated President of two family farms that produce hops and wheat, respectively. The Committee on Agriculture has jurisdiction over a federal agency that regulates the farms' operations, and the wheat farm receives federal subsidies administered by a federal agency within the Committee on Agriculture's jurisdiction. The Member may continue to serve as President of the two family farms, since they are family businesses.

Example 12. A Member has been an uncompensated Chief Executive Officer (CEO) of a private charter aircraft company since 2016, one year after being sworn into the House of Representatives. She also serves on a subcommittee of the Committee on Transportation and Infrastructure. The aircraft company is regulated by a federal agency, jurisdiction of which falls within the Committee on Transportation and Infrastructure. Despite a diligent search for a replacement CEO, the company has been unable to find a successor prior to January 1, 2020. Although her service as

CEO is prohibited by the OPR, the Member may seek a *suspension* of the prohibitions from the Committee on Ethics by submitting the appropriate form, available on the Committee's website. If approved, the suspension would be limited to no more than 120 days. This suspension will enable the company more time to replace the Member as CEO. As an alternative, if it is evident that the company would face demonstrable and dire consequences should the Member cease to perform the duties of the company's CEO, she may instead choose to request a *waiver* of the prohibitions from the Committee on Ethics by submitting the appropriate form. If approved, the waiver will be made publicly available, pursuant to Section IX(c)(iii) of the OPR.

Theodore E. Deutch, Florida
Chairman

Kenny Marchant, Texas
Ranking Member

Grace Meng, New York
Susan Wild, Pennsylvania
Dean Phillips, Minnesota
Anthony Brown, Maryland

John Ratcliffe, Texas
George Holding, North Carolina
Jackie Walorski, Indiana
Michael Guest, Mississippi



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. Donesa
Counsel to the Ranking Member

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

December 12, 2019

MEMORANDUM FOR ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES

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

SUBJECT: Holiday Guidance on the Gift Rule

The House gift rule applies to all Members,¹ officers, and employees (Members and staff) at all times, even during the holiday season.² This memorandum does not announce new rules or guidance, but is simply a reminder of some of the restrictions of the gift rule and some of the more common questions that arise during the holiday season. This guidance does not cover every situation. As a result, if you are unsure about a particular situation, please contact the Committee staff at (202) 225-7103.

Holiday Cards for Servicemembers or Veterans

A Member may use official resources to invite constituents to prepare holiday cards for military servicemembers and veterans, and the Member or the official office may collect and hand-deliver the cards. Please contact the Committee on House Administration for questions regarding the appropriate use of official resources at (202) 225-2061 (majority) or (202) 225-8281 (minority).

Overview of the Gift Rule and Other Gift Statutes

Members and staff may not accept any gift, except as provided in the gift rule.³ The rule defines the term “gift” broadly to include “a gratuity, favor, discount, entertainment, hospitality,

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

² House Rule 25, cl. 5. Generally, gifts to a Member or employee’s spouse, dependent child, or other family member are not subject to the gift rule unless there is reason to believe they are given because of the official position of the Member or employee and the Member or employee is aware of the gift. Even if a gift to a family member would be attributed to a Member or employee, a gift that falls within one of the specific exceptions to the rule may be accepted.

³ House Rule 23, cl. 4 and House Rule 25, cl. 5.

loan, forbearance, or other item having monetary value.”⁴ The gift rule contains numerous exceptions permitting Members and staff to accept gifts. There are certain gifts that staff may accept without limitation. For example, there are no restrictions on accepting gifts, including cash or cash equivalents, of any dollar value, from relatives.⁵ There are also no restrictions on accepting personal holiday gifts from House co-workers and supervisors.

Generally, Members and supervisors may not accept gifts from their subordinates, and employees may not give gifts to their superiors.⁶ However, the Committee has provided for a common-sense exception for voluntary gifts extended on special occasions such as holidays.⁷ Accordingly, Members and supervisors may accept gifts from their subordinates that are customarily extended during the holiday season, and employees may give such gifts.

In certain circumstances, Members and staff must seek and receive written permission from the Committee on Ethics before accepting a gift (*i.e.*, gifts from personal friends over \$250). Members, senior staff, and other staff who are financial disclosure filers must also disclose the value of gifts received on their annual Financial Disclosure Statements in certain circumstances. These circumstances are explained more fully in the final two sections of this memorandum.

Although the gift rule defines what Members and staff may accept, it does not authorize them to ask for any gift. There is also a statutory gift provision, which prohibits Members and staff from asking for or accepting anything of value from anyone who seeks official action from the House, does business with the House, or has interests that may be substantially affected by the performance of official duties.⁸ The statute also prohibits Members and staff from soliciting on behalf of other individuals or entities, other than political solicitations or certain solicitations for charity.

A brief description of some of the common gift rule exceptions applicable to the holiday season are listed below.

Parties and Receptions

During the holiday season, Members and staff may be invited as guests to parties or related events that are sponsored by individuals or organizations that have, or plan to have, business dealings before Congress. Provided the guidance below is followed, Members and staff may accept an invitation to the following:

- An event where the per person cost or ticket price (if sold) is **less than \$50**, provided:

⁴ House Rule 25, cl. 5(a)(2)(A).

⁵ The term “relative” is broadly defined, and it includes fiancés/fiancées and in-laws. *See 2008 House Ethics Manual* at 69 and 5 U.S.C. app. § 109(16).

⁶ 5 U.S.C. § 7351.

⁷ *See 2008 House Ethics Manual* at 70.

⁸ 5 U.S.C. § 7353.

- 1) The invitation is not from a federally registered lobbyist, foreign agent, or private entity that retains or employs such individuals; and
- 2) The total value of gifts or other invitations you accept from the host under this exception is less than \$100 for the calendar year. Any gift worth less than \$10 does not count towards the annual limitation.

Example: If an individual who is not a federally registered lobbyist invites you to their holiday dinner party and the cost of your meal before tax and tip is less than \$50, you may accept the meal under the “less than \$50 exception,” provided the aggregate value of all gifts and similar invitations you accept from the host does not exceed \$100 for the year.

- A non-business event, such as a holiday party, hosted by an individual, at the personal residence of that individual or the individual’s family, unless offered by a federally registered lobbyist or foreign agent.

Example: An individual who is not a federally registered lobbyist invites you to a holiday party at her personal residence to celebrate the holiday season. You may accept food and refreshments offered within the home under the **personal hospitality** exception.

- A **reception or open house**, provided that only food and refreshments of nominal value are offered other than as a part of a meal (*e.g.*, light appetizers and beverages, including alcoholic beverages). This exception **does not** include full meals (whether or not you stand to eat or use silverware) or luxury or expensive food items. This exception also assumes that you will not consume what is offered such that it becomes a full meal.

Example: A firm that is federally registered as a lobbying firm invites you to attend a holiday reception to be held in its offices. It will serve appetizers and drinks at the reception. Provided that the food and refreshments are of “nominal value” and offered “other than as part of a meal,” you may attend and accept these items.

- An event where invitations are offered to a group or class in which membership is **unrelated to House employment**.

Example: Your college alumni association is having a holiday party for its members. You may attend as an alumnus of the college.

- An event that is **open to the public or to all federal employees**.

Example: A local park is having a free holiday concert that is open to the public. You may attend as a member of the public.

- An event where invitations are offered because of the **outside business or activity of the invitees or their spouses**, provided the invitation:
 - 1) was not offered or enhanced because of the individual’s House status; and
 - 2) is customarily provided to others in similar circumstances.

Example: Your spouse’s employer is having a holiday party and all employees may bring their spouses as guests. You may attend as your spouse’s guest and receive the same food, refreshments, and entertainment that are provided to all attendees.

- A “**widely attended event**” provided:
 - 1) The event relates to the Members’ or employees’ official duties;
 - 2) The invitation comes from the event sponsor;
 - 3) The sponsor has a reasonable expectation that at least 25 non-congressional invitees will be in attendance; and
 - 4) The event is open to the public or will be attended by a diverse group of individuals interested in a given topic.

Please note: **The widely attended event exception does not apply to holiday parties that are purely social or recreational in nature and not related to one’s official duties.**

- An event paid for by a **foreign government** valued at less than \$390 per person, per occasion. Under the Foreign Gifts and Decorations Act (FGDA), Members and staff may receive a gift item received as a souvenir or mark of courtesy.⁹ The Committee has interpreted this provision to allow Members and staff to accept meals and entertainment in the United States related to their official duties.

Example: A foreign embassy in Washington, D.C., is having a holiday dinner at a local D.C. restaurant to foster inter-country relations. The cost of your meal will be \$100. You may accept the dinner under the FGDA.

- A holiday party for staff hosted by a Member of Congress using personal funds or **principal campaign committee funds**. For further guidance, please contact the congressional liaisons at the Federal Election Commission (FEC) at (202) 694-1006.

⁹ 5 U.S.C. § 7342.

Example: A Chairwoman and Ranking Member would like to host ¹⁰ a holiday party for their committee staff. The Chairwoman and Ranking Member may use their principal campaign committee funds or personal funds to pay for the holiday party. Members and staff may attend the holiday party.

Other Holiday Gifts

In addition to the provisions discussed above, other gift rule exceptions may permit acceptance of holiday gifts. Provided the guidance below is followed, Members and staff may accept the following:

- Gifts (other than cash or cash equivalent) valued at **less than \$50**, provided:
 - 1) The gift is not from a federally registered lobbyist, foreign agent, or private entity that retains or employs such individuals; and
 - 2) The total value of gifts you accept from the donor under this exception is less than \$100 for the year.

Please note: Gift cards and gift certificates are considered “cash equivalent” and **may not** be accepted under this exception.

Example 1: If an individual who is not a federally registered lobbyist gives you a \$40 pen set during the holiday season, you may accept the gift under the “less than \$50 exception.” However, the aggregate value of all gifts you accept from the donor under this exception may not exceed \$100 for the year.

Example 2: If an organization that does not employ a federally registered lobbyist sends perishable food, such as a fruit basket, to a House office for all the staff, the gift is considered a gift to the individual recipients and not to the employing Member. Each staff member may accept items from the fruit basket having a value of less than \$50, provided that no recipient accepts more than \$100 of gifts in the aggregate from the organization during the year.

- A **baseball hat, T-shirt**, or any **item valued at less than \$10**, even if from a lobbyist. This exception does **not** include food items.

Example: A company that employs a federally registered lobbyist sends the office 10 T-shirts along with a letter stating that one is to be given to the Member and any staff member that would like to receive one. The Member and staff may each accept one of the T-shirts under this exception.

- Gifts based on **personal friendship**. Members and staff may, without seeking Committee approval, accept a gift based on personal friendship if the gift’s market

¹⁰ See 2008 House Ethics Manual at pages 161-162.

value is \$250 or less.¹¹ The following factors must be considered before accepting a gift under this exception:

- 1) The history of the recipient's relationship with the donor, including any previous exchange of gifts;
- 2) Whether the donor personally paid for the gift, or whether the donor sought a tax deduction or business reimbursement for it; and
- 3) Whether the donor gives the same or similar gifts to other Members or staff at the same time.

Example: Your former roommate, who is a real estate agent, offers you a \$100 ticket to a holiday play. The roommate personally paid for the ticket. You and the roommate have exchanged gifts throughout the years. The roommate does not contact you or your office on official matters. To the best of your knowledge, the roommate has not made a similar offer to other Members or staff. You may accept the ticket without seeking Committee approval.

- **Gifts from a foreign government** under the FGDA. As noted above, gifts valued at less than \$390 per person, per occasion, that are offered as a souvenir or mark of courtesy may be accepted.

Example: A French government official sends you a \$300 bottle of French champagne, on behalf of the French government. You may accept the champagne under the FGDA.

Handling Unacceptable Gifts

At times, a gift may not be acceptable under the gift rule. For example, Members and staff may never accept a "thank you" gift. If Members or staff receive gifts that they may not accept under the gift rule, they may:

- Pay the donor the "fair market value"¹² and keep the gift;
- Return the gift to the donor; or

¹¹ You must seek Committee written approval before accepting a gift with a market value over \$250 under the personal friendship exception. Please see the section below regarding seeking written Committee approval for details on how to submit a request.

¹² Items are valued at market/retail, rather than wholesale, prices. For tickets, the fair market value is the cost printed on the ticket, regardless of whether the donor paid more or less. See House Rule 25, cl. 5(a)(3)(A); 2008 House Ethics Manual at 73.

- For perishable items (*e.g.*, flowers or fresh food), donate the items to charity or destroy them. **You may not donate non-perishable items to charity in lieu of returning or paying for them.**
- If the return of a gift is impossible (*e.g.*, if the identity of the donor is unknown) the recipient may “return” the item by donating it to charity or destroying it, or the recipient may keep the item by paying the fair market value to the U.S. Treasury. Please check with the Ethics Committee if you have any questions about whether return of a particular gift is impossible.

Please note: For tickets to events that do not have a printed cost on the ticket, the value of the ticket is the highest cost of a ticket available through the venue with a face value for that particular event.

Example: You are invited to sit in the premium box for a concert by a friend of a friend. The offer does not meet one of the gift exceptions, but you would still like to attend. Your ticket does not have a price on it, but the highest ticket price available through the venue for that particular concert is \$285. You must pay the donor \$285 in order to accept the ticket.

Some provisions of the gift rule require knowledge of the identity of the donor to assess whether the gift may be accepted. For example, the exceptions with respect to gifts worth less than \$50 and for those authorized by the FGDA require knowledge of the donor’s identity before accepting the gift since those provisions permit acceptance of gifts from donors who meet certain criteria. (Other gift rule exceptions, such as those that permit acceptance of nominal value gifts and informational materials, apply regardless of the identity of the donor, since they are not limited to certain types of donors.)

At times when a Member, officer, or employee is unexpectedly presented with a gift at an event, he or she may be uncertain whether it can be accepted under the gift rule. In that circumstance, the individual may receive the gift and wait until after the event to review the provisions of the gift rule and make a decision on the gift’s acceptability.

Prior Written Committee Approval Required

Members and staff must seek and receive written approval from the Committee on Ethics before accepting the following:

- A gift based on personal friendship with a market value over \$250. The Committee will only grant written approval for a personal friendship gift exceeding \$250 in value in response to a written request, using the form on the Committee’s website for this purpose.
- A gift that is not otherwise acceptable, but that the Member or staffer believes the Committee should permit them to accept. The Committee has “flexibility to allow the acceptance of gifts . . . in cases where there is no potential conflict of interest or

appearance of impropriety.”¹³ Thus, the House gift rule authorizes the Committee to grant a waiver to permit acceptance of a gift “in an unusual case.” Members and staff must submit a written request for a gift waiver from the Committee prior to accepting such a gift. Any request should include, at a minimum, a description of the gift, including its market value, the identity of the donor, and a statement of the reasons believed to justify acceptance of the gift.

Financial Disclosure Requirements

Members and financial disclosure filers¹⁴ must disclose certain gifts valued over \$390 from a single source in a calendar year on Schedule G (“Gifts”) of their annual Financial Disclosure Statements.¹⁵ This disclosure must include the source of such gifts and a brief description of the gifts. Any gift with a market value of less than \$156 need not be counted towards the \$390 disclosure threshold.

Please note: Gifts from relatives, gifts of personal hospitality, tickets to widely attended events, and certain other gifts do not have to be reported on a Financial Disclosure Statement. In addition, gifts that are received by your spouse or children, independent of your House status, do not have to be disclosed. However, all other gifts that are over \$390 in value must be disclosed.

Example: Your spouse’s college roommate gives your spouse a \$400 coat as a holiday present. You would not have to report this gift on your Financial Disclosure Statement if you believe that the gift was given regardless of your House employment.

Members and staff seeking a waiver of the reporting requirement must send a written request to the Committee. The written request and the Committee’s response will be made publicly available.

If you have any questions, please contact the Committee’s Advice and Education staff at (202) 225-7103.

¹³ See House Bipartisan Task Force on Ethics, *Report on H.R. 3660*, 101st Cong., 1st Sess. (Comm. Print, Comm. on Rules 1989), reprinted in 135 Cong. Rec. H9255 (daily ed. Nov. 21, 1989).

¹⁴ 5 U.S.C. app. § 102(a)(2)(B). House staff may be subject to financial disclosure filing requirements for a number of reasons, including 1) they are paid at or above the annual senior staff rate (\$127,914 for 2019, subject to change in future calendar years) for 60 days or more during the calendar year, even if on a temporary basis; 2) they are designated as a “principal assistant” for financial disclosure filing purposes by their employing Member; and 3) they are a shared employee of three or more offices, regardless of their rate of pay. Please contact the Committee if you have further questions about financial disclosure.

¹⁵ 5 U.S.C. app. § 102(a)(2).