

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

January 10, 2020

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: The 2020 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. Specifically:

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) 2020 for each of the categories noted above, and summarizes them in a table on page 5. 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 these requirements and 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 2020 is \$109,366.² The applicable 120% calculation for that rate is therefore **\$131,239**, or a monthly salary of more than \$10,936. 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 (\$131,239) for at least **60 days**³ during **2020** must file an FD statement on or before May 15, 2021.⁴ (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, 2020 (or their first day of employment, if later in the year) must file reports (PTRs) on an ongoing basis throughout the year regarding certain

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.13,901, 84 Fed. Reg. 72,215 (Dec. 30, 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). With regard to House employees who are federal civil service or military annuitants, it is the view of the Ethics Committee that financial disclosure obligations do not apply to those whose combined House salary and annuity are at or above the threshold rate for the specified time period (*but see* note 26, below).

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 2018), 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 website or through the electronic financial disclosure filing system.

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

Please note that the requirement to file an FD statement covering calendar year 2019 applies to officers and employees whose basic rate of pay for at least 60 days in **2019** was **\$127,914** or more (a monthly salary at or above \$10,659). Annual FD statements covering CY 2019 are due on Friday, May 15, 2020, 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 RESTRICTIONS¹⁴

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 income¹⁵

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 2020 pay cycle (January 3, 2020). Staff who are paid at or above the senior staff rate for more than 60 days later in 2020 – 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 2021.

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 For detailed information concerning limitations and prohibitions for *uncompensated outside positions*, see the Committee’s December 11, 2019 advisory memorandum “Outside Position Regulations,” which is available on the Committee’s website (<https://ethics.house.gov>), under the links for Reports/General Advisories.

¹⁵ 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).

attributable to each calendar year.¹⁶ As noted above, the senior staff rate for CY 2020 is **\$131,239**, or a monthly salary of more than \$10,936. 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 that year. As of January 1, 2020, the rate of basic pay for Executive Level II was \$192,300.¹⁷ Accordingly, the outside earned income limit for House Members, officers, and employees paid at or above the senior staff rate for CY 2020 is **\$ 28,845**.¹⁸

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.¹⁹ 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.²⁰ Receipt of compensation for service as an officer or member of a board of directors is also prohibited.²¹ Prior written approval from the Committee on Ethics is required to accept compensation for teaching and to receive copyright royalties.²² 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 certain House employees must notify the Committee within three (3) business days after they commence any negotiation or agreement for future employment or compensation with a *private* entity.²³ House employees subject to this disclosure requirement are those employees who are paid greater than 75% of the basic rate of pay for Members (employees earning more than **\$130,500 or 10,875 monthly**).²⁴ This amount is referred to as the post-employment rate.

In addition, House Members, officers, and employees paid more than the post-employment rate must recuse themselves from "any matter in which there is a conflict of interest or an

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

¹⁷ Exec. Order No., 13,901, 84 Fed. Reg. 72,218 (December 30, 2019).

¹⁸ 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 \$14,422. See 5 U.S.C. app. § 501(a)(2); House Rule 25, cl. 1(b).

¹⁹ See 5 U.S.C. app. § 502(a); House Rule 25, cls. 1-4.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ See House Rule 27, cl. 2; Stop Trading on Congressional Knowledge Act, Pub. L. No. 112-105 (Apr. 4, 2012) (hereinafter STOCK Act) § 17.

²⁴ See *id.*; see also Section 7 of the Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94 Dec. 20, 2019), prohibiting a scheduled cost-of-living pay raise for Members. As a result, Member pay will remain at \$174,000 for 2020.

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.²⁵

Information on the disclosure and recusal requirements related to seeking private employment applicable to Members, officers, and employees paid at or above the post-employment rate 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.”

POST-EMPLOYMENT RESTRICTIONS

House Members and officers, and employees paid at or above the post-employment rate, are subject to post-employment restrictions.²⁶ 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 twelve month 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. As noted above, the post-employment rate is \$130,500, or a monthly salary of \$10,875 or more.

Additionally, 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.²⁷ For 2020, that salary is **\$170,800**, or a monthly salary more than \$14,233.

Information on the post-employment restrictions applicable to Members, officers, and employees paid at or above the post-employment rate is available in the two Committee advisory memoranda referenced in the previous section.²⁸

*** * * * ***

²⁵ House Rule 27, cl. 4; STOCK Act § 17.

²⁶ 18 U.S.C. § 207. With regard to House employees who are federal civil service or military annuitants, it is the view of the Ethics Committee that the post-employment restrictions apply to those whose combined House salary and annuity were at or above the threshold rate for the specified time period (*but see* note 4, above).

²⁷ “[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).

²⁸ Most of the post-employment restrictions apply to employees paid at or above \$130,500. 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 2020

Item	2020 Amount
Outside earned income & outside employment threshold - Outside employment fiduciary restrictions if paid at rate for more than 90 days during 2020	\$131,239 (\$10,936/mo)
Outside earned income limit	\$28,845
Financial Disclosure/PTR threshold - Annual FD required in May 2021 if paid at rate for 60 days or more in CY 2020 - PTRs required during CY 2020 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 2020 (<i>e.g.</i> , if get bonus or pay raise during calendar year), subject to PTR requirement for remainder of year	\$131,239 (\$10,936/mo)
Written disclosure of job negotiations and recusals required if paid <i>more than</i> the post-employment rate	\$130,500 (\$10,875/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. 5)	\$170,800 (14,233/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 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

January 28, 2020

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Intentional Use of Audio-Visual Distortions & Deep Fakes

This memorandum serves as a reminder that Members¹ must exercise care in communicating, especially when using electronic communication, such as email, websites, Facebook, Twitter, Instagram, or YouTube.

All House Members, officers, and employees must conduct themselves at all times in a manner that reflects creditably on the House.² As Members of the House of Representatives, we are widely recognizable public servants. Communicating with our constituents and the public is one of our most important duties.

Electronic communication has drastically improved our ability to communicate directly and in real-time with our constituents at a minimal cost. The fast pace and wide dissemination of electronic communication can lead to mistaken transmissions; for example, emailing the wrong person, posting a private message publicly, or sharing the wrong video. All of these examples of mistakes may be embarrassing and have unintended consequences.

However, intentional distortions of audio and/or visual representations can be far more damaging. Members have a duty, and a First Amendment right, to contribute to the public discourse, including through parody and satire. However, manipulation of images and videos that are intended to mislead the public can harm that discourse and reflect discreditably on the House. Moreover, Members or their staff posting deep fakes³ “could erode public trust, affect public

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 23, cl. 1.

³ For purposes of this memorandum, the term “deep fakes” is defined as realistic photo, audio, video, and other forgeries generated with artificial intelligence (AI) technologies. See Kelly M. Sayler & Laurie A. Harris, CRS In Focus IF11333, *Deep Fakes and National Security* (Oct. 14, 2019) [hereinafter *Deep Fakes and National*

discourse, or sway an election.”⁴ Accordingly, Members, officers, and employees posting deep fakes or other audio-visual distortions intended to mislead the public may be in violation of the Code of Official Conduct.⁵ Prior to disseminating any image, video, or audio file by electronic means, including social media, Members and staff are expected to take reasonable efforts to consider whether such representations are deep fakes or are intentionally distorted to mislead the public.

The Committee has long held that Members are responsible for the actions of their staff.⁶ Further, Members must take reasonable steps to ensure that any outside organization over which the Member exercises control—including a campaign entity—operates in compliance with applicable law.⁷ Accordingly, Members should ensure their official and campaign staff are familiar with the rules and regulations regarding electronic communications that those staff are involved in preparing or disseminating.⁸

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.

Security]; see also House Comm’n on Congressional Mailing Standards, *The House of Representatives Communications Standards Manual* at 3 [hereinafter *Communications Standards Manual*].

⁴ See *Deep Fakes and National Security*.

⁵ House Rule 23, cl. 1.

⁶ See *2008 House Ethics Manual* at 124.

⁷ *Id.* at 123.

⁸ See *Communications Standards Manual*; see also Comm. on Ethics, *Campaign Activity Guidance* (Jun. 7, 2018).

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

March 10, 2020

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Campaign-related Media Appearances on Congressional Grounds

This memorandum serves as a reminder to all House Members,¹ officers, and employees about the restrictions on using official resources for campaign-related interviews or media appearances.

House rules and federal statutes require that official and campaign-related activity be kept separate.² Generally, campaign-related activity may not be conducted using any official resources, including the use of House staff on official time and on congressional grounds. Congressional grounds include all House and Senate office buildings, the Capitol, the grounds around the Capitol, and district offices. Spaces such as the Cannon Rotunda, Statuary Hall, and Members' offices are on congressional grounds. The Committee considers "campaign-related activity" to be activity related to any federal, state, or local government election, not just the Members' own re-election campaigns. The rules requiring separation between official and campaign-related activity apply at all times, in election years and non-election years, and regardless of the type of campaign. For example, these rules apply to Members seeking to engage in, or even merely commenting on, Presidential or Senate campaigns.

Accordingly, while on congressional grounds, Members or staff should not give an interview that is substantially devoted to a campaign, or initiate any communication, such as a press call or email, that is campaign-related. However, **Members and official staff may answer incidental campaign-related questions during an official interview or media appearance. For this exception to apply, the primary purpose of the interview or appearance must be official.** A primarily campaign-related interview or appearance cannot be "cured" by including a few

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 See House Rule 24, cl. 1; 31 U.S.C. § 1301(a).

responses to officially related questions. The Committee considers incidental campaign-related questions to be one or two during the course of the entire official interview or appearance.

As a best practice, the Committee recommends advance preparation before any media appearance or interview. Clarify with the media outlet or reporter in advance about the topics of conversation to ensure that the primary purpose of any interview occurring on congressional grounds is official. Both the resources used in advance and the content of the message determine whether an appearance or interview is official or campaign-related. If an interview will be official, official staff, using official resources, should help prepare for the interview. If an interview will be campaign-related, campaign staff, using campaign resources, should help prepare for the interview. Also, ensure that the campaign interview will not take place on congressional grounds.

When on congressional grounds, Members and staff should strive to return an official interview to its official purpose if the number of campaign-related questions becomes more than incidental.

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.

* * * * *



Search



(/)

Update about the Coronavirus: Joint House Administration-Ethics Committees Guidance

Mar 16, 2020 | Gift Pink Sheet

Several offices have contacted the Committee on House Administration (CHA), the House Commission on Congressional Mailing Standards (Commission), and the Committee on Ethics to inquire about the use of official resources to provide information to constituents about the coronavirus (COVID-19) and implementing continuity of operations plans. We would like to take this opportunity to provide a review of the applicable rules, regulations, and procedures. We understand the uniquely challenging circumstances arising out of this public health emergency, and we hope that this guidance helps Members and staff continue to mobilize the various resources at their disposal for keeping our communities safe during this difficult time.

Official Communications

In general, all content in official communications must be related to official business. Official business includes, among other things, federal issues of public concern. The coronavirus is a federal issue of public concern, so it is generally an appropriate topic to address in official communications. As part of these communications, Members may inform their constituents about resources available from non-profits, private entities, and hospitals with respect to public health and safety and the ongoing pandemic (e.g., testing, health care, and other community services for those impacted by the virus). These resources must be specific to coronavirus information.

Members' official communications may always include resources provided by federal, state, and local government entities, including public health agencies. For example, CHA recommends use of these government established websites as primary sources for information on the pandemic:

<https://www.cdc.gov/coronavirus/2019-ncov/index.html>
(<https://www.cdc.gov/coronavirus/2019-ncov/index.html>)

<https://www.usa.gov/coronavirus> (<https://www.usa.gov/coronavirus>)

<https://www.nih.gov/health-information/coronavirus> (<https://www.nih.gov/health-information/coronavirus>)

Members are generally limited from sending mass mailings and mass communications in the "blackout period," the 90 days prior to any primary or general election or caucus for any federal, state, or local election in which the Member is a candidate. However, Commission regulations expressly permit Members to send communications regarding threats to life safety. The coronavirus qualifies as a threat to life safety, so mass communications limited to information about the coronavirus will generally be exempt from the blackout rule. Note that communications mailed via USPS do not fall under this exemption and are still prohibited. A Member who is otherwise in a blackout period is strongly advised to get prior approval from the Commission for a communication about the coronavirus.

For additional information about official communications in general, please see the recently updated Communications Standards Manual, which is available online at https://cha.house.gov/sites/democrats.cha.house.gov/files/documents/Communications%20Standards%20Manual_19-2019%20ONLINE.pdf

(https://cha.house.gov/sites/democrats.cha.house.gov/files/documents/Communications%20Standards%20Manual_119-2019%20ONLINE.pdf). For specific questions about particular communications your office may wish to send, please contact the Commission directly, at (202) 225-9337 (majority) or (202) 226-0647 (minority). You can also submit a request for an Advisory Opinion online, at <https://frankingrequests.house.gov> (<https://frankingrequests.house.gov/>).

Solicitations

In times of emergency, Members and staff may want to solicit or collect goods for their constituents or charitable organizations. For example, a Member may wish to solicit donations to help pay for food, medical supplies, or expenses. As public servants, we understand the desire to help, but we remind you official resources may not be used to solicit anything of value.

While official resources may not be used to solicit contributions 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 Habitat for Humanity – 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). Members may not use official resources or communications to refer constituents to organizations or resources whose primary purpose is the solicitation of goods, funds, or services on behalf of individuals or organizations that are not permitted under the rules of the House.

Solicitations on behalf of non-qualified entities or individuals are considered and decided on a case-by-case basis through a written request for permission to the Committee on Ethics. Members and staff may use the “Solicitation Waiver Request” form to request permission to assist with fundraising activities for individuals and organizations not recognized under IRC § 170(c), which is on the Committee on Ethics’ website at [https://ethics.house.gov \(/\)](https://ethics.house.gov/).

Continuity of Operations Plans

The Sergeant at Arms (SAA) has provided more information about continuity of operations plans (COOP). In general, COOP arrangements allow offices to consider the actions and resources needed to operate in the event of an emergency, including a pandemic. Additional information, including sample plans, is available on HouseNet. For more specific information about establishing such a plan, please contact the SAA Emergency Division, at (202) 226-0950 or by email at SAEEMD@mail.house.gov (<mailto:SAEEMD@mail.house.gov>).

Telework

In prior communications, CHA has announced that employees of an office that implements a previously established COOP or emergency plan may telework during the period that the plan is in effect. CHA has developed a model policy that offices may choose to adopt to permit telework on a temporary basis in response to an emergency or implementation of the office’s COOP plan. CHA has also developed a model employee agreement for use by staff. (Please note that an office may opt to permit telework on a temporary basis in these circumstances while choosing not to permit telecommuting as part of its regular operations. However, the equipment an office purchases to provide for telework in an emergency scenario may also be used for telecommuting in the ordinary course of business.) The Centers for Disease and Control and Prevention have recommended that people at higher risk – including older adults and people who have serious chronic medical conditions, like heart disease, diabetes, and lung disease – take extra precautions to keep space between themselves and others and avoid crowds. We recommend that telework be implemented for any such employees.

In light of the unique and unusual circumstances presented by the coronavirus, as well as to promote House office emergency preparedness in general, CHA reminds offices of its previously announced determination that it is appropriate for both Member and committee

offices to be able to access any remaining unspent LY 2019 funds to purchase teleworking equipment and supplies (e.g. laptop and tablet computers, cell phones, etc.). Both Member and committee offices may continue to use LY 2020 funds for this purpose, as well. (CHA has also determined that remaining unspent LY 2019 funds may be used in connection with previously unscheduled tele-townhalls, if they are conducted for the specific purpose of relaying information regarding the coronavirus.)

Employment Policies

Members are always responsible for ensuring that each of his or her employees performs official duties that are commensurate with the compensation that the employee receives from the House. The Code of Ethics for Government Service further instructs every employee to “[g]ive a full day’s labor for a full day’s pay.” Code of Ethics for Government Service ¶ 3. These provisions prohibit fraud and misuse of government resources. Notwithstanding these restrictions, we understand that if offices or committees are utilizing COOP plans, Members and staff may be unable to work at their full capacities. Accordingly, absent any indication that government resources are being misused, the Committee on Ethics will not take any action regarding Members or staff who may be working at less-than-full capacity under an established COOP plan.

Further, we recommend Members review their employment policies (e.g., leave, telework, office hours) so that work may continue, while always prioritizing the health and safety of themselves and staff. Please note employment policies should be applied consistently among all employees without any preferential treatment. For questions regarding employment policies, please contact the Office of House Employment Counsel at (202) 225-7075.

For questions on:

- Official resources in general, please contact CHA at **(202) 225-2061 (tel: (202)%20225-2061)** (majority) or **(202) 225-8281 (tel:(202)%20225-8281)** (minority).
- Communications resources, please contact the Commission at **(202) 225-9337 (tel: (202)%20225-9337)** (majority) or **(202) 226-0647 (tel:(202)%20226-0647)** (minority).
- Personal or campaign resources, solicitations, outside employment, or financial disclosure requirements, please contact the Committee on Ethics at **(202) 225-7103 (tel:(202)%20225-7103)**.

Sincerely,

Chairperson Zoe Lofgren

Committee on House Administration

Chairman Ted Deutch

Committee on Ethics

Ranking Member Rodney Davis

Committee on House Administration

Ranking Member Kenny Marchant

Committee on Ethics



Search



(/)

Update About the Coronavirus and Solicitation: Joint House Administration-Ethics Guidance

Apr 3, 2020 | Solicitation Pink Sheet

Dear Colleague:

We all recognize we are in unprecedented times. We must come together as a nation to address the coronavirus pandemic. Helping our constituents meet and overcome this challenge is inherently an appropriate – and necessary – aspect of our official and representational duties. One immediate and pressing issue of national concern is ensuring that frontline healthcare workers have the critical supplies they need to continue their vital work.

Accordingly, we wish to take this opportunity to announce a new, temporary exception to longstanding guidance regarding solicitation activity. Effective immediately, Members are permitted to use official communications for some solicitation activities during the COVID-19 pandemic.* **This guidance only applies during the COVID-19 pandemic.**

During this crisis, Members are *temporarily* permitted to use official communications to solicit for blood donations and in-kind resources—such as volunteer services, food, hand sanitizer, disinfecting materials, and personal protective equipment (PPE) including, but not limited to, gloves, masks, and gowns—on behalf of organizations defined as charitable under Internal Revenue Code (IRC) § 170(c). Qualified organizations under IRC § 170(c) include those charitable organizations recognized under IRC § 501(c)(3), as well as state or local governmental entities, including public schools, and certain veterans' organizations. **Please note the use of official communications to solicit for such organizations only applies to blood donations and in-kind resources, and does not allow for the solicitation of money for any individual or organization.**

If Members wish to solicit on behalf of an organization not recognized under IRC § 170(c), they must seek approval from the Committee on Ethics, which considers and decides on solicitation requests on behalf of non-qualified entities on a case-by-case basis. The Committee on Ethics is currently reviewing and processing all requests relating to COVID-19 response efforts on an expedited basis. Members may use the “**Solicitation Waiver Request**” form ([/sites/ethics.house.gov/files/Solicitation%20Waiver.pdf](https://ethics.house.gov/files/Solicitation%20Waiver.pdf)) to request permission to assist with solicitations for individuals and organizations not recognized under IRC § 170(c), which is on the Committee on Ethics' website at <https://ethics.house.gov/>).

Please note that all unsolicited mass communications still require an advisory opinion from the House Commission on Congressional Mailing Standards (Commission), except for emails sent at no cost to the office, which need to be disclosed to the Commission within two days of sending. Members are generally limited from sending mass mailings and mass communications in the “blackout period,” the 90 days prior to any primary or general election or caucus for any federal, state, or local election in which the Member is a candidate. However, Commission regulations expressly permit Members to send communications regarding threats to life safety. The coronavirus qualifies as a threat to life safety, so mass communications and Franked mail limited to information about the

coronavirus will generally be exempt from the blackout rule. A Member who is otherwise in a blackout period is strongly advised to get prior approval from the Commission for a communication about the coronavirus. All regulations and the standard advisory opinion requirements still apply to communications sent during the blackout. Please contact the Commission with any questions.

For questions regarding:

- official resources in general, please contact the Committee on House Administration at **(202) 225-2061 (tel:(202)%20225-8281)** (majority) or **(202) 225-8281 (tel:(202)%20225-2061)** (minority)
- official communications, please contact the Commission at **(202) (tel:(202)%20226-0647) 225-9337** (majority) or **(202) 226-0647 (tel:(202)%20226-0647)** (minority)
- personal or campaign resources and solicitations, please contact the Committee on Ethics at **(202) 225-7103 (tel:(202)%20225-7103)**.

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

*The Committee on Ethics is issuing this solicitation waiver under its authority in 5 U.S.C. § 7353.

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 7, 2020

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Upcoming Financial Disclosure Filing Deadline & Pandemic-Related Relief

The Ethics in Government Act (EIGA) subjects all Members of the House and certain House employees to financial disclosure (FD) filing requirements. In general, Members and staff who are subject to FD filing requirements must file two types of reports: 1) annual FD Statements, 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 transaction reports (PTRs) that a filer may be required to file throughout the year on an ongoing basis, depending on their actual financial activity. The purpose of this memorandum is to remind filers of the filing requirement and to detail what steps the Committee is taking to address the difficulties of complying, at this time, with the May 15th annual FD deadline.

Pandemic-Related Relief

The Committee recognizes that the annual FD deadline comes at a time when our country is fighting the COVID-19 pandemic. To address the difficulties of complying with the statutory filing deadline at this time, the Committee has taken the following steps.

First, the Committee has automatically granted all House Members and employees who are required to file an annual FD Statement the full 90-day extension permitted by EIGA. Therefore, the deadline for all annual filers is now August 13, 2020. Annual filers are welcome to submit FD Statements as soon as practicable, or anytime before August 13, 2020. There is no need to request the extension or take any other action. As the Committee is granting an extension to the maximum extent allowed by law, Committee is not authorized to grant any additional extensions. This automatic extension does not apply to Members or staffers filing new employee reports or termination reports. Additionally, this automatic extension does not apply to candidates for the U.S. House of Representatives.¹

¹ EIGA also does not permit the Committee to grant extensions for PTRs.

Second, the Committee recognizes that the pandemic presents an extraordinary circumstance. Although we encourage filers to put forth every effort to fulfill the FD filing requirements, we also recognize that timely filing, even at the extended deadline, may not be possible for some individuals. EIGA permits the Committee to waive late filing fees in extraordinary circumstances. Therefore, all late filing fees reasonably related to pandemic-related issues will be waived by the Committee. To request a late fee waiver, filers must submit a request to the Committee. A form for this purpose is available on the Committee's website, ethics.house.gov.

Third, Committee staff are available by phone and by email to provide FD guidance. While our physical offices are temporarily closed due to the Coronavirus outbreak and the need for social distancing, our staff continue to be available to assist you from 9am to 6pm Eastern Standard Time. Simply call the Committee at (202) 225-7103, select option "4," and leave a brief message. A member of the Financial Disclosure team will return your call promptly. You may also email your inquiries to financial.disclosure@mail.house.gov for assistance. Although the temporary closure of our physical offices prohibits the Committee from prescreening draft filings, this service will resume immediately after our offices reopen.

Additional information about financial disclosure requirements may be found on the Committee's website at <https://ethics.house.gov> under the "Financial Disclosure" tab.

Which Staff Must File Financial Disclosure Statements

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.

"Senior Staff" are those House 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. Therefore, House employees who were paid at the rate of \$127,914 (\$10,659 monthly salary) for at least 60 days during 2019 will be required to file a Statement by August 13, 2020.² 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.

At least one employee in every Member's personal office must file an annual FD Statement. 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 annual 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 annual 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, clerk.house.gov.

² For 2020, senior staff are House officers and employees whose basic rate of pay is equal to or greater than \$131,239 for at least 60 days during 2020.

Some shared employees are also required to file an annual FD Statement 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 annual FD Statement the following year regardless of their rate of pay.

How to File Financial Disclosure Statements

Annual FD Statements may be filed with the Legislative Resource Center (LRC) by 1) using the online filing system available at <https://fd.house.gov> or by 2) mailing in pre-printed forms. These forms may not be filed by email, scan, or fax.

The Committee strongly encourages all filers to use the online filing system for submission. We are striving to make the system available for submission of the annual filing no later than April 15, 2020. The system can be used from any place where internet access is available and does not require any physical contact with the LRC in this time of crisis. The login and password for the system remain the same from year to year. If you need to have your login or password reset, please call the LRC at (202) 226-5200 for assistance.

Financial disclosure forms may also be filed by mailing hard copies of the pre-printed forms to the LRC. In-person delivery to the LRC is not available at this time. Members must submit the original, signed form with 2 photocopies. Staff must submit the original, signed form with 1 photocopy. All forms must be sent to the following mailing address:

The Clerk, U.S. House of Representatives
Legislative Resource Center
B-81 Cannon House Office Building
Washington, DC 20515-6612.

* * *

If you have any questions regarding financial disclosure, please contact the Committee at (202) 225-7103 or financial.disclosure@mail.house.gov.

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

April 13, 2020

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 OF THE HOUSE OF REPRESENTATIVES

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

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

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

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

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

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 Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136.

³ *Id.* at § 4019.

⁴ *Id.*

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

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

Criminal Conflicts of Interest⁷

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

In addition, 41 U.S.C. § 6306 requires that every government contract include an express condition that no Member of Congress “be admitted to any share or part of such contract or agreement, or any benefit to arise thereunder.” Finally, under 18 U.S.C. § 203, House Members, officers, and employees are prohibited from asking for or receiving compensation for “representational services” rendered in relation to a matter or proceeding in which the United States is a party or has a direct and substantial interest. Included in this provision are proceedings before any federal government agency, department, or bureau.

⁵ *Id.*

⁶ *Id.* at § 1102.

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

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

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

¹⁰ *See* 33 Op. Atty. Gen. 44 (Oct. 29, 1921).

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

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

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

Avoiding Potential Conflicts of Interest

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

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

Voting on Legislation

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

¹² House Rule 23, cl. 1.

¹³ House Rule 23, cl. 3.

¹⁴ House Rule 3, cl. 1 (emphasis added).

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

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

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

Committee staff are available to provide advice to Members and employees. Please direct questions to the Committee's Advice and Education staff at (202) 225-7103. It may also be necessary to consult with specific agencies of jurisdiction or with outside counsel.

¹⁶ *See id.* at 234-235.

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

¹⁸ *See id.* at 237.

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

April 29, 2020

MEMORANDUM FOR ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES

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

SUBJECT: Webinar Ethics Training for New Employees and Paid Interns

The purpose of this memorandum is to announce that the Committee will conduct ethics training webinars for new employees and interns paid by the House that do not have access to a House computer.

All new employees must complete ethics training within 60 days of beginning House employment. A “new” House employee for purposes of the 2020 training requirement is an individual who first began employment with the House on or after January 3, 2020. 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.¹

New employees or paid interns interested in completing the webinar, please email the Committee at ethics.training@mail.house.gov to receive the link and password. Each webinar session will be limited to 30 participants. After completing the webinar, employees will receive a certificate of completion via email.

The list of upcoming webinars 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.

¹ 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 2020. 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.

Name of Training	Date and Time
New Employee Ethics Webinar	May 1, 2020 at 11:00 AM
New Employee Ethics Webinar	May 21, 2020 at 1:00 PM
New Employee Ethics Webinar	June 8, 2020 at 11:00 AM

If you have any questions regarding this guidance, please feel free to contact the Committee's Office of Advice and Education at ethics.training@mail.house.gov.

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

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

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

June 11, 2020

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Reminder of STOCK Act Requirements, Prohibition Against Insider Trading & New Certification Requirement

The Stop Trading on Congressional Knowledge of 2012 (STOCK) Act instituted several new ethics requirements. The purpose of this memorandum is to remind all House Members, officers, and employees of two of those requirements as well as introduce a **new certification on Periodic Transaction Reports (PTRs)**. First, the memorandum will discuss the requirement that all Members, officers, and certain House employees periodically disclose certain securities transactions on PTRs.¹ Second, the memorandum will discuss the provision of the STOCK Act that explicitly affirms that Members, officers, and all House employees are subject to the insider trading prohibitions arising under the securities laws. The Committee expects the House community to promptly and diligently comply with all applicable STOCK Act requirements.

PTR FILING REQUIREMENT

All Members, officers, and employees paid at the senior staff² rate must disclose certain securities transactions over \$1,000³ on a PTR within 30 days of notice of the transaction, but in no case later than 45 days after the transaction. Reportable transactions include purchases, sales, or exchanges by the filer, the filer's spouse, and or dependent children. Filers must disclose transactions involving stocks, bonds, commodities futures, options, private equity, cryptocurrencies and other

¹ STOCK Act (Pub. L. 112-105, as amended by Pub. L. 112-173, Pub. L. 112-178 & Pub. L. 113-7).

² 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 considered to be paid at the senior staff rate. The applicable 120% calculation for that rate is \$131,239 (or a monthly salary of more than \$10,936) for calendar year 2020. Principal assistants and shared employees (who are not also paid at the senior staff rate) are not required to file PTRs.

³ The \$1,000 threshold is based on the total dollar value of the transaction. It is not based on the loss or gain generated from the transaction.

securities on a PTR. However, PTRs are not required for widely held investment funds such as mutual funds, exchange-traded funds, and index funds. No PTR is required to be filed if there is no reportable securities activity.

For all Members, officers, and senior 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. Transactions in certain types of widely held investment funds (e.g. mutual funds, exchange-traded funds, index funds, bond funds, and similar assets) only have to be reported on the annual FD statement.

PTRs may be filed with the Legislative Resource Center (LRC) by 1) using the online filing system available at <https://fd.house.gov> or by 2) mailing in a pre-printed PTR form available at <https://ethics.house.gov/financial-disclosure/financial-disclosure-forms-and-filing> to The Clerk, U.S. House of Representatives, Legislative Resource Center (LRC), B-81 Cannon House Office Building, Washington, DC 20515-6612. Members must submit the original, signed form with 2 photocopies. Officers and staff must submit the original, signed form with 1 photocopy. These forms may not be filed by email, scan, or fax.

The STOCK does not allow for extensions for PTRs. Transactions must be reported no later than 45 days after the transaction occurs. All late PTR filings are subject to a late filing fee of \$200, up to as much as \$200 per late transaction. However, there is a 30-day grace period before late fees are imposed. Late filing fees should be mailed to the LRC by check or money order made payable to the U.S. Treasury.

Any PTR submitted more than 30 days after the due date without the required late filing fee shall be deemed procedurally deficient and not properly filed.

NEW CERTIFICATION REQUIREMENT

Each PTR submission has always required a certification that the information provided is true, complete, and correct to the best of the reporting individual's knowledge. The form has now been revised to expand the required certification statement to include an affirmation that the reporting individual has disclosed all securities transactions reportable pursuant to the STOCK Act.

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.

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.

Example: A House employee learns in a meeting with Food and Drug Administration (FDA) staff that a new Coronavirus vaccine 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 vaccine. Once the news of the drug approval is made public, the company's 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.

* * *

If you have any questions regarding financial disclosure or wish to discuss any of the STOCK Act's requirements, please contact the Committee at (202) 225-7103 or financial.disclosure@mail.house.gov.

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

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

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

July 13, 2020

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Reminder of Financial Disclosure Filing Deadline & Assistance Available

The Committee has automatically granted all House Members and employees who are required to file an annual financial disclosure (FD) statement the full 90-day extension of the May 15th filing deadline as permitted by the Ethics in Government Act (EIGA). **Please be reminded that the deadline is August 13, 2020, exactly one month away. By law, no further extension is allowed beyond August 13, 2020.** This automatic extension does not apply to Members or staffers filing new employee reports or termination reports. Additionally, this automatic extension does not apply to candidates for the U.S. House of Representatives.

Assistance Available with Financial Disclosure

Committee staff are available by phone and by email to provide FD guidance. While our physical offices are temporarily closed due to the Coronavirus outbreak and the need for social distancing, our staff continue to be available to assist you during normal business hours. Simply call the Committee at (202) 225-7103, select option “4,” and leave a brief message. A member of the Financial Disclosure team will return your call promptly. You may also email your inquiries to financial.disclosure@mail.house.gov for assistance. Although the temporary closure of our physical offices prohibits the Committee from prescreening draft filings for staff, prescreening is available for Members.¹

In addition, the Committee will offer virtual senior staff trainings that **will** satisfy either the annual ethics training requirement or the additional hour of training required for senior staff for the 116th Congress. These trainings will cover general information about the requirement to file FD statements and Periodic Transaction Reports. These trainings will take place on the following dates, at the listed times, and via the WebEx audio platform:

¹ Due to the Committee’s limited ability to prescreen filings prior to submission, a larger number of amendment requests are anticipated for annual financial disclosure statements.

Senior Staff Financial Disclosure Trainings		
Date	Time	Virtual Audio Platform
Wednesday, July 29	1:00 p.m. – 2:00 p.m.	WebEx
Thursday, August 6	11:00 a.m. – 12:00 p.m.	WebEx

All attendees are ***required to pre-register*** for each training with the Congressional Staff Academy Website at <https://house.csod.com/samldefault.aspx>.

How to File Financial Disclosure Statements

Annual FD Statements may be filed with the Legislative Resource Center (LRC) by 1) using the online filing system available at <https://fd.house.gov> or by 2) mailing/delivering pre-printed forms. These forms may not be filed by email, scan, or fax.

The Committee strongly encourages all filers to use the online filing system for submission. The system can be used from any place where internet access is available and does not require any physical contact with the LRC. The login and password for the system remain the same from year to year. If you need to have your login or password reset, please call the LRC at (202) 226-5200 for assistance.

Financial disclosure forms may also be filed by mailing or hand-delivering hard copies of the pre-printed forms to the LRC. In-person delivery to the LRC is available Monday through Friday from 10 a.m. to 3 p.m. Eastern Standard Time. Members must submit the original, signed form with 2 photocopies. Staff must submit the original, signed form with 1 photocopy. Forms may be sent to the following mailing address:

The Clerk, U.S. House of Representatives
 Legislative Resource Center
 B-81 Cannon House Office Building
 Washington, DC 20515-6612.

* * *

If you have any questions regarding financial disclosure, please contact the Committee at (202) 225-7103 or financial.disclosure@mail.house.gov.

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

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

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

July 21, 2020

MEMORANDUM FOR ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES

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

SUBJECT: Campaign Activity Webinar Training

The purpose of the memorandum is to announce that the Committee will conduct campaign activity webinars. The webinars will cover the rules and regulations for campaign activity. In addition, the webinars will satisfy the annual ethics training requirement, but not the additional hour of training required for senior staff for the 116th Congress.

The list of upcoming webinars is listed below and also available on the Ethics Committee website: <https://ethics.house.gov>.

Campaign Activity Webinar	
Date	Time
July 24, 2020	10:00 AM
August 10, 2020	10:00 AM
August 27, 2020	10:00 AM

All attendees are ***required to pre-register*** for each training with the Congressional Staff Academy Website at <https://house.csod.com/samldefault.aspx>.

If you have any questions regarding this guidance, please feel free to contact the Committee's Office of Advice and Education at ethics.training@mail.house.gov.

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

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

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

November 24, 2020

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Guidance on House Staff Assisting in the Presidential Transition¹

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

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

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

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

² House Rule 23, clause 8.

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

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

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

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

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

³ House Rule 10, clause 9(b)(1).

⁴ 31 U.S.C. § 1301(a).

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

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

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

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

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

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

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

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

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

⁹ 5 U.S.C. § 5533(c)(1).

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

In addition, House employees who are considered “senior staff”¹¹ and are compensated by the transition team may be subject to a limit on the cumulative amount of income they may receive from an outside source in a calendar year. Currently, the outside earned income limit for senior staff is \$28,845. Further, outside employment restrictions define certain activities for which senior staff may not receive any compensation whatsoever. The restrictions prohibit senior staff from, among other things, (1) receiving compensation for practicing any profession that involves a fiduciary relationship, including, for example, law or accounting, and (2) serving for compensation as an officer or director of any entity. Accordingly, senior staff, as defined above, may not receive any compensation for either providing legal or accounting services to the transition in their personal capacities.

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

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

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

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

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

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

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 1, 2020

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 2020

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 70 in-person ethics training sessions and provided in-person ethics training to more than 3,400 Members², officers, and employees.

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. This definition includes fellows and interns paid by the House.

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 2020, the senior staff annual salary rate is \$131,239, or a monthly pay rate at or above \$10,936. Please note that the senior staff annual salary rate is subject to change in 2021.

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-registered for and signed the attendance sheet at a live training *or* fully completed 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 2020 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.

2020 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 2020 training requirement is an individual who was *first* sworn in on or after January 3, 2020. 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 must complete one hour of training by **December 31, 2020**. Please have a staff member contact the Committee for a password to complete online ethics training.

The Committee records Members who have completed ethics training. Members may have their staff email the Committee at ethics.training@mail.house.gov to request confirmation that they have completed the required ethics training.

“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 2020 training requirement is an individual who first began employment with the House on or after January 3, 2020. 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. Fellows and interns paid by the House for more than 60 days also must comply with this requirement.⁶

On March 11, 2020, the Committee waived the **live** training requirement for new employees who work in Capitol Hill offices until further notice. New employees who work in Capitol Hill offices may watch the “116th Congress: 2020 District New Employee Ethics Training”

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

⁶ Detailees, fellows not paid by the House, 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 2020. 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.

video online through the Congressional Staff Academy website at HouseNet.house.gov/StaffAcademy. No other video satisfies the training requirement for new employees.

Existing House Employees

“Existing” (*i.e.*, not new) House employees must complete one hour of training before the end of the calendar year. For 2020, this means all existing House employees must complete one hour of training by **December 31, 2020**. **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 determining 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.

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 completing an online senior staff training session through the Congressional Staff Academy website or having attended a live training session.

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.

ONLINE REGISTRATION & CERTIFICATION PROCESS

Members

Members may have their staff email the Committee at ethics.training@mail.house.gov for a password to complete online ethics training and/or to request confirmation that they have completed the required ethics training.

Employees

Employees who pre-registered for and signed the attendance sheet at a live training will have made their necessary certification to the Committee that they have completed the required ethics training.

⁷ See *supra* note 3.

Employees can complete ethics training online by accessing 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 and use a House computer to access the Congressional Staff Academy website to complete the training online. Employees who do not have access to a House computer or do not have a House email account should email the Ethics Committee at ethics.training@mail.house.gov 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 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 ethics.training@mail.house.gov.

* * * * *

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

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, 2020

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Reminder: Prohibition Concerning Campaign Contributions and Outlays

The purpose of this memorandum is to remind House Members¹ and employees of the federal criminal statute prohibiting campaign contributions to an employing Member, including making outlays on behalf of that Member's authorized campaign committee. The memorandum includes illustrative examples of how the federal prohibition applies, as well as best practices to help House employees avoid violating the criminal statute.

In general, and as discussed in depth below:

- **House employees may not make a contribution to any campaign committee authorized by their employing Member;**
- **An “outlay,” or the use of personal funds (or personal credit) to make a purchase on behalf of a campaign committee, is a type of campaign contribution;**
- **Non-travel outlays by House employees on behalf of their employing Member’s campaign are prohibited even in cases where the monetary value of the outlay is minor and/or the employee is fully reimbursed;**
- **Employee outlays for ordinary and necessary expenses related to the duties of an officeholder are permissible, with some exceptions; and**
- **Members are liable for outlays made to an authorized campaign committee by their employees.**

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

I. Overview of Employee Contribution Prohibition

A federal criminal statute prohibits a House employee from making a political contribution to their employing Member of Congress or a campaign committee authorized by their employing Member.² The prohibition extends to any campaign committees *authorized* by an employing Member and not merely the Member's *principal* campaign committee.³ Further, the statutory definition of "contribution" includes more than just financial donations.

Generally, a contribution includes any gift, loan, advance, or anything of value, for the purpose of influencing any election for Federal office.⁴ A loan or advance is commonly called an "outlay." Similar to other types of contributions, an outlay is impermissible, except in certain instances.⁵ As discussed in Committee training, guidance, and [recent investigative reports](#), when a House employee makes an outlay, or pays for a campaign expense from their own funds, that expenditure is a contribution even if the employee later gets reimbursed for the expense.

There are three main principles to keep in mind concerning a contribution in the form of a loan or advance. First, there is no method for reversing or undoing an impermissible loan or advance. Once a House employee uses his or her funds for a campaign expense, the outlay has already occurred. Reimbursement, while appropriate, does not fully cure the infraction because the funds have already been loaned or advanced to the campaign. Second, the prohibition is straightforward; there is no way to circumvent the prohibition. Using a personal credit card or single-member LLC funds does not avoid the prohibition. Finally, although it is each House employee's responsibility to know and understand the law, ultimately, Members are responsible for ensuring their authorized campaign committees operate in compliance with the law and may be liable for outlay violations by their staff that they fail to prevent.

- ❖ *Best Practice*: Each Member should provide a copy of this memorandum to their House employees and campaign treasurer or Federal Election Commission (FEC) compliance team to ensure everyone is aware of the prohibition.
- ❖ *Best Practice*: Members should never, under any circumstance, solicit or request a campaign contribution from their congressional employees.

² 18 U.S.C. § 603.

³ Authorized campaign committees include any political committees authorized by a candidate under 11 C.F.R. § 102.13 to receive contributions or make expenditures on behalf of such a candidate. As explained below, this does not include, for example, a joint fundraising committee.

⁴ 52 U.S.C. § 30101(8)(A).

⁵ There are *limited* instances in which a House employee may pay personally for campaign travel expenses, discussed later in this memorandum.

I. What Is A Contribution?⁶

A contribution is “any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”⁷

Perhaps one of the first things that may come to mind in the context of the prohibition is a financial contribution, in the form of a check written or an online contribution. However, contributions may also take the form of in-kind goods or services. Additionally, financial contributions made by people with whom you commingle funds can, in some instances, be imputed to you. Simply volunteering for your employing Member is *not* considered a contribution to his or her campaign.⁸

Example 1: Employee Ross works for Congressman Portal. The re-election campaign for Congressman Portal sends Employee Ross’ spouse a solicitation. Employee Ross may not write a check to Congressman Portal’s campaign. However, Employee Ross’ spouse may send a check from her personal account. Alternatively, Employee Ross’ spouse may send a check from a jointly-held account with Employee Ross. She should indicate in the memorandum line on the check that the funds being used are her own funds, rather than commingled funds.

Example 2: Employee Foster wants to attend her employing Member’s upcoming campaign fundraiser. The tickets cost \$100 per person. Employee Foster may not pay to attend her employing Member’s campaign fundraiser. If offered, Employee Foster could accept an unsolicited offer of free attendance at the fundraiser from the political organization sponsoring the event.

- ❖ *Best Practice:* If someone is on a joint account with you, and wishes to make a financial contribution to your employing Member, he or she should take an affirmative step to indicate that he or she is using their own funds, rather than commingled funds.

II. What Is An “Outlay?”

The use of personal funds (or personal credit) to make a purchase on behalf of a campaign committee, sometimes referred to as an “outlay,” is similarly a contribution, and in most circumstances, is prohibited by the statute. Once the outlay is made, reimbursement, while appropriate to make an employee whole, does not “cure” the infraction caused by the loan or advance. In addition, the value of an outlay is immaterial for purposes of the criminal statute. An outlay, whether \$2.60 or \$2,600, equally falls within the prohibition. Perhaps most important to remember is that there is simply no way to circumvent the prohibition. Paying for campaign

⁶ The statutory definition of a contribution also includes the use of personal funds (or personal credit) to make a purchase on behalf of a campaign committee. However, to further clarify the extent of the prohibition, this section will focus solely on monetary and in-kind contributions. So-called “outlays” will be addressed specifically in the next section of the memorandum.

⁷ 52 U.S.C. § 30101(8)(A).

⁸ *Id.* at (B)(i). The statute provides that among the items that do **not** constitute a contribution for purposes of the Federal Election Campaign Act (FECA) are “the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee.”

expenses through a single-member LLC, or paying for campaign expenses with a personal credit card, debit card, check, or cash, is similarly prohibited.

Example 3: Employee Appleman works for Congresswoman Donahue, and volunteers for her campaign. Employee Appleman has been asked to get pizza for campaign staff who are working late. The bill for the pizza is \$42.36. Employee Appleman may not use personal funds of any kind to pay for the campaign expense. Employee Appleman also established a single-member LLC for certain business expenses. Employee Appleman may not pay for the pizza through her single-member LLC.

- ❖ *Best Practice:* If you intend to volunteer or work for your employing Member's campaign regularly, ask for a campaign-issued credit card to be issued in your name or to be added as an authorized user on a campaign-issued credit card. Alternatively, ask for a campaign credit card any time you are asked to run an errand.

III. What is Not an Outlay

There are certain limited exceptions in which outlays to benefit an employing Member's campaign are permitted, the most notable of which is that you *may* pay for travel related to your employing Member's campaign with personal funds, provided you are reimbursed appropriately, or your total transportation expenses do not exceed \$1,000 with respect to a single election, whether reimbursed or not. Failure to be reimbursed timely or spending more than the \$1,000 travel expenditure limit will result in the outlay becoming impermissible.

Outlays for one's own travel will not be deemed a contribution if either (1) the campaign provides reimbursement within 60 days after the expenses are incurred if payment was made by credit card, or within 30 days in all other cases,⁹ or (2) the individual's outlays for transportation do not exceed \$1,000 with respect to a single election, regardless of whether the campaign reimburses the outlays.¹⁰

Further, in some situations, campaign funds may be used to reimburse employees who make outlays for ordinary and necessary expenses incurred in connection with a Member's duties as a federal officeholder. In these instances, because the original outlay was not made for the purpose of influencing a federal election, the House employee may be reimbursed by their employing Member's campaign. Members should exercise caution when using campaign funds to reimburse staff who incur expenses in connection with the Member's duties as a federal officeholder. House Rule XXIV, with some limited exceptions, prohibits the use of outside funds towards the operation of a House office.¹¹

Example 4: Employee Wambold works for Congresswoman Seo, and volunteers for her campaign. Employee Wambold has been asked to travel to staff a campaign fundraiser. The cost of transportation is \$382. Employee Wambold has already spent \$974 on campaign travel for his

⁹ 11 C.F.R. § 116.5(b)(1), (2).

¹⁰ *Id.* § 100.79(a).

¹¹ *See* House Rule XXIV; *House Ethics Manual* at pp. 326-330.

employing Member during this election cycle. Employee Wambold may use his personal credit card to pay for the travel. However, *he must be reimbursed by the campaign within 60 days after he incurs the expenses or the \$382 becomes an impermissible outlay*. If Employee Wambold instead uses his debit card to pay for the transportation, *he must be reimbursed by the campaign within 30 days after he incurs the expenses, or the \$382 similarly becomes an impermissible outlay*.

Example 5: Employee Jansen works for Congressman Bedmarz, and volunteers for his campaign. Employee Jansen has been asked to travel to staff Congressman Bedmarz at a campaign event. The cost of transportation is estimated to be \$825. Employee Jansen has not incurred any prior travel expenses while volunteering for the campaign and does not plan to travel for the campaign for the rest of this election cycle. Employee Jansen may use personal funds (check, debit card, credit card) to pay for the travel. If Employee Jansen does not travel for the rest of the election cycle, he is not required to be reimbursed.

Example 6: Congressman Korn intends to hold a meeting in his congressional office with constituents who have been negatively impacted by a recent policy change made by the Small Business Administration. Congressman Korn asks Employee Taylor to purchase coffee and donuts for the constituent meeting. Employee Taylor may purchase the refreshments using her own funds, and she may be reimbursed by the campaign for her expenditure. Employee Taylor's use of personal funds and reimbursement by the campaign is not a contribution, and thus not an impermissible outlay, since the expenses were related to the duties of an officeholder.

- ❖ *Best Practice:* If traveling for your employing Member's campaign and you have or are likely to personally incur travel expenses in excess of \$1,000 during a single election cycle, set reminders for campaign reimbursement. The timing of your reminders should be at least a week before the appropriate deadline for reimbursement, depending on your method of payment (60 days for credit card purchases or 30 days for all other types of purchases).
- ❖ *Best Practice:* If you anticipate traveling for your employing Member's campaign often, ask the campaign to book or pay for your travel directly.
- ❖ *Best Practice:* If you are unsure whether a request to expend your personal funds is related to the duties of an officeholder, as opposed to being for the benefit of the campaign, confirm the purpose of the expenditure prior to using personal funds. Remember that you *may* make an outlay for ordinary and necessary expenses incurred in connection with a Member's duties as a federal officeholder.¹²
- ❖ *Best Practice:* If your campaign reimburses an employee in your Congressional office for an allowable expenditure the employee made related to your duties as a federal officeholder, the person responsible for reporting the purpose of the campaign reimbursement on FEC filings should consider making clear that the expenditure was not made for the purpose of influencing your election. Otherwise, the reporting of the

¹² See House Rule XXIV, cl. 1(b)(2) for a list of goods and services which may never be paid for with campaign funds, whether related to an outlay or not.

campaign reimbursement to a staffer of an employing Member's campaign could result in scrutiny by the Committee.

IV. Who Is An Employing Member?

To better understand to whom a House employee may not make a contribution or outlay, it is crucial for House employees to know who qualifies as their employing Member.¹³ For staff serving solely in a personal office, your employing Member is the Member for whom you work. However, many House employees who work for Members of Congress have more than one employing Member.

House employees who work for both a personal office and for a committee may have two employing Members; their personal office Member, and the Chair or Ranking Member of their committee, if the officeholders are different people. In addition, shared employees, as defined by the Committee on House Administration (CHA), may be employed by several Members at the same time.¹⁴ Finally, House employees who work for a caucus may rotate the Member of the caucus for which they work in order for the caucus to share expenses among the caucus Members; the employing Member will be determined by which office(s) payroll includes the caucus employee.

Example 7: Employee Opachan works for Congresswoman Giattino in her personal office. Employee Opachan's employing Member is Congresswoman Giattino. The prohibition applies only to Congresswoman Giattino.

Example 8: Same example as above; however, Employee Opachan also works for the Committee on Natural Resources, minority. The Ranking Member is Congressman Rowland. Employee Opachan's employing Members are Congresswoman Giattino and Congressman Rowland. The prohibition applies to both Congresswoman Giattino and Congressman Rowland.

Example 9: Employee Myers is a shared employee, pursuant to CHA's definition. She performs financial administrative work for seven Members in their personal offices and two committee Chairs in their committee offices. The prohibition applies to all nine Members.

Example 10: Employee Baker works for a caucus that has been officially -recognized by CHA. To share expenses, Employee Baker is paid by Congressman Walker for April and May, then Congresswoman Bethea for June and July. The prohibition applies to Congressman Walker during April and May; and to Congresswoman Bethea for June and July.

¹³ Staff who work for employing authorities other than Members of Congress—for example, employees of the Chief Administrative Officer, Office of the Clerk, etc.—do not have an employing Member. Similarly, officers of the House, such as the Chaplain, do not have an employing Member, as they are their own employing authority.

¹⁴ See *Comm. on House Admin., Members' Congressional Handbook*, <https://cha.house.gov/member-services/handbooks/members-congressional-handbook#Members-Handbook-Staff-Shared> (last accessed on August 27, 2020).

- ❖ *Best Practice*: Ensure that you fully understand on whose payroll you appear from month-to-month by checking your pay disbursement statements.

V. What Is An Employing Member's Campaign?

While House employees may easily recognize their employing Member's principal campaign committee as off-limits, they may not be aware that the prohibition applies to any campaign committee *authorized by their employing Member*. House employees should bear in mind that Members may have more than one authorized campaign committee and each of those committees similarly fall within the prohibition. A joint fundraising committee may also be covered by this prohibition, but only if it has been designated by the employing Member as an authorized committee. Staff should contact the Committee for guidance prior to making a contribution to their employing Member's leadership political action committee (PAC).¹⁵

For House employees who are unsure whether a committee has been authorized by your employing Member, contact the Committee for assistance, ask your Member, or visit the FEC's website, where you can look-up your employing Member's Statement of Candidacy, which includes a list of the Member's authorized committees.¹⁶

Example 11: Congressman Mason's principal campaign committee is called Mason for Congress. Congressman Mason's employees may not make a contribution to Mason for Congress.

Example 12: Same example as above; however, Congressman Mason also utilizes the Mason Victory Committee, which is a joint fundraising committee authorized by Congressman Mason. Congressman Mason's employees may not make a contribution to Mason for Congress or to the Mason Victory Committee.

Example 13: Employee Szabo is contemplating a contribution to We, the Welders, a Super PAC that supports specific policies. Employee Szabo works for Congressman Etihad, who also supports the same policies. Employee Szabo may make a contribution to We, the Welders.

- ❖ *Best Practice*: House employees should check FEC filings, such as a candidate's Statement of Candidacy, and seek further information from their employing Member to determine which campaign committees were authorized by the employing Member before making a contribution to a campaign or PAC.
- ❖ *Best Practice*: Members should not suggest to or imply that staff make donations to other, allowable, political committees.

Further explanation of this prohibition and advice on specific questions are available from the Committee's Office of Advice and Education at extension 5-7103.

¹⁵ The analysis concerning entities that qualify as leadership PACs and whether a contribution to one would be likely to violate 18 U.S.C. § 603 is highly technical and fact-specific.

¹⁶ <https://www.fec.gov/data/>.

Theodore E. Deutch, Florida
Chairman

Kenny Marchant, Texas
Ranking Member

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

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 18, 2020

MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Negotiations for Future Employment and Restrictions on Post-Employment for House Members and Officers

The purpose of this memorandum is to remind you about issues of concern to House Members¹ and officers² who are negotiating for future employment or departing from employment with the House of Representatives.³ The matters discussed here include negotiations for future employment, post-employment restrictions, financial disclosure requirements (Termination Reports), and outside employment and earned income restrictions.⁴ Although this memorandum will be of particular interest to departing Members, current Members should also familiarize themselves with these restrictions, particularly the criminal restrictions on post-employment communications. Current Members and staff are reminded that they may not assist in the violation of these restrictions.

In addition, the Committee would like to take this opportunity to note one statutory provision that applies to **all House Members and staff**. House Members and staff may not use confidential information obtained by means of personal and substantial participation in ongoing trade or treaty negotiations for one year prior to leaving House employment in the course of

¹ This Memorandum uses the term “Member” to refer to House Members, Delegates, and the Resident Commissioner.

² The elected officers of the House are the Clerk, Sergeant-at-Arms, Chaplain, and Chief Administrative Officer. *See* House Rule 2, cl. 1.

³ The restrictions discussed herein apply uniformly to House Members, Delegates, the Resident Commissioner, and officers, except where noted with regard to the elected House officers.

⁴ The Committee has issued a separate memorandum addressing a similar range of issues for departing employees of the House and certain other legislative offices. Employees who are seeking future employment or departing House employment should consult that memorandum, titled “Negotiations for Future Employment and Restrictions on Post-Employment for House Staff,” rather than this memorandum, for guidance.

representing, aiding, or advising anyone other than the United States regarding those ongoing negotiations.⁵ As with other provisions of this statute, this prohibition lasts for one year after departure from the House payroll.⁶

NEGOTIATING FOR FUTURE EMPLOYMENT

In the past, the Committee's general guidance on job negotiations has been that House Members and employees are free to pursue future employment while still employed by the House, subject to certain ethical constraints. This memorandum provides more detailed guidance on the issues presented by such negotiations, as well as mandatory disclosure obligations such negotiations may trigger.

The general guidance applicable to any Member who wishes to engage in negotiations for future employment is as follows. First and foremost, it would be improper for a Member to permit the prospect of future employment to influence the official actions of the Member.⁷ Some Members may determine to use an agent (*e.g.*, a "headhunter") to solicit job offers on their behalf in order to avoid any appearance of improper activity. Regardless of whether job negotiations are undertaken personally or through an agent, the following generally-applicable principles must be observed.

The term "negotiation" is not defined in the relevant statute or House rule. In its past guidance, the Committee has given deference to court decisions interpreting a related federal criminal statute that bars Executive Branch employees from participating in matters affecting the financial interests of an entity with which the employee is "negotiating or has any arrangement" concerning future employment.⁸ Those decisions found that the term "negotiation" should be construed broadly.⁹ However, these decisions make a distinction between "negotiations," which trigger the rule, and "[p]reliminary or exploratory talks," which do not.¹⁰ The term "negotiations" connotes "a communication between two parties with a view toward reaching an agreement" and

⁵ 18 U.S.C. § 207(b). For purposes of this provision, the term "trade negotiation" means "negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made" and the term "treaty" means "an international agreement made by the President that requires the advice and consent of the Senate." *Id.* at § 207(b)(2).

⁶ *Id.*

⁷ See House Rule 23, cl. 3; Code of Ethics for Government Service ¶¶ 5, 6, *reprinted in 2008 House Ethics Manual* at 355.

⁸ 18 U.S.C. § 208.

⁹ See, *e.g.*, *United States v. Schaltenbrand*, 930 F.2d 1554, 1559 (11th Cir. 1991); *United States v. Conlon*, 628 F.2d 150, 155 (D.C. Cir. 1980).

¹⁰ *Schaltenbrand*, 930 F.2d at 1558-59.

in which there is “active interest on both sides.”¹¹ Thus, merely sending a copy of one’s résumé to a private entity is not considered “negotiating” for future employment.

Other, more general, ethical rules also bear on the subject of employment negotiations. The House Code of Official Conduct prohibits House Members, officers, and employees from receiving compensation “by virtue of influence improperly exerted” from a congressional position.¹² The Code of Ethics for Government Service forbids anyone in government service from accepting “favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance” of governmental duties.¹³ Federal criminal law prohibits a federal official from soliciting or accepting a “bribe” – *i.e.*, anything of value given in exchange for being influenced in an official act.¹⁴ Although bribery necessarily entails a *quid pro quo* arrangement, the same statute also bans seeking or accepting “illegal gratuities” – *i.e.*, anything given because of, or in reward for, a future or past official act, whether or not the official action would be, or would have been, taken absent the reward.¹⁵

In light of these restrictions, Members should be particularly careful in negotiating for future employment, especially when negotiating with anyone who could be substantially affected by the Member’s performance of official duties.¹⁶ It may be prudent for the Member to have an exchange of correspondence with any serious negotiating partner, stipulating that the prospective employer will receive no official favors in connection with the job negotiations. Because Members will be subject to the post-employment restrictions, which are addressed later in this memorandum, they may also wish to establish in correspondence with any prospective employer that the future employer understands that (1) it will receive no official favors as a result of the job negotiations, and (2) the Member is subject to post-employment restrictions, which should be briefly outlined.¹⁷ Departing Members who are lawyers should consult their local bar associations concerning the application of rules governing their involvement in matters in which they participated personally and substantially during their time with the House.¹⁸ In addition, as addressed in the next section

¹¹ *United States v. Hedges*, 912 F.2d 1397, 1403 n.2 (11th Cir. 1990) (quoting jury instruction); *see also Schaltenbrand*, 930 F.2d at 1558, 1559 n.2.

¹² House Rule 23, cl. 3.

¹³ Code of Ethics for Government Service ¶ 5, *reprinted in 2008 House Ethics Manual* at 355.

¹⁴ 18 U.S.C. § 201(b)(2)(A).

¹⁵ *Id.* § 201(c)(1)(B).

¹⁶ *See* Code of Ethics for Government Service ¶ 5, *reprinted in 2008 House Ethics Manual* at 355.

¹⁷ *See* 18 U.S.C. § 207. These restrictions are explained in detail later in this memorandum. Briefly, House Members may not contact any Member, officer, or employee of the House or Senate on official business for one year after leaving office, nor may they assist any foreign government or foreign political party in seeking to influence a decision of any federal official during that year. House officers may neither contact the individual’s former congressional office on official business for one year after leaving House employment, nor assist any foreign entity, *i.e.* a foreign government or foreign political party, in seeking to influence a decision of any federal official during that year.

¹⁸ A former Member who joins a law firm should also be aware that a separate statutory provision, 18 U.S.C. § 203, has been interpreted to prohibit a former federal official who joins a firm from sharing in fees

of this memorandum, Members must disclose employment negotiations in writing to the Ethics Committee.

Finally, as a reminder, Members should not be actively involved in personally selling or endorsing goods or services in which they or their family have a financial interest. Thus, as Members prepare to terminate their House service, they should refrain from allowing their name to be used in the selling or endorsing of a company, product, or service. The Committee strongly recommends that any Member with a question about how they may discuss work they may engage in after they leave the House contact the Committee for additional guidance about their specific situation.

Provided that Members conduct themselves in accordance with the considerations discussed above, they may engage in negotiations for employment in the same manner as any other job applicant. Discussions may specifically address salary, duties, benefits, and other terms.

DISCLOSURE OF EMPLOYMENT NEGOTIATIONS AND RECUSAL REQUIREMENTS

Members must notify the Committee within three (3) business days after they commence any negotiation or agreement for future employment or compensation with a *private* entity.¹⁹ As stated above, the term “negotiation” is not defined in the relevant statute or House rule. The Committee views negotiations using the standard discussed earlier in this memorandum, namely that there has been “a communication between two parties with a view to reaching an agreement” and in which there is “discussion and active interest on both sides.”²⁰

In addition, Members 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.²¹ Members who recuse themselves also must, at that time, file their negotiation notification with the Clerk in the Legislative Resource Center (B-135 Cannon House Office Building) for public disclosure.²²

attributable to representational services in federally related matters when those services were provided by the firm while the individual was still employed by the government. (OGE website at <https://www.oge.gov>).

Please note that 18 U.S.C. § 203 is a federal criminal statute within the jurisdiction of the U.S. Department of Justice; therefore, Members may wish to seek guidance from outside counsel prior to accepting fees that may implicate 18 U.S.C. § 203.

¹⁹ House Rule 27, cl. 1; Stop Trading on Congressional Knowledge Act, Pub. L. No. 112-105 (Apr. 4, 2012) (hereinafter STOCK Act) § 17.

²⁰ See *Hedges*, 912 F.2d at 1403 n.2.

²¹ House Rule 27, cl. 4.

²² *Id.* House Rule 27 does not require House employees to file their notice of negotiation with the Clerk.

The Committee has issued forms, available on the Committee website (<https://www.ethics.house.gov>), to be used for these notification requirements. When notifying the Committee of negotiations or agreements for future employment or compensation, Members and officers should complete and sign an employment negotiation form, formally titled the “Notification of Negotiations or Agreement for Future Employment.” The completed form must be submitted to the Committee, but all filers should keep a copy of their submission, as explained below.

There is a separate form for notifying the Committee of recusal, titled the “Statement of Recusal.” All Members and officers who recuse themselves from official matters pursuant to House Rule 27 must complete and submit the recusal form to the Committee. At that time, Members must *also* submit to the Clerk a copy of the completed employment negotiation form regarding that private entity, which they had previously submitted to the Committee. The Clerk will make that form available for public disclosure. As noted above, the requirement to make a simultaneous filing with the Clerk of the corresponding job negotiation form applies only to Members and not to House officers or employees.

Forms may be sent by email to EthicsCommittee@mail.house.gov.

The terms “conflict” and “appearance of conflict” are not defined in the rule. The Committee has stated that a “conflict of interest becomes problematic when a Member uses his position to enhance his personal financial interests or his personal financial interests impair his judgment in conducting his public duties.”²³ Members should also avoid situations that might be viewed as presenting even a risk that the Member might be improperly influenced by personal financial interests.²⁴

Among the “official matters” covered by the recusal provision discussed above is abstention from voting, or affirmatively taking official actions, on matters that would affect an outside party with whom the Member is negotiating, or from whom the Member has accepted

²³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Sam Graves*, H. Rep. No. 111-320, 111th Cong., 1st Sess. 16 (2009); *see also* 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. H9253 at H9259 (daily ed. Nov. 21, 1989) (“A conflict of interest is generally defined as a situation in which an official’s private financial interests conflict or appear to conflict with the public interest.”); House Rule 23, cl. 3 (“A Member . . . may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress.”).

²⁴ *See Federal Conflict of Interest Legislation*, Staff Report to Subcomm. No. 5 of the Comm. on the Judiciary, 85th Cong., 2d Sess. 1 (Comm. Print 1958) (“Within reasonable limits, also, the importance of public confidence in the integrity of the Federal service justifies the requirement that the Federal employee shall avoid the appearance of evil, as well as evil itself.”); Code of Ethics for Government Service ¶ 5, *reprinted in 2008 House Ethics Manual* at 355 (“Any person in government service should . . . never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.”); *see also* House Rule 23, cl. 2 (“A Member . . . shall adhere to the spirit and letter of the Rules of the House . . .”).

employment. This inquiry has traditionally been governed solely by House Rule 3, which states that abstention from voting on the House floor is not warranted unless the Member has “a direct personal or pecuniary interest in” the matter.²⁵ Longstanding House precedent interpreted this rule to mean that Members may vote on any matter that affects them merely as part of a large class of individuals or entities rather than with particularity.²⁶ Thus, for example, Members who were veterans were permitted to vote on military pay and pensions, which affected them only as members of a class of thousands of individuals who held or had held similar positions.²⁷ Historical practice has established that, with regard to House Rule 3, there is no authority to force a House Member to abstain from voting, and the decision on whether abstention from voting was necessary has been left for individual Members to determine for themselves under the circumstances.²⁸

However, as described above, a House rule now also imposes a requirement that Members who are negotiating for future employment “shall recuse” themselves “from any matter in which there is a conflict of interest or an appearance of a conflict for that Member.”²⁹ At a minimum, Members faced with a vote on a matter that directly impacts a private entity with which they are negotiating would have difficulty balancing the duty they owe to their constituents with the recusal provisions of House Rule 27. Members are strongly encouraged to abstain from voting on legislation that provides a benefit targeted to any entity with which the Member is negotiating or from which the Member has accepted future employment. Members likewise are discouraged from sponsoring legislation or earmarks for such an entity. In addition, House Rule 23, clause 17 requires that Members who request an earmark certify to the chairman and ranking member of the committee of jurisdiction that the Member and the Member’s spouse have “no financial interest” in the earmark.³⁰ Any earmark benefitting an entity with which a Member is negotiating or has accepted future employment could be deemed to provide a financial interest to the Member under this provision.

BENEFITS OFFERED BY PROSPECTIVE EMPLOYERS DURING JOB NEGOTIATIONS

Members may accept “[f]ood, refreshments, lodging, transportation, and other benefits . . . customarily provided by a prospective employer in connection with bona fide employment

²⁵ House Rule 3, cl. 1.

²⁶ See 5 Asher C. Hinds, *Hinds’ Precedents of the House of Representatives* § 5952 at 503-04 (1907) (hereinafter *Hinds’ Precedents*); see also Thomas J. Wickham, Jr., Parliamentarian, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives, One Hundred Fourteenth Congress*, H. Doc. 113-181, 113th Cong., 2d Sess. (2015), § 673 (hereinafter *House Rules and Manual*).

²⁷ See *Hinds’ Precedents* § 5952, at 503-04; see also *2008 House Ethics Manual* at 234-35.

²⁸ See *Hinds’ Precedents* §§ 5950, 5952 at 502-04; see also *House Rules and Manual* § 672.

²⁹ House Rule 27, cl. 4.

³⁰ House Rule 23, cl. 17.

discussions.”³¹ Thus, subject to the limitations set out in the rule, a Member may accept travel expenses from an entity with which the Member is interviewing for a position and to meet prospective colleagues. Such travel is *not* subject to the requirement for prior, written approval from the Committee that applies to privately-funded travel undertaken as part of one’s House duties. However, travel expenses that exceed \$415 from any one source must be disclosed on Schedule H (“Travel Payments and Reimbursements”) of the termination financial disclosure statement required of departing Members.³² In addition, any agreement for future employment also must be disclosed on Schedule F (“Agreements”) of that statement, if the agreement was entered into prior to the employee’s last date on House payroll.³³

POST-EMPLOYMENT RESTRICTIONS

Since 1989, legislative branch officials, including certain employees, have been subject to restrictions on their post-House employment under the Ethics Reform Act.³⁴ These limitations are part of the federal criminal code, and they apply to Members and officers of the House,³⁵ as well as to employees of House Member, committee, and leadership offices who are paid at least 75% of a Member’s salary, inclusive of any federal civil service or military annuity.³⁶ For these covered individuals, the law establishes a one-year “cooling-off period” measured from the date of the individual’s departure from the House payroll.³⁷ For Members who are not re-elected to the House, this date will be January 3 of the year following the election (not the date of adjournment *sine die*),³⁸ unless the Member resigns prior to that date.

Set out below is a detailed description of prohibited and permitted post-employment activities of former Members under the statute. This explanation is followed by a table that briefly summarizes the statutory restrictions. Please note that the statute, as part of the criminal code, is enforced by the Department of Justice (DOJ), rather than by the Ethics Committee. While the Ethics Committee interpretations of 18 U.S.C. § 207 are not binding on DOJ, those interpretations are based on the Committee’s analysis of the terms and purposes of the statute, as well as any applicable opinions or guidance of DOJ or OGE of which the Committee is aware. Accordingly, a Member (or former Member) who has any concerns about the applicability of the post-

³¹ House Rule 25, cl. 5(a)(3)(G)(ii).

³² 5 U.S.C. app. § 102(a)(2)(B).

³³ *Id.* § 109(a)(7)(A).

³⁴ 18 U.S.C. § 207 (e), (f).

³⁵ *Id.* § 207(e)(1).

³⁶ *Id.* § 207(e)(7).

³⁷ *Id.* § 207(e).

³⁸ *See* U.S. Const. amend. XX, § 2 (establishing the start of the congressional session at noon on January 3).

employment restrictions to his or her proposed conduct should contact the Ethics Committee for guidance.³⁹ The Committee also recommends Members seek guidance from outside counsel.

Prohibited Activity

Under the statute, former Members may **not**, for a period of **one year** after leaving office:

- ✘ **Knowingly communicate with or appear before any Member, officer, or employee of the House or the Senate,**⁴⁰ or current employees of any other legislative office,⁴¹ with the intent to influence, on behalf of any other person, the official actions or decisions of such Member, officer, or employee.⁴² The statute excepts certain representations made on behalf of specific types of entities. These exceptions are described below in the context of “permissible activity.” ✘ **Knowingly represent a foreign entity, i.e., a foreign government or foreign political party,** before any

³⁹ It should be noted that one court held that it is a complete defense to a prosecution for conduct assertedly in violation of a related federal criminal strict-liability statute (18 U.S.C. § 208) that the conduct was undertaken in good faith reliance upon erroneous legal advice received from the official’s supervising ethics office. *Hedges*, 912 F.2d at 1404-06.

⁴⁰ Unlike former Members, former elected officers of the House are unrestricted in their post-employment interactions with all Senate personnel and may similarly interact with employees of “other legislative offices.” *See* 18 U.S.C. § 207(e)(1)(B)(iii). Put another way, during the statutory “cooling-off” period, a former House officer is restricted from contacting only Members, officers, and employees *of the House*.

⁴¹ “[O]ther legislative offices” include employees of the Architect of the Capitol, United States Botanic Garden, Government Accountability Office, Government Printing Office, Library of Congress, Office of Technology Assessment, Congressional Budget Office, and Capitol Police. The term also includes any other House legislative branch office not covered by the other provisions of the statute, such as the Clerk, Parliamentarian, Office of General Counsel, and Chief Administrative Officer. *See* 18 U.S.C. § 207(e)(9)(G).

⁴² 18 U.S.C. § 207(e)(1).

federal official (including any Member of Congress) with the intent to influence a decision of such official in carrying out his or her official duties.⁴³

- ✘ **Knowingly aid or advise a foreign entity, i.e., a foreign government or foreign political party**, with the intent to influence a decision of any federal official (including any Member of Congress) in carrying out his or her official duties.⁴⁴
- ✘ **Use confidential information obtained by means of personal and substantial participation in ongoing trade or treaty negotiations** within one year preceding their departure from office, in the course of representing, aiding, or advising anyone other than the United States regarding those ongoing negotiations.⁴⁵

As to the prohibition against making any “communication to or appearance before” anyone in the legislative branch, former Members should be aware of the broad manner in which the DOJ has defined those terms.⁴⁶ A DOJ opinion defines “communication” as “the act of imparting or transmitting information with the intent that the information be attributed to the former official.”⁴⁷

⁴³ *Id.* §§ 207(f)(1)(A) and (i)(1)(B). Section § 207 restricts activities with respect to a “foreign entity,” which is defined as either the “government of a foreign country” or a “foreign political party” as those terms are, in turn, defined in the Foreign Agents Registration Act (22 U.S.C. § 611(e), (f)). *See id.* § 207(f)(3). A U.S. Office of Legal Counsel (OLC) opinion of August 13, 2008, concluded that a foreign corporation is to be considered a foreign entity for purposes of 18 U.S.C. § 207(f) if it “exercises sovereign authority or functions de jure (i.e. by formal delegation) or de facto.” *See* OLC Memorandum Opinion, *Application of 18 U.S.C. § 207(f) to a Former Senior Employee* (available on the OLC website at <https://www.justice.gov/sites/default/files/olc/opinions/attachments/2015/06/23/op-olc-v032-p0115.pdf>). *See* OLC Memorandum Opinion, *Application of 18 U.S.C. § 207(f) to a Former Senior Employee* (available on the OLC website at <https://www.justice.gov/sites/default/files/olc/opinions/attachments/2015/06/23/op-olc-v032-p0115.pdf>). *See also* U.S. OGE, LA-16-08: *Introduction to the Primary Post-Government Employment Restrictions Applicable to Former Executive Branch Employees*, at 10 (September 23, 2016) (available on the OGE website at [https://www.oge.gov/web/oge.nsf/All%20Documents/3741DC247191C8B88525803B0052BD7E/\\$FILE/LA-16-08.pdf?open](https://www.oge.gov/web/oge.nsf/All%20Documents/3741DC247191C8B88525803B0052BD7E/$FILE/LA-16-08.pdf?open)). Also pertinent to these provisions of the statute is an OLC opinion of June 22, 2004, which concludes that 18 U.S.C. § 207(f) covers representational contacts with Members of Congress. *See* OLC Memorandum Opinion, *Application of 18 U.S.C. § 207(f) to a Former Senior Employee* (available on the OLC website at [ww.justice.gov/sites/default/files/olc/opinions/2004/06/31/op-olc-v028-p0097_0.pdf](http://www.justice.gov/sites/default/files/olc/opinions/2004/06/31/op-olc-v028-p0097_0.pdf)).

⁴⁴ 18 U.S.C. § 207(f)(1)(B).

⁴⁵ *Id.* § 207(b).

⁴⁶ 18 U.S.C. § 207. The provisions of 18 U.S.C. § 207 should not be confused with those of the Lobbying Disclosure Act (2 U.S.C. §§ 1601 *et seq.*) (LDA). In other words, merely because a particular activity does not constitute “lobbying” for purposes of that Act does **not** mean that the activity is permissible under 18 U.S.C. § 207.

⁴⁷ OLC, “*Communications*” under 18 U.S.C. § 207 at 3 (Jan. 19, 2001) (available on the OLC website at http://www.justice.gov/sites/default/files/olc/opinions/2001/01/31/op-olc-v025-p0059_0.pdf). In that opinion, the OLC provides the following illustrative examples: “A high-ranking official who aggressively publicizes the fact that he is leaving an agency to start a one-man consulting firm, then submits a report to the agency shortly thereafter under the name of that firm, almost certainly intends that the report will be attributed to him. Similarly, a former

Further, an advisory memorandum issued by the U.S. Office of Government Ethics (OGE) for Executive Branch employees states, “[a]n ‘appearance’ extends to a former employee’s mere physical presence at a proceeding when the circumstances make it clear that his attendance is intended to influence the United States.”⁴⁸ The provision is broad enough that it precludes a former Member even from, for example, requesting or scheduling, for or on behalf of any other person, a meeting with any current Member, officer, or employee on official business.⁴⁹ While OGE guidance is merely persuasive, rather than binding, on Committee interpretations of the statute, this Committee endeavors when possible to interpret the statute in a manner consistent with OGE practice.

In addition to the one-year “cooling-off period” restrictions set out above, Members should further be aware of a permanent federal statutory restriction that prohibits any U.S. citizen acting without authority of the United States from:

- ✗ Directly or indirectly **commencing or carrying on any correspondence or intercourse with any foreign government**, or any officer or agent thereof, with the intent to influence the measures or conduct of any foreign government or of any officer or agent thereof in relation to any disputes or controversies with the United States, or to defeat the measures of the United States.⁵⁰

Permissible Activity

Under federal statutory law, former Members **may, immediately** upon leaving office:

- ✓ **Aid or advise clients** (other than foreign entities, i.e. foreign governments or foreign political parties) **concerning how to lobby Congress**, provided the former Member makes no appearance before or communication to Members or employees of Congress. Such a “background role” would not pose the contemplated risk of improper influence since the current officials would not be aware of the former official’s participation.⁵¹

official who is not introduced by name, but participates on a conference call with his former agency colleagues, almost certainly intends this his colleagues will recognize his voice.” *Id.*

⁴⁸ *Introduction to the Primary Post-Government Employment Restrictions Applicable to Former Executive Branch Employees*, note 43 above, at 3.

⁴⁹ Committee interpretations of the statute contained in this memorandum are based on analysis of the statutory terms and purposes, and opinions and guidance, issued by DOJ and OGE. However, as noted above, 18 U.S.C. § 207 is a criminal statute, and Committee interpretations of it are not binding on DOJ (*but see* note 39, above).

⁵⁰ 18 U.S.C. § 953 (the Logan Act). An eighteenth century law, the Logan Act restricts private correspondence with foreign governments. This statute, which appears to have been a reaction to the attempts of one citizen to engage in private diplomacy, has never been the basis of a prosecution, and this Committee has publicly questioned its constitutionality. House Comm. on Standards of Official Conduct, *Manual of Offenses and Procedures, Korean Influence Investigation*, 95th Cong., 1st Sess. 18-19 (Comm. Print 1977). Members should be aware, however, that the law remains part of the criminal code.

⁵¹ Former Members who are lawyers may have additional restrictions, as explained above in note 18.

However, any such participation must remain behind-the-scenes; during the one-year “cooling-off” period, former Members must not permit their name to be openly associated with contacts made by other persons.⁵²

- ✓ **Contact Executive Branch** officials with the intent to influence official action so long as not representing a foreign entity, i.e. a foreign government or foreign political party.⁵³
- ✓ **Contact state government officials** with the intent to influence state government actions or decisions. Former Members should comply with any state laws governing such contacts.
- ✓ **Contact one foreign government on behalf of another** foreign government.⁵⁴
- ✓ **Contact Members, officers and employees of the House and Senate and other Legislative Branch officials** under any of the following circumstances:
 - The former Member is carrying out official duties on behalf of the **federal government** or the District of Columbia;⁵⁵
 - The former Member is acting as an **elected official of a state or local government**;⁵⁶

⁵² As noted above, the major restrictions set forth in 18 U.S.C. § 207(e) focus on communications and appearances. By contrast, if a former Member plays a background role, and does not appear in person or convey his or her name on any communications, the law does not appear to prohibit that person from advising those who seek official action from the Congress (with the exception of the provision that applies to all former employees relating to ongoing trade or treaty negotiations). This construction is consistent with regulations promulgated by OGE, interpreting a comparable prohibition that applies to Executive Branch personnel. *See* 5 C.F.R. § 2637.201(b)(3), (6). This matter is also addressed in the 2001 OLC opinion that is cited in note 46 above, including with regard to activities that do not constitute permissible “behind-the-scenes” activities.

⁵³ Former Members who are representing a tribal government as an employee of the tribe or as an officer or employee of the United States assigned to a tribe have an additional restriction on contacts with the Executive Branch and certain other entities. Such individuals must first notify the head of the department, agency, court, or commission being contacted of “any personal and substantial involvement” they had in the matter while a Member. *See* 25 U.S.C. § 5323(j) (formerly 25 U.S.C. § 450i(j)); 18 U.S.C. § 207(j)(1)(B).

⁵⁴ No federal statute expressly permits such contacts, but so far as the Committee is aware, no federal statute prohibits such contacts. Thus, it appears that such contacts are permissible under federal law. Members who intend to undertake such activity, however, should carefully review the Foreign Agents Registration Act (22 U.S.C. §§ 611 *et seq.*) (FARA) to ensure compliance with its requirements. Briefly stated, FARA provides that anyone who acts within the United States under the direction or control of a foreign principal to influence official decisions, official policies, or public opinion on behalf of a foreign principal must register with DOJ. *See generally* 22 U.S.C. §§ 611 *et seq.*; U.S. Dep’t of Justice (DOJ), “FARA FAQs” (available on the DOJ website, www.justice.gov/nsd-fara).

⁵⁵ 18 U.S.C. § 207(j)(1)(A).

⁵⁶ *Id.*

- The former Member is an **employee** (not a private consultant or other independent contractor) of a **state or local government**, or an agency or instrumentality thereof, acting on its behalf;⁵⁷
 - The former Member is an **employee** of an accredited, degree-granting **institution of higher education** and is acting on behalf of such institution;⁵⁸ or
 - The former Member is an **employee** of a **charitable hospital or medical research organization** and is acting on behalf of such hospital or organization.⁵⁹
- ✓ **Represent or give aid or advice to international organizations** of which the United States is a member **if** the Secretary of State certifies in advance that such activities are in the interest of the United States.⁶⁰ Otherwise, former Members must wait one year before engaging in such activities.
 - ✓ Make statements or communications as an **employee of a candidate, authorized campaign committee, national or state party, or political committee**, if acting on behalf of that committee or party.⁶¹ However, if the former Member is employed by a person or entity who represents, aids, or advises only such persons or entities, the communications would be prohibited.⁶²
 - ✓ **Make statements based upon the “special knowledge”** of the former Member concerning the particular area that is the subject of the statement, if no compensation is received in connection therewith.⁶³

⁵⁷ *Id.* § 207(j)(2)(A).

⁵⁸ *Id.* § 207(j)(2)(B). The statute uses the definition of “institution of higher education” contained in § 101 of the Higher Education Act of 1965 (20 U.S.C. §§ 1001 *et seq.*). As a general matter, the definition includes only nonprofit, degree-granting educational institutions located in the United States or its territories. *See* 20 U.S.C. § 1001(a)-(b).

⁵⁹ 18 U.S.C. § 207(j)(2)(B). For this exception to apply, the hospital or medical research organization must be exempted under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)). *Id.*

⁶⁰ *Id.* § 207(j)(3).

⁶¹ *Id.* § 207(j)(7)(A).

⁶² *Id.* § 207(j)(7)(B)(ii)(II).

⁶³ *Id.* § 207(j)(4). “Special knowledge” is not defined in the statute. The Federal Register, which provides rules on the application of the statute to employees in the Executive Branch, states that a “former employee has special knowledge concerning a subject area if he is familiar with the subject area as a result of education, interaction with experts, or other unique or particularized experience.” 5 C.F.R. § 2641.301(d)(1). In addition, in the proposed rulemaking for this provision, the OGE emphasized that it regarded its interpretation of this exception

- ✓ **Give testimony under oath**, or make statements required to be made under penalty of perjury.⁶⁴
- ✓ **Contact staff of the Clerk of the House** regarding the Member’s compliance with the disclosure requirements under the Lobbying Disclosure Act.⁶⁵
- ✓ **Make political contributions** to, and **sponsor or attend political fundraisers** for, current Members of Congress, *provided that* no appearances or communications are made with the intent to influence, on behalf of any other person, the official actions or decisions of current Members or staff.⁶⁶
- ✓ **Interact socially with current Members of Congress and staff** *provided that* no appearances or communications are made with the intent to influence, on behalf of any other person, the official actions or decisions of current Members or staff.⁶⁷

Example 1. Member *A* retires to accept an appointed position in an Executive Branch agency. *A* may immediately contact Congress on behalf of the agency.

Example 2. Member *B* retires to become governor of his state. *B* may immediately contact Congress on behalf of his state.

Example 3. Member *C* retires to become the president of a private university. *C* may immediately contact Congress on behalf of the school.

Example 4. Member *D* retires and moves back to her home state. *D* may immediately contact state government officials on behalf of any clients.

Example 5. Member *E* retires to become a lobbyist. During her first year out of office, *E* lobbies only Executive Branch personnel, *E* never contacts Members or employees of Congress on behalf of clients, and *E* has no foreign clients. *E* is complying with the law.

Example 6. During his one-year “cooling-off” period, former Member *F* wishes to call a current Member to request that she meet with representatives of one of his clients to discuss legislation of interest to the client. *F* would not be present at the

as being “relatively narrow.” See 73 Fed. Reg. 36183 (June 25, 2008). While these definitions are not binding on the Ethics Committee, they provide guidance as to how the term should be interpreted.

⁶⁴ 18 U.S.C. § 207(j)(6).

⁶⁵ *Id.* § 207(e)(8).

⁶⁶ *See id.* § 207.

⁶⁷ *See id.*

meeting. *F* would violate the statute by requesting the meeting, in that the request would be a communication intended to influence official action.

Example 7. During his first year out of office, former Member *G* wishes to contact a current Member to urge him to support federal funding for a non-profit organization operated by a friend of *G*. The non-profit organization is not a client of *G*, and *G* would receive no compensation for making the contact. *G* would violate the statute by doing so, in that the statute bars such contacts regardless of whether the former official would be compensated for them.

Example 8. During her one-year “cooling-off” period, former Member *H*, who has become a lobbyist, is asked by a current Member about the views of one of her clients on a pending piece of legislation. *H* would violate the statute if she were to state her client’s views to the current Member, in that there is no exception in the statute for covered communications that are solicited by a current Member or staff person. However, it may be permissible for *H* to refer the Member to one of her colleagues who is not subject to post-employment restrictions.

Entity Contacted by Former Member

Entity Represented by Former Member

	Congress	Executive Branch	Foreign Entity	State Governments
Private Entity	Must wait 1 year before contacting Congress directly. May advise entity behind scenes immediately	May contact immediately	May contact immediately	May contact immediately
Federal, State, or Local Government	May contact Congress immediately if elected official or employee of the federal, state, or local government	May contact immediately	May contact immediately	May contact immediately
Tribal Government	Must wait 1 year before contacting Congress directly. May advise entity behind scenes immediately	May contact immediately if employed by tribe or U.S.; must inform head of agency or department of any personal and substantial involvement in matter while a Member	May contact immediately	May contact immediately
Foreign Entity	Must wait 1 year before contacting Congress or advising foreign government behind scenes. Must register with Justice Department if acting as a foreign agent in the U.S.	Must wait 1 year before contacting Executive Branch or advising foreign government behind scenes. Must register with Justice Department if acting as a foreign agent in the U.S.	May contact immediately	May contact immediately. Must register with the Justice Department if acting as a foreign agent in the U.S.
International Org. of which U.S. is a Member	If Secretary of State classifies the subject matter as one of national interest, former Member may immediately advise international organization and contact Congress directly; otherwise, must wait 1 year to do either	If Secretary of State classifies the subject matter as one of national interest, former Member may immediately advise international organization and contact executive branch directly; otherwise, must wait 1 year to do either	May contact immediately	May contact immediately
Accredited U.S. College or University	May contact immediately if an employee of the college or university	May contact immediately	May contact immediately	May contact immediately
Charitable Hospital or Medical Research Organization	May contact immediately if an employee of the hospital or organization	May contact immediately	May contact immediately	May contact immediately
Candidate, Political Campaign, or Party	May make communications immediately as employee of candidate, authorized campaign committee, or federal or state party or committee, unless employed by entity that advises only such entities	May contact immediately	May contact immediately	May contact immediately

Penalties

Each violation of the post-employment restrictions set forth in the statute is a felony punishable by imprisonment up to one year (or up to five years for willful violations) and a fine of up to \$102,446 for each violation or the value of the compensation received for the act that violated the restrictions, whichever is greater.⁶⁸ The statute further authorizes the Attorney General to seek an injunction prohibiting a person from engaging in conduct that violates the act.⁶⁹

By its terms, 18 U.S.C. § 207 governs the conduct of **former** Members, officers, and employees, and does not apply to the conduct of **current** Members, officers, and employees. However, the post-employment restrictions have been the subject of close attention by DOJ, as reflected in the guilty pleas by former House staff and others to criminal violations of the statute.⁷⁰ Therefore, current Members and staff who receive or otherwise participate in improper contacts by a covered former employee should be aware that, depending on the circumstances, they may be subject to criminal or House disciplinary action. The examples involving § 207 violations indicate that a Member who aids and abets a covered former employee in the violation may be prosecuted for conspiracy to violate the post-employment restrictions.⁷¹

Example 9. Staff member *I* resigned as chief of staff for Member *J* last month to become a registered federal lobbyist for a local non-profit organization. *I* is a covered employee and subject to the post-employment ban for a year. *I* asks *J* to support increased funding for the non-profit and schedules a time for them to discuss the matter further. If *J* accepts the meeting with *I*, he could be considered aiding and abetting *I* to violate her post-employment restrictions.

Furthermore, in an Ethics Committee disciplinary case that was completed in the 106th Congress, a Member admitted to engaging in several forms of conduct that violated House rules requiring that each Member and staff person “conduct himself at all times in a manner that shall reflect creditably on the House.”⁷² One of those violations was his engaging in a pattern and practice of knowingly allowing his former chief of staff to appear before and communicate with him in his official capacity during the one-year period following her resignation, “in a manner that created the appearance that his official decisions might have been improperly affected.”⁷³

⁶⁸ See 18 U.S.C. § 216; see also 28 C.F.R 85.5 (2020).

⁶⁹ See 18 § 216(c).

⁷⁰ See, e.g., *United States v. Jack A. Abramoff*, Docket No. 06-CR-001 (D.D.C.) (“*Abramoff* action”). In addition, in September 2006, former Representative Robert W. Ney pleaded guilty to conspiracy to violate, among other statutes, the post-employment restrictions for former covered employees (“*Ney* action”). Also note, in September 2012, a former Senate staffer, Doug Hampton, was sentenced to one year probation for violating the post-employment restriction (“*Hampton* action”).

⁷¹ See, e.g., *Abramoff* and *Ney* actions, note 67 above.

⁷² House Rule 23, cl. 1; see also House Comm. on Standards of Official Conduct, *In the Matter of Representative E.G. “Bud” Shuster*, H. Rep. 106-979, 106th Cong., 2d Sess. vol. I (July 19, 2002) (“*Shuster* Report”).

⁷³ House Comm. on Standards of Official Conduct, *Summary of Activities, One Hundred Sixth Congress*, H. Rep. 106-1044, 106th Cong., 2d Sess. at 10, 13, 16 (2000); see also *Shuster* Report, note 69 above, vol. I. See

FLOOR PRIVILEGES OF A FORMER MEMBER

The type of work that a Member does after leaving office may limit the Member's future floor privileges. While former Members generally are entitled to admission to the Hall of the House, this privilege is not extended to those who: (1) are registered lobbyists or agents of a foreign principal; (2) have any direct personal or pecuniary interest in any pending legislation; *or* (3) work for or represent anyone "for the purpose of influencing, directly or indirectly, the passage, defeat, or amendment of any legislative proposal."⁷⁴ In short, a Member may not take advantage of his or her status as a former Member to lobby current Members on the House floor (that is, those areas restricted to the public). Unlike the post-employment restrictions, this rule has no time limit.⁷⁵

In addition, a resolution adopted at the start of the 116th Congress provides that former Member and officers, as well as their spouses, who are registered federal lobbyists or agents of a foreign principal are also prohibited from access "to any exercise facility which is made available exclusively to Members and former Members, officers and former officers" during the 116th Congress.⁷⁶

FINANCIAL DISCLOSURE REQUIREMENTS FOLLOWING DEPARTURE FROM HOUSE EMPLOYMENT

A departing Member of Congress must file a final Financial Disclosure Statement, called a "Termination Report," within 30 days of leaving office.⁷⁷ Extensions of up to 90 days are available upon written request to the Committee when made prior to the original due date.⁷⁸

The Termination Report, filed on the same form as the annual report, covers all financial activity through the end of the Member's term.⁷⁹ Schedule F ("Agreements") of the report requires disclosure of any agreement entered into by the filer, oral or written, with respect to future employment.⁸⁰ Thus, if a Member accepts a future position while still on the House payroll, the Member will have to disclose the agreement on the Member's public termination filing. The date of the agreement, the future employer, the position or title and the starting date must be disclosed,

also, Senate Select Comm. on Ethics, *Report of the Preliminary Inquiry into the Matter of Senator John E. Ensign* (May 10, 2011) available at https://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=676ADD17-2C7F-40F7-A4D9-B35526E4DA97.

⁷⁴ House Rule 4, cl. 4(a).

⁷⁵ Departing Members may also wish to review a memorandum issued by the Congressional Research Service, *Selected Privileges and Courtesies Extended to Former Members of Congress*, Report No. R41121 (Dec. 5, 2014).

⁷⁶ H. Res. 6 § 3(d) (adopted Jan. 9, 2019). Although this restriction applies only during the 116th Congress, departing Members should note that similar language has been adopted in previous Congresses.

⁷⁷ 5 U.S.C. app. § 101(e).

⁷⁸ *Id.* § 101(g); Comm. on Ethics, *2019 Instruction Guide for Completing Financial Disclosure Statements and Periodic Transaction Reports (2019 FD and PTR Instructions)* at 7.

⁷⁹ *Id.* § 101(e). For Members who serve out their full term, this date will be January 3; Members who retire earlier than the end of the term will have different end date.

⁸⁰ *Id.* § 102(a)(7).

but the amount of the compensation need not be reported.⁸¹ The Member will also have to disclose, on Schedule H (“Travel Payments and Reimbursements”) of the Termination Report, any travel reimbursements exceeding \$415 received from any source in connection with job-search activity.⁸²

However, a departing Member who, prior to thirty days after leaving office, has accepted another federal position requiring the filing of a *public* financial disclosure statement need not file a Termination Report.⁸³ Any departing Member who is not required to file a Termination Report for this reason must notify the Clerk *in writing* of that fact.⁸⁴

USE OF EXCESS CAMPAIGN FUNDS

Members are prohibited by House rules from converting campaign funds to personal use.⁸⁵ Federal election law, as implemented by a set of regulations issued by the Federal Election Commission (FEC), bans the use of excess campaign funds for personal purposes by anyone, incumbents and non-incumbents alike.⁸⁶ All campaign resources (including equipment, furniture, and vehicles) are subject to the same restrictions.⁸⁷ A Member may not keep campaign property upon retirement from Congress unless he or she pays the campaign fair market value.⁸⁸ In valuing the property, the Member may take into account the fact that it has been used.⁸⁹

Example 10. Member *K* would like to keep the car owned by his campaign when he retires. If he pays the campaign the car’s fair market value, *K* may do so.

As to excess campaign funds, among the permissible uses under statutory law are donation to charities described in § 170(c) of the Internal Revenue Code,⁹⁰ and contribution to any national, state, or local committee of a political party.⁹¹ A former Member may use campaign funds to defray the costs of winding down his or her congressional office for a period of up to six months after leaving office.⁹² In addition, both the FEC and the Ethics Committee have ruled that a retiring Member may use campaign funds to pay the expenses of moving both congressional office

⁸¹ *See id.*; *see also 2019 FD and PTR Instructions* at 35.

⁸² 5 U.S.C. app. § 102(a)(2)(B). Such travel must be disclosed on the Member’s Financial Disclosure Statement even if the Member ultimately remains in Congress rather than accepting private employment.

⁸³ *Id.* § 101(e).

⁸⁴ *See 2019 FD and PTR Instructions* at 5. A form for this purpose is available on the Committee’s website, at https://ethics.house.gov/sites/ethics.house.gov/files/FD_TerminationExemption.pdf.

⁸⁵ House Rule 23, cl. 8.

⁸⁶ 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.2(e).

⁸⁷ *See generally* 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.1.

⁸⁸ 11 C.F.R. §§ 113.1(g)(3) and 113.2(e).

⁸⁹ 11 C.F.R. § 113.1(g)(3).

⁹⁰ 52 U.S.C. § 30114(a)(3); 11 C.F.R. § 113.2(b); *see also* 11 C.F.R. § 113.1(g)(2).

⁹¹ 52 U.S.C. § 30114(a)(4); 11 C.F.R. § 113.2(c).

⁹² 11 C.F.R. § 113.2(a)(2).

furnishings and personal household furnishings and effects back to the Member's home state.⁹³ A retiring Member should consult with FEC staff on the specifics of statutory law and FEC rules on the use or disposition of excess campaign funds, including with regard to maintaining those funds for use in a future campaign, or making donations to other candidates.

OUTSIDE EMPLOYMENT AND EARNED INCOME RESTRICTIONS

All departing Members remain subject to all House rules, including the gift rule and the limitations on outside employment and earned income,⁹⁴ even after adjournment *sine die*, until the end of their term, unless they elect to resign earlier. These rules are particularly important to bear in mind for a departing Member whose prospective employer suggests that the Member start work prior to leaving office. In calendar year 2020, a Member may not receive outside earned income (including, for example, a signing bonus) in excess of \$28,845, and **no** earned income may be received for: (1) providing professional services involving a fiduciary relationship, including the practice of law, or any consulting or advising; (2) being employed by an entity that provides such services; or (3) serving as a board member or officer of any organization.⁹⁵ Regardless of whether compensation is received, a Member may not allow his or her name to be used by an organization that provides fiduciary services. In addition, a Member may not receive any honoraria (*i.e.*, a payment for a speech, article, or appearance),⁹⁶ although he or she may receive compensation for teaching, if the Member first secures specific prior permission from this Committee.⁹⁷

Example 11. Member *L* plans to join a law firm when she leaves office. Since this is a firm providing professional services of a fiduciary nature, *L* may not commence employment with the firm until the new Congress is sworn in, unless she resigns early.

ACCEPTANCE OF OFFICIALLY CONNECTED TRAVEL FUNDED BY A PRIVATE SOURCE

Several rules may affect a departing Member's travel decisions. House rules prohibit the use of committee funds and local currencies owned by the United States to pay for travel by a Member: (1) after the date of a general election in which he or she was not elected to the succeeding Congress; or (2) in the case of a Member who is not a candidate in a general election, after the **earlier** of the date of the general election or adjournment *sine die* of Congress.⁹⁸

⁹³ FEC Advisory Opinion 1996-14 (available on the FEC website, www.fec.gov); *2008 House Ethics Manual* at 162.

⁹⁴ House Rule 25, cls. 1-5. The outside employment and earned income limitations are also codified at 5 U.S.C. app. §§ 501-502.

⁹⁵ House Rule 25, cls. 1-4; *see also* 5 U.S.C. app. §§ 501-502.

⁹⁶ House Rule 23, cl. 5; House Rule 25, cl. 1(a)(2).

⁹⁷ House Rule 25, cl. 2(e).

⁹⁸ House Rule 24, cl. 10.

With regard to privately-funded travel that is fact-finding in nature, because the gift rule requires that such travel be related to official duties,⁹⁹ it is questionable whether a departing Member may accept an invitation for a such travel that would take place after the adjournment *sine die* of the House. As of that time, the official responsibilities that may justify acceptance of travel expenses for such a purpose will practically have come to an end. However, this consideration does not limit the ability of a departing Member to accept travel expenses from a private source for the purpose of enabling the Member to participate substantially in an officially-related event, such as to give a speech.

* * *

Any questions on these matters should be directed to the Committee's Office of Advice and Education at (202) 225-7103.

⁹⁹ House Rule 25, cl. 5(b)(1)(A); *see also* House Rule 25, cl. 5(b)(3)(G).

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

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

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 18, 2020

MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Negotiations for Future Employment and Restrictions on Post-Employment
for House Staff

The purpose of this memorandum is to remind you about issues of concern to staff members¹ who are negotiating for future employment or departing from employment with the House of Representatives or one of the legislative branch offices.² The matters discussed here include negotiations for future employment, post-employment restrictions, financial disclosure requirements (Termination Reports), and outside employment and earned income restrictions. Although this memorandum will be of particular interest to departing staff, current staff and their employing Members should also familiarize themselves with these restrictions, particularly the criminal restrictions on post-employment communications.³ Current Members and staff are reminded that they may not assist in the violation of these restrictions.

In addition, the Committee would like to take this opportunity to note one statutory provision that applies to **all House Members and staff**. House Members and staff may not use confidential information obtained by means of personal and substantial participation in ongoing trade or treaty negotiations for one year prior to leaving House employment in the course of

¹ The terms “staff” and “employee” are used interchangeably throughout this memorandum to refer to persons who are employed by a Member, committee, leadership office, or other legislative offices (*see* note 2, below). Relevant distinctions among these categories of employees are noted as necessary.

² “[O]ther legislative offices” include employees of the Architect of the Capitol, United States Botanic Garden, Government Accountability Office, Government Printing Office, Library of Congress, Office of Technology Assessment, Congressional Budget Office, and Capitol Police. It also includes any other House legislative branch office not covered by the other provisions, such as the Clerk, Parliamentarian, Office of General Counsel, and Chief Administrative Officer. *See* 18 U.S.C. § 207(e)(9)(G).

³ This guidance, as well as some additional requirements and restrictions, also applies to House Members and officers, and is addressed in a separate memorandum entitled “Negotiations for Future Employment and Restrictions on Post-Employment for House Members and Officers.” This staff memorandum will not specifically mention the requirements for Members and officers, or how they differ from those pertaining to House staff. Members and officers seeking guidance should consult the companion memorandum referenced above.

representing, aiding, or advising anyone other than the United States regarding those ongoing negotiations.⁴ As with other provisions of this statute, this prohibition lasts for one year after departure from the House payroll.⁵

NEGOTIATING FOR FUTURE EMPLOYMENT

In the past, the Committee’s general guidance on job negotiations has been that House Members and employees are free to pursue future employment while still employed by the House, subject to certain ethical constraints. This memorandum provides more detailed guidance on the issues presented by such negotiations, as well as mandatory disclosure obligations such negotiations may trigger.

The general guidance applicable to any House employee, regardless of salary level, who wishes to engage in negotiations for future employment, is as follows. First and foremost, it would be improper for a House employee to permit the prospect of future employment to influence the official actions of the employee, or the employing office of the employee.⁶ Some employees may determine to use an agent (*e.g.*, a “headhunter”) to solicit job offers on their behalf in order to avoid any appearance of improper activity. Regardless of whether job negotiations are undertaken personally or through an agent, the following generally-applicable principles must be observed.

The term “negotiation” is not defined in the relevant statute or House rule. In its past guidance, the Committee has given deference to court decisions interpreting a related federal criminal statute that bars Executive Branch employees from participating in matters affecting the financial interests of an entity with which the employee is “negotiating or has any arrangement” concerning future employment.⁷ Those decisions found that the term “negotiation” should be construed broadly.⁸ However, these decisions make a distinction between “negotiations,” which trigger the rule, and “[p]reliminary or exploratory talks,” which do not.⁹ The term “negotiations” connotes “a communication between two parties with a view toward reaching an agreement” and in which there is “active interest on both sides.”¹⁰ Thus, merely sending a copy of one’s résumé to a private entity is not considered “negotiating” for future employment.

⁴ 18 U.S.C. § 207(b). For purposes of this provision, the term “trade negotiation” means “negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made” and the term “treaty” means “an international agreement made by the President that requires the advice and consent of the Senate.” *Id.* at § 207(b)(2).

⁵ *Id.*

⁶ See House Rule 23, cl. 3; Code of Ethics for Government Service ¶¶ 5, 6, reprinted in *2008 House Ethics Manual* at 355.

⁷ 18 U.S.C. § 208.

⁸ See, *e.g.*, *United States v. Schaltenbrand*, 930 F.2d 1554, 1559 (11th Cir. 1991); *United States v. Conlon*, 628 F.2d 150, 155 (D.C. Cir. 1980).

⁹ See *Schaltenbrand*, 930 F.2d at 1558-59.

¹⁰ *United States v. Hedges*, 912 F.2d 1397, 1403 n.2 (11th Cir. 1990) (quoting jury instruction); see also *Schaltenbrand*, 930 F.2d at 1558, 1559 n.2.

Other, more general, ethical rules also bear on the subject of employment negotiations. The House Code of Official Conduct prohibits House Members, officers, and employees from receiving compensation “by virtue of influence improperly exerted” from a congressional position.¹¹ The Code of Ethics for Government Service forbids anyone in government service from accepting “favours or benefits under circumstances which might be construed by reasonable persons as influencing the performance” of governmental duties.¹² Federal criminal law prohibits a federal official from soliciting or accepting a “bribe”— i.e., anything of value given in exchange for being influenced in an official act.¹³ Although bribery necessarily entails a *quid pro quo* arrangement, the same statute also bans seeking or accepting “illegal gratuities”— i.e., anything given because of, or in reward for, a future or past official act, whether or not the official action would be, or would have been, taken absent the reward.¹⁴

In light of these restrictions, all House employees should be particularly careful in negotiating for future employment, especially when negotiating with anyone who could be substantially affected by the performance of the employee’s official duties.¹⁵ It may be prudent for the employee to have an exchange of correspondence with any serious negotiating partner, stipulating that the prospective employer will receive no official favors in connection with the job negotiations. Those employees who will be subject to the post-employment restrictions, which are addressed later in this memorandum, may also wish to establish in correspondence with any prospective employer that the future employer understands that (1) it will receive no official favors as a result of the job negotiations, and (2) the employee is subject to post-employment restrictions, which should be briefly outlined.¹⁶ Departing employees who are lawyers should consult their local bar associations concerning the application of rules governing their involvement in matters in which they participated personally and substantially during their time with the House.¹⁷ In addition, as addressed in the next section of this memorandum, those employees subject to the post-employment restrictions must disclose employment negotiations in writing to the Ethics Committee.

¹¹ House Rule 23, cl. 3.

¹² Code of Ethics for Government Service ¶ 5, *reprinted in 2008 House Ethics Manual* at 355.

¹³ 18 U.S.C. § 201(b)(2)(A).

¹⁴ *Id.* § 201(c)(1)(B).

¹⁵ *See* Code of Ethics for Government Service ¶ 5, *reprinted in 2008 House Ethics Manual* at 355.

¹⁶ *See* 18 U.S.C. § 207. These restrictions are explained in detail later in this memorandum. Briefly, covered House employees may not contact their former employing Member or Members on official business for one year after leaving office, nor may they assist any foreign entity, i.e., a foreign government or foreign political party, in seeking to influence a decision of any federal official during that year.

¹⁷ A former employee who joins a law firm should also be aware that a separate statutory provision, 18 U.S.C. § 203, has been interpreted to prohibit a former federal official who joins a firm from sharing in fees attributable to representational services in federally related matters where those services were provided by the firm while the individual was still employed by the government. (OGE website at <https://www.oge.gov>).

Please note that 18 U.S.C. § 203 is a federal criminal statute within the jurisdiction of the U.S. Department of Justice; therefore, staff may wish to seek guidance from outside counsel prior to accepting fees that may implicate 18 U.S.C. § 203.

Provided that employees conduct themselves in accordance with the considerations discussed above, they may engage in negotiations for employment in the same manner as any other job applicant. Discussions may specifically address salary, duties, benefits, and other terms.

DISCLOSURE OF EMPLOYMENT NEGOTIATIONS AND RECUSAL REQUIREMENTS

Certain House staff must notify the Committee within three (3) business days after they commence any negotiation or agreement for future employment or compensation with a *private* entity.¹⁸ Staff subject to this disclosure requirement are those employees of the House who are paid at or above an annual rate of \$130,500 (\$10,875 per month) for any two months in a calendar year, including any federal civil service or military annuities.¹⁹ This rate is referred to as the post-employment rate.

The term “negotiation” is not defined in the relevant statute or House rule. The Committee views negotiations using the standard discussed earlier in this memorandum, namely that there has been “a communication between two parties with a view to reaching an agreement” and in which there is “discussion and active interest on both sides.”²⁰ In addition, staff paid at or above the post-employment rate 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.²¹

The terms “conflict” and “appearance of conflict” also are not defined in the rule. The Committee has stated that a “conflict of interest becomes problematic when [an employee] uses his position to enhance his personal financial interests or his personal financial interests impair his

¹⁸ House Rule 27, cl. 2; Stop Trading on Congressional Knowledge Act, Pub. L. No. 112-105 (Apr. 4, 2012) (hereinafter STOCK Act) § 17. House Rule 27, clause 1, which imposes a similar restriction on House Members, limits the disclosure requirement for Members to negotiations with *private* employers. While the express language of clause 2, which covers employees, does not limit its terms to negotiations with private employers, the Committee has read the two clauses consistently as excluding from the disclosure requirement any job negotiations with government entities for both Members and employees.

¹⁹ House Rule 27, clause 2, imposes the disclosure requirement on any “employee of the House earning in excess of 75 percent of the salary paid to a Member.” In 2020, that rate is \$130,500 per year for most House employees; *see also* Section 7 of the Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94 Dec. 20, 2019), prohibiting a scheduled cost-of-living pay raise for Members. As a result, Member pay will remain at \$174,000 for 2020.

²⁰ *See Hedges*, 921 F.2d at 1403 n.2.

²¹ House Rule 27, cl. 4.

judgment in conducting his public duties.”²² Employees should also avoid situations that might be viewed as presenting even a risk that the individual might be improperly influenced by personal financial interests.”²³

The Committee has issued forms, available on the Committee website (<https://www.ethics.house.gov>), to be used for these notification requirements. When notifying the Committee of negotiations or agreements for future employment or compensation, required staff should complete and sign an employment negotiation form, formally titled the “Notification of Negotiations or Agreement for Future Employment.”²⁴ The completed form must be submitted to the Committee. All filers should keep a copy of their submission for their records. There is a separate form for notifying the Committee of recusal, titled the “Statement of Recusal.” Staff subject to the post-employment restrictions who recuse themselves from official matters pursuant to House Rule 27 and/or the STOCK Act must complete and submit the recusal form to the Committee.²⁵

Forms may be sent by email to EthicsCommittee@mail.house.gov.

BENEFITS OFFERED BY PROSPECTIVE EMPLOYERS DURING JOB NEGOTIATIONS

House employees may accept “[f]ood, refreshments, lodging, transportation, and other benefits . . . customarily provided by a prospective employer in connection with bona fide employment discussions.”²⁶ Thus, subject to the limitations set out in the rule, a House employee may accept travel expenses from an entity with which the individual is interviewing for a position and to meet prospective colleagues. Such travel is *not* subject to the requirement for prior, written approval from the Committee that applies to privately-funded travel undertaken as part of one’s House duties. However, travel expenses that exceed \$415 from any one source must be disclosed

²² House Comm. on Standards of Official Conduct, *In the Matter of Representative Sam Graves*, H. Rep. No. 111-320, 111th Cong., 1st Sess. 16 (2009); *see also* 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. H9253 at H9259 (daily ed. Nov. 21, 1989) (“A conflict of interest is generally defined as a situation in which an official’s private financial interests conflict or appear to conflict with the public interest.”); House Rule 23, cl. 3 (“A Member . . . may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress.”).

²³ *See Federal Conflict of Interest Legislation*, Staff Report to Subcomm. No. 5 of the Comm. on the Judiciary, 85th Cong., 2d Sess. 1 (Comm. Print 1958) (“Within reasonable limits, also, the importance of public confidence in the integrity of the Federal service justifies the requirement that the Federal employee shall avoid the appearance of evil, as well as evil itself.”); Code of Ethics for Government Service ¶ 5, *reprinted in 2008 House Ethics Manual* at 355 (“Any person in government service should . . . never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.”); *see also* House Rule 23, cl. 2 (“[An] . . . employee of the House shall adhere to the spirit and letter of the Rules of the House . . .”).

²⁴ House Rule 27, cls. 1-3.

²⁵ *Id.*, cl. 4. Clause 4 does not require staff to file their notice of negotiation with the Clerk, as is required of House Members.

²⁶ House Rule 25, cl. 5(a)(3)(G)(ii).

on Schedule H (“Travel Payments and Reimbursements”) of the Termination Report required of departing senior employees.²⁷ Such travel must be disclosed on the employee’s Financial Disclosure Statement even if the individual ultimately remains employed by the House rather than accepting private employment.²⁸ In addition, any agreement for future employment also must be disclosed on Schedule F (“Agreements”) of that statement, if the agreement was entered into prior to the employee’s last date on House payroll.²⁹

POST-EMPLOYMENT RESTRICTIONS

Since 1989, legislative branch officials, including certain employees, have been subject to restrictions on their post-House employment under the Ethics Reform Act.³⁰ These limitations are part of the federal criminal code, and they apply to Members and officers of the House, as well as to employees of House Member, committee, and leadership offices who are paid at least 75% of a Member’s salary, inclusive of any federal civil service or military annuity.³¹ The basic rate of pay for Members in calendar year 2020 is \$174,000, and thus the post-employment threshold for individuals who terminate their employment with a Member, committee, or leadership office in 2020 is **\$130,500**. The threshold rate for other years is available from the Ethics Committee. For employees of “other legislative offices,”³² the basic rate of pay triggering the restrictions is level IV of the Executive Schedule, which for 2020 is **\$170,800**.³³ Please note that this rate of pay is subject to change in 2021.

An employee is subject to these restrictions if the employee is paid at or above the threshold rate for at least 60 days during the one-year period preceding termination of the employee’s House service.³⁴ Accordingly, it is possible for an employee who is usually paid below the threshold rate to become subject to the post-employment restrictions by the receipt of a “bonus” or merit adjustment that is paid by adjusting the employee’s basic rate of pay in two or more months, even if the adjustment is intended to be temporary.³⁵ Employees who are subject to the restrictions are referred to as “covered” individuals.

²⁷ Please note that the requirement to file a Financial Disclosure Statement covering calendar year 2020 applies to officers and employees whose basic rate of pay for at least 60 days in 2020 was \$131,239, or a monthly salary at or above \$10,936. Staff paid at this rate are referred to as “senior staff.”; *See* Ethics in Government Act (EIGA) §§ 109(13) and 101(d), 5 U.S.C. app. §§ 109(13) and 101(d).

²⁸ 5 U.S.C. app. § 102(a)(2)(B).

²⁹ *Id.* § 102(a)(7)(A).

³⁰ *See* 18 U.S.C. § 207(e), (f).

³¹ *Id.* § 207(e)(7). With regard to House employees who are federal civil service or military annuitants, it is the view of the Ethics Committee that the post-employment restrictions apply to those whose combined House salary and annuity were at or above the threshold rate for the specified time period.

³² For the definition of “other legislative offices,” see note 2, above.

³³ 18 U.S.C. § 207(e)(7)(B).

³⁴ *Id.* § 207(e)(7).

³⁵ The Committee has determined that lump sum payments, when properly used by an employing office, do not constitute part of the recipient’s “basic rate of pay.” *See 2008 House Ethics Manual* at 240, n.112.

For covered individuals, the law establishes a one-year “cooling-off period” that begins from the date of the individual’s departure from the House payroll.³⁶ When an office continues an individual on the payroll for the purpose of paying for accrued leave after the individual’s services to the House have ceased, the one-year cooling-off period will not begin until after the individual’s final day on the House payroll. In general, House employees whose pay is **below** the threshold are **not** subject to the post-employment restrictions set out in the statute, with the exception of the provision described earlier in this memorandum regarding participation in trade and treaty negotiations, and no other provision of federal statutory law or the House rules establishes any comparable restrictions on post-employment activity.

Set out below is a detailed description of prohibited and permitted post-employment activities of former staff under the statute. This explanation is followed by a table that briefly summarizes the statutory restrictions. Please note that the statute, as part of the criminal code, is enforced by the Department of Justice (DOJ), rather than by the Ethics Committee. While the Ethics Committee interpretations of 18 U.S.C. § 207 are not binding on DOJ, those interpretations are based on the Committee’s analysis of the terms and purposes of the statute, as well as any applicable opinions or guidance of DOJ or OGE of which the Committee is aware. Accordingly, an employee (or former employee) who has any concerns about the applicability of the post-employment restrictions to his or her proposed conduct should contact the Ethics Committee for guidance.³⁷ The Committee also recommends covered employees seek guidance from outside counsel.

Prohibited Activity

Under the statute, a covered former employee may **not**, for a period of **one year** after House employment:

- ✗ **Knowingly communicate with or appear before the employee’s former employing office or committee** with the intent to influence, on behalf of any other person, the official actions or decisions of a Member, officer, or employee in such office or on such committee.³⁸ An individual who was employed by more than one House office (i.e., “shared staff”) during the individual’s last twelve months of employment with the House is subject to the post-employment restrictions with respect to each of the individual’s employing offices if the employee’s combined House salaries exceeded the triggering threshold.

The statute excepts certain representations made on behalf of specific types of entities, as described below in the context of “permissible activity.” With regard to restricted activity, the statute specifically provides that:

³⁶ *Id.* § 207(e)(3)-(7).

³⁷ It should be noted that one court held that it is a complete defense to a prosecution for conduct assertedly in violation of a related federal criminal strict-liability statute (18 U.S.C. § 208) that the conduct was undertaken in good faith reliance upon erroneous legal advice received from the official’s supervising ethics office. *Hedges*, 912 F.2d at 1404-06.

³⁸ *Id.*

- Covered former employees on the **personal staff**³⁹ of a Member may not seek official action, on behalf of other persons, from that Member or from any of the Member’s employees.⁴⁰
- Covered former **committee staff**⁴¹ may not seek official action, on behalf of other persons, from any current Member or employee of the employing committee or from any Member who was on the committee during the last 12 months the former employee worked there.⁴² This restriction bars contacts with any of these individuals on any subject relating to official business, regardless of whether it pertains to matters within the committee’s jurisdiction.⁴³
- Covered former employees on the **leadership staff**⁴⁴ may not seek official action, on behalf of other persons, from current Members of the leadership⁴⁵ or any current staff of those Members.⁴⁶
- Covered former employees of any **other legislative office**⁴⁷ may not seek official action, on behalf of other persons, from current officers and employees of that legislative office.⁴⁸

✕ **Knowingly represent a foreign entity, i.e., a foreign government or foreign political party**, before any federal official (including any Member of Congress) with the intent to influence a decision of such official in official duties.⁴⁹

³⁹ *Id.* § 207(e)(9)(E).

⁴⁰ *Id.* § 207(e)(3). The statute expressly prohibits contacting any employee of a Member whom the departed employee is prohibited from contacting. *Id.* § 207(e)(3)(B)(ii).

⁴¹ *Id.* § 207(e)(9)(A). For the purposes of the statute, a **detailee** is deemed to be an employee of both the entity from which the detailee comes and the House committee to which the individual is detailed. *Id.* § 207(g).

⁴² *Id.* § 207(e)(4).

⁴³ *Id.* (barring communication or appearances on “any matter” on which the former employee seeks action).

⁴⁴ *Id.* § 207(e)(9)(H).

⁴⁵ The “leadership” of the House of Representatives consists of the Speaker; majority leader; minority leader; majority whip; minority whip; chief deputy majority whip; chief deputy minority whip; assistant minority leader; chairman of the Democratic Steering and Policy Committee; chairman and vice chairman of the Democratic Caucus; chairman, vice chairman, and secretary of the Republican Conference; chairman of the Republican Research Committee; chairman of the Republican Policy Committee; and any similar position created after the statute took effect. 18 U.S.C. § 207(e)(9)(L).

⁴⁶ *See id.* §§ 207(e)(5)(B) and (e)(9)(H).

⁴⁷ “[O]ther legislative offices” include employees of the Architect of the Capitol, United States Botanic Garden, Government Accountability Office, Government Printing Office, Library of Congress, Office of Technology Assessment, Congressional Budget Office, and Capitol Police. The term also includes any other House legislative branch office not covered by the other provisions of the statute, such as the Clerk, Parliamentarian, Office of General Counsel, and Chief Administrative Officer. *See* 18 U.S.C. § 207(e)(9)(G).

⁴⁸ 18 U.S.C. §§ 207(e)(6) and (e)(9)(G).

⁴⁹ *Id.* §§ 207(f)(1)(A) and (i)(1)(B). Section § 207 restricts activities with respect to a “foreign entity,” which is defined as either the “government of a foreign country” or a “foreign political party” as those terms are, in

- ✗ Knowingly **aid or advise a foreign entity, i.e., a foreign government or foreign political party**, with the intent to influence a decision of any federal official (including any Member of Congress) in carrying out his or her official duties.⁵⁰
- ✗ **Use confidential information obtained by means of personal and substantial participation in ongoing trade or treaty negotiations** within one year preceding the employee’s departure from the House payroll, in the course of representing, aiding, or advising anyone other than the United States regarding those ongoing negotiations.⁵¹

As to the prohibition against making any “communication to or appearance before” anyone in the legislative branch, covered former employees should be aware of the broad manner in which DOJ has defined those terms.⁵² A DOJ opinion defines “communication” as “the act of imparting or transmitting information with the intent that the information be attributed to the former official.”⁵³

Further, an advisory memorandum issued by the U.S. Office of Government Ethics (OGE) for Executive Branch employees states, “[a]n ‘appearance’ extends to a former employee’s mere physical presence at a proceeding when the circumstances make it clear that his attendance is intended to influence the United States.”⁵⁴ The provision is broad enough that it precludes a covered former employee even from, for example, requesting or scheduling, for or on behalf of any other person, a meeting with any Member, officer, or employee whom the individual is

turn, defined in the Foreign Agents Registration Act (22 U.S.C. § 611(e), (f)). *See id.* § 207(f)(3). A U.S. Office of Legal Counsel (OLC) opinion of August 13, 2008, concluded that a foreign corporation is to be considered a foreign entity for purposes of 18 U.S.C. § 207(f) if it “exercises sovereign authority or functions de jure (i.e., by formal delegation) or de facto.” *See* OLC Memorandum Opinion, *Application of 18 U.S.C. § 207(f) to a Former Senior Employee* (available on the OLC website at <https://www.justice.gov/sites/default/files/olc/opinions/attachments/2015/06/23/op-olc-v032-p0115.pdf>). *See also* U.S. OGE, LA-16-08: *Introduction to the Primary Post-Government Employment Restrictions Applicable to Former Executive Branch Employees*, at 10 (September 23, 2016) (available on the OGE website at [https://www.oge.gov/web/oge.nsf/All%20Documents/3741DC247191C8B88525803B0052BD7E/\\$FILE/LA-16-08.pdf?open](https://www.oge.gov/web/oge.nsf/All%20Documents/3741DC247191C8B88525803B0052BD7E/$FILE/LA-16-08.pdf?open)). Also pertinent to these provisions of the statute is an OLC opinion of June 22, 2004, which concludes that 18 U.S.C. § 207(f) covers representational contacts with Members of Congress. *See* OLC Memorandum Opinion, *Application of 18 U.S.C. § 207(f) to a Former Senior Employee* (available on the OLC website at https://www.justice.gov/sites/default/files/olc/opinions/2004/06/31/op-olc-v028-p0097_0.pdf).

⁵⁰ 18 U.S.C. § 207(f)(1)(B).

⁵¹ *Id.* § 207(b).

⁵² 18 U.S.C. § 207. The provisions of 18 U.S.C. § 207 should not be confused with those of the Lobbying Disclosure Act (2 U.S.C. §§ 1601 *et seq.*) (LDA). In other words, merely because a particular activity does not constitute “lobbying” for purposes of that Act does **not** mean that the activity is permissible under 18 U.S.C. § 207.

⁵³ OLC, “*Communications*” under 18 U.S.C. § 207 at 3 (Jan. 19, 2001) (available on the OLC website at http://www.justice.gov/sites/default/files/olc/opinions/2001/01/31/op-olc-v025-p0059_0.pdf). In that opinion, the OLC provides the following illustrative examples: “A high-ranking official who aggressively publicizes the fact that he is leaving an agency to start a one-man consulting firm, then submits a report to the agency shortly thereafter under the name of that firm, almost certainly intends that the report will be attributed to him. Similarly, a former official who is not introduced by name, but participates on a conference call with his former agency colleagues, almost certainly intends this his colleagues will recognize his voice.” *Id.*

⁵⁴ *Introduction to the Primary Post-Government Employment Restrictions Applicable to Former Executive Branch Employees*, note 49 above, at 3.

prohibited from contacting on official business.⁵⁵ While OGE guidance is merely persuasive, rather than binding, on Committee interpretations of the statute, this Committee endeavors when possible to interpret the statute in a manner consistent with OGE practice.

In addition to these one-year “cooling-off period” restrictions, departing employees should also be aware of a permanent federal statutory restriction that prohibits any U.S. citizen acting without authority of the United States from:

- ✗ Directly or indirectly **commencing or carrying on any correspondence or intercourse with any foreign government**, or any officer or agent thereof, with the intent to influence the measures or conduct of any foreign government or of any officer or agent thereof in relation to any disputes or controversies with the United States, or to defeat the measures of the United States.⁵⁶

Permissible Activity

Under federal statutory law, covered former employees **may, immediately** upon leaving office:

- ✓ **Contact Members, officers, and employees of the Senate, and – except for those officials specified above in the section on “Prohibited Activity” – Members, officers, and employees of the House and other Legislative Branch offices**, with intent to influence official action so long as not representing a foreign entity, i.e., a foreign government or foreign political party.
- ✓ **Aid or advise clients** (other than foreign entities, i.e., foreign governments or foreign political parties) **concerning how to lobby Congress**, provided the former employee makes no appearance before or communication to those officials specified above in the “Prohibited Activity” section. Such a “background role” would not pose the contemplated risk of improper influence since the current officials would not be aware of the former employee’s participation.⁵⁷ However, any such participation must remain behind-the-

⁵⁵ Committee interpretations of the statute contained in this memorandum are based on analysis of the statutory terms and purposes, and opinions and guidance, issued by DOJ and OGE. However, as noted above, 18 U.S.C. § 207 is a criminal statute, and Committee interpretations of it are not binding on the Justice Department (*but see* note 37, above).

⁵⁶ 18 U.S.C. § 953 (the Logan Act). An eighteenth-century law, the Logan Act restricts private correspondence with foreign governments. This statute, which appears to have been a reaction to the attempts of one citizen to engage in private diplomacy, has never been the basis of a prosecution, and this Committee has publicly questioned its constitutionality. House Comm. on Standards of Official Conduct, *Manual of Offenses and Procedures, Korean Influence Investigation*, 95th Cong., 1st Sess. 18-19 (Comm. Print 1977). Members should be aware, however, that the law remains part of the criminal code.

⁵⁷ Former employees who are lawyers may have additional restrictions, as explained above in note 17 of this Memorandum.

scenes; during the one-year “cooling-off” period, former employees must not permit their name to be openly associated with such contact by other persons.⁵⁸

- ✓ **Contact Executive Branch** officials with the intent to influence official action so long as not representing a foreign entity, i.e., a foreign government or foreign political party.⁵⁹
- ✓ **Contact state government officials** with the intent to influence state government actions or decisions. Former employees should comply with any state laws governing such contacts.
- ✓ **Contact one foreign government on behalf of another** foreign government.⁶⁰
- ✓ **Contact any Members, officers, and employees of the House and Senate and other Legislative Branch officials** on official business under any of the following circumstances:
 - The former employee is carrying out official duties on behalf of the **federal government** or the District of Columbia;⁶¹
 - The former employee is acting as an **elected official of a state or local government**;⁶²

⁵⁸ As noted above, the major restrictions set forth in 18 U.S.C. § 207(e) focus on communications and appearances. By contrast, if a covered former employee plays a background role, and does not appear in person or convey his or her name on any communications, the law does not appear to prohibit that person from advising those who seek official action from the Congress (with the exception of the provision that applies to all former employees relating to ongoing trade or treaty negotiations). This construction is consistent with regulations promulgated by OGE, interpreting a comparable prohibition that applies to Executive Branch personnel. *See* 5 C.F.R. § 2637.201(b)(3), (6). This matter is also addressed in the 2001 OLC opinion that is cited in note 51 above, including with regard to activities that do not constitute permissible “behind-the-scenes” activities.

⁵⁹ Covered former employees who are representing a tribal government as an employee of the tribe or as an officer or employee of the United States assigned to a tribe have an additional restriction on contacts with the Executive Branch and certain other entities. Such individuals must first notify the head of the department, agency, court, or commission being contacted of “any personal and substantial involvement” they had in the matter while a federal employee. *See* 25 U.S.C. § 5323(j) (formerly 25 U.S.C. § 450i(j)); 18 U.S.C. § 207(j)(1)(B).

⁶⁰ No federal statute expressly permits such contacts, but so far as the Committee is aware, no federal statute prohibits such contacts. Thus, it appears that such contacts are permissible under federal law. Covered former employees who intend to undertake such activity, however, should carefully review the Foreign Agents Registration Act (22 U.S.C. §§ 611 *et seq.*) (FARA) to ensure compliance with its requirements. Briefly stated, FARA provides that anyone who acts within the United States under the direction or control of a foreign principal to influence official decisions, official policies, or public opinion on behalf of a foreign principal must register with the Justice Department. *See generally* 22 U.S.C. §§ 611 *et seq.*; U.S. Dep’t of Justice (DOJ), “FARA FAQs” (available on the DOJ website, www.justice.gov/nsd-fara).

⁶¹ 18 U.S.C. § 207(j)(1)(A).

⁶² *Id.*

- The former employee is an **employee** (not a private consultant or other independent contractor) of a **state or local government**, or an agency or instrumentality thereof, acting on its behalf;⁶³
 - The former employee is an **employee** of an accredited, degree-granting **institution of higher education** and is acting on behalf of such institution;⁶⁴ or
 - The former employee is an **employee** of a **charitable hospital or medical research organization** and is acting on behalf of such hospital or organization.⁶⁵
- ✓ **Represent or give aid or advice to international organizations** of which the United States is a member **if** the Secretary of State certifies in advance that such activities are in the interest of the United States.⁶⁶ Otherwise, covered employees must wait one year before engaging in such activities.
 - ✓ Make statements or communications as an **employee of a candidate, authorized campaign committee, national or state party, or political committee**, if acting on behalf of that committee or party.⁶⁷ However, if the former employee is employed by a person or entity who represents, aids, or advises only such persons or entities, the communications would be prohibited.⁶⁸
 - ✓ **Make statements based upon the “special knowledge”** of the former employee concerning the particular area that is the subject of the statement, if **no compensation** is received in connection therewith.⁶⁹
 - ✓ **Give testimony under oath**, or make statements required to be made under penalty of perjury.⁷⁰

⁶³ *Id.* (j)(2)(A).

⁶⁴ *Id.* § 207(j)(2)(B). The statute uses the definition of “institution of higher education” contained in § 101 of the Higher Education Act of 1965 (20 U.S.C. §§ 1001 *et seq.*). As a general matter, the definition includes only nonprofit, degree-granting educational institutions located in the United States or its territories. *See* 20 U.S.C. § 1001(a)-(b).

⁶⁵ 18 U.S.C. § 207(j)(2)(B). For this exception to apply, the hospital or medical research organization must be exempted under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)). *Id.*

⁶⁶ *Id.* § 207(j)(3).

⁶⁷ *Id.* § 207(j)(7)(A).

⁶⁸ *Id.* § 207(j)(7)(B)(ii)(II).

⁶⁹ *Id.* § 207(j)(4). “Special knowledge” is not defined in the statute. The Federal Register, which provides rules on the application of the statute to employees in the Executive Branch, states that a “former employee has special knowledge concerning a subject area if he is familiar with the subject area as a result of education, interaction with experts, or other unique or particularized experience.” 5 C.F.R. § 2641.301(d)(1). In addition, in the proposed rulemaking for this provision, the OGE emphasized that it regarded its interpretation of this exception to be “relatively narrow.” *See* 73 Fed. Reg. 36183 (June 25, 2008). While these definitions are not binding on the Ethics Committee, they provide guidance as to how the term should be interpreted.

⁷⁰ 18 U.S.C. § 207(j)(6).

- ✓ **Contact staff of the Clerk of the House** regarding the individual’s compliance with the disclosure requirements under the Lobbying Disclosure Act.⁷¹
- ✓ **Make political contributions** to, and **sponsor or attend political fundraisers** for, current Members of Congress, *provided that* no appearances or communications are made with the intent to influence, on behalf of any other person, the official actions or decisions of current Members or staff.⁷²
- ✓ **Interact socially with current Members of Congress and staff** *provided that* no appearances or communications are made with the intent to influence, on behalf of any other person, the official actions or decisions of current Members or staff.⁷³

Unless stated otherwise, each of the following examples assumes that the staffer is a covered former employee because their compensation while on House payroll triggered the substantive post-employment restrictions.

Example 1. Staff member *A* resigns from her position on Member *B*’s personal staff. She may not contact *B* or anyone on his staff for one year (except on behalf of an exempt organization), but she may contact any other Member or staff member on behalf of anyone other than a foreign entity, i.e., a foreign government or foreign political party, as soon as she leaves the House payroll.

Example 2. Staff member *C* resigns from his position on the Ways and Means Committee. He may not contact any current member or employee of Ways and Means, or any Member who was on that committee during *C*’s last year of congressional service, on behalf of any non-exempt person or entity, for one year. He may, however, contact any other Member or staff member on any issue, except on behalf of a foreign entity, i.e., a foreign government or foreign political party.

Example 3. Staff member *D*, who is not a covered employee, resigns from her position on Member *E*’s staff to become a lobbyist. *D* may immediately lobby *E* or any other Member for any client.

Example 4. Staff member *F* resigns from Member *G*’s staff to accept a position in an Executive Branch agency. *F* may contact *G* immediately on behalf of the agency.

Example 5. Staff member *H* resigns from his congressional position to join the staff of the Governor of his state. As a state employee, *H* may contact anyone in Congress, including his former employing Member, on behalf of the state.

⁷¹ *Id.* § 207(e)(8).

⁷² *See id.* § 207.

⁷³ *See id.*

Example 6. Staff member *I* resigns her congressional position and moves back to her home state. *I* may contact state government officials on behalf of any clients.

Example 7. Staff member *J* resigns his position with Member *K* and begins work as a lobbyist at a lobbying firm. One of *J*'s clients is a state university. *J* may not lobby *K* on behalf of the university (or any other client) for one year following his departure from the House. However, if *J* were an employee of the university rather than an outside retained lobbyist, contact with *K* on behalf of the university would be permitted.

Example 8. Staff member *L* resigns his congressional position to become a lobbyist. For the first year after leaving the Hill, *L* lobbies only Executive Branch personnel, and *L* has no foreign clients. *L* is complying with the law.

Example 9. During his final year of House employment, staff member *M* worked for Member *N* from January to June 30, and for a committee from July 1 through December 30. December 30 was *M*'s final day on the House payroll. *M* was paid more than 75% of a Member's salary while in each position. *M* may not contact *N* or the committee on behalf of any non-exempt person or entity for one year following his termination from each employer. Thus, *M* would be barred from contacting *N* until July 1 of the following year and current and former members of the committee and current committee staff until December 31 of the following year.

Example 10. Staff member *M*, from the previous example, was paid less than the triggering rate in the Member's office, then she accepted a promotion to a committee that did pay more than the triggering rate. *M* would not be restricted from contacting the Member office once she ends her employment with the House.

Example 11. During his one-year "cooling-off" period, former staff member *O* wishes to call his former employing Member to request that she meet with representatives of one of his clients to discuss legislation of interest to the client. *O* would not be present at the meeting. *O* would violate the statute by requesting the meeting because the request would be a communication intended to influence official action.

Example 12. During his first year after leaving House employment, *P* wishes to contact a current employee of that committee to urge him to support federal funding for a non-profit organization operated by a friend of *P*. The non-profit organization is not a client of *P*, and *P* would receive no compensation for making the contact. *P* would violate the statute by doing so because the statute bars such contacts regardless of whether the former employee would be compensated for them.

Entity Contacted by Covered Former Employee

Entity Represented by Covered Former Employee

	Former Congressional Office/Committee	Executive Branch	Foreign Entity	State Governments
Private Entity	Must wait 1 year before contacting former Congressional office or committee directly. May immediately advise entity behind scenes. May contact other Congressional offices immediately	May contact immediately	May contact immediately	May contact immediately
Federal, State, or Local Government	May contact all Congressional offices immediately as employee or elected official of the federal, state, or local government	May contact immediately	May contact immediately	May contact immediately
Tribal Government	Must wait 1 year before contacting former Congressional office or committee directly. May immediately advise entity behind scenes. May contact other Congressional offices immediately	May contact immediately if employed by tribe or U.S.; must inform head of agency or department of any personal and substantial involvement in matter while a House employee	May contact immediately	May contact immediately
Foreign Entity	Must wait 1 year before contacting any Congressional office or committee directly or advising foreign government behind scenes. Must register with Justice Department if acting as a foreign agent in the U.S.	Must wait 1 year before contacting Executive Branch directly or advising foreign government behind scenes. Must register with Justice Department if acting as a foreign agent in the U.S.	May contact immediately	May contact immediately. Must register with Justice Department if acting as a foreign agent in the U.S.
International Org. of which U.S. is a Member	If Secretary of State classifies the subject matter as one of national interest, may immediately advise international organization and contact Congress directly; otherwise, must wait 1 year to do either	If Secretary of State classifies the subject matter as one of national interest, may immediately advise international organization and contact executive branch directly; otherwise, must wait 1 year to do either	May contact immediately	May contact immediately
Accredited U.S. College or University	May contact immediately if an employee of the college or university	May contact immediately	May contact immediately	May contact immediately
Charitable Hospital or Medical Research Org.	May contact immediately if an employee of the hospital or organization	May contact immediately	May contact immediately	May contact immediately
Candidate, Political Campaign, or Party	May make communications immediately as employee of candidate, authorized campaign committee, or federal or state party or committee, unless employed by entity that advises only such entities	May contact immediately	May contact immediately	May contact immediately

Penalties

Each violation of the post-employment restrictions set forth in the statute is a felony punishable by imprisonment up to one year (or up to five years for willful violations) and a fine of up to \$102,446 for each violation or the value of the compensation received for the act which violated the restrictions, whichever is greater.⁷⁴ The statute further authorizes the Attorney General to seek an injunction prohibiting a person from engaging in conduct that violates the act.⁷⁵

By its terms, 18 U.S.C. § 207 governs the conduct of **former** Members, officers and employees, and does not apply to the conduct of **current** Members, officers and employees. However, the post-employment restrictions have been the subject of close attention by DOJ, as reflected in the guilty pleas by former House staff and others to criminal violations of the statute.⁷⁶ Therefore, current Members and staff who receive or otherwise participate in improper contacts by a covered former employee should be aware that, depending on the circumstances, they may be subject to criminal or House disciplinary action. The examples involving § 207 violations indicate that a Member who aids and abets a covered former employee in the violation may be prosecuted for conspiracy to violate the post-employment restrictions.⁷⁷

Example 13. Staff member *Q* resigned as chief of staff for Member *R* last month to become a registered federal lobbyist for a local non-profit organization. *R* is a covered employee and subject to the post-employment ban for a year. *Q* asks several of *R*'s current employees to support increased funding for the non-profit and schedules a time for them to discuss the matter further. If *R*'s employees accept the meeting with *Q*, they could be considered aiding and abetting *Q* to violate her post-employment restrictions. Furthermore, in an Ethics Committee disciplinary case that was completed in the 106th Congress, a Member admitted to engaging in several forms of conduct that violated House rules requiring that each Member and staff person “conduct himself at all times in a manner that shall reflect creditably on the House.”⁷⁸ One of those violations was his engaging in a pattern and practice of knowingly allowing his former chief of staff to appear before and communicate with him in his official capacity during the one-year period following her

⁷⁴ See 18 U.S.C. § 216; see also 28 C.F.R § 85.5 (2020).

⁷⁵ See 18 U.S.C. § 216(c).

⁷⁶ See, e.g., *United States v. Jack A. Abramoff*, Docket No. 06-CR-001 (D.D.C.) (“*Abramoff* action”). Similarly, in September 2006, former Representative Robert W. Ney pleaded guilty to conspiracy to violate, among other statutes, the post-employment restrictions for former covered employees (“*Ney* action”). Also note, in September 2012, a former Senate staffer, Doug Hampton, was sentenced to one year probation for violating the post-employment restriction (“*Hampton* action”).

⁷⁷ See, e.g., *Abramoff* and *Ney* actions, note 71 above.

⁷⁸ House Rule 23, cl. 1; see also House Comm. on Standards of Official Conduct, *In the Matter of Representative E.G. “Bud” Shuster*, H. Rep. 106-979, 106th Cong., 2d Sess. vol. I (July 19, 2002) (“*Shuster* Report”).

resignation, “in a manner that created the appearance that his official decisions might have been improperly affected.”⁷⁹

FINANCIAL DISCLOSURE REQUIREMENTS FOLLOWING DEPARTURE FROM HOUSE EMPLOYMENT

A departing staff member who was required to file a Financial Disclosure statement because of the employee’s rate of pay must file a final Financial Disclosure Statement, called a Termination Report, within 30 days of leaving the House payroll.⁸⁰ However, an employee in a Member’s office who has filed only because the employee was designated as a “Principal Assistant” does not have to file a Termination Report unless the individual was designated as principal assistant to a Member leaving the House.⁸¹ Extensions of up to 90 days are available upon written request to the Committee when made prior to the original due date.⁸² Please note that the salary threshold for filing disclosure statements is higher than that which triggers the post-employment restrictions discussed above. For 2020, “senior staff” for financial disclosure purposes is anyone paid at annual salary rate of \$131,239 (or a monthly salary of \$10,936) for 60 days or more.⁸³

The Termination Report, filed on the same form as the annual report, covers all financial activity through the filer’s last day on the House payroll.⁸⁴ Schedule F (“Agreements”) of the report requires disclosure of any agreement entered into by the filer, oral or written, with respect to future employment.⁸⁵ Thus, if a senior staff employee accepts a future position while still on the House payroll, the employee will have to disclose the agreement on the individual’s Termination Report. The date of the agreement, the future employer, the position or title and the starting date must be disclosed, but the amount of the compensation need not be reported.⁸⁶ The employee will also have to disclose, on Schedule H (“Travel Payments and Reimbursements”) of

⁷⁹ House Comm. on Standards of Official Conduct, *Summary of Activities, One Hundred Sixth Congress*, H. Rep. 106-1044, 106th Cong., 2d Sess. at 10, 13, 16 (2000); *see also* Shuster Report, *supra* note 73 above, vol. I; *See also*, Senate Select Comm. on Ethics, *Report of the Preliminary Inquiry into the Matter of Senator John E. Ensign* (May 10, 2011) available at https://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=676ADD17-2C7F-40F7-A4D9-B35526E4DA97.

⁸⁰ 5 U.S.C. app. § 101(e).

⁸¹ *See* Comm. on Ethics, *2019 Instruction Guide for Completing Financial Disclosure Statements and Periodic Transaction Reports (2019 FD and PTR Instructions)* at 5.

⁸² 5 U.S.C. app. § 101(g)(1); *see also* *2019 FD and PTR Instructions* at 7.

⁸³ *See* 5 U.S.C. app. § 109(13)(B)(i). The 60 days do not have to be consecutive; being paid at the senior staff rate for any two months of the calendar year triggers the requirement to file a Termination Report.

⁸⁴ *Id.* § 101(e).

⁸⁵ *Id.* § 102(a)(7).

⁸⁶ *See id.*; *see also* *2019 FD and PTR Instructions* at 35.

the report, any travel reimbursements exceeding \$415 received from any source in connection with job-search activity.⁸⁷

However, a departing employee who, prior to thirty days after leaving office, has accepted another federal position requiring the filing of a *public* financial disclosure statement need not file a Termination Report.⁸⁸ Any departing employee who is not required to file a Termination Report for this reason must notify the Clerk *in writing* of that fact.⁸⁹

OUTSIDE EMPLOYMENT AND EARNED INCOME RESTRICTIONS

Departing staff remain subject to all House rules, including the gift rule and the limitations on outside employment and earned income,⁹⁰ as long as they remain on the House payroll. These rules are particularly important to bear in mind when an employee's prospective employer suggests that the individual begin work early, including, for example, while still drawing pay for accrued annual leave.⁹¹ In calendar year 2020, a senior staff employee may not receive outside earned income (including, for example, a signing bonus) in excess of \$28,845, and **no** earned income may be received for: (1) providing professional services involving a fiduciary relationship, including the practice of law, or any consulting or advising; (2) being employed by an entity that provides such services; or (3) serving as a board member or officer of any organization.⁹² Regardless of whether compensation is received, a senior staff employee may not allow his or her name to be used by an organization that provides fiduciary services. In addition, a senior staff employee may not receive any honoraria (i.e., a payment for a speech, article, or appearance),⁹³ although he or she may receive compensation for teaching, if the employee first secures specific prior permission from this Committee.⁹⁴

Example 14. Staff member *S*, who earns more than the qualifying senior staff rate of \$131,239, plans to join a law firm when he leaves his official position. Since

⁸⁷ 5 U.S.C. app. § 102(a)(2)(B).

⁸⁸ *Id.* § 101(e).

⁸⁹ See *2019 FD and PTR Instructions at 5*. A form for this purpose is available on the Committee's website, at https://ethics.house.gov/sites/ethics.house.gov/files/FD_TerminationExemption.pdf.

⁹⁰ House Rule 25, cls. 1-5. The outside employment and earned income limitations are also codified at 5 U.S.C. app. §§ 501-502.

⁹¹ Staff members contemplating future employment with the U.S. Senate, the Architect of the Capitol or any other department or agency of the U.S. government should bear in mind that federal law prohibits "dual compensation" in excess of an annually-adjusted dollar limit for simultaneous employment by the House and any of those entities. 5 U.S.C. § 5533(c)(1). For 2020, the limit is \$38,061. Pursuant to the statute, a departing House employee may not commence employment with any of the above-named governmental entities while receiving from the House payments for accrued annual leave if the employee's aggregated gross annual salaries from the two positions would exceed the statutory limit. *Id.*

⁹² House Rule 25, cls. 1-4; see also 5 U.S.C. app. §§ 501-502.

⁹³ House Rule 23, cl. 5; House Rule 25, cl. 1(a)(2).

⁹⁴ House Rule 25, cl. 2(e).

this is a firm providing professional services of a fiduciary nature, S may not commence his new employment until he is off the congressional payroll.

**ACCEPTANCE OF OFFICIALLY CONNECTED
TRAVEL FUNDED BY A PRIVATE SOURCE**

After the adjournment *sine die* of Congress, it is questionable whether any employee of a departing Member may participate in any privately-funded travel that is fact-finding in nature. The gift rule requires that such travel be related to official duties,⁹⁵ but as of that time, the official responsibilities that may justify participation in such a trip will practically have come to an end. However, this consideration does not limit the ability of an employee of a departing Member to accept travel from a private source for the purpose of enabling the individual to participate substantially in an officially related event, such as to give a speech.

* * *

Any questions on these matters should be directed to the Committee's Office of Advice and Education at (202) 225-7103.

⁹⁵ *Id.*, cl. 5(b)(1)(A).