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*Chairman*

Jackie Walorski, Indiana  
*Ranking Member*

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Kelly Armstrong, North Dakota



ONE HUNDRED SEVENTEENTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON ETHICS

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January 13, 2022

### MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** **Committee on Ethics**  
Theodore E. Deutch, Chairman  
Jackie Walorski, Ranking Member

**SUBJECT:** The 2022 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees

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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) 2022 for each of the categories noted above and summarizes them in a table on page 6. 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.”<sup>1</sup> The GS-15, step 1, basic pay rate for CY 2022 is \$112,890.<sup>2</sup> The applicable 120% calculation for that rate is therefore **\$135,468**, or a monthly salary of equal to or more than \$11,289. 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 (\$135,468) for at least **60 days**<sup>3</sup> during **2022** must file an FD statement on or before May 15, 2023.<sup>4</sup> (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.<sup>5</sup>) 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.<sup>6</sup> 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.<sup>7</sup> Finally, any staff who are paid at or above the senior staff rate on January 3, 2022 (or their first day of employment, if later in the year) must file reports (PTRs) on an ongoing basis throughout the year regarding certain

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<sup>1</sup> 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).

<sup>2</sup> Exec. Order No. 14061, 86 Fed. Reg. 73601 (Dec. 22, 2021).

<sup>3</sup> 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.

<sup>4</sup> 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).

<sup>5</sup> 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](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 2020), available at <https://ethics.house.gov/financial-disclosure/financial-disclosure-forms-and-filing>.

<sup>6</sup> 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.

<sup>7</sup> 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 at <https://fd.house.gov>.

financial transactions.<sup>8</sup> 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.<sup>9</sup>

Please note that the requirement to file an FD statement covering calendar year 2021 applies to officers and employees whose basic rate of pay for at least 60 days in **2021** was **\$132,552** or more (a monthly salary at or above \$11,046). Annual FD statements covering CY 2021 are due on Monday, May 16, 2022, for those individuals who continue to be Members, officers, or employees of the House on that date.<sup>10</sup> 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 on or before the original filing deadline.<sup>11</sup>

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.<sup>12</sup> 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 on or before the original filing deadline.<sup>13</sup>

### **THE OUTSIDE EARNED INCOME LIMIT AND OUTSIDE EMPLOYMENT RESTRICTIONS**<sup>14</sup>

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 income<sup>15</sup>

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<sup>8</sup> 5 U.S.C. app. § 103(l).

<sup>9</sup> 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 2022 pay cycle (January 3, 2022). Staff who are paid at or above the senior staff rate for more than 60 days later in 2022 – 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 2023.

<sup>10</sup> See *supra* note 4.

<sup>11</sup> See *supra* note 7.

<sup>12</sup> 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.

<sup>13</sup> See *supra* note 7.

<sup>14</sup> 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.

<sup>15</sup> 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.<sup>16</sup> As noted above, the senior staff rate for CY 2022 is **\$135,468**, or a monthly salary equal to or greater than \$11,289. 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, 2022, the rate of basic pay for Executive Level II was \$199,300.<sup>17</sup> Accordingly, the outside earned income limit for House Members, officers, and employees paid at or above the senior staff rate for CY 2022 is **\$29,895**.<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup> Receipt of compensation for service as an officer or member of a board of directors is also prohibited.<sup>21</sup> Prior written approval from the Committee on Ethics is required to accept compensation for teaching and to receive copyright royalties.<sup>22</sup> 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/house-ethics-manual>).

### **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.<sup>23</sup> 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**).<sup>24</sup> This amount is referred to as the post-employment rate.

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

<sup>17</sup> Exec. Order No. 13970, 86 Fed. Reg. 421 (Dec. 31, 2020) (setting Executive Schedule rates for the first pay period starting after January 1, 2021); Exec. Order No. 14061, 86 Fed. Reg. 73601 (Dec. 22, 2021) (setting Executive Schedule rates for the first pay period starting after January 1, 2022).

<sup>18</sup> 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 \$14,947.50. See 5 U.S.C. app. § 501(a)(2); House Rule 25, cl. 1(b).

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

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

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

<sup>24</sup> See *id.*; see also Section 7 of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (Dec. 27, 2020), prohibiting a scheduled cost-of-living pay raise for Members; Section 3 of the Further Extending Government

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 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.<sup>25</sup>

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 December 18, 2020, 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.<sup>26</sup> 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 at Arms) is Executive Schedule Level IV.<sup>27</sup> For 2022, that salary is **\$176,300**, or a monthly salary more than \$14,691.

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.<sup>28</sup>

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Funding Act, Pub. L. No. 117-70 (Dec. 3, 2021), providing for continuing appropriations through February 18, 2022, at 2021 levels. As a result, Member pay remains at \$174,000.

<sup>25</sup> House Rule 27, cl. 4; STOCK Act § 17.

<sup>26</sup> 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).

<sup>27</sup> “[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).

<sup>28</sup> 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 2022**

<b>Item</b>	<b>2022 Amount</b>
<b>Outside earned income &amp; outside employment threshold</b> - Outside employment fiduciary restrictions if paid at rate for more than 90 days during 2022	<b>\$135,468</b> (\$11,289/mo)
<b>Outside earned income limit</b>	<b>\$29,895</b>
<b>Financial Disclosure/PTR threshold</b> - Annual FD required in May 2023 if paid at rate for 60 days or more in CY 2022 - PTRs required during CY 2022 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 2022 ( <i>e.g.</i> , if get bonus or pay raise during calendar year), subject to PTR requirement for remainder of year	<b>\$135,468</b> (\$11,289/mo)
<b>Written disclosure of job negotiations and recusals required if paid <i>more than</i> the post-employment rate</b>	<b>\$130,500</b> (\$10,875/mo)
<b>Post-Employment threshold for employees of Member, committee, or leadership offices</b>	<b>\$130,500</b> (\$10,875/mo)
<b>Post-Employment threshold for employees of “other legislative offices” (see p. 5)</b>	<b>\$176,300</b> (\$14,691/mo)

# Congress of the United States

## House of Representatives

March 4, 2022

### Ukraine Humanitarian Relief Efforts

Dear Colleague:

Several offices have contacted the Committee on House Administration (CHA), the Communications Standards Commission (Commission), and the Committee on Ethics (Ethics) to inquire about the use of official resources to provide information to constituents and/or about the extent to which official resources may be used to help those affected by the issues arising out of the war and ensuing humanitarian crisis situation in Ukraine. We want to take this opportunity to provide a review of the applicable rules, regulations, and procedures.

#### Solicitations

There are many international, federal, state, and local government agencies and departments responsible for providing or coordinating the delivery of U.S. aid and participation in relief efforts. Telephone numbers and other contact information for several of the key agencies, departments, and organizations can be found at the following websites.

#### U.S. Department of State

<https://www.state.gov/united-with-ukraine/>

#### United States Agency for International Development (USAID)

<https://www.usaid.gov/usaid-response-ukraine>

All of the above information may be communicated to your constituents via the usual and customary official communication tools, including the congressional frank, subject to applicable statutes and House rules and regulations. In addition, a Member may post on an official website, channel, or page (including official Twitter or Facebook pages) a directory of and/or links to third-party organizations that are germane to the official content of the Member's official postings. However, referrals to organizations or links to sites whose primary purpose is the solicitation of goods, funds, or services on behalf of individuals or organizations are not permitted under the rules of the House.

In addition, Members have asked to what extent they may use their official resources to solicit or collect donations of goods, funds, or services on behalf of charities and other private organizations involved in relief efforts. We understand the good intentions of those making such inquiries, but the rules of the House preclude Members from using official resources for any purpose other than in support of the conduct of the Member's official and representational duties on behalf of the district which the Member represents. This has been interpreted in the past to mean that charitable solicitations using official resources are not permitted.

However, it would be permissible for Members to link to official government websites that give details about the delivery of relief aid, including information about how Members' constituents may provide aid or assistance during a crisis. With respect to the emergency in Ukraine, it would be permissible to provide links to any of the government websites noted above. It is permissible to notify constituents about the existence of these websites, provided franking regulations are followed. Members may also post on official websites and social media accounts.

Official resources may not be used to solicit contributions for charitable organizations or to imply that such organizations or purposes have been endorsed by the House of Representatives. However, 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 American Red Cross. These personal efforts do not require Ethics approval, but they may not use official resources (including staff on official time; House telephones, office equipment, or supplies; and official mailing lists). Other restrictions also apply.

Members who wish to solicit on behalf of an organization not recognized under IRC § 170(c) must seek approval from Ethics, which considers and decides on solicitation requests on behalf of non-qualified entities on a case-by-case basis. For example, solicitations of donations directly to specific individuals, as opposed to § 501(c)(3) charities, would need prior Ethics approval. Members may use the "[Solicitation Waiver Request](#)" form to request permission to assist with solicitations for individuals and organizations not recognized under IRC § 170(c), which is on the Ethics website at <https://ethics.house.gov>. Please note Ethics will not approve requests for fundraising activities that provide a direct personal or financial benefit to the requestor or the requestor's immediate family.

We hope this information is helpful to inform your constituency of our nation's response and the aid and resources supporting the relief efforts.

For questions regarding:

- official resources in general, please contact the CHA at (202) 225-2061 (majority) or (202) 225-8281 (minority);
- official communications, please contact the Commission at (202) 225-9337 (majority) or (202) 226-0647 (minority); or
- personal or campaign resources and solicitations, please contact Ethics at (202) 225-7103.

Sincerely,

Chairperson Zoe Lofgren  
Committee on House Administration

Ranking Member Rodney Davis  
Committee on House Administration

Chairman Ted Deutch  
Committee on Ethics

Ranking Member Jackie Walorski  
Committee on Ethics



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April 14, 2022

### MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics  
Theodore E. Deutch, Chairman  
Jackie Walorski, Ranking Member

SUBJECT: Upcoming Financial Disclosure Clinics & Training

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The Committee on Ethics will offer three Financial Disclosure Clinics in advance of the upcoming May 16, 2022, due date for the filing of all annual Financial Disclosure Statements (FD Statements).<sup>1</sup> In addition, the Committee will hold three Senior Staff Financial Disclosure Trainings before the May 16<sup>th</sup> deadline.

As a reminder, all Members are subject to financial disclosure filing requirements. House staff may be subject to financial disclosure filing requirements for a number of reasons, which include 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.<sup>2</sup>

In addition to the Clinics and Training sessions, the Committee’s nonpartisan staff is available to review forms in advance of filing for House Members, officers, and employees. Employees, however, must submit their forms to the Committee for prescreening no later than Monday, May 2, 2022, to ensure that the prescreening is completed by the filing deadline. You may email your prescreen request to [financial.disclosure@mail.house.gov](mailto:financial.disclosure@mail.house.gov) with the subject line “Prescreen Request.”

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<sup>1</sup> The Committee is authorized by statute to grant extensions of the annual filing deadline of up to ninety (90) days. Extensions may be requested through the [FD Online Reporting system](#); or by delivering the [paper extension request form](#) to [financial.disclosure@mail.house.gov](mailto:financial.disclosure@mail.house.gov).

<sup>2</sup> House officers and employees who were paid at the rate of \$132,552 (\$11,046 monthly salary) for at least 60 days during 2021 will be required to file a Statement by May 16, 2022. For 2022, senior staff are House officers and employees whose basic rate of pay is equal to or greater than \$135,468 for at least 60 days during 2022.

Financial Disclosure Clinics give filers a chance to work closely with financial disclosure staff to address individual filers’ questions. Filers are encouraged to bring with them their laptops and financial statements. Financial Disclosure Clinics also serve to help filers use the online filing system to input and submit Statements and Periodic Transaction Reports. **Please note that participation in the Clinics will not satisfy any House-mandated training requirements.**

The date, time, and location for each Clinic is provided below. Committee staff will be available for the entire time for each Clinic. Attendees are welcome to walk in at any time and may stay for as long as they need. You can find this and additional information about financial disclosure requirements on the [Committee's Website](#).

<b>Clinics</b>		
<b>Date</b>	<b>Time</b>	<b>Location</b>
<b>Thursday, April 21</b>	10:00am – 1:00pm EDT	LHOB B248
<b>Wednesday, April 27</b>	10:00am – 1:00pm EDT	LHOB B248
<b>Monday, May 2</b>	1:00pm – 5:00pm EDT	LHOB B248

In addition to the Clinics, the Committee will offer Senior Staff Training that ***will*** satisfy either the annual ethics training requirement or the additional hour of training required for senior staff for the 117<sup>th</sup> Congress (staff must choose one or the other). Senior staff training provides additional ethics guidance to staff who are required to file Statements pursuant to the Ethics in Government Act (EIGA). This training will cover general information about the requirement to file Financial Disclosure and Periodic Transaction Reports. The date, time, and location for each training is provided below.

Training is being offered in-person or via Webex. To receive credit for this training, senior staff are ***required to pre-register*** by clicking on the links provided in the “Location” section.

<b>Trainings</b>		
<b>Date</b>	<b>Time</b>	<b>Location</b>
<b>Wednesday, April 20</b>	1:30pm – 2:30pm EDT	<a href="#">RHOB 2186 Gold Room</a> or <a href="#">via Webex</a>
<b>Tuesday, April 26</b>	2:00pm – 3:00pm EDT	<a href="#">CHOB 401</a> or <a href="#">via Webex</a>
<b>Thursday, May 5</b>	3:00pm – 4:00pm EDT	<a href="#">RHOB 2186 Gold Room</a> or <a href="#">via WebEx</a>

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

The Committee strongly recommends that filers use the [FD Online Reporting system](#) to submit all filings. Filers can grant access to designated third-party preparers. A blank copy of the paper form can be downloaded from the [Committee's website](#). Committee staff will provide assistance to both paper filers and online filers. If you need to make a filing, but did not receive login information, or if you have lost your temporary password, please contact the Legislative Resource Center at (202) 226-5200 for assistance.

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



# U.S. House of Representatives

COMMITTEE ON ETHICS

Washington, DC 20515

September 19, 2022

## MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics  
Theodore E. Deutch, Chairman  
Michael Guest, Acting Ranking Member

**SUBJECT:** Guest Policy Change and Reminder of Gift Rules for Attendance at Events

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This memorandum announces a policy change by which the Committee has simplified its guidance concerning guests at events<sup>1</sup> in order to reduce confusion and promote compliance with the House Gift Rule.<sup>2</sup>

The memorandum is also a reminder to Members, officers, and employees of the rules for accepting free attendance at events and offers a quick reference guide for the event attendance rules.<sup>3</sup> Remember that you may never solicit, or ask for anything of value,<sup>4</sup> including free attendance at an event, whether you ask for your own free attendance or someone else's. You also may not accept anything that has been solicited for you.

### Guest Policy Change

*Prior Guidance:* Different exceptions to the House Gift Rule contained various rules for what kind of guests Members, officers, or employees could bring to an event if offered free attendance for a guest.

*New Guidance:* If you are offered free attendance at an event for yourself and a guest, which otherwise complies with the House Gift Rule, you may accept the offer for any kind of guest.<sup>5</sup>

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<sup>1</sup> The Committee makes this change to guidance concerning who may accompany you to an event pursuant to its general waiver authority under House Rule 25, cl. 5(a)(3)(T). Nothing in this memorandum alters who may accompany you on privately-sponsored travel or on other officially-connected travel.

<sup>2</sup> House Rule 25, clause 5.

<sup>3</sup> This guidance is not exhaustive and merely highlights event-specific exceptions to the Gift Rule. Please contact the Ethics Committee at (202) 225-7103 if you have questions about the event-specific exceptions or if none of these exceptions apply to your situation. Additional exceptions may still permit you to accept free attendance.

<sup>4</sup> Anti-Solicitation Statute, 5 U.S.C. § 7353.

<sup>5</sup> Event organizers may set their own limitations on guests. Nothing in this memorandum should be interpreted to override that.

## **Reception**

*What It Is:* A reception is often a collegial gathering. A reception may be organized for the purposes of networking or socializing and does not have to include programming related to your official duties. Your attendance may be personal or official.

*Requirements of the Exception:* The food offered is limited to appetizers, hors d'oeuvres, and drinks. The food offered does not include even low-cost items that could be considered a meal, such as a pizza or hot dog. The setting is other than one-on-one. The invitation may come from anyone.

*What You May Accept if Offered:* Free attendance for yourself and one other person, appetizers, drinks, and informational materials.

## **Widely-Attended Event**

*What It Is:* A widely-attended event is an event related to your official work where you speak on a topic related to your work for the House, you learn something related to your work, or where the event is otherwise related to your representational role. Large events, such as conferences, forums, and large fly-in dinners are often widely-attended events.

*Requirements of the Exception:* For this exception to apply, you must receive the invitation from the event organizer(s), and not from a financial sponsor. You must determine that attendance at the event is related to your official duties. The event organizer must expect at least 25 other attendees from a broad group of people other than Congressional attendees or the event organizer's own employees.

*What You May Accept from Event Organizer if Offered:* Free attendance at the event for yourself and one other person; appetizers, drinks, and/or meals; local transportation;<sup>6</sup> and informational materials.

## **Educational Event**

*What It Is:* The main purpose of an educational event is for you to learn something that will help you better understand a topic related to the work you do for the House in a small group setting, such as a roundtable or a briefing. Often, educational events are structured to enhance discussion.

*Requirements of the Exception:* For this exception to apply, you must receive the invitation from the event sponsor. The main purpose of the event must be educational, such as a lecture, seminar, or discussion. The event sponsor must be a university, foundation, think tank, or similar nonprofit, non-advocacy organization. The event sponsor may not be a registered federal lobbyist or foreign agent nor employ or retain a registered federal lobbyist or foreign agent.

*What You May Accept from the Sponsor if Offered:* Free attendance for yourself and one other person; appetizers, drinks, and/or a meal; and informational materials.

## **Constituent Event**

*What It Is:* The main purpose of a constituent event is to meet with constituent groups in a smaller group setting. Constituent events can include attendance at a monthly meeting with the local chamber of commerce or fly-in dinners that do not meet the numerical requirement for a widely-attended event.

*Requirements of the Exception:* For this exception to apply, you must receive the invitation from a civic association, veteran group, trade association, or similar organization comprised of constituents. The event must be regularly scheduled. You must determine that the event is related to your official

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<sup>6</sup> Local transportation is defined as less than 35 miles.

or representational duties. The event must be open to members of the constituent group, rather than just its officers or board members.

*What You May Accept from the Constituent Group if Offered:* Free attendance for yourself and one other person; appetizers, drinks, and/or a meal; and informational materials.

### **Business Site Visit**

*What It Is:* The main purpose of a business site visit is to enable you to tour a factory or other business to better understand its operations.

*Requirements of the Exception:* For this exception to apply, you must receive the invitation from site management. The local transportation offered must not begin or end in Washington, D.C. The meal offered must take place in a group setting with employees of the organization, rather than just with board members or management.

*What You May Accept from Site Management if Offered:* Free attendance for yourself and one other person, local transportation from an airport or other terminus to the business site, a meal at the business site in a group setting, and related informational materials.

### **Charitable Fundraising Event**

*What It Is:* A charitable fundraising event is one where the event organizer raises funds or in-kind donations for an Internal Revenue Code (IRC) § 170(c) organization. Most commonly, these are 501(c)(3) charitable organizations. Some charitable fundraising events are referred to as galas. Your attendance is personal.

*Requirements of the Exception:* For this exception to apply, you must receive the invitation from the event organizer(s), and not from a financial sponsor. At least half of the event proceeds must benefit an IRC § 170(c) organization.

*What You May Accept from Event Organizer if Offered:* Free attendance at the event for yourself and one other person; appetizers, drinks, and/or meals; local transportation; long-distance transportation and one night of lodging from the event organizer; informational materials; and entertainment at the event.

### **Political Event**

*What It Is:* A political event is often a fundraiser where the proceeds will benefit a federal campaign or candidate. Political events are not always fundraisers. Your attendance is personal.

*Requirements of the Exception:* For this exception to apply, you must receive the invitation from the event sponsor. The sponsor must be an IRC § 527 organization. Most commonly, these are principal campaign committees, PACs, or parties.

*What You May Accept from the Sponsor if Offered:* Free attendance at the event for yourself and invited guests;<sup>7</sup> appetizers, drinks, and/or meals; local transportation; long-distance transportation; lodging; informational materials; and entertainment at the event.

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<sup>7</sup> House Rule 25, cl. 5(a)(3)(G)(iii) allows you to accept anything a political organization offers in connection with a political event, including free attendance for multiple guests.

## Common Event Exceptions to the House Gift Rule

Gift Rule Exception	Requirements	What You May Accept IF OFFERED								
		Your Free Attendance	Free Attendance for Any Kind of Guest	Info. Materials	Appetizers and Drinks	Meal	Local Travel	Long-Distance Travel	Lodging	Entertainment
<b>Reception</b>	<ul style="list-style-type: none"> <li>• Invitation from anyone</li> <li>• Food limited to appetizers, drinks</li> <li>• Other than one-on-one setting</li> </ul>	✓	✓	✓	✓	✗	✗	✗	✗	✗
<b>Widely-Attended Event</b>	<ul style="list-style-type: none"> <li>• Invitation from the event organizer</li> <li>• Related to your official duties</li> <li>• Organizer expects ≥ 25 attendees from broad group</li> </ul>	✓	✓	✓	✓	✓	✓	✗	✗	✗
<b>Educational Event</b>	<ul style="list-style-type: none"> <li>• Invitation from the sponsor</li> <li>• Sponsor is nonadvocacy organization</li> <li>• Sponsor is not, and does not, retain or employ federal lobbyist or foreign agent</li> <li>• Purpose is educational</li> </ul>	✓	✓	✓	✓	✓	✗	✗	✗	✗
<b>Constituent Event</b>	<ul style="list-style-type: none"> <li>• Invitation from constituent group</li> <li>• Event regularly scheduled</li> <li>• Related to your official duties</li> <li>• Event open to members of group</li> </ul>	✓	✓	✓	✓	✓	✗	✗	✗	✗
<b>Business Site Visit</b>	<ul style="list-style-type: none"> <li>• Invitation from site management</li> <li>• Transportation not to/from DC</li> <li>• Meal in communal setting</li> </ul>	✓	✓	✓	✗	✓	✓	✗	✗	✗
<b>Charitable Fundraising Event</b>	<ul style="list-style-type: none"> <li>• Invitation from the event organizer</li> <li>• At least half of the proceeds benefit an IRC § 170(c) organization</li> <li>• Attendance is personal</li> </ul>	✓	✓	✓	✓	✓	✓	✓	✓	✓
<b>Political Event</b>	<ul style="list-style-type: none"> <li>• Invitation from the sponsor</li> <li>• Sponsor is IRC § 527 organization</li> <li>• Attendance is personal</li> </ul>	✓	✓	✓	✓	✓	✓	✓	✓	✓



## Annual Member Ethics Training Now Live

Sending Office: Committee on Ethics

Sent By: EthicsCommittee@mail.house.gov

September 22, 2022

### MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics  
Theodore E. Deutch, Chairman  
Michael Guest, Acting Ranking Member

SUBJECT: Annual Member Ethics Training Now Live

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The Committee on Ethics is required to provide annual ethics training to each Member, Delegate, Resident Commissioner, officer, and employee of the House.<sup>[1]</sup> 2022 Annual Ethics Training for current Members is now live and available for all Members who were sworn in prior to January 1, 2022. **The deadline for current Members to complete their annual ethics training is December 31, 2022.** Current Members may have their staff email the Committee at [ethics.training@mail.house.gov](mailto:ethics.training@mail.house.gov) to request the link to complete the online annual ethics training. The Committee records Members who have completed ethics training.

New House Members, sworn in January 1, 2022, or after, must complete a specifically designated ethics training session within 60 days of joining the House.<sup>[2]</sup> Newly-sworn in Members may have their staff email the Committee at [ethics.training@mail.house.gov](mailto:ethics.training@mail.house.gov) to schedule a New Member training.

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.<sup>[3]</sup> Employees who fully completed one of the online training options available through the Congressional Staff Academy will have made their necessary certification to the Committee. Online training for Members may only be



completed using the link provided by the Committee; online training for Members is not available through the Congressional Staff Academy.

### **FAILURE TO COMPLY WITH THE TRAINING REQUIREMENTS**

Failure to satisfy the annual training requirement is a violation of House rules<sup>[4]</sup> 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](mailto:ethics.training@mail.house.gov).

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<sup>[1]</sup> House Rule 11, cl. 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. For the purposes of this memorandum, "Member" is defined to include any current Member, Delegate, or Resident Commissioner of the House of Representatives.

<sup>[2]</sup> House Rule 11, cl. 3(a)(6)(B)(i).


<sup>[3]</sup> House Rule 11, cl. 3(a)(6)(B)(ii).

<sup>[4]</sup> See House Rule 11, cl. 3(a)(6)(B)(ii).

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# Congress of the United States

## House of Representatives

September 29, 2022

### Important Information Relating to Hurricanes Fiona and Ian

Dear Colleague:

Several offices have contacted the Committee on House Administration, the Communications Standards Commission, and the Committee on Ethics to inquire about the extent to which official resources may be used to help those impacted by Hurricanes Fiona and Ian. We would like to take this opportunity to provide a review of the applicable rules, regulations, and procedures.

- A. For Members directly affected, information for government entities, as well as private entities directly involved in relief efforts organized by the federal, state, or local government, may be sent as a mass communication (emails, advertisements, flyers for handout, and posters) and posted on your official website and social media accounts. However, any such unsolicited mass communications must be reviewed by the Communications Standards Commission prior to distribution.**

When a state of emergency is declared, Members whose districts are directly affected may provide constituents with information to assist those impacted. This information may include addresses and telephone numbers of entities involved in relief efforts being coordinated by the federal, state, or local government. In the past, Members have provided contact information for blood drives conducted by the American Red Cross in conjunction with the Federal Emergency Management Agency (FEMA). However, referrals to organizations or links to sites whose primary purpose is the solicitation of goods, funds, or services on behalf of individuals or organizations are not permitted under the rules of the House.

In addition, although federal law and regulations of the Communications Standards Commission generally restrict unsolicited mass communications into congressional districts in the 60 days before a general election in which a Member is a candidate, there is a specific exception to permit Members to share vital information with their constituents in the event of a disaster. The Commission has determined that Members who represent districts affected by Hurricanes Fiona and Ian may send unsolicited mass communications to their constituents. Any such unsolicited mass communications must be reviewed by the Communications Standards Commission prior to distribution.

The Committee on House Administration recommends use of these government established websites for information on the relief efforts, as well as relevant state and local government websites:

[www.usa.gov/disasters-and-emergencies](http://www.usa.gov/disasters-and-emergencies)

[www.disasterassistance.gov](http://www.disasterassistance.gov)

[www.fema.gov/blog/just-time-preparedness-hurricane-ian](http://www.fema.gov/blog/just-time-preparedness-hurricane-ian)

[www.ready.gov/hurricanes](http://www.ready.gov/hurricanes)

[www.noaa.gov](http://www.noaa.gov)

[www.nhc.noaa.gov/](http://www.nhc.noaa.gov/)

[www.opm.gov/policy-data-oversight/snow-dismissal-procedures/hurricane-guidance/](http://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/hurricane-guidance/)

**B. Members and staff may not use official resources to solicit anything for charities.**

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

**C. Members and staff may solicit for charities in their personal capacities only.**

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

**D. The Federal Election Commission (FEC) has advised us that Members' campaigns may provide information for federal, state and local government entities, as well as 501(c)3 charitable entities involved in relief efforts, and may share this information on the Member's campaign website and campaign social media accounts. Any questions regarding other local or community resources should be directed to the FEC's congressional liaison office at (202) 694-1006.**

If you have any questions regarding the use of your:

1. Official resources in general, please contact the Committee on House Administration at (202) 225-2061 (majority) or (202) 225-8281 (minority).
2. Communications resources, please contact the Communications Standards Commission at (202) 225-9337 (majority) or (202) 226-0647 (minority).

3. Personal or campaign resources, or the loan of your name and personal title to private solicitations or initiatives in support of the relief efforts, please contact the Committee on Ethics at (202) 225-7103.

Sincerely,

Chairperson Zoe Lofgren  
Committee on House Administration

Chairman Ted Deutch  
Committee on Ethics

Ranking Member Rodney Davis  
Committee on House Administration

Acting Ranking Member Michael Guest  
Committee on Ethics



# U.S. House of Representatives

COMMITTEE ON ETHICS

Washington, DC 20515

October 7, 2022

## MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics  
Susan Wild, Acting Chairwoman  
Michael Guest, Acting Ranking Member

SUBJECT: Upcoming Live Ethics Training Session

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This memorandum is a reminder to all offices about ethics training requirements and provides information about an upcoming live ethics training session. The Committee on Ethics is required to provide annual ethics training to each Member, Delegate, Resident Commissioner, officer, and employee of the House.<sup>[1]</sup> The training requirement may be satisfied by attending a live training session, completing a training session through the Congressional Staff Academy, or by completing the Member Annual Ethics Training. By January 31 of each year, all House Members and employees must certify to the Committee that they have completed ethics training during the preceding calendar year.<sup>[2]</sup> Employees who fully completed one of the online training options available through the Congressional Staff Academy or attend a live training session will have made their necessary certification to the Committee.

The Committee is pleased to announce an upcoming date for live training that will satisfy the ethics training requirement for new employees and existing employees. If you would like to attend, we recommend pre-registration as seating is limited. You may pre-register by clicking on the link provided in the “Location” section.

### UPCOMING LIVE TRAINING SESSION

2022 House Ethics Training		
Date	Time	Location
Tuesday, October 18	10:00am-11:00am EDT	<a href="#">HVC 201</a>

If you have any questions regarding ethics training requirements, please feel free to contact the Committee’s Office of Advice and Education at [ethics.training@mail.house.gov](mailto:ethics.training@mail.house.gov).

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

<sup>[2]</sup> House Rule 11, clause 3(a)(6)(B)(ii).



# U.S. House of Representatives

COMMITTEE ON ETHICS

Washington, DC 20515

October 24, 2022

## MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics  
Susan Wild, Acting Chairwoman  
Michael Guest, Acting Ranking Member

SUBJECT: Two Upcoming Live, In-Person Ethics Training Sessions

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This memorandum is a reminder to all offices about ethics training requirements and provides information about an upcoming live ethics training session. The Committee on Ethics is required to provide annual ethics training to each Member, Delegate, Resident Commissioner, officer, and employee of the House.<sup>[1]</sup> The training requirement may be satisfied by attending a live training session, completing a training session through the Congressional Staff Academy, or by completing the Member Annual Ethics Training. By January 31 of each year, all House Members and employees must certify to the Committee that they have completed ethics training during the preceding calendar year.<sup>[2]</sup> Employees who fully completed one of the online training options available through the Congressional Staff Academy or attend a live training session will have made their necessary certification to the Committee.

The Committee is pleased to announce two upcoming dates for **live, in-person** training that will satisfy the ethics training requirement for new employees and existing employees. If you would like to attend, we recommend pre-registration as seating is limited. You may pre-register by clicking on the link provided in the “Location” section.

### UPCOMING LIVE TRAINING SESSIONS

2022 House Ethics Training		
Date	Time	Location
Monday, November 14	10:00am-11:00am EDT	<a href="#">H-137, The Capitol</a>
Friday, December 9	10:00am-11:00am EDT	<a href="#">HVC 201</a>

If you have any questions regarding ethics training requirements, please feel free to contact the Committee’s Office of Advice and Education at [ethics.training@mail.house.gov](mailto:ethics.training@mail.house.gov).

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

<sup>[2]</sup> House Rule 11, clause 3(a)(6)(B)(ii).





# U.S. House of Representatives

COMMITTEE ON ETHICS

Washington, DC 20515

November 29, 2022

## MEMORANDUM FOR ALL MEMBERS, MEMBERS-ELECT, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics  
Susan Wild, Acting Chairwoman  
Michael Guest, Acting Ranking Member

**SUBJECT:** Member Swearing-in Events

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This memorandum summarizes the ethics rules relating to the receptions that Members may wish to hold or attend in connection with their swearing-in.<sup>1</sup> The major rules that apply in these areas are briefly summarized below, and guidance on specific circumstances is available by calling the Committee at (202) 225-7103 or writing to the Committee at [ethicscommittee@mail.house.gov](mailto:ethicscommittee@mail.house.gov).

**Member Swearing-in Receptions.** You may wish to host a reception or similar event for your constituents in connection with your swearing-in. You may use your principal campaign committee funds to pay the costs of such a reception, even if the reception is held in your office or another House room.<sup>2</sup> However, swearing-in events held in House rooms or district offices may not be campaign or political in nature. A swearing-in event would likely be campaign or political if, for example, the list of invitees were limited to only campaign contributors. The Committee understands the Members' Representational Allowance may not be used for receptions that are purely social activities or social events, including swearing-in receptions.<sup>3</sup>

You may not allow a lobbying firm or other private entity to pay the costs of a reception or other event hosted by you in connection with your swearing-in. Accepting private subsidy of

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<sup>1</sup> Members are subject to House Rules upon swearing-in.

<sup>2</sup> See Comm. on Ethics, *House Ethics Manual 2022 Print* at 127, 160. Even though these events are paid for with campaign funds, they are still official in nature. Therefore, no campaign activity, including soliciting for campaign donations, may occur during these events or on House grounds.

<sup>3</sup> Please contact the Committee on House Administration for any additional questions about the use of official House funds.

your official events is an impermissible gift under the House Gift Rule.<sup>4</sup> However, as discussed further below, a private entity may host its own event in your honor, subject to certain limitations.

**Attendance at Privately-Sponsored Events.** Acceptance of free attendance at swearing-in related events sponsored by private entities are subject to the House gift rule. Thus, a Member or staff person may accept such an offer only if acceptance is allowed under one of the provisions of the gift rule. Some examples of applicable gift rule exceptions include receptions, widely-attended events, and gifts worth less than \$50. A private entity may also wish to host an event in your honor.

### **Reception**

*What It Is:* A reception is often a collegial gathering. A reception may be organized for the purposes of networking or socializing and does not have to include programming related to your official duties. Your attendance may be personal or official.

*Requirements of the Exception:* The food offered is limited to appetizers, hors d'oeuvres, and drinks. The food offered does not include even low-cost items that could be considered a meal, such as a pizza or hot dog. The setting is other than one-on-one. The invitation may come from anyone.<sup>5</sup>

*What You May Accept if Offered:* Free attendance for yourself and one other person, appetizers, drinks, and informational materials.

### **Widely-Attended Event**

*What It Is:* A widely-attended event is an event related to your official work where you speak on a topic related to your work for the House, you learn something related to your work, or where the event is otherwise related to your representational role. Large events, such as conferences, forums, and large fly-in dinners are often widely-attended events.

*Requirements of the Exception:* For this exception to apply, you must receive the invitation from the event organizer(s), and not from a financial sponsor. You must determine that attendance at the event is related to your official duties. The event organizer must expect at least 25 other attendees from a broad group of people other than Congressional attendees or the event organizer's own employees.<sup>6</sup>

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<sup>4</sup> House Rule 25, cl. 5.

<sup>5</sup> House Rule 25, cl. 5(a)(3)(U).

<sup>6</sup> Individuals who are officials of other branches or levels of government count toward the required minimum of 25, but spouses and others who accompany the congressional Members and staff do not count toward the required minimum. See House Rule 25, cl. 5(a)(4)(A); *House Ethics Manual*, Gifts Chapter, XI.J.ii, [https://ethics.house.gov/house-ethics-manual/gifts# Widely-Attended Events](https://ethics.house.gov/house-ethics-manual/gifts#_Widely-Attended_Events).

*What You May Accept from Event Organizer if Offered:* Free attendance at the event for yourself and one other person; appetizers, drinks, and/or meals; local transportation;<sup>7</sup> and informational materials.

### **Less than \$50**

*What It Is:* The less than \$50 exception can be used as a catch-all exception to the gift rule, if another, more specific exception does not apply.

*Requirements of the Exception:* You may accept anything that is \$49.99 or less in a single instance from a single donor. The entity offering the gift may not be a registered federal lobbyist, a foreign agent, or an organization that employs or retains lobbyists or foreign agents. This exception has a \$99.99 cap per year, per donor, per recipient.<sup>8</sup>

*What You May Accept if Offered:* Gifts including free attendance that total no more than \$49.99 in a single instance. Cash and cash equivalents are prohibited.

### **Events in Your Honor**

*What It Is:* An event nominally in your honor is an event “in honor of” you, but where you are not the host, nor do you receive any particular benefit. An event in your honor is not considered a gift to you. The event could be a widely-attended event, a reception, or any other type of event. The event could be in honor of a single Member or employee or a group of Members or employees.

*Requirements of the Exception:* For an event to be nominally in your honor, the identity of the event organizer must be made clear to all participants. You may not be listed as the host or sponsor of the event, nor may you be involved in the planning and organizing of the event. You may not receive any particular benefit from the event. You may not ask the event sponsor to host the event, nor may you ask others for support for the event, both monetary and in-kind.<sup>9</sup>

*What You May Accept from Event Organizer if Offered:* The full cost of the event will not be a gift to you. However, the event must meet a gift exception to accept free attendance.

Detailed information on the provisions of the gift rule regarding attendance at events is available in the Committee’s *House Ethics Manual 2022 Print*, the text of which is on the Committee’s website, <https://ethics.house.gov/house-ethics-manual>. A quick reference chart is on the following page.

\* \* \*

Please note that the Committee’s guidance is subject to change if the 118th Congress adopts changes to the ethics rules. Members and staff with questions on the matters addressed

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<sup>7</sup> Local transportation is defined as less than 35 miles.

<sup>8</sup> House Rule 25, cl. 5(a)(1)(B)(i).

<sup>9</sup> See *House Ethics Manual*, Gifts Chapter, XI.J.viii, [https://ethics.house.gov/house-ethics-manual/gifts#\\_Events\\_in\\_Honor](https://ethics.house.gov/house-ethics-manual/gifts#_Events_in_Honor).

above should contact the Committee after the 118th Congress has convened to seek further guidance about any such rule changes. Any questions on these subjects should be directed to the Committee's Office of Advice and Education at (202) 225-7103.

## Common Swearing-In Events

Gift Rule Exception	Requirements	What You May Accept IF OFFERED					
		Your Free Attendance	Free Attendance for Any Kind of Guest	Info. Materials	Appetizers and Drinks	Meal	Local Travel
<b>Reception</b>	<ul style="list-style-type: none"> <li>• Invitation from anyone</li> <li>• Food limited to appetizers, drinks</li> <li>• Other than one-on-one setting</li> </ul>	✓	✓	✓	✓	✗	✗
<b>Widely-Attended Event</b>	<ul style="list-style-type: none"> <li>• Invitation from the event organizer</li> <li>• Related to your official duties</li> <li>• Organizer expects ≥ 25 attendees from broad group</li> </ul>	✓	✓	✓	✓	✓	✓
<b>Less than \$50</b>	<ul style="list-style-type: none"> <li>• Total value is \$49.99 or less</li> <li>• Not offered by lobbyist, foreign agent, or lobbying firm</li> <li>• Less than \$100 annual limit</li> </ul>	✓*	✓*	✓*	✓*	✓*	✓*
<b>Events in Your Honor</b>	<ul style="list-style-type: none"> <li>• No involvement in planning or organizing</li> <li>• No soliciting for support</li> <li>• Event organizer is clear</li> </ul>	Must Meet a Gift Exception	Must Meet a Gift Exception	Must Meet a Gift Exception	Must Meet a Gift Exception	Must Meet a Gift Exception	Must Meet a Gift Exception

\* If the total value of what you receive is \$49.99 or less.



# U.S. House of Representatives

COMMITTEE ON ETHICS

Washington, DC 20515

December 15, 2022

## MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics  
Susan Wild, Chairwoman  
Michael Guest, Acting Ranking Member

SUBJECT: Reminder about Annual Ethics Training Requirements for 2022

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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.<sup>1</sup> The Committee offers ethics training both through online video courses and in-person training sessions. For the second session of the 117th Congress to date, the Committee has held 33 in-person ethics training sessions and provided ethics training to more than 12,553 Members,<sup>2</sup> officers, and employees.

New House Members and employees must complete an ethics training session within 60 days of joining the House.<sup>3</sup> 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 staff<sup>4</sup> – whether new or existing employees – to complete an additional hour of specialized training at least once per Congress.

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<sup>1</sup> 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.

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

<sup>3</sup> House Rule 11, clause 3(a)(6)(B)(i).

<sup>4</sup> “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 2022, the senior staff annual salary rate is

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.<sup>5</sup> Employees who 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 2022 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.

## **2022 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 2022 training requirement is an individual who was *first* sworn in on or after January 3, 2022. 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, 2022**. Please have a staff member contact the Committee at [ethics.training@mail.house.gov](mailto:ethics.training@mail.house.gov) for a link 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](mailto: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 2022 training requirement is an individual who first began employment with the House on or after January 3, 2022. 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.<sup>6</sup>

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\$135,468, or a monthly pay rate at or above \$11,289. Please note that the senior staff annual salary rate is subject to change in 2023.

<sup>5</sup> House Rule 11, clause 3(a)(6)(B)(ii).

<sup>6</sup> 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 2022. 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.

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 complete the 2022 House Ethics Training available through the Congressional Staff Academy.

### **Existing House Employees**

“Existing” (*i.e.*, not new) House employees must complete one hour of training before the end of the calendar year. For 2022, this means all existing House employees must complete one hour of training by **December 31, 2022**. **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 the 2022 House Ethics Training.

### **Senior Staff Training**

All employees who are “senior staff”<sup>7</sup> 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 117th Congress, this means all senior staff must complete one hour of training by **January 3, 2023**. This “senior staff” hour is required *in addition to* the one-hour House Ethics Training all officers and staff are required to complete annually. Senior staff employees may fulfill the requirement for an additional hour by completing the 117th Congress: Senior Staff Ethics Training 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.

### **Summary**

<b>Position</b>	<b>Training Required</b>	<b>Deadline</b>
New Member	Email <a href="mailto:ethics.training@mail.house.gov">ethics.training@mail.house.gov</a> to schedule a one-on-one training	Within first 60 days

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<sup>7</sup> See *supra* note 4.



Existing Member	Email <a href="mailto:ethics.training@mail.house.gov">ethics.training@mail.house.gov</a> for link to online training	December 31, 2022
New Staff	2022 House Ethics Training	Within first 60 days
Existing Staff	2022 House Ethics Training	December 31, 2022
New Senior Staff	2022 House Ethics Training <i>and</i> 117th Congress: Senior Staff Ethics Training or attending a live briefing	Within first 60 days
		January 3, 2023
Existing Senior Staff	2022 House Ethics Training <i>and</i> 117th Congress: Senior Staff Ethics Training or attending a live briefing	December 31, 2022
		January 3, 2023

## **ONLINE REGISTRATION & CERTIFICATION PROCESS**

### **Members**

Members may have their staff email the Committee at [ethics.training@mail.house.gov](mailto:ethics.training@mail.house.gov) for the link to complete online ethics training and/or to request confirmation that they have completed the required ethics training.

### **Employees**

Employees can complete ethics training online by accessing the training through the Congressional Staff Academy website. 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](mailto: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 printout of their Training Completion Certificate from the Congressional Staff Academy website.

### **FAILURE TO COMPLY WITH THE TRAINING REQUIREMENTS**

Failure to satisfy the annual training requirement is a violation of House rules<sup>8</sup> 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](mailto:ethics.training@mail.house.gov).

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<sup>8</sup> See House Rule 11, clause 3(a)(6)(B)(ii).



# U.S. House of Representatives

COMMITTEE ON ETHICS

Washington, DC 20515

December 15, 2022

## MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics  
Susan Wild, Chairwoman  
Michael Guest, Acting Ranking Member

SUBJECT: Foreign Gifts and Decorations Act CY 2022 Reporting Reminder

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The Constitution prohibits federal government officials, including Members and employees of Congress, from receiving “any present ... of any kind whatever” from a foreign state or a representative of a foreign government without the consent of the Congress. Congress has consented to the acceptance of certain gifts from foreign governments through the vehicles of the Foreign Gifts and Decorations Act (“FGDA”) and the Mutual Educational and Cultural Exchange Act (“MECEA”).

### Annual Reporting Requirements

The FGDA requires the Committee to compile a list of certain tangible gifts or gifts of travel that House Members, officers, and employees, or their spouse or dependent, accepted from a foreign government or a multinational organization during the preceding calendar year. The Committee is required to send this list for 2022 to the Secretary of State by January 31, 2023, for publication in the *Federal Register*. **Any Member, officer, or employee who accepted any tangible gifts worth more than \$415 or gifts of travel outside the United States, regardless of value, from a foreign government under the FGDA during calendar year 2022, or whose spouse or dependent accepted such gifts, and who has not already reported the gifts to the Committee must complete this [form](#) and return it to the Committee by January 15, 2023.**

If you are an annual financial disclosure filer, you may also need to report these gifts on your annual financial disclosure statement. You may find more information about financial disclosure reporting of foreign gifts in the [FGDA Regulations](#) issued by the Committee.

## **What You May Accept**

Pursuant to the FGDA, Members, officers, and employees may accept and keep a tangible gift valued at less than minimal value from a foreign government that is tendered and received as a souvenir or mark of courtesy, including a meal, entertainment, or local travel within the United States. For FGDA purposes, a “foreign government” includes any foreign national, state, municipal, or local government, but also any unit of foreign governmental authority, any international or multinational organization whose membership is composed of any unit of a foreign government, and any agent or representative of any such unit or organization acting in that capacity. Tangible gifts valued at more than minimal value from a foreign government may only be accepted when refusal would be deemed likely to cause offense or embarrassment or otherwise adversely affect foreign relations of the United States. However, such gifts are deemed to have been accepted on behalf of the United States government, and the recipient must both deposit the gift with the Clerk of the House *within 60 days* of accepting it and file a disclosure report with the Committee.

The FGDA does not permit the acceptance of gifts of travel abroad (such as transportation, food, lodging, and entertainment) unless the travel takes place entirely outside of the United States and is related to official duties or is received under a program approved by the Department of State under MECEA. Reports concerning gifts of travel outside the United States accepted under the FGDA must be filed with the Committee *within 30 days* of accepting the gift of travel, regardless of value.

## **What is Minimal Value**

The General Services Administration sets the amount that constitutes “minimal value.” For gifts received from 2020 to 2022, “minimal value” is \$415. More information about gifts from foreign governments, including the FGDA regulations previously issued by the Committee, is available in the [House Ethics Manual](#). If you have any questions regarding acceptance of tangible gifts or gifts of travel from a foreign government, please call the Committee at 5-7103.



# U.S. House of Representatives

COMMITTEE ON ETHICS

Washington, DC 20515

December 15, 2022

## MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics  
Susan Wild, Chairwoman  
Michael Guest, Acting Ranking Member

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

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The purpose of this memorandum is to remind you about issues of concern to House Members<sup>1</sup> and officers<sup>2</sup> who are negotiating for future employment or departing from employment with the House of Representatives.<sup>3</sup> The matters discussed here include negotiations for future employment, post-employment restrictions, financial disclosure requirements (Termination Reports), and outside employment and earned income restrictions.<sup>4</sup> 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.

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

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

<sup>3</sup> 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.

<sup>4</sup> 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.

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

## 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.<sup>7</sup> 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.<sup>8</sup> Those decisions found that the term "negotiation" should be construed broadly.<sup>9</sup> However, these decisions make a distinction between "negotiations," which

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<sup>5</sup> 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).

<sup>6</sup> *Id.*

<sup>7</sup> See House Rule 23, cl. 3; Code of Ethics for Government Service ¶¶ 5, 6, *reprinted in House Ethics Manual 2022 Print* at 355.

<sup>8</sup> 18 U.S.C. § 208.

<sup>9</sup> 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).

trigger the rule, and “[p]reliminary or exploratory talks,” which do not.<sup>10</sup> 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.”<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup> 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.<sup>17</sup> Departing Members who are lawyers should consult their local bar associations concerning the

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<sup>10</sup> *Schaltenbrand*, 930 F.2d at 1558-59.

<sup>11</sup> *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.

<sup>12</sup> House Rule 23, cl. 3.

<sup>13</sup> Code of Ethics for Government Service ¶ 5, *reprinted in House Ethics Manual 2022 Print* at 355.

<sup>14</sup> 18 U.S.C. § 201(b)(2)(A).

<sup>15</sup> *Id.* § 201(c)(1)(B).

<sup>16</sup> *See* Code of Ethics for Government Service ¶ 5, *reprinted in House Ethics Manual 2022 Print* at 355.

<sup>17</sup> *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.

application of rules governing their involvement in matters in which they participated personally and substantially during their time with the House.<sup>18</sup> In addition, as addressed in the next section 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.<sup>19</sup> 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.”<sup>20</sup> For example, an exploratory conversation or an initial interview may not constitute “negotiations,” but an interview after the “exploratory” stage would if there is active interest on both sides, even if the terms of employment are not yet discussed.

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<sup>18</sup> 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 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. *See, e.g.,* Application of 18 U.S.C. § 203 to Former Employee’s Receipt of Attorney’s Fees in Qui Tam Action, 26 Op. O.L.C. 10 (2002), <https://www.justice.gov/olc/file/623846/download>.

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.

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

<sup>20</sup> *See Hedges*, 912 F.2d at 1403 n.2.



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.<sup>21</sup> 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.<sup>22</sup>

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](mailto: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.”<sup>23</sup> 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.<sup>24</sup>

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<sup>21</sup> House Rule 27, cl. 4.

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

<sup>23</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Sam Graves*, H. Rep. No. 111-320, at 16 (2009); *see also* House Bipartisan Task Force on Ethics, 101st Cong. Report on H.R. 3660 (Comm. Print 1989), *reprinted in* 135 Cong. Rec. 30740 at 30742 (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.”).

<sup>24</sup> *See* Staff of H. Comm. on the Judiciary, 85th Cong., Federal Conflict of Interest Legislation 1 (Comm. Print 1958) (“Within reasonable limits, also, the importance of public confidence in the integrity of the Federal

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 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.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

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.”<sup>29</sup> 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.<sup>30</sup> Any earmark benefitting an entity with which a Member is negotiating or has

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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 *House Ethics Manual 2022 Print* 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 . . .”).

<sup>25</sup> House Rule 3, cl. 1.

<sup>26</sup> See 5 Asher C. Hinds, *Hinds’ Precedents of the House of Representatives* § 5952 at 503-04 (1907) (hereinafter “*Hinds’ Precedents*”); see also Jason A. Smith, Parliamentarian, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives, One Hundred Seventeenth Congress*, H.R. Doc. No. 116-177 (2021), § 673 (hereinafter “*House Rules and Manual*”).

<sup>27</sup> See *Hinds’ Precedents* § 5952, at 503-04; see also *House Ethics Manual 2022 Print* at 234-35.

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

<sup>29</sup> House Rule 27, cl. 4.

<sup>30</sup> House Rule 23, cl. 17.

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 discussions.”<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup>

### **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.<sup>34</sup> These limitations are part of the federal criminal code, and they apply to Members and officers of the House,<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup> 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*),<sup>38</sup> 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

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<sup>31</sup> House Rule 25, cl. 5(a)(3)(G)(ii).

<sup>32</sup> 5 U.S.C. app. § 102(a)(2)(B).

<sup>33</sup> *Id.* § 102(a)(7)(A).

<sup>34</sup> 18 U.S.C. § 207 (e), (f).

<sup>35</sup> *Id.* § 207(e)(1).

<sup>36</sup> *Id.* § 207(e)(7).

<sup>37</sup> *Id.* § 207(e).

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

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 the U.S. Office of Government Ethics (OGE) of which the Committee is aware. Accordingly, a Member (or former Member) 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.<sup>39</sup> 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,**<sup>40</sup> or current employees of any other legislative office,<sup>41</sup> with the intent to influence, on behalf of any other person, the official actions or decisions of such Member, officer, or employee.<sup>42</sup> The statute excepts certain representations made on behalf of specific types of entities. These exceptions are described below in the context of “permissible activity.”

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<sup>39</sup> 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.

<sup>40</sup> 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*.

<sup>41</sup> “[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).

<sup>42</sup> 18 U.S.C. § 207(e)(1).

- ✗ 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 carrying out his or her official duties.<sup>43</sup>
- ✗ 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.<sup>44</sup>
- ✗ **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.<sup>45</sup>

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.<sup>46</sup> 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.”<sup>47</sup>

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<sup>43</sup> *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 Application of 18 U.S.C. § 207(f) to a Former Senior Employee*, 32 Op. O.L.C. 115 (2008), <https://www.justice.gov/sites/default/files/olc/opinions/attachments/2015/06/23/op-olc-v032-p0115.pdf>); *see also* OGE, Legal Advisory 16-08: Introduction to the Primary Post-Government Employment Restrictions Applicable to Former Executive Branch Employees, at 10 (Sept. 23, 2016), [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 Application of 18 U.S.C. § 207(f) to a Former Senior Employee*, 28 Op. O.L.C. 97 (2001), [www.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)).

<sup>44</sup> 18 U.S.C. § 207(f)(1)(B).

<sup>45</sup> *Id.* § 207(b).

<sup>46</sup> 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.*). 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.

<sup>47</sup> “Communications” Under 18 U.S.C. § 207, 25 Op. O.L.C. 59, 61 (2001), [http://www.justice.gov/sites/default/files/olc/opinions/2001/01/31/op-olc-v025-p0059\\_0.pdf](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.* at 62-63.

Further, an advisory memorandum issued by 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.”<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup>

### 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.<sup>51</sup> However, any such participation must remain behind-the-scenes; during the one-year

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

<sup>49</sup> 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).

<sup>50</sup> 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, 95th Cong. Manual of Offenses and Procedures, Korean Influence Investigation 18-19 (Comm. Print 1977). Members should be aware, however, that the law remains part of the criminal code.

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

“cooling-off” period, former Members must not permit their name to be openly associated with contacts made by other persons.<sup>52</sup>

- ✓ **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.<sup>53</sup>
- ✓ **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.<sup>54</sup>
- ✓ **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;<sup>55</sup>
  - The former Member is acting as an **elected official of a state or local government**;<sup>56</sup>

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<sup>52</sup> 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 47 above, including with regard to activities that do not constitute permissible “behind-the-scenes” activities.

<sup>53</sup> 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).

<sup>54</sup> 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, [www.justice.gov/nsd-fara](http://www.justice.gov/nsd-fara).

<sup>55</sup> 18 U.S.C. § 207(j)(1)(A).

<sup>56</sup> *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;<sup>57</sup>
  - The former Member is an **employee** of an accredited, degree-granting **institution of higher education** and is acting on behalf of such institution;<sup>58</sup> 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.<sup>59</sup>
- ✓ **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.<sup>60</sup> 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.<sup>61</sup> 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.<sup>62</sup>
  - ✓ **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.<sup>63</sup>

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<sup>57</sup> *Id.* § 207(j)(2)(A).

<sup>58</sup> *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).

<sup>59</sup> 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.*

<sup>60</sup> *Id.* § 207(j)(3).

<sup>61</sup> *Id.* § 207(j)(7)(A).

<sup>62</sup> *Id.* § 207(j)(7)(B)(ii)(II).

<sup>63</sup> *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, OGE emphasized that it regarded its interpretation of this exception as



- ✓ **Give testimony under oath**, or make statements required to be made under penalty of perjury.<sup>64</sup>
- ✓ **Contact staff of the Clerk of the House** regarding the Member’s compliance with the disclosure requirements under the Lobbying Disclosure Act.<sup>65</sup>
- ✓ **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.<sup>66</sup>
- ✓ **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.<sup>67</sup>

*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, non-profit 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

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

<sup>64</sup> 18 U.S.C. § 207(j)(6).

<sup>65</sup> *Id.* § 207(e)(8).

<sup>66</sup> *See id.* § 207.

<sup>67</sup> *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.

## ACTIVITY DURING ONE-YEAR COOLING OFF PERIOD

### *Entity Contacted by Former Member*

*Entity Represented by Former Member*

	Congress	Executive Branch	Foreign Entity	State Governments
<b>Private Entity</b>	 May advise entity behind scenes immediately			
<b>Federal, State, or Local Government</b>	 If <b>elected official</b> or <b>employee</b> of the federal, state, or local government			
<b>Tribal Government</b>	 May advise entity behind scenes immediately	 If <b>employed</b> by tribe or U.S.; must inform head of agency or department of any personal and substantial involvement in matter while a Member		
<b>Foreign Entity</b>	 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.		 Must register with the Justice Department if acting as a foreign agent in the U.S.
<b>International Org. of which U.S. is a Member</b>	 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		
<b>Accredited U.S. College or University</b>	 If an <b>employee</b> of the college or university			
<b>Charitable Hospital or Medical Research Organization</b>	 If an <b>employee</b> of the hospital or organization			
<b>Candidate, Political Campaign, or Party</b>	 If <b>employee</b> of candidate, authorized campaign committee, or federal or state party or committee, <b>unless</b> employed by entity that advises only such entities			

	May contact immediately
	May contact if additional steps are taken
	May not contact within one-year cooling off period

## 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.<sup>68</sup> The statute further authorizes the Attorney General to seek an injunction prohibiting a person from engaging in conduct that violates the act.<sup>69</sup>

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.<sup>70</sup> 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.<sup>71</sup>

*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.”<sup>72</sup> 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.”<sup>73</sup>

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

<sup>69</sup> See 18 § 216(c).

<sup>70</sup> See, e.g., *United States v. Jack A. Abramoff*, Docket No. 06-CR-001 (D.D.C.) (hereinafter “*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 (hereinafter “*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 (hereinafter “*Hampton* action”).

<sup>71</sup> See, e.g., *Abramoff* and *Ney* actions, note 67 above.

<sup>72</sup> 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, vol. I (July 19, 2002) (hereinafter “*Shuster Report*”).

<sup>73</sup> House Comm. on Standards of Official Conduct, *Summary of Activities, One Hundred Sixth Congress*, H. Rep. 106-1044, at 10, 13, 16 (2000); see also *Shuster Report*, note 72 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),

## 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."<sup>74</sup> 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.<sup>75</sup>

In addition, a resolution adopted at the start of the 117th 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 117th Congress.<sup>76</sup>

## 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.<sup>77</sup> Extensions of up to 90 days are available upon written request to the Committee when made prior to the original due date.<sup>78</sup>

The Termination Report, filed on the same form as the annual report, covers all financial activity through the end of the Member's term.<sup>79</sup> Schedule F ("Agreements") of the report requires disclosure of any agreement entered into by the filer, oral or written, with respect to future employment.<sup>80</sup> 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,

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[https://www.ethics.senate.gov/public/index.cfm/files/serve?File\\_id=676ADD17-2C7F-40F7-A4D9-B35526E4DA97](https://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=676ADD17-2C7F-40F7-A4D9-B35526E4DA97).

<sup>74</sup> House Rule 4, cl. 4(a).

<sup>75</sup> 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).

<sup>76</sup> H. Res. 8 § 3(d) (adopted Jan. 4, 2021). Although this restriction applies only during the 117th Congress, departing Members should note that similar language has been adopted in previous Congresses.

<sup>77</sup> 5 U.S.C. app. § 101(e).

<sup>78</sup> *Id.* § 101(g); Comm. on Ethics, *2021 Instruction Guide for Completing Financial Disclosure Statements and Periodic Transaction Reports* (hereinafter "2021 FD and PTR Instructions") at 7.

<sup>79</sup> *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.

<sup>80</sup> *Id.* § 102(a)(7).

but the amount of the compensation need not be reported.<sup>81</sup> 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.<sup>82</sup>

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.<sup>83</sup> Any departing Member who is not required to file a Termination Report for this reason must notify the Clerk *in writing* of that fact.<sup>84</sup>

## USE OF EXCESS CAMPAIGN FUNDS

Members are prohibited by House rules from converting campaign funds to personal use.<sup>85</sup> 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.<sup>86</sup> All campaign resources (including equipment, furniture, and vehicles) are subject to the same restrictions.<sup>87</sup> A Member may not keep campaign property upon retirement from Congress unless he or she pays the campaign fair market value.<sup>88</sup> In valuing the property, the Member may take into account the fact that it has been used.<sup>89</sup>

***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,<sup>90</sup> and contribution to any national, state, or local committee of a political party.<sup>91</sup> 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.<sup>92</sup> 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

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<sup>81</sup> *See id.*; *see also* 2021 FD and PTR Instructions at 34.

<sup>82</sup> 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.

<sup>83</sup> *Id.* § 101(e).

<sup>84</sup> *See* 2021 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/Complete%20Termination%20Exemption%20Form\\_0.pdf](https://ethics.house.gov/sites/ethics.house.gov/files/Complete%20Termination%20Exemption%20Form_0.pdf).

<sup>85</sup> House Rule 23, cl. 8.

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

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

<sup>88</sup> 11 C.F.R. §§ 113.1(g)(3) and 113.2(e).

<sup>89</sup> 11 C.F.R. § 113.1(g)(3).

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

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

<sup>92</sup> 11 C.F.R. § 113.2(a)(2).

furnishings and personal household furnishings and effects back to the Member's home state.<sup>93</sup> 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,<sup>94</sup> 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 2022, a Member may not receive outside earned income (including, for example, a signing bonus) in excess of \$29,895, 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.<sup>95</sup> 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),<sup>96</sup> although he or she may receive compensation for teaching, if the Member first secures specific prior permission from this Committee.<sup>97</sup>

**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.<sup>98</sup>

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<sup>93</sup> FEC, Advisory Opinion 1996-14 (May 31, 1996), <https://saos.fec.gov/aodocs/1996-14.pdf>; *House Ethics Manual 2022 Print* at 162.

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

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

<sup>96</sup> House Rule 23, cl. 5; House Rule 25, cl. 1(a)(2).

<sup>97</sup> House Rule 25, cl. 2(e).

<sup>98</sup> 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,<sup>99</sup> 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.

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

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





# U.S. House of Representatives

COMMITTEE ON ETHICS

Washington, DC 20515

December 15, 2022

## MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics

Susan Wild, Chairwoman

Michael Guest, Acting Ranking Member

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

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The purpose of this memorandum is to remind you about issues of concern to staff members<sup>1</sup> who are negotiating for future employment or departing from employment with the House of Representatives or one of the legislative branch offices.<sup>2</sup> 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.<sup>3</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> “[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).

<sup>3</sup> 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.

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

## 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.<sup>6</sup> 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.<sup>7</sup> Those decisions found that the term “negotiation” should be construed broadly.<sup>8</sup> However, these decisions make a distinction between “negotiations,” which trigger the rule, and “[p]reliminary or exploratory talks,” which do not.<sup>9</sup> The term “negotiations” connotes “a communication between two parties with a view toward reaching an agreement” and

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<sup>4</sup> 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).

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

<sup>6</sup> See House Rule 23, cl. 3; Code of Ethics for Government Service ¶¶ 5, 6, *reprinted in House Ethics Manual 2022 Print* at 355.

<sup>7</sup> 18 U.S.C. § 208.

<sup>8</sup> 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).

<sup>9</sup> See *Schaltenbrand*, 930 F.2d at 1558-59.

in which there is “active interest on both sides.”<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> In

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<sup>10</sup> *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.

<sup>11</sup> House Rule 23, cl. 3.

<sup>12</sup> Code of Ethics for Government Service ¶ 5, *reprinted in House Ethics Manual 2022 Print* at 355.

<sup>13</sup> 18 U.S.C. § 201(b)(2)(A).

<sup>14</sup> *Id.* § 201(c)(1)(B).

<sup>15</sup> *See* Code of Ethics for Government Service ¶ 5, *reprinted in House Ethics Manual 2022 Print* at 355.

<sup>16</sup> *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.

<sup>17</sup> 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. *See, e.g., Application of 18 U.S.C. § 203 to Former Employee’s Receipt of Attorney’s Fees in Qui Tam Action*, 26 Op. O.L.C. 10 (2002), <https://www.justice.gov/olc/file/623846/download>.

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.

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.<sup>18</sup> 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 during the preceding twelve month period, including any federal civil service or military annuities.<sup>19</sup> 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.”<sup>20</sup> For example, an exploratory conversation or an initial interview may not constitute “negotiations,” but an interview after the “exploratory” stage would if there is active interest on both sides, even if the terms of employment are not yet discussed. 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.<sup>21</sup>

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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.

<sup>18</sup> 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.

<sup>19</sup> 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 2022, that rate is \$130,500 per year for most House employees; *see also* Section 5 of the Further Consolidated Appropriations Act, 2022, Pub. L. No. 117-103 Mar. 15, 2022), prohibiting a scheduled cost-of-living pay raise for Members. As a result, Member pay remained at \$174,000 for 2022.

<sup>20</sup> *See Hedges*, 921 F.2d at 1403 n.2.

<sup>21</sup> House Rule 27, cl. 4.

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 judgment in conducting his public duties.”<sup>22</sup> 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.<sup>23</sup>

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.”<sup>24</sup> 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.<sup>25</sup>

Forms may be sent by email to [EthicsCommittee@mail.house.gov](mailto: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.”<sup>26</sup> 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

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<sup>22</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Sam Graves*, H. Rep. No. 111-320, at 16 (2009); *see also* House Bipartisan Task Force on Ethics, 101st Cong., Report on H.R. 3660, (Comm. Print 1989), *reprinted in* 135 Cong. Rec. 30740 at 30742 (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.”).

<sup>23</sup> *See* Staff of H. Comm. on the Judiciary, 85th Cong., Federal Conflict of Interest Legislation 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 House Ethics Manual 2022 Print* 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 . . .”).

<sup>24</sup> House Rule 27, cls. 1-3.

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

<sup>26</sup> House Rule 25, cl. 5(a)(3)(G)(ii).

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 Report required of departing senior employees.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup>

## 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.<sup>30</sup> 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.<sup>31</sup> The basic rate of pay for Members in calendar year 2022 is \$174,000, and thus the post-employment threshold for individuals who terminate their employment with a Member, committee, or leadership office in 2022 is **\$130,500**. The threshold rate for other years is available from the Ethics Committee. For employees of "other legislative offices,"<sup>32</sup> the basic rate of pay triggering the restrictions is level IV of the Executive Schedule, which for 2022 is **\$176,300**.<sup>33</sup> Please note that this rate of pay is subject to change in 2023.

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.<sup>34</sup> 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

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<sup>27</sup> Please note that the requirement to file a Financial Disclosure Statement covering calendar year 2022 applies to officers and employees whose basic rate of pay for at least 60 days in 2022 was \$135,468, or a monthly salary at or above \$11,289. 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).

<sup>28</sup> 5 U.S.C. app. § 102(a)(2)(B).

<sup>29</sup> *Id.* § 102(a)(7)(A).

<sup>30</sup> See 18 U.S.C. § 207(e), (f).

<sup>31</sup> *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.

<sup>32</sup> For the definition of "other legislative offices," see note 2, above.

<sup>33</sup> 18 U.S.C. § 207(e)(7)(B).

<sup>34</sup> *Id.* § 207(e)(7).

if the adjustment is intended to be temporary.<sup>35</sup> Employees who are subject to the restrictions are referred to as “covered” individuals.

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.<sup>36</sup> 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 the U.S Office of Government Ethics (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.<sup>37</sup> 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.<sup>38</sup> 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

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<sup>35</sup> 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 House Ethics Manual 2022 Print* at 240, n.112.

<sup>36</sup> *Id.* § 207(e)(3)-(7).

<sup>37</sup> 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.

<sup>38</sup> *Id.*

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:

- Covered former employees on the **personal staff**<sup>39</sup> of a Member may not seek official action, on behalf of other persons, from that Member or from any of the Member's employees.<sup>40</sup>
- Covered former **committee staff**<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup>
- Covered former employees on the **leadership staff**<sup>44</sup> may not seek official action, on behalf of other persons, from current Members of the leadership<sup>45</sup> or any current staff of those Members.<sup>46</sup>

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<sup>39</sup> *Id.* § 207(e)(9)(E).

<sup>40</sup> *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).

<sup>41</sup> *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).

<sup>42</sup> *Id.* § 207(e)(4).

<sup>43</sup> *Id.* (barring communication or appearances on "any matter" on which the former employee seeks action).

<sup>44</sup> *Id.* § 207(e)(9)(H).

<sup>45</sup> 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).

<sup>46</sup> *See id.* §§ 207(e)(5)(B) and (e)(9)(H).



- Covered former employees of any **other legislative office**<sup>47</sup> may not seek official action, on behalf of other persons, from current officers and employees of that legislative office.<sup>48</sup>
- ✗ **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.<sup>49</sup>
- ✗ **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.<sup>50</sup>
- ✗ **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.<sup>51</sup>

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.<sup>52</sup> A DOJ opinion defines “communication” as “the act of

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<sup>47</sup> “[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).

<sup>48</sup> 18 U.S.C. §§ 207(e)(6) and (e)(9)(G).

<sup>49</sup> *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* Application of 18 U.S.C. § 207(f) to a Former Senior Employee, 32 Op. O.L.C. 115 (2008), <https://www.justice.gov/sites/default/files/olc/opinions/attachments/2015/06/23/op-olc-v032-p0115.pdf>; *see also* OGE, Legal Advisory 16-08: Introduction to the Primary Post-Government Employment Restrictions Applicable to Former Executive Branch Employees, at 10 (Sept. 23, 2016), [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* Application of 18 U.S.C. § 207(f) to a Former Senior Employee, 28 Op. O.L.C. 97 (2001), [www.justice.gov/sites/default/files/olc/opinions/2004/06/31/op-olc-v028-p0097\\_0.pdf](https://www.justice.gov/sites/default/files/olc/opinions/2004/06/31/op-olc-v028-p0097_0.pdf)).

<sup>50</sup> 18 U.S.C. § 207(f)(1)(B).

<sup>51</sup> *Id.* § 207(b).

<sup>52</sup> 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.*). 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.

imparting or transmitting information with the intent that the information be attributed to the former official.”<sup>53</sup>

Further, an advisory memorandum issued by 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.”<sup>54</sup> 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 prohibited from contacting on official business.<sup>55</sup> 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.<sup>56</sup>

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<sup>53</sup> “Communications” Under 18 U.S.C. § 207, 25 Op. O.L.C. 59, 61 (2001), [http://www.justice.gov/sites/default/files/olc/opinions/2001/01/31/op-olc-v025-p0059\\_0.pdf](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.* at 62-63.

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

<sup>55</sup> 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).

<sup>56</sup> 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, 95th Cong., Manual of Offenses and Procedures, Korean Influence Investigation 18-19 (Comm. Print 1977). Members should be aware, however, that the law remains part of the criminal code.

## 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.<sup>57</sup> However, any such participation must remain behind-the-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.<sup>58</sup>
- ✓ **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.<sup>59</sup>
- ✓ **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.<sup>60</sup>

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

<sup>58</sup> 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 49 above, including with regard to activities that do not constitute permissible “behind-the-scenes” activities.

<sup>59</sup> 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).

<sup>60</sup> 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

- ✓ **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;<sup>61</sup>
  - The former employee is acting as an **elected official of a state or local government**;<sup>62</sup>
  - 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;<sup>63</sup>
  - The former employee is an **employee** of an accredited, non-profit, degree-granting **institution of higher education** and is acting on behalf of such institution;<sup>64</sup> 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.<sup>65</sup>
  
- ✓ **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.<sup>66</sup> 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.<sup>67</sup> However, if the former employee is employed by a

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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, [www.justice.gov/nsd-fara](http://www.justice.gov/nsd-fara).

<sup>61</sup> 18 U.S.C. § 207(j)(1)(A).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* (j)(2)(A).

<sup>64</sup> *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).

<sup>65</sup> 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.*

<sup>66</sup> *Id.* § 207(j)(3).

<sup>67</sup> *Id.* § 207(j)(7)(A).

person or entity who represents, aids, or advises only such persons or entities, the communications would be prohibited.<sup>68</sup>

- ✓ **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.<sup>69</sup>
- ✓ **Give testimony under oath**, or make statements required to be made under penalty of perjury.<sup>70</sup>
- ✓ **Contact staff of the Clerk of the House** regarding the individual’s compliance with the disclosure requirements under the Lobbying Disclosure Act.<sup>71</sup>
- ✓ **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.<sup>72</sup>
- ✓ **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.<sup>73</sup>

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

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<sup>68</sup> *Id.* § 207(j)(7)(B)(ii)(II).

<sup>69</sup> *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, OGE emphasized that it regarded its interpretation of this exception to be “relatively narrow.” *See* 73 Fed. Reg. 36183 (June 25, 2008). Although these definitions are not binding on the Ethics Committee, they provide guidance as to how the term should be interpreted.

<sup>70</sup> 18 U.S.C. § 207(j)(6).

<sup>71</sup> *Id.* § 207(e)(8).

<sup>72</sup> *See id.* § 207.

<sup>73</sup> *See id.*

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.

**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.

**ACTIVITY DURING ONE-YEAR COOLING OFF PERIOD**

*Entity Contacted by Former Employee*

*Entity Represented by Former Employee*

	Former Congressional Office/Committee	Executive Branch	Foreign Entity	State Governments
<b>Private Entity</b>	<b>x</b>  Must wait 1 year before contacting former Congressional office or committee directly. May immediately advise entity behind scenes. May contact other Congressional offices immediately	✓	✓	✓
<b>Federal, State, or Local Government</b>	✓  If <b>elected official</b> or <b>employee</b> of the federal, state, or local government	✓	✓	✓
<b>Tribal Government</b>	<b>x</b>  May advise entity behind scenes immediately	▲	✓	✓
<b>Foreign Entity</b>	<b>x</b>  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.	<b>x</b>  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.	✓	✓  Must register with the Justice Department if acting as a foreign agent in the U.S.
<b>International Org. of which U.S. is a Member</b>	▲  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	✓	✓
<b>Accredited U.S. College or University</b>	✓  If an <b>employee</b> of the college or university	✓	✓	✓
<b>Charitable Hospital or Medical Research Organization</b>	✓  If an <b>employee</b> of the hospital or organization	✓	✓	✓
<b>Candidate, Political Campaign, or Party</b>	✓  If <b>employee</b> of candidate, authorized campaign committee, or federal or state party or committee, <b>unless</b> employed by entity that advises only such entities	✓	✓	✓

✓	May contact immediately
▲	May contact if additional steps are taken
x	May not contact within one-year cooling off period



## 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.<sup>74</sup> The statute further authorizes the Attorney General to seek an injunction prohibiting a person from engaging in conduct that violates the act.<sup>75</sup>

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.<sup>76</sup> 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.<sup>77</sup>

*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.”<sup>78</sup> 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

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

<sup>75</sup> See 18 U.S.C. § 216(c).

<sup>76</sup> See, e.g., *United States v. Jack A. Abramoff*, Docket No. 06-CR-001 (D.D.C.) (hereinafter “*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 (hereinafter “*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 (hereinafter “*Hampton* action”).

<sup>77</sup> See, e.g., *Abramoff* and *Ney* actions, note 71 above.

<sup>78</sup> 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, vol. I (July 19, 2002) (hereinafter “*Shuster* Report”).

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

## **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.<sup>80</sup> 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.<sup>81</sup> Extensions of up to 90 days are available upon written request to the Committee when made prior to the original due date.<sup>82</sup> Please note that the salary threshold for filing disclosure statements is higher than that which triggers the post-employment restrictions discussed above. For 2022, “senior staff” for financial disclosure purposes is anyone paid at annual salary rate of \$135,468 (or a monthly salary of \$11,289) for 60 days or more.<sup>83</sup>

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.<sup>84</sup> Schedule F (“Agreements”) of the report requires disclosure of any agreement entered into by the filer, oral or written, with respect to future employment.<sup>85</sup> 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.<sup>86</sup> The employee will also have to disclose, on Schedule H (“Travel Payments and Reimbursements”) of the report, any travel reimbursements exceeding \$415 received from any source in connection with job-search activity.<sup>87</sup>

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<sup>79</sup> House Comm. on Standards of Official Conduct, *Summary of Activities, One Hundred Sixth Congress*, H. Rep. 106-1044, at 10, 13, 16 (2000); *see also* Shuster Report, *supra* note 78 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), [https://www.ethics.senate.gov/public/index.cfm/files/serve?File\\_id=676ADD17-2C7F-40F7-A4D9-B35526E4DA97](https://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=676ADD17-2C7F-40F7-A4D9-B35526E4DA97).

<sup>80</sup> 5 U.S.C. app. § 101(e).

<sup>81</sup> *See* Comm. on Ethics, *2021 Instruction Guide for Completing Financial Disclosure Statements and Periodic Transaction Reports* (hereinafter “2021 FD and PTR Instructions”) at 5.

<sup>82</sup> 5 U.S.C. app. § 101(g)(1); *see also* 2021 FD and PTR Instructions at 7.

<sup>83</sup> *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.

<sup>84</sup> *Id.* § 101(e).

<sup>85</sup> *Id.* § 102(a)(7).

<sup>86</sup> *See id.*; *see also* 2021 FD and PTR Instructions at 34.

<sup>87</sup> 5 U.S.C. app. § 102(a)(2)(B).

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.<sup>88</sup> Any departing employee who is not required to file a Termination Report for this reason must notify the Clerk *in writing* of that fact.<sup>89</sup>

## 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,<sup>90</sup> 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.<sup>91</sup> In calendar year 2022, a senior staff employee may not receive outside earned income (including, for example, a signing bonus) in excess of \$29,895, 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.<sup>92</sup> 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),<sup>93</sup> although he or she may receive compensation for teaching, if the employee first secures specific prior permission from this Committee.<sup>94</sup>

**Example 14.** Staff member *S*, who earns more than the qualifying senior staff rate of \$135,468, plans to join a law firm when he leaves his official position. Since 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.

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<sup>88</sup> *Id.* § 101(e).

<sup>89</sup> See 2021 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/Complete%20Termination%20Exemption%20Form\\_0.pdf](https://ethics.house.gov/sites/ethics.house.gov/files/Complete%20Termination%20Exemption%20Form_0.pdf).

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

<sup>91</sup> 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 2022, the limit is \$39,603. 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.*

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

<sup>93</sup> House Rule 23, cl. 5; House Rule 25, cl. 1(a)(2).

<sup>94</sup> House Rule 25, cl. 2(e).

**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,<sup>95</sup> 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.

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

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<sup>95</sup> *Id.*, cl. 5(b)(1)(A).