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ONE HUNDRED SIXTEENTH CONGRESS

## U.S. House of Representatives

### COMMITTEE ON ETHICS

May 2, 2019

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

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

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

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

#### LIMITS ON SOLICITATION

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

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

#### WHAT ARE "FUNDRAISING ACTIVITIES"?

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

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

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

### **POLITICAL FUNDRAISING ACTIVITIES**

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

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

### **CHARITABLE FUNDRAISING ACTIVITIES**

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

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

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

<sup>3</sup> *Id.*

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

<sup>5</sup> See 1990 Committee Solicitation Memo; 2008 House Ethics Manual at 348.

<sup>6</sup> See 26 U.S.C. § 170(c).

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

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

### **FUNDRAISING GENERAL GUIDELINES**

All permissible fundraising must comply with the following rules.

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

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<sup>7</sup> See 1990 Committee Solicitation Memo; *2008 House Ethics Manual* at 348.

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

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

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

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

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

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

### **SIMPLIFIED PROCESS FOR FUNDRAISING REQUESTS**

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

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

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

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

<sup>13</sup> 5 U.S.C. § 7353(b)(1).

<sup>14</sup> *Id.* at (c).

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

### **FREQUENTLY ASKED QUESTIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Enclosure: Solicitation Waiver Request



U.S. House of Representatives

# COMMITTEE ON ETHICS

## SOLICITATION WAIVER REQUEST

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

1. Name: \_\_\_\_\_
2. Official Title: \_\_\_\_\_
3. (For Staff) Name of employing Member or Committee: \_\_\_\_\_
4. Contact information (e-mail address, office address, telephone number, point-of-contact):  
\_\_\_\_\_
5. Name of organization or individual that will benefit from your fundraising:  
\_\_\_\_\_
6. Contact person and phone number of the individual or organization:  
\_\_\_\_\_
7. Tax status of organization (*e.g.*, IRC § 501(c)(4)): \_\_\_\_\_
8. Yes  No  Do you or your family have any connection to the individual or organization?  
If yes, please explain: \_\_\_\_\_  
\_\_\_\_\_
9. Please describe how the individual or organization would like to use your name:  
\_\_\_\_\_
10. Date(s) of the event/when would you assist with fundraising: \_\_\_\_\_
11. Please describe how you will participate in the fundraising efforts:  
\_\_\_\_\_
12. Yes  No  Did the individual or organization offer to cover any travel expenses in connection with the fundraising?
13. Yes  No  Do you have a sample invitation or sample language you would like to use?  
If yes, please provide a copy.
14. Yes  No  Is the organization founded or controlled by current Members, officers, or employees?  
If yes, what is the purpose of the organization?  
\_\_\_\_\_

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

**SIGNATURE OF REQUESTOR:** \_\_\_\_\_ **DATE:** \_\_\_\_\_