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ONE HUNDRED EIGHTEENTH CONGRESS

U.S. House of Representatives

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MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: Guidance for House Staff Assisting in the Presidential Transition¹

Consistent with past practice, the Committee issues this guidance to summarize the rules and address frequently asked questions related to a House employee's assistance to a Presidential Transition Team (PTT).

"I am a House employee. I would like to assist in the Presidential transition. Is that possible?"

There are several ways House employees may be able to assist in the Presidential transition. You can find further information on the topic below. And remember, you can always "Ask Ethics" at (202) 225-7103.

Some key things to remember:

1. This memorandum applies only to work performed for one or more apparent successful candidates as part of a PTT.² The guidance below does not apply to work for any other entity, including for a campaign or a nonprofit organization.
2. Under each option below, House staff remain at all times subject to provisions of the Constitution and federal statutes applicable to all federal employees, in addition to all

¹ For purposes of this memorandum, the terms "Presidential transition" and "transition" refer to the period immediately *following* a Presidential election.

² Section (3)(c)(1)(A) of the Presidential Transition Act of 1963 (PTA), as amended, explains the determination of an "apparent successful candidate" or candidates. Of note, it is possible for more than one eligible candidate for the office of President or Vice President to be an apparent successful candidate. Accordingly, more than one PTT may operate after a Presidential election takes place. 3 U.S.C. § 102 note (as amended by Pub. L. No. 117-328, 2022).

House Rules. Moreover, all PTT employees and volunteers are required to sign a separate ethical code of conduct with the PTT.³

3. If you are asked to solicit on behalf of a PTT, keep in mind that your solicitation activities must be consistent with the Anti-Solicitation Statute and the Committee's related guidance.⁴
4. By its very nature, Presidential transition work is temporary.
5. In addition to consulting with the Committee on Ethics, you may need or wish to contact Payroll & Benefits or the Committee on House Administration prior to assisting a PTT if you would like to go on Leave Without Pay (LWOP), be a reimbursed detailee, or be assigned to a PTT as part of your official duties. Your employing Member may want to contact the Office of House Employment Counsel.
6. Whether you are employed by a PTT or you volunteer for a PTT, your ability to communicate with federal agencies may be limited.⁵ These restrictions do not apply if you are assisting a PTT as part of your congressional duties or are a reimbursed detailee.
7. If you decide to leave House employment to work for a PTT, post-employment restrictions may apply, and we encourage you to call the Committee so we can help you familiarize yourself with these restrictions.⁶

³ *Id.* at § (4)(g)(3)(B)(iii).

⁴ 5 U.S.C. § 7353; Comm. on Ethics, [Member, Officer, and Employee Participation in Fundraising Activities](#) (May 2, 2019). Solicitations for a PTT likely benefit a 501(c)(4) organization. Note that fundraising for a political candidate or campaign does not implicate the Anti-Solicitation Statute, as noted in the Committee's related guidance.

⁵ 18 U.S.C. §§ 203 and 205 prohibit federal employees from representing anyone before a federal department, agency, officer, or court in any particular matter in which the United States is a party or has a direct and substantial interest, whether the employee is compensated or not. These statutes are administered by the Department of Justice, and any advice the Committee provides about these statutes is advisory only.

⁶ Staff subject to the post-employment restrictions 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. See Comm. on Ethics, [Negotiations for Future Employment and Restrictions on Post-Employment for House Staff](#) (Dec. 15, 2022).

Please note, the PTA, as amended, allows eligible candidates to solicit for and collect private funds to supplement funds Congress appropriates for Presidential transition activities. For those former House employees who are subject to the one-year post-employment restrictions and serve on a PTT within that one-year period, it is unclear how the provisions at 18 U.S.C. § 207 apply, but the Department of Justice's Office of Legal Counsel has provided some insight as it applies to executive branch staff. See Definition of "Candidate" Under 18 U.S.C. §207(j)(7), 24 Op. O.L.C. 288 (2000); Applicability of 18 U.S.C. §207(c) to President-Elect's Transition Team, 12 Op. O.L.C. 264 (1988).

FIRST OPTION

“My employing Member told me I can assist the transition as part of my congressional duties. Is that true?”

House Members⁷ and officers have broad latitude to determine how to deploy their official staff, consistent with certain rules. For example, Members may not retain a staff person who does not perform duties commensurate with their compensation.⁸ Similarly, committee staff may only conduct committee business during congressional working hours and may not perform duties other than those pertaining to committee business.⁹ And of course, do not forget the Purpose Statute. Paraphrasing, that statute says anything paid for with appropriated funds—including staff when they are expected to perform work for the House—may only be used for the purposes for which they were appropriated.¹⁰ In other words, official funds may not be used for a personal, political, or campaign-related purpose.¹¹

However, the Ethics Committee considers transition work for the apparent successful candidate(s) to be governmental, rather than political in nature. As a result, within these parameters, Members may reasonably determine that having their staff assist an incoming or re-elected Administration would ultimately benefit their constituents, their committee, or their leadership office.¹² Your employing Member may therefore appropriately determine your assistance to a PTT is part of your official, congressional duties.

If your employing Member determines you may or should assist a PTT as part of your congressional duties, you remain responsible to and under the direction of your employing Member. You do not become an employee of an apparent successful candidate, the President-elect, or the PTT. In short, you may be able to add a line or two to your resume under “duties,” but you may not add an entirely new employer.

⁷ This Memorandum uses the term “Member” to refer to House Members, Delegates, and the Resident Commissioner.

⁸ House Rule 23, cl. 8.

⁹ House Rule 10, cl. 9(b)(1).

¹⁰ 31 U.S.C. § 1301(a).

¹¹ *See Comm. on House Admin., Members’ Congressional Handbook*, <https://cha.house.gov/members-congressional-handbook>, (last accessed October 8, 2024).

¹² By signing the monthly salary certification, your employing Member in effect represents that you continue to perform congressional work, even if that work is for a PTT.

SECOND OPTION

“I’m wondering if I can assist the transition on nights and weekends.”

House employees must receive approval from their employing Member before engaging in any outside activity, whether the activity is compensated or not. In addition, House employees’ participation in outside activities must be consistent with House Rules and other applicable legal requirements; for example, your ability to communicate with federal agencies may be limited.¹³ With these two cautions in mind, House staff generally may spend their non-working hours or their “own time” doing whatever they choose. Thus, for example, House staff may use accrued annual leave or go on LWOP, pursuant to established office policy, to assist a PTT.¹⁴

Because assisting a PTT as a volunteer is an outside activity, you must follow the guidance above and ensure you understand which laws apply to your volunteer activities for the PTT. In addition, you report and are responsible to the PTT while volunteering, rather than being responsible to your employing Member. In other words, you may add an entire new line to your resume, wherever you list volunteer activities. Remember that if you choose to go on LWOP to assist a PTT, you may not perform any official House duties for the duration of your time on LWOP.¹⁵

THIRD OPTION

“Can I work for the transition for compensation while I am also a House employee?”

House employees must receive approval from their employing Member before engaging in any outside activity, whether the activity is compensated or not. In addition, House employees’ participation in outside activities must be consistent with House Rules and other applicable legal requirements; for example, your ability to communicate with federal agencies may be limited.¹⁶ With these cautions in mind, House staff generally may spend their non-working hours or their “own time” working for another employer. Thus, for example, House staff may use accrued annual leave or go on LWOP, pursuant to established office policy, to assist a PTT.¹⁷

¹³ Employees who serve on a PTT as a volunteer outside activity generally may not communicate with federal officers or employees on behalf of the PTT pursuant to 18 U.S.C. § 205(a)(2). *See supra* note 5.

¹⁴ Any staff members wishing to go on LWOP status may do so only in accordance with the guidelines on LWOP issued by the Committee on House Administration.

¹⁵ House Rule 23, cl. 8(a). Staff on LWOP are not receiving compensation from the House; therefore, they may not perform duties for the House, including minor, administrative duties.

¹⁶ 18 U.S.C. § 203(a). *See supra* note 5.

¹⁷ *See supra* note 14.

A PTT may offer a House employee a paid position to serve on a PTT, including as part of a landing team.¹⁸ House employees who are considered “senior staff”¹⁹ pursuant to the Ethics in Government Act (EIGA) may be subject to a limit on the cumulative amount of income they are permitted to receive from all outside sources in a calendar year. Currently, the outside earned income limit (OEIL) is \$31,815. Further, outside employment restrictions define certain activities for which senior staff may not receive any compensation whatsoever. Among other things, senior staff are prohibited from (1) receiving compensation for practicing any profession that involves a fiduciary relationship, including, for example, law or accounting, and (2) serving for compensation as an officer or director of any entity.

Because working for a PTT (other than as part of your congressional duties or as a detailee) is an outside activity,²⁰ you must follow the guidance above and ensure you understand which laws apply to your paid position with the PTT. In addition, you report and are responsible to the PTT while performing work and receiving compensation from the PTT, rather than being responsible to your employing Member. In other words, you may add a new line to your resume where you list your employers and paid positions. Remember that if you choose to go on LWOP to accept a paid position with the PTT, you may not perform any official House duties for the duration of your time on LWOP.²¹

If you are not senior staff, the EIGA restrictions and prohibitions do not apply. If you are senior staff, make sure your compensation does not exceed the OEIL, and you do not receive compensation that falls into one of the prohibited categories.

FOURTH OPTION

“Can I assist the transition as a reimbursed detailee?”

The PTA provides that House employees, among other federal employees, may be detailed to assist a PTT on a reimbursable basis, with the consent of their employing Member. The PTA provides, in pertinent part:

[A]ny employee of any agency of any branch of the Government, or an employee of a committee of either House of Congress, a joint committee of the Congress, or an individual Member of Congress, may be detailed to such

¹⁸ It is important for House employees who are offered compensation to work on a PTT to confirm that their pay does not come from a federal appropriation, to avoid application of the Dual Compensation statute, 5 U.S.C., § 5533(c)(1). That statute generally prohibits House employees from receiving pay from a non-House federal job if the gross pay for the two positions, *combined*, would exceed the dual compensation limit for the calendar year. The dual compensation limit for 2024 is \$42,450. Note that employment with a PTT through a detail does not implicate this statute.

¹⁹ Senior staff who are subject to the outside earned income limit are those employees whose rate of basic pay is equal to or greater than \$147,649 annually, or \$12,304 per month for more than 90 days in 2024. These employees are also subject to additional restrictions and some absolute prohibitions concerning compensation and affiliations. *See* 5 U.S.C. § 13101, *et seq.*

²⁰ *See* Presidential Transition Act § 3(a)(2).

²¹ *See supra*, note 15.

[transition] staffs on a reimbursable basis with the consent of the supervising Member of Congress; and while so detailed such employee shall be responsible only to the apparent successful candidate for the performance of his duties: Provided further, [t]hat any employee so detailed shall continue to receive the compensation provided pursuant to law for his regular employment, and shall retain the rights and privileges of such employment without interruption.²²

The legislative history of the 1976 amendments to the PTA indicates that “on a reimbursable basis” means that reimbursement of the employees’ salaries by a PTT is required. One purpose of the amendments, according to the Senate report accompanying the amendments, was to “require that when personnel is detailed to the office staffs of the incoming and outgoing Presidents and Vice Presidents from a federal department or agency, *reimbursements must be made* to the appropriate agency for such services.”²³ As a result, during a detail to a PTT, House employees retain full House salary and benefits, even though the PTT must reimburse the House for the detailed employee’s salary.²⁴ Accordingly, House employees who are detailed to a PTT may not accept compensation directly from the PTT or from any other source, including from nonprofit organizations or campaign committees for their transition work, pursuant to House Rule 24. In addition, House employees on detail to a PTT are not prohibited from communicating with other federal officials on behalf of the PTT because their communications are made in the discharge of official duties.²⁵

Because being detailed to a PTT essentially means you are a loaned transition employee, you report and are responsible to the PTT throughout the duration of your detail, rather than being responsible to your employing Member. In other words, you may add a new line to your resume where you list employers, or you may add your detail as a line item under your current employment with the House. Be sure to check with Payroll & Benefits and any other House office involved in effectuating a detail if you would like to become a reimbursed detailee.

What all of this together means is that House employees may assist a Presidential transition team in a variety of ways, so long as their activities on behalf of a PTT comply with the guidance above. When in doubt, “Ask Ethics” by contacting the Committee’s Office of Advice and Education at extension 5-7103.

²² 3 U.S.C. § 102 note (as amended by Pub. L. No. 117-328, 2022).

²³ S. Rep. No. 94-1322, 94th Cong., 2d Sess., at 1 (1976) (emphasis added).

²⁴ See Presidential Transition Act § 3(a)(2).

²⁵ 18 U.S.C. § 203(a), 205(a); see also Applicability of 18 U.S.C. § 207(c) to President-Elect’s Transition Team, 12 Op. O.L.C. 264, 265 (1988) (“[T]he prohibitions in section 203 and 205 do not apply to...detailed employees by virtue of the ‘official duties’ exception to those provisions.”).