S. PUB. 106--40

SENATE ETHICS MANUAL

Select Committee on Ethics
United States Senate

106th Congress
2nd Session

September 2000
(Supersedes both the 1996 and 1999 Editions)

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PREFACE

The Senate Select Committee on Ethics is authorized to publish regulations necessary to implement the Senate Code of Official Conduct, and to issue interpretative rulings and advisory opinions regarding the application of any law, rule, or regulation within the Committee's jurisdiction.

In early 1993, the Ethics Committee commissioned its staff to begin preparation of an ethics manual. Later that year, the Ethics Study Commission, whose membership included all Members of the Ethics Committee and other current and former Members, also recommended that the Committee augment its efforts to educate Senate Members, officers, and employees about ethics issues. This manual is part of that effort.

The manual's purpose is to explain the application of the Senate's Code of Official Conduct and related ethics laws, and to describe the operation and role of the Committee. The intent is to provide a "single source" of information about ethics-related provisions of the U. S. Constitution, Federal statutes, and Senate Rules which regulate the operation of a Senate office and the conduct of Senate Members, officers, and employees. As such, the manual provides an efficient and effective means of meeting the Committee's educational obligation to the Senate.

The Committee has traditionally relied upon the periodic issuance of Interpretative Rulings to advise Senate Members, officers, and employees on the application of the Code of Conduct. Each Interpretative Ruling previously issued by the Committee and referred to in this manual is reprinted in Appendix A for easy reference. Because the Interpretative Rulings span the period from April, 1977 to June, 1995, a time during which significant changes in Senate Rules have occurred, each Interpretative Ruling in Appendix A has been annotated to explain how the Ruling applies under current Rules. Many of the Committee's early Rulings are no longer valid due to Rule changes. Thus, earlier printings of the Committee's Interpretative Rulings (e.g. S. Prt. 103-35) should NOT be relied upon for advice. Instead, the annotated Rulings reprinted in Appendix A, the text of this manual, and such future Rulings as may be issued by the Committee should be referred to for guidance.

As needed, the Committee has also historically issued, and will continue to issue, advice in the form of "Dear Colleague" advisory letters covering a particular subject. Additionally, over the past 18 years, the Committee has issued thousands of private letter rulings to Members, officers, and employees, providing advice on the application of a law or rule to a specific set of facts. Members, officers, and employees may continue to request such written advice.

The Committee staff may be reached at 202-224-2981. Committee information is also available through it's Website, http://webster.senate.gov/committee/ethics.

This manual attempts to consolidate all forms of the Committee's previously issued advice and rulings, and to present it in an easy to use and understandable format.

The reader should also understand, however, that the Federal statutes and Senate Rules to which most of this manual's discussion is devoted, are but a part of a wider body of ethical standards related to service in the Senate. Unwritten norms of behavior, reflected in the established customs of the Senate, are an important source of behavioral standards. The manual, in Appendix E, includes a discussion on the Senate's unwritten standards, and also presents general principles of public service.

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Chapter 1

HISTORY, JURISDICTION, PROCEDURES, AND ROLE OF THE COMMITTEE AND SOURCES OF SENATE STANDARDS OF CONDUCT[1]

INTRODUCTION

The U.S. Constitution, in Article I, section 5, grants broad authority to Congress to discipline its Members. However, the modern age of congressional ethics committees and formal rules governing the conduct of Members, officers, and employees did not exist until the 1960's, with prior disciplinary actions by Congress against Members taking place on an *ad hoc* basis. In 1964, in the wake of the Bobby Baker scandal, the Senate adopted S. Res. 338, 88th Congress, which created the Senate Select Committee on Standards and Conduct as a six-member, bipartisan committee with advisory functions and investigative authority to ''receive complaints and investigate allegations of improper conduct which may reflect upon the Senate, violations of law, and violations of rules and regulations of the Senate.'' In 1968, the Senate adopted its first official code of conduct, with substantial revision and amendment of the code occurring in 1977. The Committee's name was changed in 1977 to the Select Committee on Ethics. The following chapter provides a brief synopsis of the evolution of the Committee and its jurisdiction, with an overview of the Committee's advisory role, its procedures for conducting inquiries and investigations, and a discussion of the sources of standards of conduct in the Senate.

OVERVIEW

The Select Committee on Standards and Conduct was established by the Senate on July 24, 1964. In February 1977, following Senate-wide committee reorganization, its name was changed to the Select Committee on Ethics. The bipartisan Committee, which has six members, is authorized to oversee the Senate's self-discipline authority provided by the Constitution. Article 1, Section 5 states in part that:

Each House may determine the Rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two thirds, expel a Member.

The Committee is authorized to:

[1] The material in this Chapter relies heavily upon, and passages have been liberally taken from, the following publications: *The Senate Select Committee on Ethics: A Brief History of Its Evolution and Jurisdiction*, Mildred Amer, Congressional Research Service, The Library of Congress (March 17, 1993); *Two Periods - 1787 to 1873 and 1951 to 1977 - In the Development of Legal and Ethical Constraints on the Conduct of Members of the Senate, With Particular Emphasis on Conflicts of Interest and Unwritten Standards of Conduct*, Michael Davidson, Senate Legal Counsel, Morgan J. Frankel and Claire M. Sylvia, Assistant Senate Legal Counsel (March 1991). *See also Expulsion and Censure Actions Taken by the Full Senate Against Members*, Jack Maskell, Congressional Research Service, The Library of Congress (October 3, 1990, revised September 17, 1993).

1) receive complaints and investigate allegations of improper conduct which may reflect upon the Senate, violations of law, violations of the Senate Code of Official Conduct, and violations of rules and regulations of the Senate, relating to the conduct of individuals in the performance of their duties as Members of the Senate, or as officers or employees of the Senate, and to make appropriate findings of fact and conclusions with respect thereto;

2) recommend, when appropriate, disciplinary action against Members and staff;

3) recommend rules or regulations necessary to insure appropriate Senate standards of conduct;

4) report violations of any law to the proper Federal and State authorities;

5) regulate the use of the franking privilege in the Senate;

6) investigate unauthorized disclosures of intelligence information;

7) implement the Senate public financial disclosure requirements of the Ethics in Government Act;

8) regulate the receipt and disposition of gifts from foreign governments received by Members, officers, and employees of the Senate;

9) render advisory opinions on the application of Senate rules and laws to Members, officers, and employees; and

10) for complaints filed under the Government Employee Rights Act of 1991 respecting conduct occurring prior to January 23, 1996, review, upon request, any decision of the Senate Office of Fair Employment Practices.

The Committee may investigate allegations brought by Members, officers, or employees of the Senate, or by any other individual or group, or the Committee may initiate an inquiry on its own. There are no formal procedural requirements for filing a complaint with the Committee. Unless the Committee issues a public statement relating to a particular inquiry, complaints and allegations are treated confidentially, and the Committee neither confirms nor denies that a particular matter may be before the Committee. Upon completion of its investigative process, the Committee may recommend to the Senate or party conference an appropriate sanction for a violation or improper conduct, including, for Senators, censure, expulsion, or party discipline and, for staff members, termination of employment.

* * * * * * * * * * *

Until the 1960s, there were no permanent congressional ethics committees, no formal rules governing the conduct of Members, officers, and employees in either House of Congress, nor any consistent approach to the investigation of alleged misconduct. When allegations were investigated, it was usually by special or select committees created for that purpose. Sometimes, however, they were considered by the House or Senate without prior committee action.

Moreover, the Senate and the House of Representatives have traditionally exercised their powers of self-discipline with caution. Senate Historian Richard Baker notes: ''For nearly two centuries, a simple and informal code of behavior existed with prevailing norms of decency the chief determinants of proper conduct. Congress has chosen to deal with only the most obvious acts of wrongdoing. . .''[2]

Several events, beginning in the 1950's, led to the creation in 1964 of the Select Committee on Standards and Conduct.

[2] Baker, Richard. The History of Congressional Ethics. In: *Representation and Responsibility, Exploring Legislative Ethics*. New York, Plenum Press, 1985. p. 4.

A. PRELUDES TO CREATION OF THE SELECT COMMITTEE ON STANDARDS AND CONDUCT

1. The Douglas Subcommittee Report

In the early 1950's a series of congressional hearings focused attention on issues of ethical misconduct in the government and private sectors. Central among these congressional inquiries was a set of hearings conducted by Senator J. William Fulbright into conflicts of interest and questionable dealings involving the Reconstruction Finance Corporation.[3] At the conclusion of the RFC hearings, Senator Fulbright took the Senate floor to speak on ''The Moral Deterioration of American Democracy.''[4] Senator Fulbright identified a problem of government employees who committed ethical lapses not amounting to criminal conduct. He asked,

> What should be done about men who do not directly and blatantly sell the favors of their offices for money and so place themselves within the penalties of the law? How do we deal with those who, under the guise of friendship, accept favors which offend the spirit of the law but do not violate its letter?[5]

Fulbright introduced a resolution to establish a national commission on ethics in the federal government. S. Con. Res. 21, 82d Cong., 1st Sess. (1951).

Senator Fulbright's resolution was referred to a special subcommittee of the Senate Committee on Labor and Public Welfare chaired by Senator Paul H. Douglas, who had sat on Fulbright's committee when it investigated the RFC. Senator Douglas convened a set of hearings in 1951 ''to review the ethical dilemmas and conflicting pressures which confront public officials and private citizens in their relationship to government: to identify and analyze specific improper practices and unfair methods'' and to recommend remedies.[6]

The Douglas subcommittee recommended establishment of a government commission on ethics in government,[7] and the Labor and Public Welfare Committee reported legislation to establish such a commission.[8] The subcommittee found that Congress had been ''unduly complacent'' in failing to ''act[] vigorously to tighten its discipline in moral matters or to raise its ethical stand-

---

[3] *Study of Reconstruction Finance Corporation: Hearings Before a Subcomm. of the Senate Comm. on Banking and Currency*, 81st Cong., 2d Sess. & 82d Cong., 1st Sess. (1950–51). *See also Influence in Government Procurement: Hearings Before the Investigations Subcomm. of the Senate Comm. on Expenditures in the Executive Departments*, 81st Cong., 1st Sess. (1949); *Influence in Government Procurement: Hearings Before the Investigations Subcomm. of the Senate Comm. on Expenditures in the Executive Departments*, 82d Cong., 1st Sess. (1951); *Investigation of Organized Crime in Interstate Commerce: Hearings Before the Senate Special Comm. To Investigate Organized Crime in Interstate Commerce*, 81st and 82d Cong. (1950–51); *Inquiry Into the Operations of the Maritime Commission With Particular Reference to Allowances for National-Defense Features and Construction-Differential Subsidies Under Title V of the Merchant Marine Act of 1936, As Amended: Hearings Before a Subcomm. of the House Comm. on Expenditures in the Executive Departments*, 81st Cong., 1st Sess. (1949).

[4] *Establishment of a Commission on Ethics in Government: Hearings Before a Subcomm. To Study S. Con. Res. 21 of the Senate Comm. on Labor and Public Welfare*, 82d Cong., lst Sess. 2 (1951), *reprinting* 97 Cong. Rec. 2904–06 (1951).

[5] 97 Cong. Rec. 2905. Senator Fulbright elaborated, as follows:

> One of the most disturbing aspects of this problem of moral conduct is the revelation that among so many influential people, morality has become identical with legality. We are certainly in a tragic plight if the accepted standard by which we measure the integrity of a man in public life is that he keep within the letter of the law.
>
> *Id.*

[6] *Establishment of a Commission on Ethics in Government: Hearings Before a Subcomm. To Study S. Con. Res. 21 of the Senate Comm. on Labor and Public Welfare*, 82d Cong., 1st Sess. 1 (1951).

[7] T3Ethical Standards in Government, Report of a Subcomm. of the Senate Comm. on Labor and Public Welfare, 82d Cong., 1st Sess. 1 (Comm. Print 1951)[hereinafter cited as *Ethical Standards in Government*].

[8] S.J. Res. 107, 82d Cong., 1st Sess. (1951), *reprinted in id*. at 69, *reported by* S. Rep. No. 933, 82d Cong., 1st Sess. (1951). The resolution reported by the committee to establish a national ethics commission was not agreed to by the Senate, and no commission was established.

ards.'' [9] The subcommittee took note of recommendations for the formulation and adoption of a written ethical code for Members of Congress, among other groups, and concluded that a national commission on ethics in government would help achieve that goal. [10] The subcommittee was clear, however, that it did not assume that all ethical norms had been or would be reduced to written codes, and it took note of proposals for ''[v]igorous enforcement of existing standards of conduct in public affairs whether contained in written ***or unwritten codes. . . .***'' [11]

2. The Discipline of Senator Joseph McCarthy

The joint resolution that had been reported by the Douglas subcommittee would have provided for a report in the 83d Congress, which met in 1953 and 1954, from the proposed commission on ethics, but the predominant ethical issue within the Senate during that Congress did not concern government-wide ethics but rather the ethics of one of its members, Joseph McCarthy.

In 1954, the Senate established a select committee to investigate charges of misconduct that had been brought against Senator McCarthy. After completing its investigation, the Select Committee recommended that the Senate censure Senator McCarthy for two charges of misconduct.

At the conclusion of its report, the Select Committee addressed its decision not to hold hearings on the remainder of the charges. The Select Committee explained how it approached its task of determining what conduct was censurable and which charges were ''legal[ly] insufficien[t].'' [12] The Committee observed that:

> conduct may be distasteful and less than proper, and yet not constitute censurable behavior.
>
> We begin with the premise that the Senate of the United States is a responsible political body, important in the maintenance of our free institutions. Its Members are expected to conduct themselves with a proper respect for the principles of ethics and morality, for senatorial customs based on tradition, and with due regard for the importance of maintaining the good reputation of the Senate as the highest legislative body in the Nation. . . .

Id. at 62. However, the Committee also noted

> that individual Senators may, within the bounds of political propriety, adopt different methods of discharging their responsibilities to the people.
>
> We did not, and clearly could not, undertake here to establish any fixed, comprehensive code of noncensurable conduct for Members of the United States Senate. We did apply our collective judgment to the specific conduct charged, and in some instances to the way a charge was made and the nature of the evidence proffered in support of it. And on the basis of the precedents and our understanding of what might be deemed censurable conduct in these circumstances, we determined whether, if a particular charge were established, we would consider it conduct warranting the censure of the Senate.

Id. at 62.

The Senate ultimately voted to censure Senator McCarthy on two counts, one that had been recommended by the Select Committee, and one that had not been considered by the Select Committee: abuse of the Subcommittee on Privileges and Elections and abuse of the Select Committee to Study Censure Charges. The Senate's investigation and its final decision evidenced the Senate's understanding that censurable conduct included conduct not specifically prohibited by rule or statute.

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[9] *Id.* at 15.

[10] *Id.* at 36.

[11] T3Id. at 5 (emphasis added).

[12] *Report of the Select Committee to Study Censure Charges Re Senator McCarthy of Wisconsin*, Senate Report No. 83–2508, November 8, 1954.

3. The 1958 Code of Ethics for Government Service

The proposals made in testimony before Senator Douglas's subcommittee in 1951 for adoption of a code of ethical conduct for government officials and employees continued to percolate in the Congress during the 1950s until the Congress finally adopted a government-wide code of conduct in 1958. The principal proponent of the adoption of a government code of ethics throughout these years was Representative Charles Bennett. In 1951 Representative Bennett introduced a resolution that would have made it ''the sense of the Congress'' that ''all Government employees, including officeholders,'' adhere to a ten-point code. H.R. Con. Res. 128, 82d Cong., 1st Sess. (1951).

Representative Bennett's resolution was the joint product of an informal committee of House members, including Representatives Hale Boggs and Gerald Ford, who had been meeting over several months to draft a proposed code.[13] This House task force developed a preliminary statement of principles that ''precede any code of concrete conduct,'' including the precept that ''[p]ublic office is a public trust.'' 97 Cong. Rec. 7176 (1951). The task force explained, ''No code of conduct can hope to cover specifically the multitude of concrete situations which the complex and vast sphere of contemporary government contains within itself. Yet we believe there is value in identifying certain concrete principles which should guide public officials—in whatever branch or level of government.'' ***Id.***

The proposed code would have imposed upon government employees the duty, among ten itemized obligations, never to ''discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never [to] accept favors or benefits from persons doing business with the Government.'' H.R. Con. Res. 128, ¶ 5.

Identical resolutions to establish a code of government conduct were reintroduced in the Eighty-Third and Eighty-Fourth Congresses.[14]

A congressional resolution establishing a code of conduct for government employees and officials was finally agreed to in the Eighty-Fifth Congress.

The House committee described the resolution as ''essentially a declaration of fundamental principles of conduct that should be observed by all persons in the public service.'' H.R. Rep. No. 1208, 85th Cong., 1st Sess. 1 (1957). The Committee stated that the resolution ''is not a mandate. It creates no new crime or penalty. Nor does it impose any positive legal requirement for specific acts or omissions.'' ***Id.*** The Committee explained, ''It does not pretend or purport to create new or unfamiliar standards. It is a concise restatement—as a part of the laws under which the Federal Government operates—of the principles of conduct in the public service which always have been expected by the American people.'' ***Id.*** at 2. Without debate, the House of Representatives agreed to the ''sense of the Congress'' resolution as reported by the Committee. 103 Cong. Rec. 16297 (1957).

The following year, the Senate Committee on Post Office and Civil Service reported the resolution without amendment. S. Rep. No. 1812, 85th Cong., 2d Sess. (1958). The Committee made express its intent that the ''resolution apply to every servant of the public,'' including Members of Congress. ***Id.*** at 2.

The Senate agreed to the concurrent resolution as reported, 104 Cong. Rec. 13556–57 (1958), and the resolution establishing a code of conduct for all government employees became effective. 72 Stat. B12 (1958).

This Code of Ethics for Government Service is listed in the Committee's Rules of Procedure (Part III, Sources of Jurisdiction) as a source of Committee jurisdiction. The Code of Ethics for

[13] Several other House Members introduced similar resolutions. *See* H.R. Con. Res. 126–127, 129–132, 82d Cong., 1st Sess. (1951).

[14] H.R. Con. Res. 2, 83d Cong., 1st Sess. (1953); H.R. Con Res. 10, 83d Cong., 1st Sess. (1953); H.R. Con. Res. 2, 84th Cong., 1st Sess. (1955); H.R. Con. Res. 17, 84th Cong., 1st Sess. (1955).

Government Service has not, to date, been cited by the Committee as a basis for recommending discipline of a Senate Member, officer, or employee, although the House has used violations of this Code as a ground for discipline of its Members.

4. The 1962 Amendments to Federal Conflict-of-Interest and Bribery Laws

In 1962, Congress enacted a statute to strengthen, modernize, and integrate the corruption and conflict-of-interest laws. Pub. L. No. 87–849, 76 Stat. 1119, 1121 (1962).

a. Conflict-of-Law Amendments

As part of this reform, Congress revised the old conflict-of-interest provision that traced from 1864 in a new section 203 of title 18.[15] Section 203 remains the primary criminal conflict-of-interest statute applicable to Members of Congress today, although in 1989 Congress enacted minor, but relevant, amendments to the section.[16]

b. Bribery Amendments

Congress has also modernized the bribery provision originally enacted in 1853. In its 1962 overhaul of the corruption and conflict-of-interest laws, Congress brought the disparate bribery provisions that then applied to various categories of government officials ''within the purview of one section and ma[d]e uniform the proscribed acts of bribery, as well as the intent or purpose making them unlawful.'' S. Rep. No. 87–2213, 87th Cong., 2d Sess. 7 (1962), ***reprinted in*** 1962 U.S. Code Cong. & Admin. News 3852, 3856. The new omnibus provision provided for punishment for any public official, including a Member of Congress, who ''directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for . . . being influenced in his performance of any official act'' and defined ''official act'' as ''any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit.'' Pub. L. No. 87–849, 76 Stat. 1119, 1119–20 (amending 18 U.S.C. § 201(a), (c)(1)). In the 1962 law, Congress also enacted the lesser offense of receipt of an unlawful gratuity. The unlawful gratuity provision established a violation for any public official who ''otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him.'' ***Id.***, 76 Stat. 1120 (amending 18 U.S.C. § 201(g)). With minor textual changes, the bribery provision remains in effect today.[17]

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[15] The old conflict provision, section 1782 of the Revised Statutes, had been carried forward with minor revisions as section 113 of the Act of Mar. 4, 1909, ch. 321, 35 Stat. 1088, 1109 (1909), which recodified the federal criminal laws, and subsequently as section 281 of title 18 of the federal code, through the Act of June 25, 1948, ch. 645, § 1, 62 Stat. 683, 697 (1948), which codified title 18.

[16] First, Congress modified the prohibition on Members' providing compensated ''services'' in relation to agency proceedings in which the government has an interest, in order to bar Members from providing ''representational services, as agent or attorney or otherwise.'' Ethics Reform Act of 1989, Pub. L. No. 101–194, § 402(1), 103 Stat. 1716, 1748 (1989). The substituted language appears to have been intended to ''[c]larify'' the provision more than to make a substantive change. 135 Cong. Rec. S15956 (daily ed. Nov. 17, 1989); *Id.* at H9719 (daily ed. Dec. 11, 1989).

Second, after one hundred years of debate, Congress added ''court'' to the enumeration of decision-making bodies for whose proceedings Members of Congress are prohibited from accepting compensation. *Id.*, § 402(2), 103 Stat. 1748.

[17] In 1986, Congress amended section 201(c) to provide for punishment for a public official who ''corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for . . . being influenced in the performance of any official act.'' 18 U.S.C. § 201(b)(2)(A) (1988), *as amended by* Criminal Law and Procedure Technical Amendments Act of 1986, Pub. L. No. 99–646, § 46(c), 100 Stat. 3592, 3602 (1986).

Congress likewise modified the unlawful gratuity section to provide for punishment for a public official who, ''otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person.'' 18 U.S.C. § 201(c)(1)(B) (1988), *as*

c. A Renewed Call for a Code of Congressional Ethics and Procedures for Its Enforcement

Writing separately in the Senate Judiciary Committee report accompanying the 1962 amendments, Senator Kenneth Keating proposed an amendment to the bill to create a joint congressional committee to draft a code of congressional ethics and to authorize the Senate Rules Committee to give advisory opinions to Members on conflict-of-interest questions. ***Id.*** at 17–18, 1962 U.S. Code Cong. & Admin. News at 3866. Keating intended the Rules Committee to function like the typical grievance or ethics committees of bar associations, medical societies, and other professional organizations. It would consider all matters arising in connection with legislative conflicts of interest and would issue public interpretative opinions for the guidance of Members either on request or on its own initiative. In short, it would provide general guidelines for action as well as effective machinery for resolving specific congressional conflict-of-interest problems.[18]

In the end, Senator Keating withheld offering his amendments in order to facilitate the enactment of the bill during the Eighty-Seventh Congress. 108 Cong. Rec. 21988–89 (1962). Senator Keating and Senator Javits both ''pledge[d] . . . to come back and very early in the next session begin the fight to add to the measure a code of ethics for Members of Congress.'' ***Id.*** at 21989.

B. THE INVESTIGATION OF BOBBY BAKER AND THE ESTABLISHMENT OF THE SELECT COMMITTEE ON STANDARDS AND CONDUCT

1. The Bobby Baker Investigation

Momentum for reform grew after Robert G. (Bobby) Baker, Secretary to the Democratic Majority, resigned from his job in October 1963 following allegations that he had misused his official position for personal, financial gain. For the next year and a half, the Senate Rules and Administration Committee held hearings to investigate the business interests and activities of Senate officials and employees (focused on Bobby Baker) in order to ascertain what, if any, conflicts of interest or other improprieties existed and whether any additional laws or regulations were needed.[19] The Senate recognized that serious allegations had been made against a former employee and that it had no specific rules or regulations governing the duties and scope of activities of Members, officers, and employees.

In its first report, the Rules Committee characterized many of Baker's outside activities as being in conflict with his official duties and made several recommendations, including adoption of public financial disclosure rules and other guidelines for senatorial employees.[20]

Subsequently, as part of its conclusion of the Baker case, the Rules Committee held additional hearings on proposals advocating a code of ethics in conjunction with a pending pay raise, the creation of a joint congressional ethics committee to write an ethics code, and the adoption of various rules requiring public disclosure of personal finances by Senators and staff and the disclosure of ex-parte communications. Additions to the Senate rules - calling for public financial disclosure reports and more controls on staff involvement in Senate campaign funds - were then introduced to implement the Committee's Baker investigation recommendations.

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amended by Pub. L. No. 99–646, § 46(g), 100 Stat. 3603. ''The changes [did] not substantively alter the provisions of 18 U.S.C. 201.'' H.R. Rep. No. 99–797, at 25, *reprinted in* 1986 U.S. Code Cong. & Admin. News 6138, 6148.

[18] *1962 Senate Hearing, supra* p. 89–90, at 9.

[19] U.S. Congress. Senate. Committee on Rules and Administration. *Financial or Business Interests of Officers and Employees of the Senate.* Hearings, 88th Congress, pursuant to S.Res. 212. Parts 1–27. Washington, U.S. Govt. Print. Off., 1964. 2260 p.

[20] *Id.*

The Rules Committee concluded that remedial action was necessary to make those who serve the public ''recognize that their office is a public trust and should not be compromised by private interests.'' ***Id.*** at 62. To this end, the Committee recommended the adoption of financial disclosure rules, the development of guidelines for committees and staff, and the Executive branch's consideration of public recordkeeping of congressional intervention on matters pending before agencies.[21]

2. The Establishment of the Select Committee on Standards and Conduct

In July 1964, the Rules Committee reported Senate Resolution 338, 88th Congress, which would have amended Senate Rule XXV to give the Rules Committee jurisdiction ''to investigate every alleged violation of the rules of the Senate, and to make appropriate findings of fact and conclusions'' and to ''recommend appropriate disciplinary action as may be indicated by the particular circumstances of individual instances.''[22]

The Senate took up S. Res. 338 first. Senator John Sherman Cooper, one of the members of the Rules Committee who had been dissatisfied with the Baker investigation, introduced a substitute resolution, proposing the establishment of a permanent Select Committee on Standards and Conduct to ''investigate allegations of improper conduct which may reflect upon the Senate, violations of law, and violations of rules and regulations of the Senate, relating to the conduct of individuals in the performance of their duties as Members of the Senate, or as officers or employees of the Senate,'' ***id.*** at 16929 (text of resolution), and to make ''recommendation[s] to the Senate [of] appropriate disciplinary action.'' ***Id.*** (Sen. Cooper).

A section of the Cooper substitute authorizing the Committee to investigate ''allegations of improper conduct'' received particular attention. Senator Clifford Case stated his understanding that under this section ''the committee would be free to investigate anything which, in its judgment, seemed worthy, deserving, and requiring investigation from any source.'' ***Id.*** at 16933. After Senator Cooper confirmed this interpretation, Senator Case expressed his support for the substitute, noting that ''unlike the resolution in its original form, . . . the proposal would not be limited to alleged violations of Senate rules, but it would take into account all improper conduct of any kind whatsoever.'' ***Id.*** The Senate agreed to the Cooper substitute and adopted S. Res. 338 by a vote of 61 to 19 on July 24, 1964. ***Id.*** at 16938–39. With the creation of this Committee, an internal disciplinary body was established in Congress for the first time on a continuing basis.

The six members of the new Committee were not appointed until a year later, July 9, 1965, because of the Senate Leadership's desire to wait until the Rules Committee had completed the Baker investigation.[23] It was not until October 1965 that the Committee elected a chairman and a vice chairman, appointed the first staff, and began developing standards of conduct for the Senate. The Committee's initial efforts in this regard were interrupted by its investigation of Senator Thomas Dodd. Following that investigation, the Committee returned to the development of ethics rules, and on March 15, 1968, reported favorably Senate Resolution 266, 90th Congress, 114 Cong. Rec. 6670 (1968), which proposed a declaration of Senate policy and four specific rules concerning ethical conduct.

In recommending the first written internal rules of ethics for the Senate, the Committee made clear that it did not intend the specific rules that it was proposing to be the Senate's exclusive

[21] This recordkeeping proposal may have stemmed from evidence about the conduct of Representative John Byrnes, which came to light during the Committee's investigation of Baker's dealings in the stock of the Mortgage Guaranty Insurance Corporation (MGIC). MGIC had enlisted Representative Byrnes to persuade the Internal Revenue Service to reverse a tax ruling unfavorable to the company. Following Representative Byrnes' efforts, which included threatening to introduce legislation to overturn the ruling, and subsequently doing so, the IRS issued a favorable ruling. About six months later, Byrnes purchased MGIC stock on preferential terms, although he later sold it and gave the proceeds to charity. ***Id.*** at 34.

[22] *Amending Rule XXV of the Standing Rules of the Senate Relative to the Jurisdiction of the Committee on Rules and Administration,* S. Rep. No. 1147, 88th Cong., 2d Sess. 1 (1964).

[23] *Congressional Record,* v. 111, July 9, 1965, p. 16179.

source of behavioral standards. The proposed specific rules, which were set out in section two of S. Res. 266, were preceded by a declaration of Senate policy in section one of the resolution:

> *Resolved,* It is declared to be the policy of the Senate that—
>
> (a) The ideal concept of public office, expressed by the words, ''A public office is a public trust,'' signifies that the officer has been entrusted with public power by the people; that the officer holds this power in trust to be used only for their benefit and never for the benefit of himself or of a few; and that the officer must never conduct his own affairs so as to infringe on the public interest. All official conduct of Members of the Senate should be guided by this paramount concept of public office.
>
> (b) These rules, as written expression of certain standards of conduct, complement the body of unwritten but generally accepted standards that continue to apply to the Senate.

114 Cong. Rec. 7406 (1968).

The 1968 Code of Conduct covered four areas: outside employment of officers and employees; the raising and permissible use of campaign funds; the political fund-raising activities of Senate staff; and annual financial disclosure by Members, officers, and designated employees of the Senate and senatorial candidates. With the exceptions of gifts in excess of $50 and honoraria in excess of $300, the information in the disclosure reports was to be kept confidential and not available to the public (since changed to require that statements be publicly available).

A select committee created to study the Senate committee system recommended in 1976 that the functions of the Select Committee on Standards and Conduct should be placed in the Senate Rules Committee. However, the Rules Committee rejected the idea and instead recommended a newly constituted Ethics Committee to indicate to the public the seriousness with which the Senate viewed congressional conduct. Thus, the permanent Select Committee on Ethics was created in 1977 to replace the Select Committee on Standards and Conduct.

On April 1, 1977, the Senate Code of Conduct was revised and amended, and the procedures and duties of the Ethics Committee were further expanded and developed.

Title I of S. Res. 110, 95th Congress, the Official Conduct Amendments of 1977, included amendments to the Senate Code of Conduct first adopted in 1968. Included were the first public financial disclosure requirements for Members, officers, and employees of the Senate, as well as the first limits on gifts, outside earnings, the franking privilege, the use of the Senate radio and television studios, unofficial office accounts, lame-duck foreign travel, and discrimination in staff employment.

Title II amended S. Res. 338, the 1964 resolution that created the first Senate Ethics Committee and constituted the basic charter of the newly created Select Committee on Ethics. It provided the Committee with the authority to issue regulations to implement the revised Code of Conduct and to issue interpretative rulings to clarify its meaning and applicability. It also: 1) preserved for the Ethics Committee the discretion to initiate investigations; 2) set forth the procedures for the receipt and processing of sworn complaints alleging violations of any rule, law, or regulation within the Committee's jurisdiction; 3) spelled out the requirement that an affirmative vote of four Members of the Committee is necessary for any resolution, report, recommendation, advisory opinion or investigation; 4) required the Committee to adopt written rules for investigations; 5) provided for the disqualification of Committee Members in investigations; 6) stipulated that outside counsel must be hired for investigations unless the Committee specifically decides not to use such counsel; 7) clarified that no investigation could be made of any alleged violation which was not considered a violation at the time it was alleged to have occurred; and 8) enumerated specific sanctions that the Committee could recommend in calling upon the Senate to take disciplinary action.

The first years of the newly created Select Committee on Ethics were spent interpreting for the Senate the provisions of these new rules. Consequently, on February 1, 1980, the Senate adopt-

ed S. Res. 109 which directed the Select Committee on Ethics to undertake within a year a comprehensive review of the Senate Code of Official Conduct and the provisions for its enforcement, implementation, and investigation of improper conduct in the Senate.

During the course of its review, the Committee held hearings in November 1980 during which academicians, Federal and State ethics officials, and Members of Congress testified. It sent questionnaires to Senators and consulted the Hastings Center Institute of Society, Ethics, and the Life Sciences, which issued two reports.

Subsequently, the Ethics Reform Act of 1989 and the FY 1992 Legislative Branch Appropriations Act significantly amended the Senate Code of Conduct by changing the restrictions on the acceptance of gifts and travel by Members, officers, and employees of the Senate; banning honoraria; and limiting the earnings of other income by Senators and designated employees.

The Senate Ethics process was again the subject of careful scrutiny in 1993, when, pursuant to Senate Resolution 111 (103d Congress) creating the Senate Ethics Study Commission, hearings were held in May and June 1993 concerned solely with possible improvements in the process. In March 1994, the Commission issued its Report Recommending Revisions to the Procedures of the Senate Select Committee on Ethics. The Commission's principal recommendations were adopted by the Senate on November 5, 1999 with the passage of Senate Resolution 222 (see the discussion in Section D. below).

Also, in July 1995, the Senate passed a new Gifts Rule, S. Res. 158, effective January 1, 1996, which replaced Rule 35 of the Senate Code of Conduct, and which further changed the restrictions on the acceptance of gifts and travel by Members, officers, and employees of the Senate.

C. JURISDICTION OF THE COMMITTEE

Constitutional Self-Discipline

The United States Constitution confers on each House of Congress the power to punish and expel its Members. Article I provides:

> ''Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.'' [24]

Pursuant to this authority, in 1964, the Senate adopted Senate Resolution 338, which created the Select Committee on Standards and Conduct, and delegated to it the authority to ''receive complaints and investigate allegations of improper conduct which may reflect upon the Senate, violations of law, and violations of rules and regulations of the Senate, relating to the conduct of individuals in the performance of their duties as Members of the Senate, or as officers or employees of the Senate . . .'' [25]

In those situations where the violations are sufficiently serious to warrant sanctions, the Committee is authorized to recommend to the Senate by report or resolution appropriate disciplinary action. [26]

The Senate has disciplined Members for conduct that it has deemed unethical or improper, regardless of whether it violated any particular law or Senate rule or regulation. [27] As it adopted new rules governing Members' conduct, the Senate has recognized that the rules did not ''replace

[24] U.S. Const. art. I, § 5, cl. 2.

[25] S. Res. 338, § 2(a)(1), 88th Cong., 2d Sess. (1964). This authority was amended in 1977 to provide additional authority for investigation of ''violations of the Senate Code of Official Conduct.''

[26] *Id.*, amended by S. Res. 110, 95th Cong., 1st Sess. (1977), § 2(a)(2); S. Rpt. 95–49.

[27] *United States Senate Election, Expulsion and Censure Cases From 1793 to 1990,* S. Doc. 103–33, 103d Cong. (1995).

that great body of unwritten but generally accepted standards that will, of course, continue in effect.''[28]

Scope of The Authority

The Senate or House may discipline a Member for any misconduct, including conduct or activity which does not directly relate to official duties, when such conduct unfavorably reflects on the institution as a whole.[29] In his historic work on the Constitution, Justice Joseph Story noted in 1833 that Congress' disciplinary authority for ''expulsion and any other punishment'' is apparently unqualified as to ''the time, place or nature of the offense.''[30] Moreover, the Supreme Court has consistently declared that the Senate has far-reaching discretion in disciplinary matters.[31] Precedent within both the House and Senate has reaffirmed this broad authority. In the censure of Senator Joseph McCarthy, the Select Committee to Study the Censure Charges in the 83rd Congress reported:

> ''It seems clear that if a Senator should be guilty of reprehensible conduct unconnected with his official duties and position, but which conduct brings the Senate into disrepute, the Senate has the power to censure.''[32]

Additionally, in the report on Representative Adam Clayton Powell from the House Judiciary Committee, which recommended that Powell be censured for misconduct, the House Committee noted that the conduct for which punishment may be imposed is not limited to acts relating to the Member's official duties.[33]

In proposing a permanent standing committee on ethics in the Senate, Senator John Sherman Cooper expressly referred to the select committee that investigated the censure charges of Senator Joseph McCarthy as a model—a committee that had unambiguously asserted its authority to investigate conduct ''unconnected with [a Member's] official duties and position.'' Senator Cooper and supporters of the resolution emphasized that the Select Committee was intended ''to be free to investigate anything which, in its judgment, seemed worthy, deserving, and requiring investigation''[34] and ''would not be limited to alleged violations of Senate rules, but it would take into account all improper conduct of any kind whatsoever.''[35]

It appears that the intent of the Senate in adopting S. Res. 338 was to delegate to the Ethics Committee the authority to investigate and make recommendations to the full Senate on misconduct of Members over which the institution has jurisdiction.

Senate Resolution 338 (88th Congress)

When the Select Committee on Standards and Conduct was created in 1964, it was authorized to: (1) investigate allegations of improper conduct which may reflect upon the Senate; (2) investigate violations of laws and rules and regulations of the Senate relating to the conduct of Mem-

[28] 114 Cong. Rec. 6833 (1968) (comments of Senator John Stennis).

[29] S. Rep. 2508, 83d Cong., 2d Sess. 20,22 (1954); H.R. Rep. No. 27, 90th Cong., 1st Sess. 24 (1969).

[30] Joseph Story, *Commentaries on the Constitution of the United States,* Volume II, § 836, (Boston 1833, De Capo Press Reprint Edition, 1970).

[31] *See, e.g., In re Chapman,* 166 U.S. 661, 670 (1897) (in upholding the authority of the Senate to require by subpoena testimony of private persons in an investigation of Senatorial misconduct, the Court noted the expulsion of former Senator Blount as an example of Congress's broad authority: ''It was not a statutable offense nor was it committed in his official character, nor was it committed during the session of Congress, nor at the seat of government.''); *United States v. Brewster,* 408 U.S. 501 (1972) (in dicta, the Court observed, ''The process of disciplining a Member of Congress . . . is not surrounded with the panoply of protective shields that are present in a criminal case. An accused Member is judged by no specifically articulated standards, and is at the mercy of an almost unbridled discretion of the charging body . . . from whose decisions there is no established right of review.'').

[32] Report of the Select Committee to Study Censure Charges pursuant to S. Res. 301 and amendments, S. Rep. 2508, 83rd Cong., 2d Sess. 20, 22 (1954) (a resolution to censure the Senator from Wisconsin, Mr. McCarthy).

[33] H.R. Rep. No. 27, 90th Cong., 1st Sess. 24 (1969).

[34] 110 Cong. Rec. 16,933, (1964).

[35] *Id.*

bers, officers, and employees in their official duties; (3) recommend disciplinary action, when appropriate; (4) recommend additional Senate rules to insure proper standards of conduct; and issue advisory opinions and interpretative rulings explaining and clarifying the application of any law, rule, or regulation within its jurisdiction. The Select Committee on Ethics assumed this jurisdiction as well as that of enforcing the Senate Code of Conduct, which was first created in 1968, and substantially amended in 1977. S. Res. 338, which specifies the duties of the Select Committee on Ethics and the process by which those duties are to be carried out, was amended substantially by Senate Resolution 222 (106th Congress, November 5, 1999) discussed more fully in Section D. below.

Other Responsibilities

Public Law 93–191 was enacted in 1973 to clarify the proper use of the franking privilege by Members of Congress, and the Ethics Committee was authorized to provide assistance and counsel to Senators in this area.

The Senate Select Committee on Intelligence was created in 1976, and the Ethics Committee was given specific jurisdiction to investigate any unauthorized disclosure of intelligence information by a Member, officer, or employee of the Senate and to report to the Senate on any substantiated allegation. See, Senate Resolution 400, 94th Congress, Section 8.

In August 1977, with the enactment of Public Law 95–105, which amended the Foreign Gifts and Decorations Act of 1966, the Committee was designated the ''employing agency'' for the Senate and authorized to issue regulations governing the acceptance by Senators and staff of gifts, trips, and decorations from foreign governments.

In August 1979, the Committee was given the responsibility for administering the Senate financial disclosure requirements contained in the Ethics in Government Act of 1978, since amended in 1989. Amendments to the Ethics in Government Act in 1989 named the Ethics Committee as the ''supervising ethics office'' for purposes of several laws, including 5 United States Code 7353 (Gifts to Federal Employees) and 7351 (Gifts to Superiors).

The preamble to Senate Resolution 266, 90th Congress, 2d Session, and the Code of Ethics for Government Service, H. Con. Res. 175, 85th Congress, 2d Session, also set forth general ethical principles for Members, officers, and employees of the Senate.

The Committee was authorized by section 308 (a) of the Government Employee Rights Act of 1991, Title III of the Civil Rights Act of 1991, to review hearing board decisions in employment discrimination cases filed with the Office of Senate Fair Employment Practices. For alleged conduct occurring on or after January 23, 1996, such cases are no longer filed with the Office of Senate Fair Employment Practices, but are handled as prescribed in the Congressional Accountability Act of 1995, a remedial process which does not include Committee review. However, the Committee retains jurisdiction over disciplinary cases arising out of alleged discrimination prohibited by Senate Rule 42.

D. OVERVIEW OF COMMITTEE PROCESS AND PROCEDURES REGARDING THE CONDUCT OF INQUIRIES AND INVESTIGATIONS

S. Res. 338, as amended by S. Res. 222 (106th Congress, 1st Session), specifies that it is the duty of the Select Committee on Ethics to

(1) receive complaints and investigate allegations of improper conduct which may reflect upon the Senate, violations of law, violations of the Senate Code of Official Conduct, and violations of rules and regulations of the Senate, relating to the conduct of individuals in the performance of their duties as Members of the Senate, or as officers or em-

> ployees of the Senate, and to make appropriate findings of fact and conclusions with respect thereto;
>
> (2)(A) recommend to the Senate by report or resolution by a majority vote of the full committee disciplinary action to be taken with respect to such violations which the Select Committee shall determine, after according to the individual concerned due notice and opportunity for a hearing, to have occurred;
>
> (B) pursuant to subparagraph (A) recommending discipline, including--
>
> (i) in the case of a Member, a recommendation to the Senate for expulsion, censure, payment of restitution, recommendation to a Member's party conference regarding the Member's seniority or positions of responsibility, or a combination of these; and
>
> (ii) in the case of an officer or employee, dismissal, suspension, payment of restitution, or a combination of these;
>
> (3) [subject to a right of appeal to the full Senate], by a unanimous vote of 6 members, order that a Member, officer, or employee be reprimanded or pay restitution, or both, if the Select Committee determines, after according to the Member, officer, or employee due notice and opportunity for hearing, that misconduct occurred warranting discipline less serious than discipline by the full Senate:
>
> (4) [if a violation is inadvertent, technical, or otherwise of a deminimis nature], issue a public or private letter of admonition to a Member, officer, or employee, which shall not be subject to appeal to the Senate . . .

The Committee's Rules of Procedure provide the framework for the Committee's investigation of allegations of misconduct by Members, officers, or employees of the Senate (see Appendix C). These Rules allow the Committee to act upon allegations of misconduct that are received in the form of sworn or unsworn complaints filed with the Committee, as well as credible information reported to the Committee indicating that a Member, officer, or employee may have violated the Code of Official Conduct, a law, any rule or regulation relating to the conduct of individuals in the performance of their duties, or engaged in improper conduct which may reflect on the Senate. Such information may come from a variety of sources, including sworn complaints, anonymous or informal complaints, information developed during a study or inquiry by the Committee or other committees or subcommittees, information reported by the news media, or information obtained from any individual, agency, or department of the executive branch. See Rule 2, Appendix C.

Supervision of the day to day activities of the Committee and its staff rests with the Chairman (Majority party) and Vice Chairman (Minority party) of the Committee, acting jointly. Upon the receipt of allegations of misconduct, a preliminary inquiry is commenced of such duration, scope, and conduct as may be deemed appropriate, judgments which are normally made by the Chairman and Vice Chairman, acting jointly. Such preliminary inquiry may include any inquiries, interviews, sworn statements, depositions, or subpeonas deemed appropriate to obtain the information to make any required determination. An opportunity to respond to the allegations or information may also be provided to any known respondent (or his or her representative). The preliminary inquiry may be conducted by staff counsel or by outside counsel. Periodic confidential status reports may be made, and at the conclusion of a preliminary inquiry, a confidential report (oral or written) is made to the Committee on findings, and recommendations as appropriate. As soon as practicable after the final report a determination is made as to whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the Committee's jurisdiction has occurred.

> (A) If no such substantial credible evidence is found, the Committee must dismiss the matter. Additionally, the Chairman and Vice Chairman acting jointly on behalf of the Committee, may dismiss any matter which is determined to lack substantial merit. The complainant is informed of such dismissals.
>
> (B) If such substantial credible evidence is found, but the alleged violation is inadvertent, technical, or otherwise of a de minimis nature, the matter may be disposed of by a public

> or private letter of admonition, which is not considered discipline and is not subject to appeal to the Senate.
>
> (C) If there is such substantial credible evidence and the matter cannot be disposed of as de minimis, the Committee may initiate an ''adjudicatory review'' of the conduct upon a vote of four of its members. Such review must be conducted by outside counsel, unless the Committee decides to conduct the review using staff counsel.

The Committee must give written notice of its decision to conduct an adjudicatory review to the respondent, no later than five working days after the Committee's vote. This notice must include a statement of the nature of the possible violation, and a description of the evidence indicating that a possible violation occurred. The Committee may offer the respondent an opportunity to present a statement or to respond to questions from members of the Committee, Committee staff, or outside counsel. The Committee must also accord the respondent the opportunity for a hearing (which may be public or private at the Committee's discretion) before the Committee recommends disciplinary action to the Senate or before it imposes an order of restitution or reprimand (not requiring discipline by the full Senate. See Rule 4.

Periodic confidential progress reports may be made, and upon completion of the adjudicative review, counsel (outside or staff, as appropriate) must submit a confidential written report to the Committee, detailing the factual findings of the adjudicatory review. Counsel may also recommend disciplinary action, if appropriate. As soon a practicable following submission of counsel's report, the Committee must prepare and submit a report to the Senate, including a recommendation for disciplinary action, if appropriate. Any recommendation or resolution concerning the adjudicative review must be approved by the affirmative recorded vote of at least four members. This report must be promptly forwarded to the Secretary of the Senate, and a copy provided to the complainant and the respondent; the full report and any recommendation must also be printed and made public, unless not less than four members of the Committee vote that it should remain confidential. See Rule 4.

At any time during a preliminary inquiry, adjudicatory review, or other proceeding, the Committee may issue subpoenas for testimony and the production of documents and tangible things. The Committee Members, staff, outside counsel, or other persons designated by the Committee, may conduct depositions. See Rule 6.

The Committee may conduct hearings during any preliminary inquiry, adjudicatory review, or other proceeding. The Committee has the authority to subpoena the testimony of witnesses and production of documents or other items.

If a hearing is designated as an adjudicatory hearing (either by a vote of not less than four members of the Committee, or because the hearing is concerned with possible disciplinary action), the respondent has the right to cross-examine witnesses, and may call witnesses in his or her behalf. The respondent may apply to the Committee for the issuance of subpoenas for the appearance of witnesses or production of documents on his or her behalf. The Presiding Officer (either the Chairman, or in his or her absence, the Vice Chairman) rules on the admissibility of testimony or other evidence. All evidence that may be relevant and probative is admissible, unless privileged under the Federal Rules of Evidence. See Rule 5.

The Committee's Rules (See Rule 8) provide that any information or material in the possession of the Committee pertaining to illegal or improper conduct by a Member, officer, or employee, to any preliminary inquiry, adjudicative review, or other proceeding related to allegations of such conduct, to the investigative techniques and procedures of the Committee, or to information or material so designated by the staff director or outside counsel, is Committee Sensitive, and may not be divulged by the Committee, staff, or any person performing services for the Committee.

Importantly, the Committee's prior inquiries and investigations provide a further body of ''common law'' on the application of the Committee's Rules of procedure to specific fact situations. While factual differences may distinguish any new situation, the Committee is guided by what it has done in similar prior cases. Thus, the procedures used in earlier cases should be consulted for an understanding of the established practices of the Committee.

E. EDUCATIONAL AND ADVISORY ROLE OF THE COMMITTEE

Senate Resolution 110 (April 2, 1977) gives the Committee the authority to issue interpretative rulings and advisory opinions regarding application of any law, rule, or regulations within the Committee's jurisdiction. See, Section 3(e) of the Resolution.

In large part, the Committee has historically relied upon the periodic public issuance of Interpretative Rulings (IR's) to keep Senate Members, officers, and employees advised as to the application of the Code of Conduct. Those past Committee IR's which continue to provide helpful guidance have been annotated and are attached to this Manual as Appendix A. Many of the Committee's IR's are no longer valid. Thus, earlier publications of the IR's should not be relied on for advice.

From time to time, the Committee has also issued advice in the form of ''Dear Colleague'' advisory letters covering a particular subject. Additionally, over the years, the Committee has issued thousands of private letter rulings to Members, officers, and employees, providing advice on the application of a law or rule to a specific set of facts. These diverse sources of Committee advice are drawn together in this Manual.

The Committee considers its advisory function to be among its most important. Contact with the Committee about the application of laws and rules to proposed conduct is welcomed and encouraged. The Committee's advisory function is conducted in a confidential manner, although advice of general applicability may be publicly disseminated in a manner which protects confidentiality. The Committee's aim is to preempt possible violations by being freely accessible to provide prospective advice. This Manual is part of the Committee's effort to eliminate potential infractions. It is far easier to avoid a problem in advance, than to correct a problem after the fact. On a number of occasions, the Committee has had to advise Members, officers, and employees that past conduct was not acceptable and should not be repeated, in situations where the difficulties could have been easily avoided by getting advice in advance from the Committee. Routine or frequent contact with the Committee for advice is encouraged.

Of course, the Committee will also continue to provide advice through Interpretative Rulings, Dear Colleague letters, and private letter rulings on request from Senate Members, officers, and employees. The Committee also offers periodic briefings on the Code of Conduct through the Secretary of the Senate's office. At least quarterly, seminars on the Code of Official Conduct are available to interested staffers, and seminars on Use of the Franking Privilege are separately offered. Likewise, seminars tailored for the use of office managers, committee staff, and paid interns are offered. Additionally, the Committee is available at the convenience of any Senate office to provide ''in-office'' briefings for Members or staff. Again, and perhaps most importantly, the Committee is always available to Senate Members, officers, and employees through its staff to provide telephonic advice and private letter rulings. Such telephone advice and private letter rulings are the mainstay of the Committee's advisory function, and Members, officers, and employees are encouraged to seek such advice or rulings in any situation.

F. SOURCES OF APPLICABLE STANDARDS OF CONDUCT

As discussed in C. above, the Committee's role is prescribed by the Senate in furtherance of the institution's constitutional obligation of self-discipline. The standards which govern a Senate

Member, officer, or employee's conduct, and which provide the framework for institutional discipline, are drawn from a number of sources including federal statutes and Senate rules.

Both the official and personal conduct of Senate Members, officers, and employees are now the subject of a substantial body of ethics-related rules and laws. This manual endeavors to provide and discuss those specific written rules, statutes and, in at least one case, Constitutional provision as they relate to the operation of a Senate office and to the conduct of individual Senate Members, officers, and employees.

The Senate Code of Official Conduct contained in Senate Rules 34 through 43 provides very specific standards of conduct on: Financial Disclosure, Gifts, Outside Earned Income and Honoraria, Conflict-of-Interest, Prohibited Unofficial Office Accounts, Foreign Travel, Use of the Mailing Frank and Radio and Television Studios, Political Fund Activity, Employment Discrimination, and Constituent Service. Those Senate Rules comprising the Code of Official Conduct are within the exclusive jurisdiction of the Senate Select Committee on Ethics. Application of each of these Rules will be discussed in the Chapters which follow.

Additionally, Federal statutes also provide specific standards of conduct in such areas as: Conflict-of-Interest, Financial Disclosure, Outside Earned Income and Honoraria, Gift Acceptance and Solicitation, Campaign Activities, Government Contracts, Foreign Travel and Gifts from Foreign Governments, to name a few. Finally, the United States Constitution contains a prohibition on the acceptance of Gifts or Emoluments from Foreign Governments except as permitted by statute. Some Federal statutes provide for joint jurisdiction of the Ethics Committee and the Department of Justice, others are enforced exclusively by the Department of Justice. See the Table at the end of Appendix D for a listing of statutes and Rules which create overlapping or joint jurisdiction by both the Senate Select Committee on Ethics and the Department of Justice or other Executive Branch agency.

Complementing these written standards (i.e. rules and statutes) is a body of unwritten but well-established norms of Senate behavior, violation of which may be deemed ''improper conduct reflecting upon the Senate.'' In other instances the Committee, although not declaring conduct to be ''improper conduct reflecting upon the Senate'' in violation of an unwritten standard, has found that such conduct warranted public criticism, or has stated that it did not condone such conduct. See Appendix E.

Finally, the Senate has enunciated certain general principles of public service which provide guidance on desirable conduct. These principles are also set out in Appendix E.

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Chapter 2

GIFTS

Rules 35 and 39

INTRODUCTION

[W]hen I once asked a policeman how some of his colleagues got started on the downward path, he replied, ''It generally began with a cigar.''

—Senator Paul H. Douglas,

Ethics in Government, at 44 (1952)

In a 1951 report entitled *Ethical Standards in Government*, a Senate subcommittee headed by Senator Paul H. Douglas highlighted some of the concerns that arise when public officials receive gifts:

> What is it proper to offer public officials, and what is it proper for them to receive? A cigar, a box of candy, a modest lunch (usually to continue discussing unfinished business)? Is any one of these improper? It is difficult to believe so. They are usually a courteous gesture, an expression of good will, or a simple convenience, symbolic rather than intrinsically significant. Normally they are not taken seriously by the giver nor do they mean very much to the receiver. At the point at which they do begin to mean something, however, do they not become improper? Even small gratuities can be significant if they are repeated and come to be expected. . .
>
> Expensive gifts, lavish or frequent entertainment, paying hotel or travel costs, valuable services, inside advice as to investments, discounts and allowances in purchasing are in an entirely different category. They are clearly improper. . . The difficulty comes in drawing the line between the innocent or proper and that which is designing or improper. At the moment a doubt arises as to propriety, the line should be drawn.[36]

The Senate has long recognized that ''public office is a public trust.''[37] Senators hold office to represent the interests of their constituents and the public at large. Members are assisted in these efforts by officers and employees who are paid from United States Treasury funds. The public has a right to expect Members, officers, and employees to exercise impartial judgment in performing their duties.[38] The receipt of gifts, entertainment, or favors from certain persons or interests may interfere with this impartial judgment, or may create an appearance of impropriety that may undermine the public's faith in government.

Thus, Members and employees of the Senate should always exercise discretion concerning the acceptance of gifts, favors, or entertainment from persons who are not relatives. They should be

[36] SPECIAL SUBCOMM. ON THE ESTABLISHMENT OF A COMM'N ON ETHICS IN GOV'T, SENATE COMM. ON LABOR AND PUBLIC WELFARE, ETHICAL STANDARDS IN GOVERNMENT, 82d Cong., 1st Sess. 23 (Comm. Print 1951).

[37] Code of Ethics for Government Service ¶ 10, H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt. 2, B 12 (1958).

[38] *Id.* ¶ 5. *See also* 135 Cong. Rec. H8764 (daily ed. Nov. 16, 1989) (debate on Ethics Reform Act of 1989, quoting Paul Volcker, Chairman of the National Commission on the Public Service); United States v. Podell, 436 F. Supp. 1039, 1042 (S.D.N.Y. 1977), *aff'd*, 572 F.2d 31 (2d Cir. 1978).

particularly sensitive to the source and value of a gift, the frequency of gifts from one source, and possible motives of the donor.[39] A gift of cash or a cash equivalent (for example stocks or bonds) is not an acceptable gift, unless it is from a relative or is part of an inheritance. Members and employees should never ''discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not,'' and never accept favors or benefits for themselves or their families ''under circumstances which might be construed by reasonable persons as influencing the performance of [their] governmental duties.''[40] One should always be wary of accepting any gift, favor, or benefit that may not have been offered ''but for'' one's position in the Senate.

In addition to these general principles, detailed Senate rules regulate the gifts that a Member, officer, or employee may accept. Under Rule 35, a Member, officer, or employee of the Senate may generally not accept any one gift valued at $50 or more, or gifts with an aggregate value of $100 or more, from any one source in a calendar year. Definitions and exceptions are set forth in the rule.

THE GIFTS RULE

A limit on the amount and/or source of acceptable gifts for Senators and their staffs has been in effect since 1977, when the Special Committee on Official Conduct, 95th Congress, proposed the first Code of Official Conduct for Members, officers, and employees of the United States Senate. The report issued by that committee provides a useful source of legislative history on the original intent of the Gifts Rule, which has been amended on several occasions since 1977.[41] The original Rule limited gifts from those with a ''direct interest'' in legislation to $100. Later, a $300 limit on gifts from all other sources was added. Thereafter, a uniform $250 annual limit was placed on all sources of gifts.

Most recently, the Senate Gifts Rule was revised by Senate Resolution 158, 104th Congress, effective January 1, 1996. A 1994 Report of the Senate Committee on Governmental Affairs (S. Rpt. No. 103–255, 103d Cong., 2d Sess.) offers insight into the purposes behind changes to the Rule effectuated by Senate Resolution 158. The current Rule places significant new restrictions on the ability of Senate Members, officers, and employees to accept gifts.

Senate Rule 35.1(a) sets forth the basic rule on accepting gifts. It states:

> *(1) No Member, officer, or employee of the Senate shall knowingly accept a gift except as provided in this rule.*
>
> *(2) A Member, officer, or employee may accept a gift (other than cash or cash equivalent) which the Member, officer, or employee reasonably and in good faith believes to have a value of less than $50, and a cumulative value from one source during a calendar year of less than $100. No gift with a value below $10 shall count toward the $100 annual limit. No formal recordkeeping is required by this paragraph, but a Member, officer, or employee shall make a good faith effort to comply with this paragraph.*

The figure of $50 (which is actually a dollar limit of $49.99) applies to each gift received, unless the gift falls under an exception. The figure of $100 (which is actually a dollar limit of $99.99) applies to the aggregate value of all non-exempt gifts received from a single source during a calendar year. Thus, the value of all non-exempt gifts from a single source in a calendar year must be tallied. Any gift worth less than $10 is excluded under Rule 35.1(a)(2) and does not count

[39] *Id.*

[40] Code of Ethics for Government Service, *supra* note 2, ¶ 5.

[41] Senate Code of Official Conduct, Report of the Special Committee on Official Conduct, United States Senate, to accompany S. Res. 110, S. Rep. No. 95–49, 95th Cong., 1st Sess. (1977).

towards the $99.99 total. Once the tally reaches $99.99, all further non-exempt gifts from that source in that year must be declined.

> ***Example 1.*** Over the course of one year, company Z offers Senator B the following gifts: in January, theater tickets worth $45; in April, a paperweight worth $8.50; in September, a bottle of wine worth $40; and in December, a crystal vase worth $35. The paperweight does not count towards the $100 aggregate because it is worth less than $10. All the other gifts count. If the Senator accepts the theater tickets and the wine, he must return the crystal vase to avoid exceeding the gift limit.

Section 1(c)(1) excepts from the restrictions of the Rule ''anything for which the Member, officer, or employee pays the market value, or does not use and promptly returns to the donor.'' Thus, a Member, officer, or employee may rectify the inadvertent receipt of an impermissible gift by promptly returning it or reimbursing the donor for the full, fair market retail value.

Generally, when multiple items, each individually worth less that $50, are offered simultaneously to any individual, the ''gift'' being offered is deemed to be the aggregate of all the items. Also, as a general rule, a Member, officer, or employee may not ''buy-down'' the value of a gift to bring it within the dollar limitations of the Gifts Rule.

The Committee has determined, however, that with respect to multiple item gifts where some of the items are worth less than $50, and are divisible by nature (such as tickets, bottles of wine, etc.), Members, officers, and employees may either accept one proffered item worth less than $50 and purchase the others, or accept one such item and decline the others. This policy merely permits a Member, officer, or employee to take a gift that would have been acceptable under the Gifts Rule had it been offered by itself. For example, a staffer who is offered two $40 tickets to a basketball game could accept one ticket, because it would be an acceptable gift if offered by itself; a staffer who is offered two $55 tickets to a football game could not accept either ticket, because the value of each ticket exceeds $49.99, nor may he buy down the value of the single ticket by contributing $6 towards its cost.

However, with respect to all other gifts, such as meals and single items that are not naturally divisible, a Member, officer, or employee may not ''buy-down'' the value of the gift in order to bring it within the Gifts Rule limits. For example, a staffer may not chip in $6 toward a $55 meal that is being paid for by an individual (other than a ''relative'' or ''personal friend'') as hereinafter defined and thereby bring the meal within the $49.99 limit. With respect to meals, it should be noted that a meal is a single item whose value consists of all of the items consumed during the meal (i.e., appetizers, main course, drinks, wine, and dessert). For example, a staffer may not bring the value of a meal under $50 by paying for a bottle of wine. (On the other hand, a staffer who contributes to the total cost of a meal with a group by paying for the wine, where the cost of the wine represents the staffer's proportionate share of the total meal, has not received a gift at all because the staffer has paid for his share of the meal.)

> ***Example 2.*** Staffer A is invited to dinner by two representatives of a trade organization. The total bill for the meal is $165, with the cost of the staffer's meal being $55. The staffer may not pay for the wine, which cost $20, and allow the two trade organization representatives to pay the remaining $35 cost of his meal as a gift. On the other hand, the staffer could pay his proportionate share of the meal (i.e. $55).
>
> ***Example 3.*** Lobbyist B walks into a Senate office and offers the scheduler two tickets to a theater performance, each ticket with a face value of $45. The scheduler may accept one ticket and decline the other, or accept one ticket and pay $45 for the second.

The Committee ruled in 1978 (Interpretative Ruling 94) that a Senate Member, officer, or employee should not repeatedly accept from the same donor small gifts otherwise permitted by the Rule. The Committee also has previously concluded, in 1987, that where a gift is going to a Senate office, it may, depending upon the circumstances, be treated as a single gift to the supervising Senator. For example, in a situation where an entity outside the Senate wanted to provide a T-shirt to each member of a Senator's softball team along with bats and balls, the Committee con-

cluded this would be a gift to the Senate office and, therefore, a single gift to the Senator rather than a gift to each individual team member.

This ruling stands in contrast with the usual situations noted above where a number of items, by nature divisible (tickets, bottles, etc.), are delivered to an office for use by the Senator or staff. For example, where an individual delivers several tickets to an entertainment event to a Senate office and indicates that the tickets are for use by members of the staff, the tickets are treated as gifts to each individual staffer who uses them, rather than as a single gift to the Senator. However, where several such tickets are presented to a Senate office without an attempt to designate or specify that the items are for use by members of the staff, the items may be considered a single gift to the Member. Thus, for example, if a private college sends five college basketball tickets valued at $20 a piece to a Senate office with the notation that the tickets are for the Senator's use, all five tickets will be treated as a gift to the Senator. In that case, the Member may keep two of the tickets for her use and either pay for the remaining tickets or return them to the college.

A gift of ''**food**'' poses unique issues. The Committee has long distinguished the provision of ''food'' from the sharing of a ''meal''. This distinction has been based upon the notion that a ''meal'' contemplates that the recipient enjoys a dining experience at a restaurant or other establishment in the company of the person providing the fare. Thus, where an individual invites a group of employees in a Senate office to dine with her in a restaurant, the result is a gift to each employee who shares the meal, valued at what the employee eats and drinks. Therefore, if an individual invites Senator X's office staff of ten to dinner at a D.C. restaurant, and each meal costs $12, each employee has received a gift of $12 (which is within the gifts limit of $49.99).

However, ''food'' sent to a Senate office for consumption by a group of the office's employees is one gift to the Senator, valued at the total fair market retail value of the food. Thus, if a company sends six $10 pizzas to Senator X's office to feed ten of his staffers, Senator X has received a gift valued at $60, and may not accept it under current gift limits. Under this ruling, the fact that the ''food'' might be eaten by ten staffers does not convert the gift of ''food'' to the Senator into ten individual gifts of a ''meal'' to the staffers. Nor would the gift of the ''food'' escape the dollar restrictions of the Gifts rule simply because no individual staffer consumed more than $9.99 or $49.99 worth of food. At least one purpose served by the ''meal'' versus ''food'' distinction is to preclude the possibility of a person regularly supplying a Senate office with food items (including frozen dinners, pizzas, canned goods, snacks, and other consumables) so long as no individual staffer ever ate more than $9.99 worth of the food at any one time. The Committee has seen fit to avoid this possible result by considering ''food'' given to a Senate office as a gift to the supervising Senator valued at its total cost. (See also the discussion of valuation of meals and food in section on ''Valuation of Certain Gifts'' in this chapter).

The Committee has also ruled that even when the provider accompanies food delivered to a Senate office and shares it with staffers, if it is consumed in Senate space (other than the cafeterias or food courts), it remains a gift of ''food'' to the supervising Senator valued at the total fair market value of all the food. Thus, individuals may continue to purchase staff meals at Senate cafeterias and establishments outside the Senate, but food delivered to Senate offices for consumption in the Senate will be treated as a gift to the supervising Member of the total value of all food provided, even when the provider of the food is present when the food is consumed by staff. Finally, this result may not be avoided by having the food ''divided'' into separate packages labeled with the names of individual staff members prior to delivery to a Senate office.

In addition, it should be noted that even if a gift of food sent to a Senate office or to a Senate committee complies with the dollar limits of the Gifts rule (i.e., has a value of less than $50), staffers are consistently advised that they should not accept such gifts when the person sending the food has a direct interest in particular legislation that the staff is working on at the time. In other words, if staffers are staying late at the office working on a particular piece of legislation,

they should not accept pizzas sent in by an organization that has a direct interest in that piece of legislation, even if the total value of the pizzas is less than $50, since acceptance of such gifts under these circumstances may implicate the bribery and illegal gratuities statute, which prohibits acceptance of gifts ''for or because of'' an official act.

WHAT IS A GIFT?

The word ''gift'' is defined broadly and includes any ''item having monetary value.'' Specifically, paragraph 2(b)(1) of the Rule states:

> [T]he term ''gift'' means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

WHO IS RESTRICTED?

By its terms, Rule 35 covers current Members, officers, and employees of the Senate (¶ 1(a)(1) and (2)). Unlike the previous Rule 35, spouses and dependents are not separately subject to the gift limitations. Rather, under the current Rule, a gift to a family member (or any other individual) is considered a gift to the Member, officer, or employee only if it is given with the knowledge and acquiescence of the Member, officer, or employee and the Member, officer, or employee has reason to believe the gift was given because of the official position of the Member, officer, or employee. The Rule does not restrict anyone else, such as candidates, or future or former Members or employees. In addition, the Committee has determined that the Vice President, although a constitutional officer with the duty of presiding over the Senate, is not a Member, officer, or employee of the Senate as those terms are used in the Code of Official Conduct.[42] However, any employee of the Vice President whose salary is disbursed by the Secretary of the Senate is fully subject to the Senate Code of Official Conduct.

> ***Example 4.*** Senator-elect A appears before a home-state business group in December, prior to her swearing-in in January, and is presented with a wristwatch. A may accept the watch, regardless of its value, because she is not yet covered by the Senate Gifts Rule.[43]

WHAT GIFTS ARE ACCEPTABLE?

The Gifts Rule contains 23 exceptions. The following gifts are expressly excluded from the Rule's limitations:

(1) gifts for which the recipient pays the market value, or does not use and promptly returns;

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[42] *See* Interpretative Ruling No. 140 (May 25, 1978), Appendix A. Historically, the Committee has from time to time published collections of its Interpretative Rulings (See, for example, S. Prt. 103–21). Interpretative Rulings are the non-confidential versions of private letter rulings, issued by the Committee in response to specific requests for advice. In this Manual, these will be referred to hereinafter by Interpretative Ruling (IR) numbers and original dates of issuance. Each Interpretative Ruling referred to in this Manual is reprinted in Appendix A for easy reference. Because the Interpretative Rulings date from 1977 and Senate Rules have changed significantly over the years since, each Interpretative Ruling reprinted in Appendix A has been annotated to explain how the Ruling applies under current Rules. Many of the early Rulings were no longer valid. Thus, earlier printings of the Committee's Interpretative Rulings should NOT be relied upon for advice. Instead, the annotated Rulings reprinted in Appendix A, and the text of this Manual, should be referred to for guidance.

[43] *See* Interpretative Ruling No. 345 (Feb. 23, 1981).

(2) political contributions reported under the law, or attendance at a fundraising event sponsored by a political organization;

(3) gifts from relatives;

(4) anything, including personal hospitality, provided by an individual on the basis of a personal friendship unless the Member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the Member, officer, or employee and not because of the personal friendship (see ''Personal Friendship'' Section for additional criteria);

(5) contributions or payments to an approved legal expense trust fund;

(6) gifts from another Member, officer, or employee of the Senate or House;

(7) food, refreshments, lodging, and other benefits that result from the outside business or employment (or other activities not connected with official duties) of the Member, officer, or employee, or spouse thereof that are customarily provided and that are not offered or enhanced by the official position of the Member, officer, or employee; that are customarily provided by a prospective employer in connection with bona fide employment discussions; or that are provided by a political organization in connection with a fundraising or campaign event sponsored by the organization;

(8) pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;

(9) informational materials, such as books, articles, periodicals, audio or videotapes, sent to the office;

(10) awards or prizes won in contests open to the public;

(11) bona fide nonmonetary awards (including honorary degrees) presented in recognition of public service, and associated food, refreshments, and entertainment provided in the presentation of such degrees and awards;

(12) donations of products from the home State which are intended primarily for promotional purposes (display or distribution) and are of minimal value to any individual recipient;

(13) training, including food and refreshments furnished to all attendees as an integral part of the training, in the interest of the Senate;

(14) bequests, inheritances, and other transfers at death;

(15) any item whose receipt is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute;

(16) anything paid for by Federal, State, or local government, or secured by the Government under a Government contract;

(17) personal hospitality, other than from a registered lobbyist or agent of a foreign principal;

(18) free attendance at a widely attended event that is officially connected to Senate duties or at a widely attended charity event;

(19) opportunities and benefits which are:

(a) available to the public or to a class consisting of all Federal employees;

(b) offered to members of a group or class in which membership is unrelated to congressional employment;

(c) offered to members of an organization, such as an employees' association or congressional credit union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size;

(d) offered to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;

(e) commercial loans from banks or other financial institutions on terms generally available to the public;

(f) reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations;

(20) a plaque, trophy, or other item that is substantially commemorative in nature and which is intended solely for presentation;

(21) in an unusual case, anything for which a waiver is granted by the Committee;

(22) food or refreshments of a nominal value offered other than as part of a meal;

(23) an item of little intrinsic value such as a greeting card, baseball cap, or T-shirt.

Gifts Paid for or Returned

This exception to the restrictions of the Gifts Rule allows a Member, officer, or employee who inadvertently receives a gift whose value is over the dollar limit either to pay the donor the market value of the gift, or to return it to the donor without using it.

Disposition of Perishable Goods

Section 1(f) provides that if it is not practicable to return a tangible item to the donor because it is perishable (food or flowers, for example), the item may be given to an appropriate charity or discarded. The Committee has determined, however, that in those instances where it is impractical to transport a perishable item to a charity, the item may be placed in the reception area or other common area where it may be shared by constituents and other visitors to the office.

Political Contributions or Attendance at a Fundraiser

The first (1977) Senate Gifts Rule's exception for any political contribution lawfully made was devised to complement the ban on converting campaign funds to personal use (now set forth in Rule 38.2). The Nelson Report explained: ''If a ''contribution'' does not conform to the strictures of the Federal Election Campaign Act, it is a gift rather than a contribution, and must be treated as such for the purposes of this Rule and disclosed, if in excess of [the financial disclosure threshold].'' [44] The current Gifts Rule (section 1(c)(2)) continues this exception for contributions lawfully made under the Federal Election Campaign Act.

Additionally, prior to S. Res. 158 (which became effective January 1, 1996), where there was no conflict of interest, Members, officers, or employees have been candidates for state or local office, and have accepted campaign contributions lawfully made under applicable state or local campaign finance laws. Acceptance of such state or locally regulated campaign contributions has historically been viewed as consistent with the Senate Gifts Rule. The Committee has concluded that this historical treatment of state or local campaign contributions is consistent with the current Gifts Rule as well. Thus, Senate Members or employees who become candidates for state or local office may accept campaign contributions in accordance with state or local laws, as long as there is no conflict of interest with respect to Senate duties.

Section 1(c)(2) of the Gifts Rule also allows a Member, officer, or employee to accept ''attendance'' at a fundraiser sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986. ''Attendance'' includes the provision of food, refreshments, entertainment, and local transportation in connection with the campaign event. Under this exception, a Senate Member, officer, or employee may accept a ticket to a campaign fundraiser from sources

[44] S. Rep. No. 95–49, *supra* note 6, at 36.

other than the sponsor of the fundraising event, as well as from the sponsor. Transportation other than local, lodging, or food which is not an integral part of the campaign fund raiser could not be accepted under this section. While acceptance of ''free attendance'' from a source other than the sponsor is permitted under section 1(c)(2), only a sponsoring political organization may pay other (i.e. non-local transportation, lodging, and food) expenses in connection with attendance at a fundraiser or campaign event under section 1(c)(7)(C), as discussed later in this chapter.

Under section 1(c)(2), a Senate Member, officer, or employee may accept free attendance at a campaign fundraiser sponsored by a political organization where the event is held at a sky or luxury box or other similarly discrete, segregated seating or viewing area at a performance arena.

National Political Conventions

The national political conventions typically involve many diverse kinds of activities that may call for application of the Gifts Rule. The following discussion covers some common situations that occur at political conventions.

* With limited exceptions, attendance at the national conventions is considered campaign activity. Thus, for example, a Senate staff member who attends a convention must do so on his or her own time (i.e., using accrued leave). Except in rare circumstances, such as, for example, where a Capitol police officer is officially assigned to provide security for Members, it is unlikely that attendance at a convention will be deemed to be official or officially connected. Attendance at a political convention will generally be considered campaign activity, regardless of the nature of the participation (e.g., delegate, platform committee, cloakroom type duties, etc.)

* The Gifts Rule permits acceptance of any gift paid for by any unit of federal, state, or local government, including the host city's official host committee.

* The Rule permits national party and convention committees, state and local party organizations, and campaign committees to provide transportation, and food, lodging, refreshments, and entertainment in the host city, in connection with attendance at the convention. The Rule also allows acceptance of free attendance (local transportation, food, refreshments, or integral entertainment) to any fundraising event sponsored by a political organization.

* An invitation to any reception is also acceptable, since the Rule allows food or refreshments of nominal value (other than as part of a meal). Additionally, items of little intrinsic value, such as a T-shirt or baseball cap, are permitted by the Rule.

* The Rule also permits free attendance at widely attended events at the invitation of the event sponsor. This large-group exception appropriately applies to activities associated with attendance at the conventions. If at least 25 non-congressional attendees are invited to attend an event, then Senate invitees may also attend and accept local transportation, and food, refreshments, or entertainment which are part of the event. The sponsor's invitation for an accompanying individual may also be accepted if others will generally be similarly accompanied.

* Unless specifically permitted by the Rule as discussed above, all other gifts from organizations or individuals (other than a relative or personal friend) must comply with the Rule's $49.99 per gift, $9.99 aggregation, and $99.99 annual limits, or they may not be accepted.

Gifts from Relatives

The Gifts Rule exempts all gifts from relatives, regardless of value (¶ 1(b)(1)). The Nelson Committee, in explaining the first Senate Gifts Rule, stated that it ''exempts gifts from relatives because of the presumption that when a Member, officer, or employee receives a gift from a relative, it is because of the familial relationship and not because of the position occupied by the Member, officer, or employee.'' [45] Rule 35.1(c)(3) defines the term ''relative'' by reference to title

[45] S. Rep. No. 95–49 at 34.

I of the Ethics in Government Act of 1978 (''EIGA,'' the financial disclosure statute). That law contains the following definition:

> ''[R]elative'' means an individual who is related . . . as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the . . . individual and shall be deemed to include the fiance or fiancee of the . . . individual.[46]

Note that this definition includes various in-laws, as well as fiances. Engagement rings and other tokens exchanged by engaged couples are thus exempt from the gift limit. The rule does not similarly exempt gifts given because of a significant, personal, dating relationship (short of a formal engagement), but the Committee has granted a waiver which generally (with important limitations) permits a Member, officer, or employee to accept gifts from an individual with whom the Member, officer, or employee enjoys a significant, personal, dating relationship.[47] Since January 1, 1996, many of the gifts permitted by the Committee's 1990 ''significant other'' ruling, may now also be permitted by the exception for gifts based on personal friendship discussed immediately below.

Gifts Based on Personal Friendship

This exception to the restrictions of Rule 35 exempts from the $49.99 single gift/$99.99 aggregate limits:

> Anything provided by an individual on the basis of a personal friendship unless the Member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the Member, officer, or employee and not because of the personal friendship.

Rule 35.1(c)(4)(A). The Rule further provides that:

> ''(B) In determining whether a gift is provided on the basis of personal friendship, the Member, officer, or employee shall consider the circumstances under which the gift was offered, such as:

(i) The history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between such individuals.

(ii) Whether to the actual knowledge of the Member, officer, or employee the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift.

(iii) Whether to the actual knowledge of the Member, officer, or employee the individual who gave the gift also at the same time gave the same or similar gifts to other Members, officers, or employees.

> Thus, gifts motivated solely by personal friendship between the giver and the Member, officer, or employee are permissible. However, such gifts may not be of a value greater than $250, unless the recipient receives approval from the Committee.[48] This exception would apply to gifts from any individual, including a lobbyist, who was making a gift on the basis of personal friendship.[49] Where the gift giver does not personally pay for the gift, or takes a tax deduction, or gives similar gifts to others in the Senate, or seeks reimbursement, the gift is unlikely to come within the personal friendship exception.

Senators and staffers must also be careful that gifts from personal friends, even though they may meet the tests under Rule 35.1(c)(4), do not run afoul of other restrictions on the acceptance

[46] 5 U.S.C. app. 6, § 109(16).

[47] *See* discussion of Waivers later in this chapter; *see also* Interpretative Ruling No. 439 (June 18, 1990).

[48] Rule 35.1(e).

[49] A Member, officer, or employee may accept personal hospitality from a lobbyist or foreign agent *as a gift of personal friendship*, up to $250. However, a Member, officer, or employee may not use the personal hospitality exception, paragraph 1(b)(17), to accept personal hospitality from a friend who is a lobbyist or foreign agent.

of gifts. For example, acceptance of a gift that, to his or her knowledge, is given to a Member, officer, or employee in appreciation or gratitude for his or her official action is an illegal gratuity. See Discussion of Bribery and Illegal Gratuity Statutes, infra at p. 42. Even in the absence of criminal intent, Senators must also be careful to ensure that gifts, including those from personal friends, do not raise issues of improper linkage to their official position or actions.

Example 5. Senator *X* and her husband receive a crystal vase, valued at $150, from J and her husband, as an anniversary present. The couples have been friends since college, and have exchanged gifts on many occasions. Senator *X* may accept the gift, as it is under the $250 limit for gifts, based on personal friendship.

Example 5a. Staffer *B* receives from a close personal friend a ticket to a baseball game valued at $30. The friend obtained the ticket from her employing company and did not reimburse the company for the ticket. Since the friend did not personally pay for the ticket, the gift does not come within the personal friendship exception. However, since the ticket is worth less than the gift limit of $49.99, Staffer *B* may accept the ticket so long as the tally of all non-exempt gifts from the friend during the calendar year is equal to or less than the aggregate gift limit of $99.99.

Example 6. Senator *A* receives a framed print, worth $120, as a fiftieth birthday gift from *B*, who is a registered lobbyist, and who told Senator A that he had personally paid for the print. Senators *A* and *B* have been good friends for over ten years, and they have exchanged gifts occasionally. *B*'s lobbying clients currently have no interest in any legislation pending before the Senate or any of Senator *A*'s committees. Senator *A* may accept the gift, as long as he is satisfied that there is no linkage between the gift and any official action that he has taken or may take in the future. However, Senator *A* may not take *B* up on his offer for Senator *A* and his wife to join *B* and his wife at their beach house for the weekend, if the value of the hospitality exceeds $250, unless he reimburses *B* for the value of the lodging and meals for the weekend, or gets approval from the Committee.

Example 7. Senator *M*'s college roommate *O*, with whom she has remained close friends over the years, begins working as a registered foreign agent. Senator *M* receives a piece of pottery valued at more than $50 from *O* as a Christmas gift. Senator *M* and *O* have never exchanged gifts in the past. Additionally, Senator *M* learns that *O* is also giving similar Christmas gifts to other Senators. Senator *M* may not accept the gift.

Example 8. Senator *F* has a close friend *Z* who is not a lobbyist, but who is very active in the pro-choice movement. After the Senate votes on a piece of legislation dealing with pro-choice issues, Senator *F* receives a large flower arrangement at his office from *Z*, with a note attached that reads, ''Thank you for your support of the pro-choice legislation.'' Senator *F* may not accept the gift: it is an illegal gratuity.

Contributions or Payments to a Legal Expense Trust Fund

From time to time, Members, officers, and employees of the Senate may find it necessary to defend themselves against criminal charges or civil claims, or to provide evidence in proceedings (or in rare cases, to initiate civil lawsuits) which would not have arisen but for their positions. Pursuant to S. Res. 508,[50] this Committee has issued regulations authorizing Members, officers, and employees to establish legal expense trust funds to defray legal expenses incurred in investigative, civil, criminal, or other legal proceedings relating to or arising by virtue of service in or to the Senate.[51] The trust fund agreement must be approved by the Committee. A lawfully made contribution to a legal expense trust fund, other than by a registered lobbyist (or lobbying firm) or foreign agent,[52] is not subject to the dollar restrictions of the Gifts Rule, although it must

[50] S. Res. 508 (96th Cong., 2d Sess.) was agreed to on September 30, 1980.

[51] Senate Select Committee on Ethics, Regulations Governing Trust Funds to Defray Legal Expenses Incurred by Members, Officers and Employees of the United States Senate (adopted Sept. 30, 1980; amended Aug. 10, 1988). *See* Appendix I for a complete copy of the trust fund regulations.

[52] Section 35.3(c) provides that ''a contribution or other payment by a registered lobbyist or an agent of a foreign principal to a legal expense fund established for the benefit of a Member, officer, or employee'' is a gift prohibited by the Rule. The Committee has determined that for purposes of the Gifts Rule, a ''lobbying firm'' as defined by the

be disclosed in accordance with the Committee's disclosure requirements. The Committee's regulations regarding legal expense trust funds do, however, place limitations on contributions to legal expense trust funds. This section summarizes those regulations, which should be consulted directly by anyone seeking to establish such a fund.

Legal expense trust funds may *not* be established for purely personal legal matters, such as tax planning, personal injury litigation, protection of property rights, divorces, or estate probate. A trust fund *may* be established to defray legal expenses incurred, either as plaintiff or defendant in a defamation suit, if it is related to one's official position. The trustee may not be a Member, officer, or employee of the Senate; an immediate family member of the person creating the trust; that person's legal counsel for the matter necessitating the trust; or anyone affiliated with that counsel's firm.

Before any money may be raised for or disbursed from the fund, a copy of the executed trust agreement must be approved by the Committee and subsequently filed with the Committee and the Office of Public Records. No Senate officer or employee may participate in the fundraising, except for the political fund designees of an involved Senator.[53] No Senate staffer, corporation or labor union, Member's principal campaign committee, or foreign national may contribute to a legal expense trust fund. Anyone else (including, e.g., PACs, but excluding lobbyists and foreign agents) may contribute up to $10,000 a year. The individual establishing the fund and his or her relatives may contribute unlimited amounts. Consistent with analogous FEC precedent, the Committee has ruled that expenses incurred by an individual in raising money for the fund (e.g., stamps, invitations, and refreshments for a home- or church-based fundraiser) up to $1,000 do not count towards the contribution limits.[54]

Subject to the approval of the Committee, individuals may be permitted to accept, as a contribution to a legal expense trust fund, pro bono services (other than from lobbyists, lobbying firms, or foreign agents) worth more than $10,000 a year. If the pro bono services are being provided in order to assist a Member to file an amicus curiae brief, the Member need not establish a legal expense trust fund.[55] However, any individual who wishes to become a party (either as an intervenor or plaintiff) to a proceeding must establish a legal expense trust fund before accepting pro bono services (see Appendix H for Committee Regulations Regarding Disclosure of Pro Bono Legal Services.)

The trustee of a legal expense trust fund must submit quarterly reports to both the Committee and the Office of Public Records, detailing the following:

1) the name and address of every contributor of more than $25 a year;

2) the amount of those contributions;

3) the name and address of every individual or entity receiving expenditures from the fund;

4) a brief description of the nature and amount of each expenditure;

5) the name and address of any provider of pro bono services; and

6) the fair market value of any pro bono services received.

All excess funds must be donated to organizations that are tax-exempt under section 501(c)(3) of the Tax Code or returned to contributors pro rata.

Lobbying Disclosure Act of 1995 is deemed to be a ''registered lobbyist.'' Since the Rule prohibits any gift with a value of $50 or more, a lobbyist (or lobbying firm) or agent of a foreign principal could, therefore, contribute only up to $49.99 to such a fund.

[53] *See* Senate Rule 41 and Chapter 5 of this Manual for a discussion of political fund designees.

[54] *See* 11 C.F.R. ¶ 100.7(b)(6).

[55] *See also* Interpretative Ruling No. 442 (Apr. 15, 1992).

Gifts From Other Members, Officers, or Employees

Rule 35 now permits a Member, officer, or employee to accept a gift from another Member, officer, or employee of the Senate or House of Representatives, with no restrictions on the dollar value of the gift. However, federal law prohibits a federal employee from giving a gift to a superior, and prohibits a federal employee from accepting a gift from another employee receiving less pay than herself or himself. Title 5, United States Code, Section 7351. The law provides, however, that the Committee may make exceptions for gifts given for special occasions such as marriage or retirement, or other circumstances where gifts are traditionally exchanged. Pursuant to this authority, the Committee has given blanket permission for the giving and acceptance of gifts between and among Senate Members, officers or employees, when such gifts are given on occasions where gifts are traditionally given, such as marriage, retirement, birth of a child, birthday, anniversaries, or holidays, provided such gifts or contributions toward such gifts are entirely voluntary.

Food, Refreshments, Lodging, and Other Benefits of Outside Activity

Exempted from the general restrictions of Rule 35 by section 1(c)(7) are food, refreshments, lodging, and other benefits:

> (A) resulting from the outside business or employment activities (or other outside activities that are not connected to the duties of the Member, officer, or employee as an officeholder) of the Member, officer, or employee, or the spouse of the Member, officer, or employee, if such benefits have not been offered or enhanced because of the official position of the Member, officer, or employee and are customarily provided to others in similar circumstances;
>
> (B) customarily provided by a prospective employer in connection with bona fide employment discussions; or
>
> (C) provided by a political organization described in section 527(e) of the Internal Revenue Code of 1986 in connection with a fundraising or campaign event sponsored by such an organization.

Respecting benefits extended by a political organization under section 1(c)(7)(C) in connection with its fundraising or campaign event, the Committee has determined that only the political organization sponsoring the event may reimburse expenses for its invitees. Thus, in contrast to section 1(c)(2), where ''free attendance'' (i.e. tickets) may be accepted from third parties to fundraising events sponsored by political organizations, only the sponsoring political organization may reimburse food, lodging, and non-local transportation expenses. Such travel expense reimbursements are not subject to the Gifts Rule's 30-day disclosure requirement for necessary expenses (payment of such expenses would be reported by the political organization as required by the appropriate election authority). (For a discussion of Gifts Rule issues in connection with national political conventions, see previous heading in this chapter).

> ***Example 9.*** Senator *B* is the uncompensated president of a company that operates a trout farm in his home state. As part of his duties as president, Senator *B* periodically visits the farm to inspect the facilities, and to meet with the employees. Senator *B* may accept reimbursement from the company for his travel to the farm, and for his lodging and meals while he is there. Reimbursement of such expenses would need to be disclosed by the Senator on his annual financial disclosure statement, but would not be subject to the Gifts Rule's 30-day disclosure requirement for necessary travel expenses.
>
> ***Example 10.*** Senator *T*'s husband is employed as a travel agent. As part of his job, several times a year he and other travel agents fly to various vacation spots to evaluate them for prospective customers. Their travel expenses are paid by their employer, and their lodging is provided by the various hotels at which they stay. Senator *T*'s husband may accept the payment of the travel expenses and the free lodging, as well as his salary from the travel agency, as they are all provided as part of his employment. Acceptance of such expenses by the Senator would need to be disclosed on her annual financial disclosure statement, but would not be subject to the Gifts Rule's 30-day disclosure requirement for necessary travel expenses.

Example 11. *X*, who is an attorney working for the Judiciary Committee, is interviewing for a job with a law firm in Chicago. The law firm wants to fly *X* out for a two-day interview, as they do with all prospective employees. Consistent with Rule 35, *X* may accept reimbursement for the flight to Chicago, as well as his overnight stay at a hotel and meals. If he is a filer, *X* will need to disclose the acceptance of these expenses on his financial disclosure report, but need not disclose them under the Gifts Rule's 30-day disclosure requirement for necessary travel expenses. Potential conflict of interest issues arising out of job search activities are discussed in a later chapter.

Example 12. Senator *K*'s wife is a lawyer with a private law firm. Every year the firm invites all of its lawyers and their spouses to a weekend retreat at a resort hotel. The value of the weekend's food and lodging exceeds $49.99 per couple. This retreat would be offered to Mrs. *K* as a job-related benefit, regardless of the identity of her spouse. Therefore, Mrs. *K* may accept. Since the weekend is the result of the outside business or employment activities of his spouse, Senator *K* may also accept it.[56] Acceptance of such expenses by the Senator would need to be disclosed on his annual financial disclosure statement, but would not be subject to the Gifts Rule's 30-day disclosure requirement for necessary travel expenses.

Example 13. Staffer *L*'s spouse works as a flight attendant for an airline that offers free travel to all employees and their immediate families to the extent that seats are available. The spouse may accept this benefit under Rule 35.2(a)(7), and staffer *L* may accept the free flights as well, as they are the result of the outside business or employment activities of her spouse. If she is a filer, *L* will need to disclose the acceptance of these expenses on her financial disclosure report, but need not disclose them under the Gifts Rule's 30-day disclosure requirement for necessary travel expenses.

Example 14. Staffer *M*'s spouse is temporarily assigned by her employer to work in another city. In keeping with company policy regarding out-of-town assignments, the employer offers the spouse weekend round-trip airfare to and from Washington. The spouse may accept the airfare, regardless of whether the staffer or the spouse actually does the traveling.[57] If he is a filer, *M* will need to disclose the acceptance of these expenses on his financial disclosure report, but need not disclose them under the Gifts Rule's 30-day disclosure requirement for necessary expenses.

Example 15. A political organization sponsors a campaign fundraiser for Senator Y in New York City, and invites Senator *Z* to attend. Senator *Z* may accept the refreshments offered at the fundraiser, and reimbursement from the political organization for the plane fare to New York City and the taxi fare from the airport to the fundraiser. If the circumstances of the fundraiser required overnight lodging and attendant meals, these could also be provided by the political organization. Acceptance of such expenses would not need to be disclosed by Senator *Z*, since they are reported to the Federal Election Commission.

Pension and Other Benefits

Section 1(c)(8) of Rule 35 allows a Member, officer, or employee to maintain a pension or other benefit plan from a previous employer without having to cash it in or roll it over upon coming to work for the Senate. The Committee in the past has determined that pension and other benefits resulting from participation in a plan maintained by a former employer represent earnings from the previous employment rather than a gift. However, neither the previous employer nor the Member, officer, or employee may continue to make contributions to the pension or other benefit plan. Thus, an employee who participated in an IRA plan maintained by his employer would be able to keep his account with his former employer when he began working for the Senate, but neither he nor his former employer could make any additional contributions to the plan.

[56] *See* Interpretative Ruling No. 339 (Sept. 25, 1980). *See also* discussion of Gifts from Relatives, above.

[57] *See* Interpretative Ruling No. 192 (Oct. 16, 1978).

Informational Materials

This provision of Rule 35 [i.e. 1(c)(9)] allows a Member, officer, or employee to accept informational material sent to the office. Informational material includes books, articles, periodicals, audiotapes, and videotapes, and information stored by electronic or electromagnetic means (such as CD ROM, digital disc, etc.). This exception, however, includes only informational material received from the publisher, author, or producer. In other words, the publisher of a periodical may provide it to Members, but a third party (e.g., a trade association) may not purchase a subscription to the periodical and give it to Members. While this section will permit the acceptance of a set of materials (''The Civil War'' video series from PBS, for example) this provision does not permit the acceptance of specialized reporting services or other collections which are periodically updated [for example, encyclopedias (but see ''loaned furnishings'' under the ''Donations of Home State Products,'' section) or the annotated U. S. Code].

Awards or Prizes

Rule 35, section 1(c)(10) allows a Member, officer, or employee to accept an award or prize won in a contest or event that is open to the public. Thus, the staffer who appears on Jeopardy and becomes a grand champion may keep her prize money and other winnings, as may the Senator who purchases the winning Powerball ticket. While a trophy or non-monetary equivalent may be accepted if it is won in an athletic competition, monetary or monetary equivalent items may not be accepted as a ''prize'' or ''award'' for winning, unless such competition is open to the public, or unless the group of competitors was chosen on the basis of athletic talent. Such winnings must be reported by disclosing individuals as earned income.[58]

Honorary Degrees and Other Awards

Section 1(c)(11) of the Rule permits a Member, officer, or employee to accept an honorary degree, or other nonmonetary award, that is presented in recognition of public service provided by the Member, officer, or employee. In addition, the Member, officer, or employee may accept food or refreshments provided as a part of the presentation of such awards (for example, a banquet or reception), as well as any entertainment provided as part of the presentation. If the award has a value of more than $250 (e.g., a crystal sculpture, a rare book, etc.), the Member, officer, or employee must disclose acceptance of the award on the gifts section of his or her annual financial disclosure report.

Members, officers, and employees who are the intended recipient of a cash award that is bestowed in connection with an event not open to the public may accept the honor of the award, but the proposed cash award should be given directly to a designated charity, unless a waiver is requested and obtained from the Committee. If the award or prize is contingent upon, or given in return for, any speech, article or appearance by the Member, officer, or employee, then the amount of the award or prize is subject to the $2,000 limit on contributions to charity in lieu of honoraria contained in Senate Rule 36, and the contribution must be paid directly to a designated charity, which is not maintained or controlled by the Member, officer or employee and from which neither the Member, officer, or employee, nor his or her family receives any financial benefit. The direction to charity of such awards worth more than $250 must be disclosed on the gifts section of the annual financial disclosure report if the Member, officer, or employee is a reporting individual.

Reimbursement for travel expenses in connection with an event at which a Member, officer, or employee is presented with an award or other honor is governed by Section 2 of the Gifts Rule. That is, reimbursement for such travel expenses may not be provided by a lobbyist or for-

[58] Interpretative Rule No. 414; *see also*, Chapter 4, Financial Disclosure.

eign agent, and the appropriate advance authorization and disclosure forms must be filed with the Secretary of the Senate. (See later discussion of expense reimbursement in this Chapter.)

Donations of Home State Products

This provision of Rule 35 allows a Member to accept donations of products from his or her state, from the producers or distributors of those products, that are intended primarily for promotional purposes, and that are of minimal value to any individual recipient (See section 1(c)(12)). Although there was no corresponding provision in the previous Rule 35, in light of the Gifts Rule's overriding purposes of precluding conflicts of interest and promoting public confidence, the Committee previously concluded that the ***provision of home state products*** of minimal value, such as food and beverages, by businesses in a Senator's home state, to a Senator's office for the purpose of passing on to constituents and other visitors represented a time-honored tradition not involving any conflict of interest. Similarly, under the new Rule, these home state products (e.g., apples, peanuts, popcorn, coffee, candy, orange juice) are not regarded as gifts to the Senator or staff, if the products are not intended primarily for use by the Senator or staff. Thus, to come within the home state exception, these products **must** be from the Senator's home state, **must** be from home state producers or distributors, and **must** be available to office visitors.

Following the same line of reasoning, the ***LOAN of local art work*** from home state producers or distributors for display in a Senate office does not constitute a ''gift'' to the Senator, as it falls within a time-honored tradition, confers de minimis value upon the Senator, and does not present any conflict of interest.[59] Displaying home state art work, like offering typical home state snacks, promotes local talents and products and, where the products are offered or displayed in the Washington, D.C. offices, help make visiting constituents feel at home.

Similarly, ***LOANED furnishings*** from home state producers or distributors for display in a Senate office are neither subject to the limits of the Gifts Rule nor the disclosure requirements of Rule 34 and the Ethics in Government Act, as amended. These items are not meant for the personal use or permanent possession of Members, officers, or staff. Ownership is retained by the lender. Moreover, the items are, by definition, the products of home state businesses and organizations which Senators have a traditional role in promoting. Office equipment, on the other hand, may be borrowed only for a specified testing period under the supervision and with the approval of the Rules Committee, in order to provide the Senate with an evaluation of the item's desirability for purchase.[60]

While the acceptance of loaned furnishings and artwork from home state producers or distributors need not be disclosed on Senators' annual personal Financial Disclosure Statements, the Committee has in the past determined that there is a public interest in providing a formal means for authorizing and disclosing the use of private property for official use. Members who plan to use loaned furniture or furnishings (including artwork) should write to the Committee for a determination that the arrangement is permissible under the Code of Official Conduct. These determinations are available for public inspection at the Committee's office.[61]

Training

Section 1(c)(13) of Rule 35 allows a Member, officer, or employee to accept training that is in the interest of the Senate, and food and refreshments that are offered to all attendees as a part of the training. It does not allow a Member, officer, or employee to accept reimbursement for transportation or lodging in connection with the training (but provision of local transportation is permitted).

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[59] Interpretative Ruling No. 17 (May 23, 1977).

[60] *See* Interpretative Ruling No. 442 (Apr. 15, 1992).

[61] *See* Interpretative Ruling No. 386 (Aug. 8, 1984), as modified by Interpretative Ruling No. 442 (Apr. 15, 1992).

The Committee has determined that acceptance of educational programs, seminars, and fellowships sponsored by universities and institutions of higher learning are acceptable because such programs are not the kind of ''gifts'' intended to be prohibited by Rule 35. It appears that university fellowship programs are also fundamentally consistent with the training exception. The Committee recommends that a Member, officer, or employee invited to participate in such a program write the Committee before acceptance to confirm that the program is consistent with this exception.

In addition, non-university, non-Senate groups also sponsor seminars, briefings, and presentations on various issues for Members of Congress and staff. These seminars, briefings, and presentations are an important part of the process of providing information to Members and staff on issues of legislative concern. For purposes of the Gifts Rule, the Committee has defined ''training'' to include any event where information is presented to Members and staff by an outside group, so long as the event is expected to be attended by at least 25 persons from more than one Senate office or Committee, in addition to those attending from outside the Senate. Thus, no matter how many individuals from outside the Senate are expected to be in attendance at the training event, more than 25 individuals from within the Congress must be expected to attend the event, and the Senate individuals must be employed by more than one Senate office.

The exception for training also requires that the training be ''in the interest of the Senate.'' Thus, before attendance is permitted at an event under the training exception, the Member, officer, or employee must also make an affirmative determination that the training provided by the event is ''in the interest of the Senate.''

> ***Example 16.*** A group in Washington, D.C. regularly sponsors two-hour seminars on the federal tax code and invites 40 Senate and House staff members with an interest in tax matters. *G*, who is a staff member on the Finance Committee, wishes to attend, and he and his supervising Member have determined that the training would be in the interest of the Senate. Since more than 25 individuals not all from the same Senate office are expected to attend, *G* may accept the training, as well as the buffet lunch offered to all attendees at the seminar.

Bequests, Inheritances, and Other Transfers at Death

The exception for a ''bequest, inheritance, and other transfer at death'' (Senate Rule 35.1(c)(14)) recognizes that an inheritance is generally a tribute to a personal relationship rather than one based on position. This exception also reflects the common sense reality that rarely will such a situation have the potential for a conflict of interest.

Anything Paid for by the Federal, State, or Local Government

The Gifts Rule provides an exception for:

> Anything which is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract.

Senate Rule 35.1(c)(16). Under this exception, any gift to a Member, officer, or employee (e.g., transportation, food, lodging) will not be subject to the restrictions of the Gifts Rule. Additionally, the Committee has determined that under this exception a Member, officer, or employee may accept gifts from Native American groups with whom the federal government has entered into formal recognition of sovereignty (The Department of the Interior publishes a list of Federally Recognized Tribes).

Consistent with Senate Rule 38's prohibition on unofficial office accounts (see Chapter 4) and the current Gifts Rule, the Committee has interpreted the federal, state, or local government exception to permit state and local governments to defray expenses in connection with specific events, but <u>not</u> to provide employees or office space, equipment, or furnishings. This interpretation permits Senators to undertake limited cooperative efforts with state and local governments to sponsor

specific events or activities, while prohibiting those governments from making a continuing or sustaining contribution to a Senator's office.

The Committee has determined that the Kennedy Center (through its Board of Trustees) and the Ford's Theatre Society with respect to events at the Ford's Theatre will be considered to be a part of the federal government for purposes of the Gifts Rule. Thus, consistent with paragraph 1(c)(16), a Member, officer, or employee may accept an invitation to attend an event at the Kennedy Center or Ford's Theatre if the invitation is extended by the respective sponsoring organization, i.e., either the Kennedy Center or the Ford's Theatre Society. Where the Kennedy or Ford's Theatre event is a fundraiser for either entity, an invitation from the sponsor of the charity fundraiser also may be accepted in compliance with paragraph 1(d)(3) of the Gifts rule. (See also the section on free attendance at a charity event in this Chapter.)

For purposes of Rule 35, in addition to the Kennedy Center and the Ford's Theatre, the Committee has treated the following entities as part of the federal government: the FDR Memorial Commission; the regional Federal Home Loan Banks; the Joint Congressional Committee on Inaugural Ceremonies; the Peace Corps; the TVA; and the Wolf Trap Foundation. Entities which have been considered to be state governments include the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and American Samoa. State-run colleges and universities are treated as part of state government. Amtrak on the other hand is not a government entity. This list is representative, not exhaustive, and questions concerning any particular entity's status may be directed to Committee staff.

Personal Hospitality

Personal hospitality, that is, food, lodging, and entertainment provided by an individual, other than a registered lobbyist or agent of a foreign principal, at that person's residence, is exempt from both the limits of the Gifts Rule (see ¶ 1(C)(17)) and the reporting requirements of the financial disclosure statute.

This personal hospitality exemption is intended to cover hospitality in any personal residence which an individual owns, or leases under a lease which is unrelated to the individual's employment.[62] As a general rule, to qualify for the exemption, the residence or other property should not be property which is rented out to others by the individual providing the hospitality.

The exemption also covers travel on a boat or airplane owned by an individual unless such travel is substituting for commercial transportation. An individual (other than a lobbyist or foreign agent) who owns a non-commercial fishing or pleasure boat could, for example, permit a Member, officer, or employee to use the boat for a weekend, and the use of the boat could qualify as ''personal hospitality.'' Likewise, a pleasure ride in a private airplane could be considered personal hospitality if the ride did not substitute for commercial transportation.

The personal hospitality exemption does not apply to hospitality by individuals in restaurants, nightclubs, or in any other commercial establishment. Personal hospitality is exempted only if paid for by an individual, not a corporation or firm, even if the corporation or firm is wholly owned by the individual.

As long as the hospitality is truly personal, that is, extended by an individual (other than a lobbyist or foreign agent) at that individual's residence (or other property of the individual) and at his or her own expense for a non-business purpose, a Senator or staffer may accept it, whether or not the host is present at the time. As with gifts of little value (less than $10), repetitive acceptance of personal hospitality from the same individual, even though permitted by the Gifts Rule, could be improper, depending upon the totality of the circumstances.

[62] *See* Interpretative Rulings Nos. 76 (Oct. 5, 1977) and 162 (Aug. 3, 1978).

Example 17. Mr. and Mrs. *Y* invite Senator *C* and family to fly down to Miami on the *Y*s' private plane, stay at the *Y*s' nearby vacation home, and use their yacht for deep sea fishing. The *Y*s' provision of food and lodging at their home and pleasure boating would all be exempt from the Gifts Rule as personal hospitality. The flight to Miami, however, would be a substitute for commercial transportation. It would thus be a non-exempt gift, valued at the first class fare to Miami,[63] and subject to the $50 gift limit.

Example 18. The *X* Corporation maintains a corporate hunting lodge, available to its executives and their guests. An officer of the corporation invites Senator *D* to be his guest at the lodge. Since the lodge is owned by the corporation and not the individual officer, this offer would not fall under the personal hospitality exception.[64]

Example 19. The *W* family owns a beach house at Rehobeth, which they do not rent out but use for family vacations. Mr. *W* is a registered lobbyist. The *W*s invite staffer *E* to use the house during a week when the *W*s will be elsewhere. *E* may not accept because Mr. *W* is a lobbyist.

Example 20. The owner of a guest house in Aspen offers Senator *F* complimentary lodging there. Since the guest house is a commercial establishment, this offer would not constitute personal hospitality and would be subject to the gift limit.

Although a Member, officer, or employee may not accept an offer of a week's lodging from a lobbyist under the personal hospitality exception, a Member, officer, or employee may accept an offer of a week's lodging from a lobbyist who is a personal friend, under the exception for gifts based on personal friendship, as long as the total value of the lodging does not exceed $250 and the requirements for use of the exception are otherwise met.

Example 21. Lobbyist *A* owns a beach house at Bethany, which he uses for family vacations. *A* and Senator *B* have been friends for many years. *A* invites Senator *B* to spend a weekend at the beach house. Senator *B* may accept *A*'s offer, as a gift of personal friendship, as long as the total value of the weekend's lodging is less than $250.

Free Attendance at a Widely Attended Event

Section 1(d) of the Gifts Rule provides that:

(1) A Member, officer, or employee may accept an offer of free attendance at a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, provided by the sponsor of the event, if –

(A) the Member, officer, or employee participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the Member's, officer's, or employee's official position; or

(B) attendance at the event is appropriate to the performance of the official duties or representative function of the Member, officer, or employee.

The Committee has determined that an event is ''widely attended'' when attendance at the event is expected to include at least 25 persons from outside Congress, and attendance at the event is open to members from throughout a given industry or profession, or to a range of persons interested in an issue.

''Free attendance'' includes waiver of a conference fee, provision of local transportation, and instructional materials that are furnished to all attendees. It does not include entertainment collateral to the event, or food or refreshments that are not taken in a group setting with substantially all of the other attendees. Transportation may be deemed ''local'' for purposes of accepting free attendance, if such travel takes place within the Senate Member, officer, or employee's official duty station as defined in the Senate Travel Regulations. (See the TRAVEL section below in this Chapter for a discussion of the limitation on acceptance of ''necessary expenses'' for local travel.)

[63] *See* Interpretative Ruling No. 412 (Aug. 11, 1986).

[64] *See* Interpretative Ruling No. 162 (Aug. 3, 1978); Interpretative Ruling No. 76 (Oct. 5, 1977).

''Free attendance'' at a widely attended event does not include an offer of free attendance (i.e. a ticket) to a sporting, entertainment, or other purely recreational event. See the section on sporting events in this chapter and the section on attendance at a charity event, below.

Free attendance may come only from the sponsor of an event. Any individual or entity may sponsor a ''widely attended'' event, including registered lobbyists, lobbying firms, or foreign agents. However, those who only purchase tables or blocks of tickets to an event do not become event sponsors.

This section also permits a Member, officer, or employee to accept an unsolicited offer of free attendance for an accompanying individual (only 1), e.g., a staff member, spouse, child, significant other, or other individual, if others attending will be similarly accompanied, or if the attendance is appropriate to assist in the representation of the Senate.

This exception requires that any Member, officer, or employee who attends an event makes a determination that his or her attendance at the event is appropriately connected with official duties or position.

The **spouse** of a Member can participate in activities and events unaccompanied by a Member in a quasi-official or officially connected capacity. Thus, where an event meets the Gifts Rule requirements relating to widely attended events such that a Member may attend an event, the spouse of a Member may attend the event unaccompanied by the Member, provided the Member makes a determination that the attendance of the spouse is appropriate to assist in the representation of the Senate.

> ***Example 22.*** The Washington Press Club invites Members to attend its annual Press Awards dinner, which will be attended by representatives of numerous press organizations, and their spouses. The Press Club will provide two tickets to each Member interested in attending, one for the Member, and one for the spouse. The Members may accept the tickets, and may bring their spouses.

Free Attendance at a Charity Event

Section 1(d)(3) allows a Member, officer, employee, or spouse or dependent to accept an unsolicited offer of free attendance from the sponsor of a charity event. Such an offer of free attendance may include the immediate family of the Member, officer, or employee. Although organizations that put on charitable fundraisers may designate groups underwriting the event (e.g. by donating money or refreshments, or buying tickets) as ''sponsors'' in their invitations and promotional materials, for purposes of the Gifts Rule, an individual or company does not become a ''sponsor'' of an event merely by donating goods or money for, or purchasing tickets to, the event. Thus, a staffer may not accept a $60 ticket to a charity fundraiser from a corporation or association that buys a table at the event, even though the corporation or association is listed as a ''sponsor'' in the event's program.

Although a Member, officer, employee, or spouse (and the immediate family of the Member, officer, or employee) may accept reimbursed travel expenses from the sponsor of a charity event, such expenses may not be accepted if the charity event is substantially recreational in nature.

> ***Example 23.*** *X*, a lobbyist, invites Senator *L* to attend the American Heart Association's fundraiser in Arlington, Virginia. There will be a dinner with a live band and dancing. Tickets to the event will be sold for $500 per person. Senator *L* may not accept the invitation, as it does not come from the sponsor of the event, the American Heart Association.
>
> ***Example 24.*** Good Charity invites Senator *L* to participate in its annual charity golf tournament in northern Virginia. Senator *L* may accept the invitation from the sponsor, may accept the waiver of any greens fees, and may participate in the dinner for all participants following the tournament. Lodging and transportation other than local transportation could not be accepted from the sponsor because the event is substantially recreational.

Sporting Events

As noted above, a Member, officer, or employee may accept an offer of free attendance from the sponsor of a charity event that is substantially recreational, i.e. a sporting event, however, reimbursed travel expenses may not be accepted in such circumstances. A ticket to a sporting or recreational event that is not a charity event would be considered a gift of the face value of the ticket and must come within the gift limit of $49.99 and the aggregate limit from the source of $99.99 to comply with the Senate Gifts Rule.

Events which are solely sporting, recreational, or entertainment events do not meet the requirements of the ''widely attended'' exception to the Gifts Rule. The widely attended exception requires, in part, that the activity relate to a matter before Congress or to a ceremonial function appropriate to the Member's or employee's official position or to the performance of official duties or representative functions.

Under section 1(c)(2), a Senate Member, officer, or employee may accept free attendance at a campaign fundraiser sponsored by a political organization where the event is held at a sky or luxury box seat or other similarly discrete, segregated seating or viewing area at a **performance arena.**

Opportunities and Benefits Available to a Wide Group

This provision of Rule 35 allows a Member, officer, or employee to accept opportunities and benefits which are:

> (A) available to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographical consideration;
>
> (B) offered to members of a group or class in which membership is unrelated to congressional employment;
>
> (C) offered to members of an organization, such as an employees' association or congressional credit union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of a similar size;
>
> (D) offered to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;
>
> (E) in the form of loans from banks and other financial institutions on terms generally available to the public; or
>
> (F) in the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

Generally, this provision allows a Member, officer, or employee to accept benefits or opportunities that are offered because of the Member's, officer's or employee's membership in a group that is not defined on the basis of the Member's, officer's, or employee's employment with the Senate.

The Committee has concluded, however, that if participants in a program are chosen on the basis of a selective screening process, the program does NOT qualify for the exemptions provided by 1(c)(19)(A) or (D). For example, if any government employee is eligible, but the program sponsor selects participants which it deems ''best qualified'' for inclusion, then the program cannot qualify for acceptance by a Member, officer, or employee under this exception. In other words, just because every individual in a defined class or group may apply for participation, does not make the program available to everyone in the group if further selection criteria are applied to limit the class or group.

The Committee has in the past determined that the Gifts Rule was not intended to prohibit Members, officers, and employees from accepting ***offers made to the general public***, as distinct

from offers targeted specifically at Senators or their staff. Similarly, scholarship awards that are available on the same terms to others outside the Senate were not intended to be covered by Rule 35.

> ***Example 25.*** Staffer *N* accumulates sufficient ''frequent flyer'' miles on personal travel to receive complementary airfare to Europe. He may accept the award because the ''frequent flyer'' program is available to all travelers.
>
> ***Example 26.*** A hotel chain offers a discounted ''government rate'' to all federal employees, whether they are on official trips or not. Senate employees may take advantage of the reduced rate.
>
> ***Example 27.*** Staffer *Q* is enrolled in a night school master's program in public policy. *Q* applies for a scholarship program available to all students at the school and receives an award. He may accept the scholarship.
>
> ***Example 28.*** *X*, a lawyer and a staff member for a Senate Committee, receives an advertisement from his local bar association offering term insurance at a discounted rate to all members of the bar association. *X* may take advantage of the offer.

Plaques, Trophies, or Other Commemorative Items

Section 1(c)(20) of Rule 35 allows a Member, officer, or employee to accept a plaque, trophy, or other item that is substantially commemorative in nature and which is intended solely for presentation. Thus, a Senator who speaks at a local high school as part of the school's Civics Day program may accept a plaque presented to him by the students commemorating his appearance in the program. However, a Member, officer, or employee may not accept, under this provision, an item of significant utilitarian or artistic value, for their own personal use.

The Rule requires that the commemorative item be solely for presentation. This provision contemplates that the item is presented as part of an event involving the Member or employee receiving the item, whether that event is a full-fledged reception, dinner or luncheon, or a visit by a delegation of constituents to the Member's office. For example, a model ship mailed by a marine supply company to Members in commemoration of the company's 100th anniversary would not qualify. A model ship presented to a Member upon the Member's tour of the shipbuilding facility could be a commemorative item.

Consistent with past practice, and notwithstanding the disclosure requirements of Senate Rule 34, the Committee will continue to require that Members and employees disclose commemorative items of a value in excess of $250 on annual financial disclosure forms. Trophies or awards won in athletic competition must be reported as earned income.[65]

Reimbursement for travel expenses in connection with an event at which a Member, officer, or employee is presented with a commemorative item, plaque or trophy is governed by Section 2 of the Gifts Rule. Accordingly, reimbursement for such travel expenses may not be provided by a lobbyist or foreign agent, and the appropriate advance authorization and disclosure forms must be filed with the Secretary of the Senate.

Items for Which a Waiver is Granted by the Ethics Committee

The Select Committee on Ethics is authorized to grant waivers in unusual cases. The Committee will grant requests for such waivers only where there is no potential conflict of interest or appearance of impropriety, generally, for gifts from individuals who have a long-standing personal or social relationship with the Member or employee, where it is clear that it is those relationships that are the motivating factors of the gift, rather than the fact of the individual's office or position in the Senate. The following list describes waivers granted by the Committee in situations that may have general interest.

[65] Interpretative Ruling 414; *see also*, Chapter 4, Financial Disclosure.

Wedding gift and ''significant other'' waivers. The Committee routinely waives the Gifts Rule to allow the acceptance of wedding gifts[66] as well as gifts given because of a significant, personal, dating relationship where the person giving the gift is not seeking official action from the person receiving the gift or that person's supervising Senator.[67]

Presidential Inaugural events. Under the current Gifts Rule,[68] the Presidential Inaugural event or inaugural events sponsored by private parties may qualify as ''widely attended'' events under Rule 35. The Rule provides that a Member, officer, or employee may accept an offer of free attendance only at a widely attended event (that is, an event at which attendance is expected to include **at least 25 persons** from outside Congress, and attendance is open to members from throughout a given industry or profession, or to a range of persons interested in an issue), **only from the sponsor** of the event, and **only if** the Member, officer, or employee determines that his or her attendance is appropriately connected with his or her official duties or position. Thus, a Member or staffer could accept an offer of free attendance from the Presidential Inaugural Committee for an event sponsored by the committee, or from a private group for an event sponsored by the group, if the event is widely attended and the Member or staffer determines that attendance is connected with his or her official duties or position.

If an event is a fundraiser sponsored by a political organization, a Member or staffer may accept an invitation to attend from any person or group that has obtained tickets from the sponsoring political organization. Tickets to a campaign event which is not a fundraiser may be accepted only from the sponsoring political organization.

If an event is a charitable fundraiser, a Member or staffer, or his or her spouse or dependent, may accept a ticket only from the charitable sponsor of the event. Tickets to events may also be accepted from a relative or state or local government or, if valued at no more than $250, on the basis of personal friendship. Attendance at a reception where food or refreshments of nominal value are offered other than as part of a meal is also permissible.

Unless an invitation comes within one of the above exceptions, Members and staff should recall that the Gifts Rule prohibits acceptance of any gift valued at $50 or more. Thus, bearing in mind the Rule's annual per source gift limit of $99.99, where no exception applies, a Member or staffer could accept a ticket (or tickets) to an event only if the ticket (or tickets) had a face value (or aggregate face value) of less than $50.

Constituent-sponsored meetings and meals. The Committee has also granted a blanket waiver for certain meetings, sponsored by constituent groups, that include a meal. This blanket waiver permits small (less than 25) constituent groups to meet with a Member or staffer over a meal if the meeting is: 1) regularly scheduled (e.g., a civic club's, labor union's, or industry association's annual visit to Washington), 2) open to all members of the group (as opposed to only officers or directors), and 3) attendance by a Member, officer, or employee is appropriate under the Rule because it relates to the Member, officer, or employee's official duties.

Disclosure Waivers. Waivers of the disclosure requirements of Title I of the Ethics in Government Act (Senate Rule 34) must be separately requested. See Chapter 5 of this Manual for information on disclosure waivers.

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[66] *See* Interpretative Ruling No. 437 (Dec. 15, 1987). Under the Gifts Rule effective January 1, 1996, these gifts will often fall under the exceptions for personal friends or relatives, and thus not require a waiver.

[67] *See* Interpretative Ruling No. 439 (June 18, 1990).

[68] In 1993, the Committee granted a blanket waiver permitting Senate Members and staff to accept tickets to 1994 inaugural events sponsored by the Presidential Inaugural Committee, in recognition of the uncertainty surrounding the value of these tickets and because of the unique public character of these inaugural events. See Dear Colleague letter, dated January 14, 1993, from the Members of the Committee. In prior inaugural years, tickets were acceptable under the former entertainment exception to the Gifts Rule. *See* Interpretative Ruling No. 394 (Jan. 18, 1985). The exception for entertainment was later deleted from the rule.

Food or Refreshments Other than as Part of a Meal

Section 1(c)(22) allows a Member, officer, or employee to accept food or other refreshments of a nominal value that are offered not as part of a meal. The Committee has adopted a reasonable, common sense interpretation of this exception, to include a reception where the attendees consume food (typically, hors d'oeuvres) or drink while standing up, as opposed to a sit-down meal; and a ''continental'' style breakfast, where coffee and donuts, bagels, etc. are served, as opposed to service of a hot meal.

Items of Little Intrinsic Value

A Member, officer, or employee is permitted by section 1(c)(23) to accept items of little intrinsic value, such as a greeting card, baseball cap, or T-shirt. The Committee will not assign a dollar value to the concept of ''little intrinsic value'' instead, it will be left to the reasonable discretion of each supervising Member as to whether a gift to the Member, or to a staffer under his or her supervision, falls within this exception, giving due regard to the kind of items enumerated in the exception.

General Guidelines

In addition, Senators and Senate staff should be wary of accepting any gift where it appears that the gift is motivated by a desire to reward, influence, or elicit favorable official action. In the 102d Congress, the Committee rebuked a Senator for repeated acceptance of and failure to disclose gifts from a university and its president over a period of years when the Senator was being asked to take routine official actions which affected the school. The Committee found this conduct, and the failure to disclose miscellaneous gifts from other persons (as required for gifts worth more than $250), inappropriate, despite finding no linkage between the gifts and any official action. Similarly, the Committee has advised a group of staffers against accepting coffee and donuts for their weekly legislative meeting from an organization that lobbied the Congress, ruling that ''such an arrangement between a committee staff and [an organization with] an interest within its jurisdiction could reflect discredit upon the Senate.''[69] Thus, repeatedly taking gifts which the Gifts Rule otherwise permits to be accepted may, nonetheless, reflect discredit upon the institution, and should be avoided.

Who is a ''Lobbyist'' for Purposes of the Gifts Rule

The Gifts Rule contains several restrictions specifically applicable to gifts from registered lobbyists and foreign agents. Members, officers, and employees may not accept from lobbyists or foreign agents gifts of personal hospitality or contributions to legal defense funds. In addition, a contribution by a registered lobbyist or foreign agent to a charity maintained or controlled by a Member, officer, or employee, or on the basis of a designation or recommendation by a Member, officer, or employee (unless it is a charitable contribution in lieu of honoraria), is a prohibited gift to the Member, officer, or employee. (For a detailed discussion, see section on ''Other Prohibited Gifts From Lobbyists, Lobbying Firms, and Foreign Agents'' in this chapter). Finally, a Member, officer, or employee may not accept reimbursement from a registered lobbyist or foreign agent for officially connected travel. (See section on ''Travel'' in this chapter).

Under the Gifts Rule, a ''registered lobbyist'' is a lobbyist registered under the Lobbying Disclosure Act of 1995 and an ''agent of a foreign principal'' is defined as an agent of a foreign principal registered under the Foreign Agents Registration Act. Pursuant to the Lobbying Disclosure Act, in addition to individuals who must register, many organizations are required to act as registrants, as, for example, organizations employing in-house lobbyists, and lobbying firms (entities with one or more employees who act as lobbyists for outside clients).

[69] *See* Interpretative Ruling No. 94 (Jan. 24, 1978).

For purposes of applying the special restrictions on lobbyists in the Gifts Rule, an organization employing lobbyists (outside or in-house) to represent solely the interests of the organization or its members will not be considered to be a ''lobbyist''. Thus, a corporation, trade association, or labor union that employs lobbyists to serve only the interests of the corporation or the members of the trade association or union would not be a ''lobbyist'' for purposes of the Gifts Rule, and could sponsor and reimburse for officially connected travel. On the other hand, a lobbying firm—that is, a firm that provides lobbying services for others—will be considered a lobbyist for purposes of these restrictions. Thus, the law firm that provides lobbying services for the firm's clients through an individual registered as a lobbyist will also be considered to be a ''lobbyist'' for purposes of the Gifts Rule, and may not contribute to a legal expense trust fund, contribute to a charity maintained or controlled by a Member, officer, or employee, or reimburse for officially connected travel.

TRAVEL

The Gifts Rule provides that a reimbursement:

> ''from an individual other than a registered lobbyist or agent of a foreign principal for necessary transportation, lodging and related expenses for travel to a meeting, speaking engagement, factfinding trip or similar event in connection with the duties of the Member, officer, or employee as an officeholder shall be deemed to be a reimbursement to the Senate and not a gift prohibited by this rule''.

Rule 35.2(a)(1)(emphasis added). Thus, if the Member or employee is participating in an event in connection with the duties of the Member or employee, he or she may accept necessary travel expenses from the sponsor of the event, as long as the sponsor is not a registered lobbyist or foreign agent.[70] For purposes of this Rule, the Committee has concluded that a ''lobbying firm,'' as defined in the Lobbying Disclosure Act of 1995, will also be deemed to be a ''lobbyist'' and may not provide reimbursement of travel expenses.

Although section 2 of Senate Rule 35 prohibits lobbyists from sponsoring or reimbursing expenses of Members, officers, or employees for officially connected travel, it does not prohibit a lobbyist who is an employee of the sponsoring organization, or who is an outside lobbyist hired by the sponsoring organization, from assisting the organization in arranging the event, for example, by issuing the invitations on behalf of the organization or by attending the event. Thus, Members, officers, or employees may accept invitations to participate in officially connected travel, even if the invitation comes through the sponsor's lobbyist, as long as it is clear that the lobbyist is making the invitation on behalf of his or her employer or client, who is the sponsor of and is paying for the event and who is not a lobbyist.

A Member, officer, or employee may not accept reimbursement for necessary expenses of ''factfinding'' or other travel connected with the performance of official duties for travel within a thirty-five (35) mile radius of the Member, officer, or employee's local duty station. Acceptance of necessary expenses authorized by this paragraph is also subject to certain time and other limitations, as will be discussed fully below. (See the section on ''Free Attendance at a Widely Attended Event'' earlier in this Chapter for a discussion of the geographic limitations applicable to such events).

Examples of events for which reimbursement could be accepted from the sponsor by the Member, officer, or employee could include conducting officially connected factfinding on a sponsor's premises, or on issues clearly relevant to the sponsor's interests, addressing a convention, attending a meeting, teaching a seminar, or a similar activity in connection with official duties.

[70] Senate Rule 35.2(a).

The term ''reimbursement'' includes direct, up-front payment of travel expenses by the sponsor, as well as the sponsor's indemnification of a staffer for travel expenses.

Reimbursement for necessary expenses for events which are substantially recreational in nature, however, is not considered to be ''in connection with the duties of a Member, officer, or employee as an officeholder,'' and will not be allowed.[71] Thus, Members or employees may not accept reimbursement for necessary travel expenses in connection with charity golf, tennis, fishing, or ski tournaments.[72]

While expenses for officially connected travel may be accepted, a Member or staffer may not accept travel from a private source to perform a core Senate function, such as appearing before a federal agency. Additionally, accepting payment beyond travel expenses in return for a speech or appearance is prohibited under the honoraria ban.[73]

An employee who plans to accept reimbursement for necessary travel expenses under this provision of the Rule must receive ADVANCE authorization in writing from his or her supervising Member or Senate officer, (not from the staff director, administrative assistant, chief of staff or other Senate employee) and must disclose the expenses reimbursed or to be reimbursed and the written authorization to the Secretary of the Senate within 30 days after completion of the travel.[74] The forms for these disclosures (RE–1 and RE–2) have been consolidated onto one form (RE–1/2),which should be filed with the Office of Public Records within 30 days after completion of travel (see Appendix G for a copy of the Rule 35 travel form.) Completion of these Rule 35 forms is not necessary for official travel paid with Senate funds or other government funds. The written authorization must include the employee's name, the name of the person making the reimbursement, the time, place, and purpose of the travel, and ''a determination that the travel is in connection with the duties of the employee as an officeholder and would not create the appearance that the employee is using public office for private gain.''[75] The authorization must be signed by the supervising Member or officer, and must include a good faith estimate of total transportation, lodging, meal, and other expenses reimbursed or to be reimbursed, as well as a determination that all of the expenses are necessary transportation, lodging, and related expenses.[76] Supervising officer in this context refers to officers of the Senate only (i.e. Secretary of the Senate, Sergeant at Arms, and Secretary of the Majority and Minority). All other forms filed under this section of the Rule will need to bear the signature of a Senator.

A Member who accepts reimbursement for necessary travel expenses under this provision of the Rule must also disclose the expenses reimbursed or to be reimbursed within 30 days after the travel is completed (on form RE–3). This disclosure must be signed by the Member, and must include a good faith estimate of total transportation, lodging, meal, and other expenses reimbursed or to be reimbursed, a determination that all of the expenses are necessary transportation, lodging, and related expenses, and ''a determination that the travel was in connection with the duties of the Member or officer as an officeholder and would not create the appearance that the Member or officer is using public office for private gain.''[77]

Finally, Senate Rule 34, Public Financial Disclosure, (Title I of the Ethics In Government Act of 1978, as amended) requires a reporting individual to make an annual disclosure of the receipt of reimbursements that cover travel-related expenses aggregating more than $250 from any one source during a calendar year. However, if the reporting individual properly reports the receipt

[71] Senate Rule 35.2(a)(2).

[72] An unsolicited offer of ''free attendance'' from the sponsor of the event, however, may be accepted. Rule 35.2(d)(3).

[73] 5 U.S.C. app. 7, § 501(b); Senate Rule 36. *See* Chapter 3 for a detailed discussion of the honoraria ban.

[74] Senate Rule 35.2(a)(1)(A) and (B).

[75] Senate Rule 35.2(b)(1) through (4).

[76] Senate Rule 35.2(c)(1) through (5).

[77] Senate Rule 35.2(c)(1) through (6).

of necessary expenses under Senate Rule 35 as discussed above, the reporting individual need not file a duplicate report of these expenses on the annual Financial Disclosure Report under Senate Rule 34.

> ***Example 29.*** A local Chamber of Commerce and an oil producers group invite a group of Senate staffers with responsibility for energy issues to a meeting to discuss energy problems and potential legislation. Neither group is a registered lobbyist, lobbying firm, or foreign agent. The staffers may accept travel expenses from the Chamber and/or the oil producers to attend the meeting.
>
> ***Example 30.*** The sponsor of a charitable golf tournament invites several Senators, along with numerous other celebrities, to participate in the tournament. The sponsor offers to pay the Senators' entrance fee of $150 in order to induce other people to contribute to the charity in return for the opportunity to play with the celebrities. The Senators may accept because the invitation comes from the sponsor of the charity event.[78] However, since the Rule specifically prohibits it, they may not accept the sponsor's offer to pay their expenses for travel (other than local transportation at the tournament site), lodging, meals, or other travel expenses.

Necessary Expenses

The Rule defines ''necessary expenses'' as ''reasonable expenditures for transportation, lodging, conference fees and materials, and food and refreshments'' [Rule 35.2(d)(2)]. The sponsoring organization may provide reimbursement for these expenses or may provide the food, lodging, or transportation directly. There is no dollar limit on the value of the necessary expenses, though the expenses must be ''reasonable,'' and travel expenses of $250 or more in value must be disclosed by Senators and those staffers who file annual financial disclosure statements. Nor are there restrictions on the mode of transport or the type of accommodations that may be accepted. Necessary expenses do *not* include any expenditures for recreational activities, or entertainment other than that provided to all attendees as an integral part of the event, unless the activities or entertainment are otherwise permissible under the Rule. Nor do necessary expenses include expenses which are associated with appearances or activities unrelated to the sponsor's event.

> ***Example 31.*** Senator *R*, who sits on the Armed Services Committee, has been invited to speak at a convention in Los Angeles, sponsored by a consortium of defense contractors. The day after the convention, *R* schedules a meeting with Department of Veterans Affairs officials in L.A. Senator *R* may *not* accept an extra day's accommodations from the consortium to attend this meeting.[79]

''Necessary transportation, lodging, and related expenses'' may include travel expenses of the Member's or employee's spouse or child, if the Member (or the employee's supervising Member or officer) signs a determination in writing that the attendance of the spouse or child is ''appropriate to assist in the representation of the Senate'' [Rule 35.2(d)(4)]. The Committee has concluded that necessary expenses which may be paid by the sponsor of legislative factfinding or other officially connected travel by a Member, officer, or employee do not include expenses for any individual (aide, fiance, significant other, etc.) who is not either the spouse or a child of the Member, officer, or employee. Thus, a Senate aide who is to accompany a Senator on officially connected travel must have received a separate invitation from the sponsor of the event.

A senatorial spouse traveling independently of the Senator in a quasi-official or officially connected capacity, should disclose reimbursement of necessary expenses under Senate Rule 34, which requires annual financial disclosure on May 15 of each year, rather than under the disclosure requirements of Senate Rule 35.

Reimbursement for other than ''necessary'' expenses will be deemed to be a gift.

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[78] Senate Rule 35, Section 1(d)(4).

[79] *See* Interpretative Ruling No. 214 (Dec. 22, 1978); Interpretative Ruling No. 89 (Nov. 21, 1977).

Needless to say, ''necessary expenses,'' for which one claims reimbursement, may never exceed one's actual expenses. With respect to foreign travel, Rule 39.2 stipulates that no Member, officer, or employee may seek or accept payment from the United States Government for any expense that has already been reimbursed through any governmental or non-governmental source. While not spelled out in the rules, this ''no double billing'' principle obviously applies to domestic travel as well. Moreover, a Member, officer, or employee who receives a per diem allowance for foreign travel must return to the United States Government any portion that is not actually used for necessary lodging, food, and related expenses (Rule 39.3).

Time Limits

Rule 35.2(d)(1) sets an upper limit of ''3 days exclusive of travel time within the United States or 7 days exclusive of travel time outside of the United States,'' absent a Committee waiver in advance. Recognizing the greater time required to travel to locations such as Alaska, Hawaii, and Guam, the Committee has construed the 3-day limit to apply only within the contiguous 48 states. Travel to destinations outside the contiguous 48 states is governed by the 7-day rule. These limits do not apply to publicly funded trips, that is, travel expenses paid from a committee account or a Member's personal office account or paid by a unit of federal, state, or local government; nor do the limits apply to officially connected travel funded by a Senator's principal campaign committee.[80]

The travel period begins upon arrival at the first business destination on the trip. The travel period ends upon departure from the last point of business on the trip. Three days means three 24-hour periods; seven days means seven 24-hour periods. The return transportation may be accepted even though it occurs after the expiration of the three- or seven-day period. Travel time itself does not count against the limits. Travelers may extend trips at their own expense and on their own time and still accept return transportation. Such incremental officially connected expenses may also be paid with the supervising Senator's excess campaign funds. Travelers may not accept additional reimbursements from the sponsor to cover the costs of personal travel. Travelers may accept transportation from one duty station to the site of the sponsored event and back to the duty station, or may accept travel expenses from the event to their next point of business. If a traveler receives invitations to consecutive independently arranged events with separate purposes, hosted by separate sponsors, the traveler may engage in back-to-back trips, accepting necessary expenses from the first sponsor for its part of the trip, and proceeding directly to the site of the second event, with necessary expenses assumed by the second host. In such a case, the day limit begins anew with the assumption of expenses by the second sponsor.

> ***Example 32.*** Senator *S*, from the Midwest, is invited to give a speech in Boston. He may accept airfare from Washington to Boston and then from Boston back to his home state. He may not accept additional airfare to return home by way of Los Angeles since that is not the normal route.
>
> ***Example 33.*** Staffer *T*, who advises her employing Member on environmental issues, is invited by an oil company to inspect its offshore drilling facilities and pollution control preparedness. The company proposes to have the staffer (accompanied by her spouse) fly from Washington to Alaska on Monday, arriving at 3 p.m., tour facilities on Tuesday through Sunday, and fly back on Monday afternoon, departing at 2:30. Assuming that the Member agrees in writing that this trip is directly related to the staffer's official duties and would not create the appearance that the staffer is using public office for private gain, and that attendance of the spouse is appropriate, the staffer may accept expenses for herself and her spouse.
>
> ***Example 34.*** A private university invites Staffer *U* to participate in a five day conference in Taiwan. After the conference ends, *U* wishes to take a week's vacation in Hong Kong.

[80] *See* Interpretative Ruling No. 157 (June 30, 1978). Similarly, there are no financial disclosure requirements under Senate Rule 34 or 35 for such publicly funded or campaign funded trips. Campaign funds used to pay officially connected travel expenses must be disclosed in accordance with the Federal Election Campaign Act.

U may accept reimbursement from the university for his expenses in Taiwan and for the cost of round trip airfare to and from Taiwan. U may then continue his travels at his own expense.

Example 35. Organization *A* invites Senator *V* to do fact-finding at its facilities in Miami on Tuesday and Wednesday. Organization *B* acting independently invites Senator *V* to participate in a conference in Orlando on Thursday and Friday. Senator *V* may fly to Miami and stay over Tuesday and Wednesday night at *A*'s expense and accept expenses from *B* for Thursday, Friday, and the flight home on Saturday. Either *A* or *B* may pay for the trip from Miami to Orlando. Reimbursements may never exceed actual expenses, of course.

Example 35A. Staff *D*, an employee of the Energy Committee, is scheduled to travel on official business to Arizona. An outside organization independently invites Staffer *D* to participate in an event scheduled in Oregon. The Oregon event concludes a day before Staffer *D* is scheduled to begin official business in Arizona. Staffer *D* may arrange for the outside organization to fly her from Washington, D. C. to Oregon and then to her next point of business in Arizona. [Note: Since the Arizona trip is necessitated by official activities, Senate funds must be used to pay for Staffer *D*'s per diem expenses in Arizona and the return flight to D. C.]

The Committee is authorized to permit a Senator or staffer to travel in excess of the time limits, but will only do so in exceptional circumstances. The fact that a particular trip's itinerary happens to extend beyond the limits will not, by itself, lead the Committee to issue a waiver. The Committee has permitted individuals extra time in the following unusual circumstances: One trip included lengthy in-country ground transportation (i.e., a two-day train trip to get from one location in the country to another). In another case, the program was approved and partially funded by the United States Government. In a third case, the participant provided substantial services (not mere fact-finding) each day of the trip. The participant in another event was performing services unrelated to official duties or status, on leave time (i.e., conducting a tour for an alumni association). In one other case, the individual needed an extra day to meet with a foreign country's president, who was unavailable during the rest of the trip. Any time a Senator or staffer seeks to accept travel for more than the allotted 3 or 7 days, the individual must secure the advance written permission of the Committee, which will decide on a case-by-case basis whether a waiver is appropriate.

Who May Pay

The provider of the Member, officer, or employee's travel will in most cases be the sponsor of the event. However, in certain circumstances, the Committee has found other parties besides the sponsor to be so closely connected to particular events and their sponsors as to render them permissible providers of Senate participants' necessary expenses. The Committee has ruled that an entity is sufficiently affiliated to the host of an event to provide necessary expenses to a participating Member, officer, or employee if:

1) the group is a member in good standing of the sponsoring organization, or

2) the directors, principal officers, or trustees of the group are the directors, principal officers, or trustees of the sponsoring organization, or

3) there is a direct corporate and/or financial relationship between the sponsoring organization and the group.[81]

Moreover, if the sponsor independently arranges for a third party to donate transportation, food, or lodging to enable a Senator or staffer to participate in an event, the Senate participant may accept such services as necessary expenses from the sponsor.[82] Senators and staffers should not themselves ask third parties to provide such services.

[81] *See* Interpretative Ruling No. 410 (Apr. 3, 1986).

[82] *See* Interpretative Ruling No. 422 (Dec. 10, 1987).

Example 36. A private college invites Senator *A* to speak at a seminar it is hosting. The college administrator explains that one of its trustees is CEO of a company with a corporate jet and has offered the college the use of the jet to transport the Senator. The Senator may accept the flight, as a necessary expense provided by the college to enable her to attend.

Example 37. The *XYZ* Trade Association invites Senator *B* to address its annual meeting. Company *X*, a member of the association, offers to transport *B* on its corporate jet. Senator *B* may accept.

Example 38. The *W* Foundation is holding a conference in Smithtown. *W* obtains from the Smith Company, headquartered in Smithtown, the loan of its corporate jet for the purpose of transporting Senator *C*, the keynote speaker, between Washington and Smithtown. Senator *C* may accept the transportation.[83]

Example 39. Senator *D* wishes to address the *V* Foundation's conference in Jonesville, but the Foundation does not have the resources to provide him with transportation. It would be inappropriate for Senator *D* to call his friend, Joe Jones, and ask for the loan of the Jonesco jet.

As noted above, travel provided by the Senate, or other units of federal, state, or local government is not subject to the limits of Rule 35 nor the 30-day disclosure of travel expenses under Rule 35. For restrictions on accepting travel from foreign government sources, see below.

Who May Accompany

Under Rule 35.2(d)(4), the sponsor of an event may pay travel expenses not only for the participating Senator or staffer, but also for the spouse[84] *or* child of the participant[85], if the Senator, or in the case of the staffer, the staffer's supervising Senator or officer, signs a determination in advance that the attendance of the spouse or child is ''appropriate to assist in the representation of the Senate.'' The Committee has concluded that necessary expenses which may be paid by the sponsor of legislative fact finding or other officially connected travel by a Member, officer, or employee do not include expenses for any individual (aide, fiance, significant other, etc.) who is not either the spouse or a child of the Member, officer, or employee.

Gifts and Travel from Foreign Governments and Organizations

Special rules apply to gifts from foreign governments. The United States Constitution prohibits Government officials, including Members and employees of Congress, from receiving ''any present . . . of any kind whatsoever'' from a foreign state or a representative of a foreign government without the consent of the Congress.[86] Congress has consented, through the vehicles of the Foreign Gifts and Decorations Act (FGDA)[87] and section 108(A) of the Mutual Educational and Cultural Exchange Act (MECEA)[88] to the acceptance of certain gifts from foreign governments.

The FGDA authorizes acceptance of a gift of minimal value[89] (currently no more than $100 for the Senate) when tendered as a souvenir or mark of courtesy. Additionally, a Member or employee may accept a gift of an educational scholarship or medical treatment from a foreign government.[90] The FGDA further allows a Member or employee to accept (but not to retain) a gift of

[83] *See* Interpretative Ruling No. 124 (May 5, 1978) (Senator may accept hotel accommodations provided free of charge by hotel to foundation sponsoring speech).

[84] *See also* Interpretative Ruling No. 214 (Dec. 22, 1978).

[85] *See also* Interpretative Ruling No. 75 (Oct. 3, 1977).

[86] Art. I, § 9, cl. 8. A similar prohibition on the acceptance of ''emoluments,'' or compensation, is discussed in Chapter 2.

[87] 5 U.S.C. § 7342.

[88] 22 U.S.C. § 2458(a).

[89] 5 U.S.C. § 7342(c)(1)(A) and (a)(5); *see* 41 C.F.R. § 101–49.001–5.

[90] 5 U.S.C. § 7342(c)(1)(B).

more than minimal value when refusal of the gift would cause offense or embarrassment or otherwise adversely affect United States foreign relations.[91] Such gifts, however, are deemed to be accepted on behalf of the United States. Within 60 days of acceptance, the recipient must turn the gift over to the Secretary of the Senate for use or disposal.[92] The Select Committee on Ethics may, upon written request, allow such a gift to be retained and used by the recipient during his or her Senate tenure.[93]

Both the FGDA and MECEA permit the acceptance of travel expenses under certain limited circumstances. A Member, officer, or employee may accept travel expenses from a unit of foreign government *only* under one of these two statutory grants of authority.

The FGDA stipulates that the travel must take place *totally outside* of the United States, must be consistent with the interests of the United States, and must be permitted by the Committee on Ethics. Pursuant to this authority, the Committee has given its general consent for Members, officers, and employees traveling outside the United States to accept ''in-country'' expenses from the host country government in connection with official duties, provided the 7 day limitation on provision of such expenses is observed. The Member, or in the case of a staffer, the supervising Member, must make the determination that acceptance of such ''in-country'' travel expenses is in the interests of the United States. The intent of this provision is to allow an individual who is already overseas (as on a CODEL) to take advantage of fact-finding opportunities offered by the host country.[94] Therefore, under the FGDA, the Member or employee may *not* accept expenses for transportation from the United States to the foreign destination or back home again.[95] Nor may this rule be circumvented by having a foreign government pay for transportation to or from a point just outside the United States border.

A gift of travel permitted under the FGDA and accepted by a Member or employee must be disclosed within 30 days after leaving the host country.[96] The Committee provides forms for this purpose (see Appendix G). Tangible gifts of more than minimal value must be disclosed at the time of deposit of the gift with the Secretary of the Senate.[97] The FGDA also covers gifts from ''quasi-governmental'' organizations closely affiliated with, or funded by, a foreign government (so that they are ''deemed to be'' a foreign government), as well as any international or multinational organizations with membership composed of foreign governments (such as NATO or the U.N.).

Section 108A of the Mutual Educational and Cultural Exchange Act authorizes the Director of the United States Information Agency to approve cultural exchange programs that finance ''visits and interchanges between the United States and other countries of leaders, experts in fields of specialized knowledge or skill, and other influential or distinguished persons. . .''[98] Members and employees of the Senate may accept travel expenses from a foreign government in order to participate in approved MECEA programs.[99] Expenses for MECEA trips sponsored as part of programs approved under Section 108A are not considered gifts, either for the purposes of the Senate Gifts Rule (and are therefore not subject to the 7 day time limit) or the FGDA. Under MECEA,

[91] 5 U.S.C. § 7342(c)(1)(B).

[92] 5 U.S.C. § 7342(c)(2).

[93] *See* Interpretative Ruling No. 406 (Dec. 18, 1985).

[94] *See* Interpretative Ruling No. 216 (Jan. 5, 1979) (Senator on official trip to foreign country may accept transportation, lodging, and hospitality from foreign government in order to visit remote areas of country).

[95] *See* Interpretative Ruling No. 178 (Sept. 29, 1978) (Senate employee may not accept expenses from a foreign government to participate in a seminar to be held outside the United States); Interpretative Ruling No. 143 (June 14, 1978) (Senate employees may not accept offer to fly to foreign country at the expense of the foreign government in order to attend treaty ratification ceremony).

[96] 5 U.S.C. § 7342(c)(3).

[97] 5 U.S.C. § 7342(c)(3).

[98] 22 U.S.C. § 2452(a)(2)(i).

[99] 22 U.S.C. § 245(a)(1). *See* Interpretative Ruling No. 261 (May 22, 1979).

however, the traveling Member or employee may *not* accept travel expenses for a spouse or family member.[100] While travel expenses accepted under the FGDA are reported separately on specialized forms, expenses accepted as part of a program approved under Section 108A of MECEA must be disclosed only in the Reimbursement section of the annual Financial Disclosure form filed pursuant to Senate Rule 34. Rule 35 reporting (forms RE–1/2, RE–3) is not required for Section 108A MECEA travel.

Example 40. A private foundation invites Senator *E* on a fact-finding trip to China. Senator *E* may accept expenses for travel to and from China and up to 7 days' food and lodging within China for herself and her spouse, if the Senator makes a written determination that her spouse's attendance is appropriate to assist in the representation of the Senate. She must disclose the trip under the category of Reimbursements on her annual Financial Disclosure form.[101] In-country expenses paid by the government of China must be reported under the Foreign Gifts and Decorations Act.

Example 41. The Chinese Agricultural Ministry invites the Members of the Agriculture Committee on a six-day tour of Chinese farm cooperatives. The tour is not part of an approved cultural exchange program. The Members may, consistent with the FGDA, accept expenses for themselves and their spouses while they are in China, but they may not accept airfare to and from China from the Chinese government. They must disclose the receipt of these expenses for themselves and their spouses on an FGDA reporting form within 30 days of leaving China. They need not repeat the disclosure on their annual Financial Disclosure forms.

Example 42. A public university in China invites Senator *F* to attend a two-week seminar and discussion series with Chinese leaders at the school. This program has been approved by the United States Information Agency, under MECEA. Senator *F* may accept expenses for travel to and from China and related expenses for his two-week stay. If he wishes to bring his spouse, he must do so at personal expense, as the MECEA does not permit payment of spousal travel expenses. He must disclose the trip under the category of Reimbursements on his annual Financial Disclosure form.

Example 43. A foreign ambassador invites Senate employee *G* to fly from the United States to the foreign country at the expense of the foreign government to attend a treaty ratification ceremony. Since the trip is not part of a MECEA program and does not comply with the terms of the FGDA because it begins and ends within the United States, G must decline.[102]

''Lame Duck'' Travel

Senate Rule 39.1 bars United States government-funded foreign travel, by any Senator whose term will expire at the end of a Congress, after:

1) the date of the general election in which his or her successor is elected; *or*

2) if the Member is not a candidate in the general election, the date of that election or the adjournment sine die of the second regular session of that Congress, whichever is *earlier*.

Employees of these Senators (whether personal office or committee) are subject to the same restrictions, as are officers and committee employees whose employment will terminate at the end of a Congress.

FREQUENT FLYER MILES

Pursuant to Senate Rules Committee travel regulations, discount coupons, frequent flyer mileage, or other evidence of reduced fares, obtained on official travel shall be turned into the office for which the travel was performed so that they may be used for future official travel. This regulation is based upon the general government policy that promotional materials earned as a result

[100] *Id.*

[101] *See* Chapter 5 for details of financial disclosure requirements.

[102] Interpretative Ruling No. 143 (June 14, 1978). *See also* Interpretative Ruling No. 167 (Aug. 10, 1978) (staffer prohibited from accepting travel expenses from foreign political party to attend inauguration of foreign president).

of trips paid by appropriated funds are the property of the government and may not be retained by the traveler for personal use (*See* the U.S. Senate Handbook, II–44). The 1999 Legislative Branch Appropriations Bill provides an exception for frequent flyer miles relating to air transportation for a Member of the Senate, the spouse of that Member, or a son or daughter of that Member, between the Washington metropolitan area and the state of that Member. Any questions about the application of this provision should be directed to the Senate Rules Committee.

Travel Summary

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Reminder: Lobbyists, lobbying firms, and foreign agents may not pay the necessary expenses of travel.

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Source	Authority	Time Limit	Reporting
Domestic Government (Federal, State, or local)	Senate Rule 35; I.R. No. 157; I.R. No. 442..	None	For employee, internal approval by supervising Senator, but no reporting to Secretary of the Senate or to the Ethics Committee
Foreign Government	§ 108(A) of Mutual Educational and Cultural Exchange Act (MECEA);.	None, but may not accept travel expenses for family member or aide.	Annual Ethics in Government Act (EIGA) financial disclosure statement
Foreign Government	Foreign Gifts and Decorations Act.	7 days foreign, excluding travel time; may not accept travel to or from the U.S..	An FGDA report form must be filed with the Ethics Committee
Private source (person, organization or corporation)	Senate Rule 35.2	3 days domestic, 7 days foreign, excluding travel time.	For employee, advance authorization by supervising Member; for Members and employees, disclosure of expenses to Secretary of Senate within 30 days. For filers, no annual EIGA financial disclosure statement if expenses exceed $250, unless previously reported pursuant to the 30 day rule. For senatorial spouses traveling independently in an officially connected capacity, disclose expenses under Senate Rule 34 (Financial Disclosure, Reimbursement Section), rather than under Rule 35.2.

OTHER PROHIBITED GIFTS FROM LOBBYISTS, LOBBYING FIRMS, AND FOREIGN AGENTS

In addition to the restrictions on lobbyists, lobbying firms, and foreign agents discussed above, Rule 35.3 **prohibits** the following:

(a) Anything provided by a registered lobbyist or an agent of a foreign principal to an entity that is maintained or controlled by a Member, officer, or employee.

(b) A charitable contribution (as defined in section 170(e) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal on the basis of a designation, recommendation, or other specification of a Member, officer, or employee (not including a mass mailing or other solicitation directed to a broad category of persons or entities), other than a charitable contribution permitted by paragraph 4 of Senate Rule 35, regarding payments in lieu of honoraria to charities not maintained or controlled by a Member, officer, or employee.

(c) A contribution or other payment by a registered lobbyist or an agent of a foreign principal to a legal expense fund established for the benefit of a Member, officer, or employee.

(d) A financial contribution or expenditure made by a registered lobbyist or an agent of a foreign principal relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of Members, officers, or employees.

This section generally prohibits indirect gifts by lobbyists and foreign agents to Members, officers, and employees, by prohibiting gifts from lobbyists and foreign agents to entities controlled by, designated by, or established for the benefit of Members, officers, and employees (this prohibition includes contributions in lieu of honoraria, see Chapter 3, discussion of Honoraria Ban). Entities maintained or controlled by a Member, officer, or employee could include, for example, charitable trusts or other organizations where a Member sits on the board of directors. Whether an organization is ''maintained or controlled'' by a Member is a decision which will be made by the Committee on a case-by-case basis.

Additionally, a contribution to any charity from a lobbyist or foreign agent based upon the recommendation of a Member, officer, or employee may be deemed a gift to the Member, officer, or employee. There are exceptions for mass mailings; solicitations directed to a broad range of persons or entities; and payments in lieu of honoraria made by a lobbyist or foreign agent to charities not maintained or controlled by a Member, officer, or employee, if the payment is reported as discussed below.

Often, a Member is asked to lend his or her name to a fundraising effort by a charity (or other non-profit organization where no compensation or other economic benefit accrues to the Member; see Interpretative Ruling 438), by allowing the Member's name to appear on the letterhead used to solicit donations, by signing or permitting the Member's name to be used in the actual solicitation, or by making a personal appeal on behalf of the charity at a fundraising event. (See also the section on ''Senate Letterhead'' in Chapter 7 for prohibitions on its use.)

The Committee has determined that a Member who does nothing more than allow his or her name to appear on fundraising letterhead, for example, as honorary chair, or host, has not solicited a contribution from anyone, but that a Member does make a solicitation when he or she signs the fundraising letter, or allows his or her name to appear in the body of the fundraising letter as supporting or endorsing the fundraising effort. A Member who makes a personal appeal at a charitable fundraiser would clearly be making a solicitation for charitable contributions.

Under the new Rule, contributions to charity that are made as the result of a solicitation by a Member or employee are not deemed to be prohibited gifts to the Member or employee, unless

the contributions are made by lobbyists or foreign agents. In the case of large, organized fundraising efforts, however, it is not practical for a Member to review the mailing list, or the list of expected guests, to determine if any lobbyists are included in the group. Nor would it seem fair to penalize a Member who makes an appeal at a charitable fundraising event and then discovers that there are one or more lobbyists in the assembled group.

In this regard, the Rule specifically allows mass mailings or other charitable solicitations directed to a broad category of persons or entities. The Committee will rely, in part, on the meaning of the term ''mass mailing'' in the franking statute: that is, Members may participate in charitable solicitations by means of mailings or other solicitations to 500 or more. In addition, because the Rule also permits other charitable solicitations directed to a broad category of persons or entities, a Member may make a solicitation in connection with a charitable fundraising event, whether by mail or in person at a fundraising event, so long as the group of prospective donors is sufficiently large (50 or more), and the Member has no reason to believe that the solicitation is targeted specifically at lobbyists or foreign agents. Regardless of the number of persons being solicited, however, Members should refrain from making any solicitation on behalf of a charity, aimed or directed specifically at lobbyists or foreign agents.

In addition, lobbyists and foreign agents may not make any contribution or expenditure relating to an event ''sponsored by or affiliated with an official congressional organization,'' such as a staff retreat or conference. It should be noted in this context, however, that Rule 38 already prohibits any third party from making any contribution or expenditure to defray expenses related to an official or officially connected event.[103]

DETERMINING THE SOURCE OF A GIFT

The new Gifts Rule prohibits Members and employees from accepting gifts from the same source during a calendar year of an aggregate value greater than $99.99. This raises the question of whether each individual member or employee of an organization (corporation, partnership, association, professional corporation, limited partnership, or other form of business) has a separate aggregate limit, or whether each gift coming from an affiliate of the same organization is aggregated as a gift from the organization.

The Committee has defined ''source'' for these purposes to include the organization with which the paying individual is affiliated. Thus, an individual who gives a Member or staffer a gift, as well as his or her affiliated organization, will both be considered to be the source of a gift, for purposes of reaching the $99.99 aggregate, unless the individual providing the gift is doing so based on personal friendship with the Member or staffer, and is paying personally for the meal, without receiving reimbursement from the organization. That is, an employee of ABC Co. who takes a Member to lunch will be presumed to be doing so on behalf of ABC Co., and the value of the meal will count toward the aggregate of the individual and also his employer, ABC Co., unless the personal friendship exception applies. Thus, every organization, regardless of the number of employees, partners, members, or the like, will be able to provide a total of only $99.99 in meals or other gifts to any particular Member or staffer during a calendar year.

Often, a Member or staffer will be invited to a meal by two or more persons from the same organization, who then split the bill. In this situation, the entire value of the meal should be considered to be a gift from the organization, and counted toward the organization's and each of the individuals' $99.99 aggregate for the year.

If the persons are from different firms, however, with each paying for one-half of the meal, the Member or staffer should still treat the meal as one gift, and then attribute the entire value of the meal to one of the persons and his or her employer for purposes of complying with the $49.99 limit for a single gift, and staying within the $99.99 limit for the calendar year.

[103] *See* Interpretative Ruling No. 442.

SUMMARY OF GIFTS PROVISIONS RELATED TO SENATE SPOUSES

In General

Unlike the previous Gifts Rule, the current Gifts Rule places no restrictions on the acceptance of gifts by spouses. However, the new Rule does provide that a gift to any family member (or any other individual based on the individual's relationship with the Member, officer, or employee) will be considered a gift to the Member, officer, or employee:

> if it is given with the knowledge and acquiescence of the Member, officer, or employee and the Member, officer, or employee has reason to believe the gift was given because of the official position of the Member, officer, or employee.

See Section 1(b)(2)(A). Thus, for example, a spouse could accept gifts from his or her friends and business associates; but any gift that is given to a spouse because of his or her status as the spouse of a Member, officer, or employee, with the knowledge or acquiescence of the Member, officer, or employee, would be subject to the limitations of the Rule and would be a gift to the Member, officer or employee.

Food and Refreshments

The Rule also provides that if food or refreshment is provided at the same time and place to a Member, officer, or employee and his or her spouse or dependent, only the food and refreshment that is offered to the Member, officer, or employee will be treated as a gift for purposes of the new Rule. *See* Section 1(b)(2)(B). In other words, if an individual invites a Member and her husband to dinner, the Member's meal is treated as a gift to the Member, but her husband's meal is not.

Spouse's Outside Business/Employment Activities

The Rule also provides that food, refreshments, lodging, and other benefits that result from a spouse's outside business or employment activities or other outside activities not connected to the Member, officer, or employee's duties will not be subject to the restrictions of the new Rule, if these benefits have not been enhanced because of the Member, officer, or employee's position, and they are customarily provided to others in similar circumstances. *See* Section 1(c)(7). Thus, for example, a Member's attendance at a Christmas dinner-dance hosted each year by his wife's employer, for employees and their spouses, will not be subject to the restrictions of the new Rule.

Accompaniment at a Widely Attended Event

The Rule also provides that a Member, officer, or employee may accept an unsolicited offer of free attendance at a widely attended event from the sponsor of the event for an accompanying individual (which may be a spouse) if others at the event will generally be similarly accompanied, or if the attendance of the accompanying individual is appropriate to assist in the representation of the Senate. *See* Section 1(d)(2).

The **spouse** of a Member can participate in activities and events unaccompanied by a Member in a quasi-official or officially connected capacity. Thus, where an event meets the Gifts Rule requirements relating to widely attended events such that a Member may attend an event, the spouse of a Member may attend the event unaccompanied by the Member, provided that the Member makes a determination that the attendance of the spouse is appropriate to assist in the representation of the Senate.

Non-Recreational Charity Events

A spouse or dependent of a Member, officer, or employee may also accept an unsolicited offer of free attendance from the sponsor of a charity event, even if there is reason to believe that the invitation is extended because of an individual's status as the spouse or dependent of such Member, officer, or employee. However, in these circumstances the spouse or dependent may accept reimbursement from the sponsor for transportation and lodging only if the charity event is not substantially recreational in nature. *See* Section 1(d)(3).

Reimbursable Travel

Finally, the Rule provides that a Member, officer, or employee may be reimbursed by an individual (other than a registered lobbyist or foreign agent) for the necessary transportation, lodging, and related expenses of a spouse or child who travels with the Member, officer, or employee on an officially connected trip, if the Member or officer (or in the case of an employee, the supervising Member or officer) signs a written determination that the attendance of the spouse or child is appropriate to assist in the representation of the Senate. *See* Section 2(d)(4). A senatorial spouse traveling independently of the Senator in a quasi-official or officially connected capacity, should disclose reimbursed expenses under Senate Rule 34 (Financial Disclosure, Reimbursement Section), rather than under Rule 35.2.

SOLICITATION OF GIFTS

As part of the Ethics Reform Act of 1989, Congress enacted a new, government-wide ban on solicitation, codified at 5 U.S.C. § 7353. This provision for the first time limited not only what government officials could *accept* but also that which an official could *solicit*.

Section 7353 states, in pertinent part:

> (a) Except as permitted by subsection (b), no Member of Congress or officer or employee of the executive, legislative, or judicial branch shall solicit or accept anything of value from a person—
>
> (1) seeking official action from, doing business with, or . . . conducting activities regulated by, the individual's employing agency; or
>
> (2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.

Subsection (b) authorizes this Committee to issue implementing rules or regulations for the Senate, ''providing for such reasonable exceptions as may be appropriate.'' The Senate Gifts Rule, as interpreted by this Committee, defines that which Members, officers, and employees may accept. No rule or law authorizes a Member, officer, or employee of the Senate to solicit anything of value. The Committee has ruled, however, that section 7353 restricts only soliciting or accepting gifts directly or indirectly for oneself. Thus, Members and staffers may solicit for charitable organizations[104] and campaign committees without violating section 7353 or the Senate Gifts Rule.[105]

BRIBERY AND ILLEGAL GRATUITY

Section 7353 of Title V generally bars solicitation and acceptance of gifts, except as permitted by the Committee on Ethics. Where the solicitation or acceptance is tied to an official act, how-

[104] Members and staffers may not, however, solicit charitable contributions from registered lobbyists or foreign agents, lest any resulting contribution from the lobbyist or foreign agent be deemed a gift to the Member or staffer who made the solicitation. Rule 35.3(b).

[105] *See* Interpretative Ruling No. 438 (July 16, 1990). *See also* Senate Rule 41, which largely limits political solicitation by Senate staff to three political fund designees in each Senator's employ. Rule 41 is discussed in more detail in Chapter 5.

ever, the U.S. Criminal Code comes into play. The federal bribery statute makes it a crime for a public official, including a Member or employee of the Senate, to ask for or receive gifts, money, or other things of value in connection with the performance of official duties. Bribery occurs when a federal official ''directly, or indirectly, corruptly'' receives or asks for ''anything of value personally or for any other person or entity, in return for . . . being influenced in the performance of any official act.''[106] The lesser offense of illegal gratuity results when an official directly or indirectly seeks or receives personally anything of value other than ''as provided by law . . . for or because of any official act performed or to be performed.''[107] The United States Court of Appeals for the District of Columbia Circuit discussed the distinguishing features of the two sections:

> The bribery section makes necessary an explicit *quid pro quo* which need not exist if only an illegal gratuity is involved; the briber is the mover or producer of the official act, but the official act for which the gratuity is given might have been done without the gratuity, although the gratuity was produced because of the official act.[108]

Both clauses require as an element of the offense that the thing of value be related in some manner to an official act, that is, the thing of value must be offered or requested either ''in return for being influenced in'' or ''for or because of'' an official act. In United States v. Sun-Diamond Growers of California, 526 U.S. 398 (1999) the Supreme Court confirmed that in order to show a violation of the illegal gratuity provision, the Government must prove a link between a thing of value conferred upon a public official and a *specific* official act for or because of which it was given. This element—that the thing of value relate to an official act—distinguishes a bribe or illegal gratuity from a mere gift. A gift, as generally defined, is a ''voluntary transfer'' of property, made ''without consideration.''[109] A bribe induces an official act; an illegal gratuity rewards or seeks to elicit favorable official action; a gift has no connection to any official act.

> ***Example 44.*** Lobbyist *U* offers Senator *H* a substantial campaign contribution if *H* will introduce certain legislation. *U* has violated the bribery law, as will *H* if *H* accepts.
>
> ***Example 45.*** Senator *I* introduces S. 007 and manages the bill through passage solely because I believes the legislation will be good for the country. Lobbyist T also favors the legislation because it will benefit his clients. Lobbyist *T* sends Senator I a color television set, with a note saying, ''In appreciation for your good work on S. 007.'' The television is an illegal gratuity.
>
> ***Example 46.*** In mid-December, a trade association sends a basket of fruit (valued at under $50) to Senator Claus' office, with a note saying, ''Season's Greetings to Senator Claus and staff.'' The fruit is an acceptable gift.
>
> ***Example 47.*** Caseworker *J* helps *S*, a new immigrant to the district, get a ''green card.'' The following week, *J* receives a crystal vase, with a note from *S* saying, ''I'll never be able to repay you for what you've done for me.'' *J* must return the vase; it is an illegal gratuity.

A person found guilty of bribery may be fined up to 3 times the value of the bribe, imprisoned for up to 15 years, and disqualified from holding any federal office.[110] A person found guilty of seeking or receiving an illegal gratuity may be fined and/or imprisoned for up to two years.[111] Violation of these laws may also lead to disciplinary action by the Senate.

In the 96th and 97th Congresses, the Committee investigated charges, arising out of the Department of Justice's ''ABSCAM'' probe and the subsequent conviction of Senator Harrison A.

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[106] 18 U.S.C. § 201(b)(2)(A).
[107] 18 U.S.C. § 201(c)(1)(B).
[108] *United States v. Brewster*, 506 F.2d 62, 72 (D.C. Cir. 1974).
[109] Black's Law Dictionary 688 (6th ed. 1990).
[110] 18 U.S.C. § 201(b).
[111] 18 U.S.C. § 201(c).

Williams, Jr. (NJ) of bribery and related charges.[112] The Committee found that Senator Williams had violated federal law and Senate Rules 34 (financial disclosure) and 37 (conflict of interest) and had engaged in improper conduct which reflected adversely upon the Senate. Specifically, the Committee found that the Senator had offered to use his official influence to obtain government contracts for a business venture in which he had a personal financial interest and offered to introduce a private immigration bill on behalf of a purported wealthy foreigner in order to induce that person to invest in the business. After a hearing, the Committee unanimously recommended his expulsion from the Senate.[113] A vote of the full Senate was scheduled, but the Senator resigned before it took place.

In addition to the bribery and illegal gratuities statute, several other provisions of the Federal Criminal Code restrain Members and staffers from accepting private compensation in matters of federal concern. Section 203 of Title 18 prohibits Senate Members and employees from accepting compensation for 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. Even if Members and employees are acting properly and within their official capacities, they may not receive compensation, other than their congressional salaries, for acts before a unit of federal government.[114] Nor may an individual solicit or receive anything of value (including campaign contributions) in return for supporting someone for, or using influence to obtain for someone, a federal job.[115] A Member, officer, or employee should, therefore, be wary of accepting any gifts, favors, contributions, or entertainment from persons whom the Member or staff has assisted with dealings with the agencies of the federal government.

VALUATION OF CERTAIN GIFTS

Generally, for the purpose of the Gift Rule, items are valued at their fair market value, and at their retail, rather than wholesale prices.[116] Often an item may be priced differently at different stores. In determining whether a particular gift may be accepted, a Member, officer, or employee may use the lowest price at which the item is available to the general public at retail.

Tickets to Fundraisers. The value of the gift to the donee is the face value of the ticket.

Season Passes. The value of a season pass (e.g., for sporting or cultural events) is the full market value at the time it is accepted, undiminished by any subsequent failure to use the pass or any portion of it. Thus, if the pass has a market value in excess of the gift limit at the time it is offered, it may not be accepted, even if the recipient does not intend to attend every event.[117] Similarly, a pass for several days' worth of entertainment (e.g., an amusement park pass or ski lift pass good for a set number of days) is valued at its total cost, and is not viewed as separate gifts, with separate limits each day.

Tickets to Seats in Performance Arenas. The value of a ticket to a seat in a performance arena, including a sky or luxury box, club seat, or other similar seat, is the face value of the ticket, plus the fair market value of any attendant food or parking privileges, but if the ticket has no face value, the value will be the price of the seat in closest proximity bearing a face value, plus

[112] Senator Williams was convicted of conspiracy (18 U.S.C. § 371), bribery (U.S.C. § 201(c)), receipt of illegal gratuities (18 U.S.C. § 201(g)), conflict of interests (18 U.S.C. § 203(a)), and interstate travel in aid of a racketeering enterprise (18 U.S.C. § 1952).

[113] *Investigation of Senator Harrison A. Williams, Jr.*, Report of the Select Committee on Ethics, United States Senate, to Accompany S. Res. 204, 97th Cong., 1st Sess. 7 (1981).

[114] *May v. United States*, 175 F.2d 994 (D.C. Cir.), *cert. denied*, 338 U.S. 830 (1949). Indeed, if an employee is acting outside his or her official duties, the employee may not act as anyone's agent or attorney before any Federal agency or officer in a matter in which the United States has an interest, *whether or not* compensation is received. 18 U.S.C. § 205(a). This statutory provision is discussed in Chapter 3.

[115] 18 U.S.C. § 211.

[116] *See* Interpretative Ruling No. 251 (Apr. 27, 1979).

[117] *See* Interpretative Ruling No. 31 (June 16, 1977); Interpretative Ruling No. 327 (July 1, 1980).

the fair market value of any attendant food or parking privileges. In the case of box seats, this ruling applies where the attendee is sharing the use of the box with others and is not getting exclusive use of the box.

Club Memberships. Club memberships typically involve an initiation fee or equity contribution, annual or monthly dues, and facility or service usage charges. ''Honorary'' club memberships usually involve a waiver or reduction in the normal level of fees, contributions, dues or charges levied on members. They might also contemplate limited club usage and limited or no voting or equity rights.

The Committee has determined that for purposes of the new Gifts Rule and Rule 34 on disclosure, an honorary club membership will be valued at what it would cost an individual receiving no waiver or reduction to purchase club benefits or access equivalent to that provided with the honorary membership, without regard to anticipated or actual usage, and without regard to whether voting or equity rights are received.

Thus, an honorary club membership will be valued at the total market price of the club's normal initiation fee or equity contribution, annual or monthly dues, and facility or service usage charges, with no diminution in value for lack of usage, voting rights, or equity interest. The value of any gift which results from acceptance of an honorary membership should be the total market price of whatever membership price components are accepted during the calendar year, less any amounts paid by the honorary member during the calendar year. Like season passes, memberships in clubs (e.g., country clubs, athletic clubs, eating clubs) are valued at their full market value at the time of joining, that is, what it would cost anyone else to join, including any initiation fees.

> ***Example 48.*** Senator *L* is offered a complementary membership in a health club. Normally, new members are assessed an initiation fee of $45 and annual dues of $500. The Senator may not accept the membership.

Private Air Travel. Travel on private planes (or helicopters) is valued as follows, both for purposes of the Gifts Rule and the financial disclosure statute. If the cities between which the Member or employee is flying have regularly scheduled air service, regardless of whether such service is direct, then the value of the use of a private aircraft is the cost of a first-class ticket from the point of departure to the destination. If there is no first class service, then the standard (coach) rate is used. If there is no regularly scheduled air service, then the value of the gift is the cost of chartering the same or a similar aircraft.[118] If a group of people are traveling between cities with no regularly scheduled service, then the value to each person is his or her proportionate share of the cost of chartering.

Group Gifts.

a. Several individuals contribute to one gift/one sponsor bundles several smaller gifts. If a number of individuals gives a present to a Member, officer, or employee, the gift's total value will be apportioned among the individuals only if the individuals are acting as individuals and not as or on behalf of a group. An organization or group, however, may not circumvent the gift limit by purporting to give an item on behalf of its employees or members.[119] Moreover, if one source bundles together a number of smaller gifts from other sources, the Committee will view the entire package as a single gift from the presenter, worth the sum of all its parts.

> ***Example 49.*** Ten friends of Senator M chip in $30 apeice to buy M a birthday present. Although the total value is $300, this is considered a gift worth $30 from each person and is within the gift limit.

[118] *See* Interpretative Ruling No. 412 (Aug. 11, 1986).

[119] *See* Interpretative Ruling No. 201 (Nov. 27, 1978).

Example 50. A trade association with 100 members offers Senator N a gift worth $1,000, with a note saying, ''From the members of Association R.'' Senator N may *not* accept, as this is a single gift from the association.

Example 51. A charitable foundation sponsors a celebrity tennis tournament featuring athletes, actors, and business leaders, along with a few Senators. The foundation offers to all participants a package consisting of $400 worth of tennis accessories from a number of corporate contributors to the foundation. The Senators may *not* accept the package, as it comprises a single gift from the foundation.

In construing this principle, as always, Members, officers, and employees must observe both the letter and the spirit of the Gift Rule. Gifts may not be artificially broken down, either by donors (as in the trade association example above) or in substance. Thus, a set of golf clubs is valued at the price of the set, even if it is given one club at a time. Similarly, a Member or employee could accept a movie ticket with a face value of less than $10 without counting it toward the $100 aggregate; accepting a ticket worth less than $10 from the same source every week, however, would violate the spirit of the Rule.[120]

b. Gifts of Food and Meals. A question about value is also presented when a group of Senate employees receives a gift of food from an individual outside the Senate. The Committee has historically distinguished the provision of ''food'' from the sharing of a ''meal,'' and this distinction is reflected in the Committee's handling of gifts of food. The Committee has previously concluded that a gift of food sent to a group of employees in a Senate office is one gift to the Senator whose office receives the food, and the value of the gift is the total fair market value retail of the food. Thus, if a lobbying firm wished to send pizza to staff members in a Senate office, the value of the gift to the Senator whose office is involved would be the full cost of the pizza, and could be accepted only if that total value is less than $50. For further discussion of food and meal gifts, see discussion of the divisibility of gifts in this chapter under ''What is a Gift''.

c. Parties and Receptions. Another area of activity which generates questions about ''value'' in the group context is that of parties or receptions. When a Senate Member, officer, or employee leaves the Senate, for example, it is not uncommon for a group of his or her friends to sponsor a party or reception in honor of the Member, officer, or employee. Section 1(c)(11) of the Gifts Rule excepts nonmonetary awards from coverage by the Rule's gift limits, along with any food, entertainment, or refreshments associated with presentation of the award. Based upon this section of the Rule, the Committee has concluded that the cost of an event at which an individual is honored is not a gift to the honoree. Thus, an individual who is leaving the Senate may be honored at an event and the only gift which the individual will be deemed to receive is the total value of whatever food and drink the individual consumes at the event. Those Senate Members, officers, or employees who are sponsoring the event to honor the departing employee may share the cost of the event among themselves in any manner (see Rule 35 (1)(c)(6)) which does not violate the Gifts to Superiors statute (5 U.S.C. 7351). In this regard, the Committee has ruled that a Member may use officially connected funds to pay for an office party for a departing staffer and may purchase a commemorative item for the staffer in recognition of the staffer's service to the Senate (See Interpretative Ruling 330). Also, a reception sponsored by an outside entity in honor of an entire office or committee will not be treated as a gift to the Member or Chairman. The value of any gift received by an individual attending the reception is the value of the food or beverages consumed by the individual; depending upon the facts, the event may qualify as either a ''reception,'' under section 1(c)(22), or as a ''widely attended'' event under section 1(c)(18).

[120] *See* Interpretative Ruling No. 94 (Jan. 24, 1978).

Taxes As Part of the Value of a Gift.

The Committee has previously ruled that for purposes of the Gifts Rule, the value of an item did not include taxes that would be imposed on the sale of the item. This policy will continue under the new Gifts Rule, and gratuities will be treated the same as taxes for purposes of determining the value of a gift.

FINANCIAL DISCLOSURE OF GIFTS

Under the Ethics in Government Act of 1978, as detailed in Chapter 5, Members and certain employees of the Senate must disclose information in annual financial statements, including the donor, description and value of all gifts aggregating $250 or more from a single source in a single year.[121] Additional information on certain gifts received by the spouse or dependent of the Member or employee may also need to be filed.[122] Further, as noted above, tangible gifts of over minimal value that may be received from foreign governments must be disclosed at the time such gifts are required to be turned over to the United States, that is, within 60 days of receipt; and gifts from foreign governments of travel or expenses for travel outside the United States must be reported within 30 days of departure from the host country.

The fact that a gift must be disclosed under the Ethics in Government Act (Senate Rule 34) has no bearing on whether the gift may be accepted under the Gifts Rule (Senate Rule 35). In other words, disclosing the acceptance of a gift does not mean that the gift was necessarily acceptable.

[121] 5 U.S.C. app. § 102(a)(2).
[122] 5 U.S.C. app. § 102(e)(1).

Chapter 3: CONFLICTS OF INTEREST AND OUTSIDE EARNED INCOME

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Chapter 3

CONFLICTS OF INTEREST (RULE 37)

AND

OUTSIDE EARNED INCOME (RULE 36)

Rules 36 and 37

INTRODUCTION

As early as the mid-nineteenth century, Congress passed federal criminal conflicts of interest laws prohibiting bribery, defrauding the government, self-dealing, and other corrupt activities by federal officials including Members of Congress. Congress revised the federal conflicts of interest laws in 1962, but it was not until 1968, when the Houses of Congress passed initial codes of conduct, that express limitations and ethical guidelines on outside economic activities and personal finances governed the activities of Members, officers, and employees. Subsequent rules and statutes were adopted to restrict outside earned income, outside employment, post employment lobbying, and the receipt of honoraria, and also to require annual public financial disclosure by Members, officers, senior staff, and political fund designees. This chapter details the conflicts of interest rules in the Senate, the restrictions governing outside earned income and the receipt of honoraria, and the applicable statutory restrictions governing public officials and employees.

OVERVIEW

Federal law and Senate rules restrict the amount and source of outside income that Members, officers, and employees of the Senate may accept. These limits represent an attempt to preclude conflicts between the narrow interests of private employers and the broader interests of the general public. For the most part, these restrictions limit *earned* income, that is, payments for services rendered (e.g., wages, fees, commissions), but not returns on investments (e.g., interest, dividends, rents, royalties). Investment income is subject to fewer restrictions, but must be publicly disclosed by Senators, officers, and certain staffers.[123]

Some of the restrictions derive from longstanding Senate rules. Others originate with the Ethics Reform Act of 1989 and the Legislative Branch Appropriations Act for Fiscal Year 1992. In its report on the Ethics Reform Act, the House Bipartisan Task Force on Ethics (which drafted the Ethics Reform Act) explained its concerns:

> The current limitations on outside earned income and honoraria were prompted by three major considerations: First, substantial payments to a Member of Congress for rendering personal services to outside organizations presents a significant and avoidable potential for conflict of interest; second, substantial earnings from other employment is inconsistent with the concept that being a Member of Congress is a full-time job; and third, substantial outside earned income creates at least the appearance of impropriety and thereby undermines public confidence in the integrity of government officials.
>
> . . . The earned income limitation was intended to assure the public that (1) Members are not using their positions of influence for personal gain or being affected by the pros-

[123] Financial disclosure requirements are discussed in Chapter 4.

pects of outside income; and (2) outside activities are not detracting from a Member's full-time attention to his or her official duties.[124]

A Member or employee should never use the prestige or influence of a position in the Senate for personal gain. Moreover, Senate Rule 36 sets an overall cap on outside earned income for Senators and certain staff and prohibits honoraria. Senate Rule 37 contains a number of restrictions on particular types of activities. These rules are triggered at various salary thresholds, with the most restrictive provisions affecting only Members and highly paid staff.

A few restrictions affect everyone, regardless of salary. No Member, officer, or employee may accept any honorarium. The ban on honoraria has been in effect for Senate Members, officers, and employees since August 14, 1991.[125] All staff are also mandated to avoid conflicts between private and public employment and to obtain the approval of their supervising Senators for any outside employment. Members, officers, and employees of the Senate generally may not represent others in a private capacity before the Government. While statutory criminal provisions do not appear to restrict representations before Congress made by Members, officers, or employees in a private capacity (See, supra, section on Representing Others Before Federal agencies), such representations may raise issues of improper conduct and conflict of interest under Rule 37, depending upon the facts of the particular case. Members, officers, and employees also may not receive compensation from foreign governments or act as agents for a foreign principal. Members, officers, and employees may not receive any compensation, nor permit any compensation to accrue to their benefit, by virtue of the improper exertion of official influence. Nor may they advance legislation with the principal purpose of furthering their own narrow pecuniary interests.

A second set of rules limits the professional activities of those earning at a rate of pay in excess of **$25,000** and employed for more than 90 days in a calendar year. These individuals may neither affiliate with nor lend their names to firms that provide professional services for compensation. Neither may they practice professions for compensation during Senate working hours, or, with some exceptions, serve as officers or board members. Committee staff earning at a rate of pay in excess of **$25,000** must generally divest themselves of any substantial holdings directly affected by the actions of the employing committees. As to what constitutes ''substantial holdings'', the Committee has held that the question is one for each committee chairperson to determine in the first instance, taking such steps as necessary to ascertain the potential for a conflict of interest arising from the holdings of committee staff persons and to suggest a course of action deemed to be an acceptable solution.[126]

Yet another level of restrictions applies to Members and those officers and employees paid at a rate equal to or exceeding 120 percent of the base salary for Grade GS–15 of the executive branch's General Schedule.[127] In 2000, this salary threshold is **$93,137 ($89,728 in CY 1999)**. Federal law[128] and Senate Rule 36 limit the total amount of outside earned income that these persons may receive in a calendar year. The earnings cap is set at 15 percent of the Executive Level II salary, that is, a Member's base annual salary. In 2000, the cap is **$21,195 ($20,505 in CY 1999)**. The Committee will inform Members and staff of the new amount of the cap as it changes in future years.

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[124] HOUSE BIPARTISAN TASK FORCE ON ETHICS, REPORT ON H.R. 3660, 101st Cong., 1st Sess. 12 (Comm. Print, Comm. on Rules 1989), *reprinted in* 135 Cong. Rec. H9253, H9256 (daily ed. Nov. 21, 1989) (hereinafter House BIPARTISAN TASK FORCE REPORT).

[125] The honoraria ban, enacted as part of the Ethics Reform Act of 1989 (Pub. L. No. 101–194, 103 Stat. 1716) amending the Ethics in Government Act of 1978, also applied to employees of the executive branch. The ban was invalidated for executive branch employees in *United States of America, et al., vs. National Treasury Employees Union, et al.*, Case No. 93–1170, U. S. Sup. Ct. (October Term 1994). Legislative branch employees remain subject to the ban.

[126] *See* Interpretative Ruling No. 147 (June 19, 1978).

[127] This salary threshold will sometimes be referred to in text as ''above GS–15.''

[128] 5 U.S.C. app. 7 § 501, which is recodified as a rule of the Senate at Senate Rule 36.

Important Note: The restrictions in this and the above paragraph are based on Senate ''rate of pay,'' so that an employee who works less than full time for the Senate must adjust his or her actual pay rate accordingly (pro rata) to determine his or her true ''rate of pay'' for purposes of these and other ''rate of pay'' limitations. For example, an employee who works two and one half days per week and is paid at a rate of $50,000 a year is, for purposes of these limitations, an employee whose Senate ''rate of pay'' is $100,000 per year.

In addition, both law and rule prohibit Members and these senior employees (those paid above 120% of the base salary level for GS–15) from acting in certain fiduciary capacities. These individuals may not receive compensation for practicing a profession that offers services involving a fiduciary relationship, even if the work is done entirely on their own time. A Member or senior employee may not serve as a paid officer or board member of any organization. Neither may such an individual teach for compensation without prior written approval from the Select Committee on Ethics. Members and senior employees also must file annual financial disclosure statements. Senate Rule 37, paragraph 10, restrains any employee who files a financial disclosure statement from contacting executive or judicial branch personnel on matters in which the employee has a significant financial interest, unless he or she gets a prior written waiver from his or her supervisor. Members may not contract with the federal government.[129] Each of these prohibitions and limitations is discussed below.

CONFLICTS OF INTEREST (RULE 37)

The Basic Principles

The Senate's commitment to avoiding conflicts of interest is embodied in Senate Rule 37. Paragraphs 1 through 4, 7, and 10 target the possibility or the appearance that Members or staff are ''cashing in'' on their official positions (i.e., using their positions for personal gain) or that they have personal financial stakes in the outcome of their official duties. Paragraphs 5 and 6 prohibit a number of specific professional activities believed to pose particular risks of conflict. Paragraphs 8 and 9 restrict post-employment lobbying.

Rule 37(1) states: ''A Member, officer, or employee of the Senate shall not receive any compensation, nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt or accrual of which would occur by virtue of influence improperly exerted from his position as a Member, officer, or employee.'' This provision was intended ''as a broad prohibition against members, officers or employees deriving financial benefit, directly or indirectly, from the use of their official position[s].''[130] The Nelson Report (which accompanied the original Senate Code of Official Conduct) explained that this rule encompasses conduct also barred under the bribery laws, but is broader:

> For example, if a Senator or Senate employee intervened with an executive agency for the purpose of influencing a decision which would result in measurable personal financial gain to him, the provisions of this paragraph would be violated. Similarly, if a Senator or a Senate employee intervened with an agency on behalf of a constituent, and accepted compensation for it, the rule of this paragraph would also be violated.[131]

Paragraph 2 sets forth the axiom that conflicts of interest must be avoided: ''No Member, officer, or employee shall engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties.'' The legislative history of this provision states that it ''should be read to prohibit any outside activities which could represent a conflict of interest *or the appearance of a conflict* of interest.''[132] The Committee has interpreted this paragraph to prohibit compensated employment or

[129] 18 U.S.C. 431.

[130] S. Rep. No. 95–49, The ''Nelson Report.''

[131] *Id.*

[132] *Id.* (emphasis added).

uncompensated positions on boards, commissions, or advisory councils where such service could create a conflict with an individual's Senate duties due to appropriation, oversight, authorization, or legislative jurisdiction as a result of Senate duties.[133]

A detailed discussion of advisory, officer, and board service for non-Senate organizations is set forth later in this chapter.

Paragraph 3 delineates the enforcement mechanism for the first two provisions. All officers and employees (including consultants and part-time employees[134]) must report in writing ''any outside business or professional activity or employment for compensation'' to their supervisors before the activity or employment commences and on May 15 of each year thereafter so long as it continues. The responsibility then rests with the supervisor to ''take such action as he [or she] considers necessary for the avoidance of conflict of interest or interference with duties to the Senate.'' Thus, all outside employment or professional activity must be cleared in advance with one's supervisor.[135] The Committee will advise against activities that it believes to pose actual conflicts of interest. Where the appearance of a conflict is presented, the Committee may recommend refraining from engaging in the activity. In most cases involving appearances (but not an actual conflict), however, the Committee will defer to the judgment of the relevant supervisor. A supervisor, within his or her sole discretion, may forbid an outside activity or set conditions upon it (e.g., that the employee recuse him- or herself from official actions that could affect the outside employer) to avoid perceived conflicts.[136] The duty to avoid conflicts with official responsibilities and to notify one's supervisor whenever the potential for conflict exists pertains to whether or not one's outside activities are compensated.[137]

With respect to the question of leave time to perform outside employment (including campaign work, and regardless of compensation), it is the Committee's understanding that the Senate does not recognize a ''leave of absence''. The Committee has ruled that it is proper for a Senator to either reduce the salary or remove the employee from the Senate payroll when the employee intends to spend additional time on outside activities, over and above accrued leave time or vacation time (see I.R. 194). However, in order to receive any level of Senate salary, pay should be

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[133] *See* Interpretative Ruling No. 342 (December 10, 1980), Interpretative Ruling No. 283 (Sept. 25, 1979). *See also* Interpretative Ruling No. 99 (Feb. 16, 1978) (staffer should not serve on the advisory panel of an institute that retained a registered lobbyist and intended to lobby concerning pending legislation within the jurisdiction of the staffer's employing committee).

[134] *See* Interpretative Ruling No. 61 (Sept. 13, 1977).

[135] Generally, one's supervisor is one's employing Senator or officer. Paragraph 12 of Rule 37 details who supervises whom, as follows:

> For purposes of this rule—
>
> (a) a Senator or the Vice President is the supervisor of his administrative, clerical, or other assistants;
>
> (b) a Senator who is the chairman of a committee is the supervisor of the professional, clerical, or other assistants to the committee except that minority staff members shall be under the supervision of the ranking minority Senator on the committee;
>
> (c) a Senator who is a chairman of a subcommittee which has its own staff and financial authorization is the supervisor of the professional, clerical, or other assistants to the subcommittee except that minority staff members shall be under the supervision of the ranking minority Senator on the subcommittee;
>
> (d) the President pro tempore is the supervisor of the Secretary of the Senate, Sergeant at Arms and Doorkeeper, the Chaplain, the Legislative Counsel, and the employees of the Office of the Legislative Counsel;
>
> (e) the Secretary of the Senate is the supervisor of the employees of his office;
>
> (f) the Sergeant at Arms and Doorkeeper is the supervisor of the employees of his office;
>
> (g) the Majority and Minority Leaders and the Majority and Minority Whips are the supervisors of the research, clerical, or other assistants assigned to their respective offices;
>
> (h) the Majority Leader is the supervisor of the Secretary for the Majority and the Secretary for the Majority is the supervisor of the employees of his office; and
>
> (i) the Minority Leader is the supervisor of the Secretary for the Minority and the Secretary for the Minority is the supervisor of the employees of his office.

[136] *See* Interpretative Ruling No. 33 (June 28, 1977).

[137] *See* Interpretative Ruling No. 308 (Mar. 3, 1980); *cf.* Interpretative Ruling No. 339 (Sept. 25, 1980).

commensurate with actual duties performed for the Senate. An employee may be terminated from the Senate (without) pay and return at a later date.

Example 1. Subcommittee staffer *V* works on authorizing legislation for the federal school lunch program. *V* is offered a position with a state agency, advising the state on the implementation of school nutrition programs, funded in part with federal dollars. *V* should decline the position as it could lead to an actual conflict with the conscientious performance of official duties.[138]

Example 2. A defense contractor offers to make one of its employees available to the Committee on Armed Services on a part-time basis, while the individual continues to work for the contractor. This arrangement could create an actual conflict of interest or the appearance of a conflict of interest due to the jurisdiction of the committee over matters of interest to the contractor. The Committee therefore recommends that the offer be declined.[139]

Example 3. Senator *W* is writing a book and wishes to hire staffer *X* as a consultant. The Senator proposes to retain *X* on the Senate payroll at the minimum figure established by the Secretary of the Senate. *X* will perform services, commensurate with his reduced salary, in the Member's office during Senate business hours. Work on the book will be undertaken during non-Senate business hours. This arrangement is permissible under the Code of Official Conduct. Senator *W* is responsible for insuring that work on the book does not interfere with *X*'s Senate duties.[140]

Example 4. Upon election to the Senate, Senator *Y* resigns her position as Chairman of the Board and Chief Executive Officer of the company she founded. The company asks her if, during the first few months of her Senate service, she can be available to advise the new CEO on an intermittent basis on matters in the company's history that may be within *Y*'s sole knowledge. *Y* would not be compensated for this advice, which would not include current planning decisions for the company, but her continued association with the company would allow her to exercise certain previously awarded stock options. This arrangement is permissible under Senate rules.[141]

Example 5. Committee counsel *Z* is invited to join a local bar association subcommittee which intends to lobby *Z*'s Senate committee on pending legislation. To avoid the appearance of a conflict of interest, *Z* should refrain.[142]

Example 6. Staffer A, a legislative assistant for health, education and labor issues, is also an officer in the military reserve. Reserve service normally entails one weekend each month and two weeks active duty each year. Compensation is well within the outside earned income cap. The employing Senator believes this service will not conflict with Senate duties. This outside employment does not pose any conflict of interest and is consistent with the Senate Code of Official Conduct.[143] If the staffer's legislative responsibilities relate to military affairs, a conflict could result should the staffer be assigned to work on matters related to the military reserves.

Example 7. Staffer *B* is offered a grant from a university to conduct academic research, on his own time, on a subject unrelated to his official duties. With the approval of his supervising Senator, *B* may accept.[144]

Example 8. Staffer *M*, the computer systems administrator in a Senate personal office earning less than 120% of GS–15, would like to work outside the Senate for a commercial and political research firm providing computer and hardware services on machines for the company's clients. With the supervising Senator's permission, the staffer may ac-

[138] *See* Interpretative Ruling No. 227 (Jan. 30, 1979). *See also* examples set forth under discussion of Board Service.

[139] *See* Interpretative Ruling No. 213 (Dec. 22, 1978). *See also* Senate Rule 38 and Interpretative Ruling 442 (Apr. 15, 1992).

[140] *See* Interpretative Ruling No. 128 (May 12, 1978).

[141] *See* Interpretative Ruling No. 358 (Dec. 17, 1982).

[142] *See* Interpretative Ruling No. 97 (Feb. 8, 1978). *See also* Interpretative Ruling No. 54 (Aug. 30, 1977) (for committee professional staffer to serve as Consumer Representative on a local government council which has an interest in legislation pending before the employing committee would create the appearance of a conflict).

[143] *See* Interpretative Ruling No. 27 (June 7, 1977).

[144] *See* Interpretative Ruling No. 181 (Sept. 29, 1978).

> cept the outside employment where the computer and hardware services will have no relationship to the Senate or Senate business, the work is done on the employee's own time, and no use of Senate facilities or funds is involved. In order to be ''related to'' official duties, work must relate to the subject matter of the employee's official duties, not simply to the tools used by the employee to perform those official duties, or to technical knowledge or skills gained, in part at least, through the staffer's performance of official duties.

Legislative Action

Paragraph 4 of Rule 37 prohibits individuals from using their legislative power to advance their personal financial interests. This provision states: ''No Member, officer, or employee shall knowingly use his official position to introduce or aid the progress or passage of legislation, a principal purpose of which is to further only his pecuniary interest, only the pecuniary interest of his immediate family, or only the pecuniary interest of a limited class of persons or enterprises, when he, or his immediate family, or enterprises controlled by them, are members of the affected class.''

The Nelson Committee explained the narrow scope of this provision as follows:

> The Committee recognizes that in many cases, legislation advancing through the Senate will have some impact on the financial situation of a member, officer, and employee. All tax legislation has such an impact. Ordinarily, however, the impact on an individual's holdings is likely to be quite minimal in comparison to the impact of the legislation on the public and the public interest served . . . Legislation may have a significant financial effect on a Senator because his holdings are involved, but if the legislation also has a broad, general impact on his state or the nation, the prohibitions of the paragraph would not apply.
>
> Thus, for example, if a dairy farmer represented a dairy farming state in the Senate, and introduced, worked for, and voted for legislation to raise or maintain price supports for dairy producers, he would not fall under the strictures of this rule. The strong presumption would be that the Member was working for legislation because of the public interest and the needs of his constituents and that his own financial interest was only incidentally related . . . [T]he committee intends that a class of people or enterprises sharing a particular economic interest (i.e. dairy farmers; shoemakers; disabled veterans) would not be a ''limited class.'' By ''limited class,'' the Committee means a class which resembles much more closely the class of people affected by a private bill. Therefore, to return again to the example of the Senator who was a dairy farmer, he would not be prohibited from working for legislation to help boost or maintain the price supports of dairy products. If, however, legislation was introduced to purchase a piece of land made up in part of a piece of his property and in part of pieces of his neighbors' property, in order to build a federal project there, the Senator would be foreclosed from working on the legislation.
>
> If the legislation does meet the ''principal purpose'' (and ''limited class'') standards as necessary, the Committee intends that the disqualification from involvement with the legislation should be total.[145]

Both the ''principal purpose'' and the ''limited class'' test must be met before the paragraph precludes a Senator's involvement in a legislative proposal. As noted, the history states that ''legislation may benefit a Senator significantly, but if it also has a broad, general impact on his state or the nation, the prohibitions of the paragraph would not apply.'' In Interpretative Ruling 171 the Committee ruled that a Member's efforts in supporting tax legislation that would benefit his wife's profession if it were passed did not violate this rule since the legislation would have a broad general impact.

In connection with this rule, the Committee has observed that, ''Those who elect Senators and Congressmen are entitled to have their elected representatives represent them by voting and

[145] S. Rep. No. 95–49 at 41–42.

fully participating in all aspects of the legislative process. This representation is carried out with the understanding that the votes cast by the Senators and Congressmen are predicated on their perceptions of the public interest and the public good, not on personal pecuniary interest.''

The Committee has previously ruled under paragraph 4 that ownership of a peanut farm did not present a conflict of interest in acting upon legislation which would establish peanut allotments and subsidies (1981 ruling); that a Senator who owned 10 acres of unimproved land on a coastal barrier island could participate in legislation terminating future Federal subsidies for the development of certain undeveloped coastal barrier islands without having a conflict of interest (1982 ruling); that ownership of shares in the manufacturer of defense equipment, held through a mutual fund, did not present a conflict of interest in dealing with legislation directly affecting the defense contractor (1993 ruling); that a Senator who owned shares in a company that owned cable stations could participate in legislation directly affecting cable companies (1990 ruling); that a Senator who owned a large hog farm operation could participate in committee actions and vote on legislation affecting hog farming interests (1995 ruling); that a Senator who belonged to a performance rights organization representing copyright holders could participate in legislative activities affecting licensing agents and copyright owners generally (1997 ruling); and that a Senator with tobacco farming interests could participate in legislative activities on comprehensive tobacco legislation (1998 ruling).

> ***Example 9***. Senator *C* favors legislation to restore full tax deductibility to business meals, based on the impact of the legislation on constituents in the food services industry. *C*'s spouse owns a restaurant. Since such tax legislation would have a broad, general impact, Rule 37(4) does not preclude *C* from co-sponsoring the bill.[146]
>
> ***Example 10***. Mary is Senator *D*'s legislative assistant for agricultural affairs. She also owns an agriculture related business, Mary's Dairy, which employs her children and pays her dividends. Mary may, as a member of the broad economic class of dairy farmers, work on legislation that will benefit all dairy farmers.[147]
>
> ***Example 11***. Senator *E*, a retired military reservist, may vote on legislation to remove the limit on military pensions for federal officials.[148]

Staff Holdings

Senate Rule 37, paragraph 7, requires committee staff paid at a rate of pay in excess of $25,000 a year and employed for more than 90 days to divest themselves of any substantial holdings which may be directly affected by the actions of the employing committee, unless the Ethics Committee after consultation with the employee's supervisor approves other arrangements.[149] On occasion, the Select Committee has permitted an employee either to retain specific holdings or to make arrangements to avoid participation in committee actions which present a conflict of interest or an appearance of a conflict. Under the rule, the Committee may only grant such permission in writing, after consulting the employee's supervisor.

Paragraph 10 of Rule 37 restricts the *official* activities of employees who earn at least 120% of GS–15 **($93,137 in CY 2000; $89,728 in CY 1999)**. These individuals may not contact other government agencies with respect to non-legislative matters affecting their own significant financial interests. An employing Senator may waive this disqualification by notifying the Select Committee on Ethics, in writing, that the Senator is aware of the employee's financial interest, but deems this person's participation necessary nonetheless.

> ***Example 12***. *F*, who has substantial stock holdings in the airline industry, accepts a job with the Committee on Commerce, Science, and Transportation at a salary of $50,000 a year. Absent written permission of the Select Committee on Ethics (in consultation with

[146] *See* Interpretative Ruling No. 171 (Sept. 14, 1978).
[147] *See* Interpretative Ruling No. 36 (June 28, 1977).
[148] *See* Interpretative Ruling No. 63 (Sept. 15, 1977).
[149] *See* Interpretative Ruling No. 147 (June 19, 1978); Interpretative Ruling No. 142 (June 6, 1978).

the chairman or ranking member of the committee), *F* must sell this stock. The decision as to whether a holding is ''substantial'' is made on a case-by-case basis.

Example 13. Staffer *G*, the banking expert on Senator *H*'s staff, is part owner of a bank in *H*'s state. A new banking regulation will adversely affect all the banks in *H*'s state, and *H* wishes G to contact the banking regulators on his behalf to urge reconsideration. *H* writes to the Committee on Ethics, stating: ''I authorize my staffer, *G*, to contact banking authorities concerning Regulation 123. I understand that *G*, as part owner of Central Bank, may benefit if the Regulation is withdrawn. Nonetheless, I waive the application of Senate Rule 37(10) because *G*'s expertise in this area makes her participation necessary.'' *G* is now free to contact the agency.

PROFESSIONAL/FIDUCIARY RESTRICTIONS

Senate Rule 37, paragraph 5(a) has long prohibited every Member, officer, and employee paid at a rate of pay in excess of $25,000 a year and employed for more than 90 days in a calendar year from: (1) affiliating with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; (2) permitting his or her name to be used by a firm, partnership, association or corporation which provides professional services for compensation; or (3) practicing a profession for compensation to any extent during regular office hours of the employing Senate office. ''Professional services'' include, but are not limited to, those which involve a fiduciary relationship. The Committee has ruled that the type of services contemplated by the drafters of paragraph 5(a) involved a ''duty to outside commercial or business organizations, which on their face were likely to present conflicts between Senate duties and outside responsibilities.'' [150]

For those making less than 120% of GS–15, paragraph 5(a)(1) limits affiliation with firms for the purpose of providing professional services. Professional service firms include, but are not necessarily limited to, firms providing the following services: law, medicine, engineering, architecture, real estate, insurance, and consulting. Paragraph 5(a)(1) restricts, but also contemplates the possibility of, some professional practice outside office hours or on annual leave time. [151] As long as the individual avoids affiliating with a firm, Rule 37(5)(a) allows him or her to practice a profession during off hours. [152] Additionally, if the individual does not affiliate, but instead acts as a sole practitioner in the capacity of independent contractor, he or she may provide professional services to a firm itself. [153] As the Committee construes this rule, the individual's services may not include work product for the firm's clients. If the services do include client work product, the arrangement will be deemed an impermissible affiliation.

Pursuant to the Ethics Reform Act, paragraph 5(b) was added, further prohibiting Senators and *senior* employees (those earning at or above 120% of the GS–15 level) from entering into professional fiduciary relationships. Specifically, the rule bars these persons from: (1) receiving compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship; (2) permitting their names to be used by any such firm, partnership, association, corporation, or other entity; (3) receiving compensation for practicing a profession which involves a fiduciary relationship, or (4) receiving compensation for teaching, without the prior notification and approval of the Ethics Committee.

Thus, in contrast to paragraph 5(a), under paragraph 5(b), a covered individual may not receive compensation for being employed *in any capacity* (not just for the purpose of providing pro-

[150] Interpretative Ruling No. 359 (Jan. 3, 1983).

[151] *See* Interpretative Ruling No. 233 (Mar. 9, 1979); Interpretative Ruling No. 70 (Sept. 29, 1977).

[152] A partnership formed for the purpose of personal investment (e.g., forming a partnership to buy rental property) and not for the purpose of providing professional services to others for compensation, is not a prohibited affiliation for purposes of Rule 35.

[153] *See* Interpretative Ruling No. 352 (August 2, 1982).

fessional services) by a firm which provides professional services involving a fiduciary relationship. Moreover, paragraph 5(b) prohibits the paid practice of fiduciary professions, even if done as a solo practitioner, entirely on one's own time. This provision, however, does not prohibit an individual from being compensated for serving as trustee of a family trust or executor of a family will. Thus, the Committee has previously approved an individual being compensated as executor of a relative's will (See Senate Rule 34 and 5 U.S.C. app. Sec. 109(16) for the definition of relative, and ;.)

Neither the rule nor the statute defines ''fiduciary,'' a term generally denoting an obligation to act in another person's best interests or for that person's benefit, or a relationship of trust in which one relies on the integrity, fidelity, and judgment of another.[154] The professional restrictions were intended to limit the practice of law, medicine, engineering, architecture, service as a real estate or insurance agent or consultant, ''and similar types of activities.''[155] These provisions reflect the belief ''that the practice of a profession usually requires substantial amounts of personal involvement and time and may also present conflicts of interest or in some cases an appearance of such conflicts.''[156] In response to individual inquiries, the Committee has determined that certain compensated activities are not the type of professional endeavors contemplated by the rule and therefore, with supervisor approval, may be pursued. These include serving as a political party official, farming, writing (subject to the honoraria law), transcribing, and race car driving.[157] Moreover, the Committee has noted that difficulties might arise if this rule were applied too literally with respect to newly elected Members winding up their business affairs. The Committee has advised such persons to conclude their business responsibilities ''expeditiously and in conformity with the spirit and purpose of paragraphs 2 and 5 of Rule 37.''[158]

While some of these provisions restrict payment for professional services, the ban on allowing one's name to be used by a specified organization applies *regardless* of whether the organization compensates the Member or employee. Federal law at 5 U.S.C. § 501 also provides that a firm, business, or organization that practices before the Federal Government may not use the name of a Member of Congress to advertise the business. These limitations accord with rules of the American Bar Association (ABA) prohibiting the facade of retaining a government lawyer's name in a firm when the individual is not actively and regularly practicing.[159]

From a practical standpoint, paragraphs 5(b) (covering Senators and staff earning above GS–15) is somewhat redundant of paragraph 5(a) (covering all those earning more than $25,000). Their differences and nuances can perhaps best be explained by examples of how they work in various circumstances.

Thus, while paragraph 5(a) allows individuals paid at a rate of pay in excess of $25,000 in Senate salary to provide paid professional services on their own time, as long as they do not affiliate with a firm to do so, paragraph 5(b) bars individuals earning above GS–15 from being paid for practicing a profession involving a fiduciary relationship, even as solo practitioners, working on their own time. Additionally, paragraph 5(a)(1) would allow a Senate employee paid at a rate of pay in excess of $25,000 in Senate salary to work on the weekend as an accountant (i.e., pro-

[154] *See* BLACK'S LAW DICTIONARY 625–26 (6th ed. 1990); House BIPARTISAN TASK FORCE REPORT on H.R. 3660 (101 Cong., 1st Sess., March 15, 1989), at 16, 135 CONG. REC. H9257.

[155] S. Rep. No. 95–49, *supra* note 6, at 43. *Accord* Interpretative Rulings No. 431 (Feb. 29, 1988) and 166 (Aug. 10, 1978) (affirming that service as a real estate broker is a fiduciary profession); Interpretative Ruling No. 257 (May 14, 1979) (service as a consultant is a fiduciary profession).

[156] *Id. See also* House Bipartisan Task Force Report, *supra* note 89, at 14, 135 CONG. REC. H9257.

[157] *See* Interpretative Ruling No. 359 (Jan. 3, 1983); Interpretative Ruling No. 36 (June 28, 1977); Interpretative Ruling No. 338 (Sept. 23, 1980); Interpretative Ruling No. 93 (Jan. 4, 1978); Interpretative Ruling No. 352 (Aug. 2, 1982).

[158] Interpretative Ruling No. 344 (Feb. 16, 1981).

[159] *See* ABA MODEL RULES OF PROFESSIONAL CONDUCT Rule 7.5(c) (1989); MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2–102(B), EC 2–12 (1981).

viding professional services), on an independent contractor basis, for a law firm, as long as he or she was auditing the books of the firm itself, and not its clients. Under paragraph 5(b), however, an individual earning above GS–15 in Senate salary would be barred both from being paid for personally providing professional services to anyone, and from being employed by a firm providing professional services in any capacity, be it as a lawyer or a janitor.

Example 14. Staffer *I* earns $60,000 a year as associate counsel to a committee. He may, with the concurrence of his employing Senator (and assuming no conflict of interest is otherwise present), draft wills for pay on the weekends, as a solo practitioner.[160] However, Staffer *I* may not join the Jones law firm to provide services to the firm's clients.

Example 15. Staffer *J* earns $90,000 a year as general counsel to the same committee. She may *not* provide legal services for compensation outside her Senate duties.

Example 16. Staffer *K*, a non-lawyer, earns $100,000 a year as a committee staff director. He is offered an outside job as a part-time employee of a law firm. Although his responsibilities, advising the firm's lawyers in his substantive area of expertise, will not amount to practicing a profession which involves a fiduciary relationship, his employment in any capacity by a firm which provides professional services involving a fiduciary relationship is barred under Rule 37(5)(b)(1). Moreover, any outside employment giving advice in the area of his committee's jurisdiction would be prohibited under Rule 37(2).

Example 17. Senator *L*, a former law firm partner, may not be listed on the firm's letterhead as ''Of Counsel'' to the firm, regardless of whether *L* is compensated for this status.[161]

Example 18. Staffer *M*, a former personal injury lawyer, had several cases pending when she began her Senate employment at an annual salary of $70,000. Her Senate responsibilities are unrelated to personal injury law. With the permission of her employing Senator, *M* may, as a sole practitioner, on her own time, complete her work on these cases. Further, she may fulfill an agreement made before she left her former firm to share with the firm that portion of the fees attributable to work done at the firm before she left.[162]

Example 19. Committee counsel *N*, before coming to the Senate, worked on a court case on a subject of direct concern to his committee. *N* wishes to take a temporary leave of absence from his Senate position to return to association with his former law firm for the sole purpose of arguing the appeal in the case. He would then permanently sever his ties to the firm. The Committee advises against this arrangement, which creates both the appearance of a conflict of interest and too great a potential for an actual conflict.[163]

Example 20. Staffer *O*, who earns $30,000 a year as a Senator's staff assistant, may *not* sell real estate on weekends under an arrangement whereby his associate broker's license is held by a real estate company because this would be an impermissible affiliation with the company for the purpose of providing professional services for compensation.[164] He *may*, however, allow a real estate firm to hold and display his license for the sole purpose of maintaining that license, as long as he provides no services to, and receives no benefits from, the firm.[165] An individual who was a broker and did not affiliate with anyone could, by his or herself, engage in real estate sales, however.

Example 21. Law partner *P* is leaving her practice to become counsel to a Senate committee, at a salary in excess of $25,000 a year. During her employment with the Senate, she will do no work for the firm and have no interest in fees for services rendered by the firm in her absence. The firm will remove her name from its letterhead. She would like to retain, with no further contributions by the firm, her interest in the firm's pension

[160] *See* Interpretative Ruling No. 304 (Feb. 21, 1980).

[161] *See* Interpretative Ruling No. 145 (June 15, 1978).

[162] *See* Interpretative Ruling No. 233 (Mar. 9, 1979). Care should be taken that such representation does not violate Federal criminal law (18 U.S.C. 203 & 205) that prohibits Members, officers, and employees from privately representing others before the Federal Government. *See generally* discussion on Representing Others Before Federal Agencies.

[163] *See* Interpretative Ruling No. 48 (Aug. 5, 1977). *See also* Interpretative Ruling No. 275 (July 17, 1979).

[164] *See* Interpretative Ruling No. 166 (Aug. 10, 1978).

[165] *See* Interpretative Ruling No. 431 (Feb. 29, 1988).

plan. She may accept the job under these circumstances. Maintaining her interest in the pension plan at her own expense would not constitute a prohibited affiliation.[166]

The ''90-Day Affiliation Rule'' for Employees and Per Diem Employees

In a 1989 ruling involving the case of a regular Senate employee (paid 360 days per year), the Committee concluded that as used in Rule 37.5, the phrase ''. . . employed for more than 90 days . . .'' referred to the amount of time an individual is on the Senate payroll rather than to the number of days the individual actually works. Thus, a Senate employee on the payroll for more than a 90 day period was prohibited from affiliating with a firm as contemplated in Rule 37.5, even if the individual was a part-time employee who actually worked less than 90 days.

The Committee has considered the application of Senate Rule 37.5 to an individual engaged by the Senate as a per diem employee. (For further discussion of per diem employee status, see section on ''Consultant, Per Diem, and Special Government Employees'' in Chapter Four). In the case of a per diem employee (who is paid when actually employed), the Committee concluded that **only those days when the employee is actually providing services** to the Senate should be counted for purposes of determining when the employee may have been ''employed for more than 90 days'' within the meaning of the Rule. The Committee has further concluded, however, that because continued employment of an individual affiliated with a firm as contemplated in Rule 37.5 could reflect upon the institution and present an unacceptable potential conflict of interest, no such employee may be employed in this fashion in consecutive Congresses. For example, during the 105th Congress such an employee could provide services to the Senate for 90 days in calendar year 1997 and 90 days in 1998, but could not continue to provide Senate services in the 106th Congress. Such employees are subject to all other provisions of the Code of Official Conduct.

Officer, Board, or Advisory Service

Rule 37(6)(a) bars Members, officers, and employees paid at a rate of pay in excess of $25,000 a year and employed for more than 90 days in a calendar year from serving as officers or members of the board of any publicly held or publicly regulated corporation, financial institution, or business entity. This rule *exempts* uncompensated service as an officer or board member of (1) a tax-exempt organization (under section 501(c) of the Internal Revenue Code)[167] and (2) an institution or organization which is principally available to Members, officers, or employees of the Senate, or their families.

Paragraph 6(a) additionally permits a Senate individual paid at a rate of pay in excess of **$25,000** a year to serve, *with or without compensation*, as a member of the board of a corporation, institution, or other business entity, *if* (A) the Member, officer, or employee had served continuously as a member of that board for at least two years prior to coming to the Senate, (B) the amount of time required to perform the service is minimal, and (C) the Member, officer, or employee is not a member or staffer of any Senate committee which has legislative jurisdiction over any agency of the Government charged with regulating the activities of the corporation, institution, or other business entity. Under the later enacted paragraph 6(b), however, any Member, officer, or employee compensated at or above 120 percent of the GS–15 rate of pay (i.e., **$93,137 in CY**

[166] *See* Senate Rule 35, which specifically contemplates that individuals coming to work at the Senate may maintain their pension benefits with prior employers, provided no further contributions are made on behalf of the individual by the former employer. *See also* Interpretative Ruling No. 321 (May 13, 1980) where an individual was coming to work for the Senate on a temporary basis and was permitted to also retain membership in the firm's health insurance plan at the individual's sole expense. The Committee has closely monitored the period of time during which an employee may work for the Senate under these conditions. Any individual contemplating employment with the Senate who anticipates retaining <u>any</u> relationship with his or her prior employer or firm (other than simply leaving his or her assets in the firm's pension plan) should receive advance approval from the Ethics Committee.

[167] *See also* Interpretative Ruling No. 243 (Mar. 29, 1979) (Senator may serve, without compensation, on advisory board of tax-exempt educational institution).

2000; $89,728 in CY 1999), may not serve *for compensation* as an officer or member of the board of *any* association, corporation, or other entity. In addition to these provisions, board (and officer or advisory) service is governed by paragraphs 1 and 2 of Rule 37, prohibiting the improper use of official influence for private profit as well as any outside business or professional activity or employment which is inconsistent or in conflict with the conscientious performance of official duties. [168]

Because service on the **board** of an outside organization involves a fiduciary duty and an increased potential for an appearance of a conflict, the Committee has advised that, as long as a **Senator** remains on such a board, the Senator should refrain from any official action advocating any proposal of particular benefit to the organization in question because such activities may create an appearance of a conflict under paragraphs 1 and 2 of Rule 37. The Committee has applied the provisions of paragraphs 1 and 2 broadly, but has previously found a potential for a conflict of interest in such situations only where the organization – on whose board of directors a Senator proposes to take an uncompensated position – receives federal funding from an agency which is subject to the appropriation or oversight functions of a committee on which the Senator sits or otherwise has an interest in matters under such committee's jurisdiction.

Where the position in question is **advisory** and non-fiduciary in nature, the Committee has not previously prohibited a **Member's** participation on such an advisory body, although the Committee has restricted **staff** activities on advisory boards where the entity has legislative interests in the same topic areas as the employee's official duties or where federal money is sought, spent, or administered by the advisory body or the group that it advises. In permitting somewhat greater latitude to Members serving in a purely advisory role, the Committee has recognized that individual Senators are typically the judge of whether an activity creates an appearance of conflict, and the Committee will not normally interfere with a Senator's discretion under paragraph 2, absent an actual conflict.

Senators may also serve as **honorary chairpersons** of non-profit events so long as such service is consistent with Rule 37. In many instances, the Member is asked to assume the role of guest host or ''honorary chairperson'' of a charity event sponsored by either a non-profit organization or by a corporation or other entity whereby the proceeds from the event or a charitable gift are donated to charitable purposes, such as a charity golf or tennis tournament. The Committee has previously stated that Senators may serve as honorary chairpersons of charitable events so long as such service is consistent with Rule 37, paragraphs 1 and 2 (prohibiting the improper use of official influence for private profit and prohibiting outside business or professional activity which is inconsistent or in conflict with the conscientious performance of official duties) and so long as the activity is not performed on Senate time and does not use Senate resources or equipment.

The decision as to whether to lend his or her name to a charitable event as an honorary chairperson is entirely within the Senator's discretion. However, the Senate Gifts Rule, Rule 35, states that a contribution to any charity from a lobbyist or foreign agent based upon the recommendation of a Member, officer, or employee may be deemed a gift to the Member, officer or employee. (See the discussion of this topic in Chapter 2, heading ''Other Prohibited Gifts from Lobbyists, Lobbying Firms, and Foreign Agents''.) There are exceptions for mass mailings, solicitations directed to a broad range of persons or entities (50 or more prospective donors) and the Member has no reason to believe that the solicitation is targeted specifically at lobbyists or foreign agents, and payments in lieu of honoraria made by a lobbyist or foreign agent to a charity not maintained or controlled by the Member if the payment is reported under Senate Rule 35.

Often a Member who serves in an honorary capacity for a charity event will be asked by the event organizers to allow his or her name to appear on the letterhead used to solicit donations, or to allow the Member's name to be used in the actual solicitation, or to make a personal appeal

[168] *See* S. Rep. No. 95–49, *supra* note 6, at 44.

on behalf of the charity at the fundraising event. The Committee has previously determined that a Member who does nothing more than allow his or her name to appear on a fundraising letterhead as honorary chair or host has not solicited a contribution from anyone, but that a Member does make a solicitation when he or she signs the fundraising letter or allows his or her name to appear in the body of the fundraising letter as supporting or endorsing the fundraising effort. A Member who makes a personal appeal at a charitable fundraiser would clearly be making a solicitation for charitable contributions.

For information on the use of the Senate Official Letterhead in the context of charitable events, see heading on the Senate Letterhead in Chapter 7.

Often the organizers of a charity event will invite Members and staff to serve as co-hosts of the event and will waive the ticket price for the event. The Senate Gifts Rule prohibits a Member, officer, or employee of the Senate from receiving any gift of a value of $50 or more (counting gifts of ten dollars or more), or gifts from one source that aggregate $100 or more during a calendar year. However, paragraph 1(d)(3) of the Gifts Rule provides that a Member, officer, or employee or the spouse or dependent thereof, may accept a sponsor's unsolicited offer of free attendance at a charity event, except that reimbursement for transportation and lodging may not be accepted in connection with an event that is substantially recreational in nature. See Chapter 2 for a discussion of the Gifts Rule exception for charity events.

Establishment of a Charitable Foundation by a Member

The Committee has approved the establishment of a charitable trust by a Senator (and the donation of contributions in lieu of honoraria to the trust from those who are not lobbyists or foreign agents) where the IRS had ruled that the trust was a 501(c)(3) and a 170(c) organization, and, although the Senator was a trustee of the trust, neither the Senator, his sibling, spouse, child, or dependent relative were employed by or derived any financial benefit from the trust, nor were employed by or derived any financial benefit from the charities to which the trust gave money. As noted, the Senate Gifts Rule prohibits any lobbyist from contributing to any entity or charity maintained or controlled by a Senator, officer, or employee. Thus, a lobbyist or lobbying firm may not contribute to a Member's charitable fund or make a contribution in lieu of honoraria to such a fund where the fund is maintained or controlled by the Member.

The Committee has not yet determined what conditions will render an entity to be deemed to be ''maintained or controlled'' by a Member, officer, or employee. However, control or maintenance of such an entity would appear to at least include situations where a Senator appoints board members, trustees, or other overseers of an entity; where a Senator serves on the board of a closely held entity; or where family members or relatives serve on such a board. Service of members of the Senator's staff on the board of a charity organization established by a Member could also cause a charitable entity to be ''maintained or controlled'' by the Member. The determination of whether a particular entity is ''maintained or controlled'' by a Member depends upon a case by case analysis based on the totality of the circumstances.

In addition, any Senate staffers serving on such a board should not perform board work on Senate time or using Senate resources, and care should be taken in the fundraising process to avoid any staff solicitation of individuals who have direct business with the Senator's office.

Staff members are restricted by Rule 37.2 and Committee decisions from engaging in board, officer, or advisory positions which conflict with the performance of official duties. Under paragraph 3 of Rule 37, staff may engage in board activity on a limited basis, provided that prior to the commencement of any such activity, the employee's supervisor determines that there is no conflict of interest and that the activity will not interfere with Senate duties. Under these provisions, however, the Committee has previously found conflicts of interest where Senate employees have taken uncompensated positions on boards, commissions, or advisory councils of organizations

that receive or seek federal funding and/or where the employee's official duties involve the same topics addressed by the outside organization (**i.e., federal money conflict or subject matter conflict**).[169] Where an outside organization has an interest in a legislative matter, and the staff person, because of her position and expertise in the Senate, is likely to be called upon by her supervising Senator to provide input on the matter, a conflict of interest may be created under Rule 37.2 should the staff person take the outside position.

> ***Example 22***. Staffer *Q*, who works for the Budget Committee, is invited to serve without pay on the board of a tax-exempt organization which publishes a newsletter summarizing state and federal election campaigns. With the approval of her supervising Senator, *Q* may so serve.[170]
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> ***Example 23***. Senator *R* is invited to serve, on an uncompensated basis, on the board of directors of a statewide non-profit community action agency. The agency administers programs that are substantially funded by the Federal Government, through legislation under the jurisdiction of subcommittees and committees on which the Senator sits. The Select Committee recommends against the voluntary service, which could lead to a conflict of interest.[171]
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> ***Example 24***. Staffer *S–1*, who works on the Aging Committee, is invited to serve on the Board of Directors of a non-profit organization formed for the objective of promoting elder housing. The organization does not lobby or receive federal money. Because the Aging Committee, on which the supervising Senator sits, has jurisdiction over issues dealing with elder care, the organization has an interest in legislation in this area, and the staffer advises the supervising Senator in such matters, a conflict of interest may be created and, thus, the staffer should refrain from serving on the board.
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> ***Example 25***. Staffer *S–2*, who works in a Senate personal office as State Director, is invited by a private child care center to accept an uncompensated position on its board of directors. In addition to private tuition, the center receives funding through a federal grant for a state-wide nutrition program. The board manages the bookkeeping for the center's receipt of the program, but is not responsible for the implementation or oversight for the program and does not write the grant application. If the board ever must take a vote related to the program, staffer *S–2* would recuse himself. The staffer does not perform official duties related to child care and the staffer's supervising Senator does not sit on a committee that oversees the grant process. Under these circumstances, the initial decision on whether the staffer may engage in the outside activity is one for the supervising Senator, who must monitor the situation to protect the Senate against any conflict of interest.
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> ***Example 26***. Staffer *S*, who works for the Committee on Agriculture, Nutrition, and Forestry, is invited to serve without pay on the board of a state university publication which is funded in part by the Department of Agriculture. Because his employing committee has jurisdiction over legislation and authorizations affecting the publisher, an appearance of a conflict of interest might result if *S* accepted the position.[172]
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> ***Example 27***. Staffer *T*, a field representative for Senator *U*, is invited to serve on the board of a federally-funded non-profit organization. *U* is a member of the oversight committee for the federal agency providing the funds. The organization's grant applications are handled through the Senator's office, which *T* supervises. *T*'s supervisory role may result in the appearance of a conflict between her official responsibilities and her fiduciary duties to the non-profit. If she were personally involved in processing the application, an actual conflict of interest might be presented. *T* should thus decline.[173]

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[169] *See* Interpretative Ruling 342 (December 10, 1980) and Interpretative Ruling 227 (January 30, 1979).

[170] *See* Interpretative Ruling No. 103 (Mar. 6, 1978).

[171] *See* Interpretative Ruling No. 342 (Dec. 10, 1980).

[172] *See* Interpretative Ruling No. 286 (Oct. 2, 1979).

[173] *See* Interpretative Ruling No. 308 (Mar. 3, 1980). *See also* Interpretative Ruling No. 23 (May 26, 1977) (Committee recommended that a committee staff director *not* accept appointment to the advisory board of a college interested in establishing a center which might be eligible for partial federal funding, pursuant to legislation then under consideration by the employing committee.)

Example 28. Staffer *V*, a caseworker in the state capital, is offered an uncompensated position on a state literacy commission which receives funding from the federal government. *V*'s employing Senator does not serve on any Committee with oversight or appropriation authority in the area of education. *V* has no duties related to education. *V*'s service on the commission would not present a conflict of interest. *V* must secure the approval of his employing Senator before accepting. [174]

Example 29. Staffer *W*, whose Senate salary exceeds $25,000, but is less than 120% of GS–15, sits on the board of a 501(c)(4) educational foundation. *W* performs her board activities, which are unrelated to her Senate job, on her own time and without compensation. The foundation offers to pay *W* as an independent consultant, to do work beyond the scope of her board service. If the consulting duties are clearly distinguishable from her board duties, and if her supervising Senator determines that the consulting will not entail conflict of interest or interference with Senate duties, *W* may be paid as a consultant. [175]

Example 30. Staffer *X*, who earns $50,000 a year as State Director for Senator *Y*, is offered a compensated position as State Party Chair. *X* will perform his party duties on his own time. Since the party is not a business entity as contemplated by paragraphs 5(a) and 6(a) of Rule 37, *X* may (with *Y*'s approval) so serve. [176]

Example 31. Senator *A* accepts an uncompensated position on the board of trustees of a private non-profit university. The Senator is asked by the university to sponsor and support legislation to award a Federal grant to the university. Because Senator *A*'s service on the board involves a fiduciary duty and an increased potential for an appearance of a conflict of interest, the Committee advises that the Senator refrain from any official action advocating any proposal of particular benefit to the university. Thus, so long as the Senator remains on the university's board, she should refrain from sponsoring or supporting the legislation to award the university a Federal grant.

Example 32. Prospective staffer *B* seeks employment with a Senator who serves on the Environment and Public Works Committee as a projects assistant in the Senator's state office, acting as a liaison between business, communities, and local and federal agencies. *B* would like to retain his current position as a commissioner of a state regional sewerage transmission facility serving certain municipalities and involving Federal funds. Under these circumstances, the prospective staffer should resign from the commission if he is employed by the Senate, given that the Senator serves on a committee with jurisdiction over environmental issues, including sewerage collection and disposal.

Example 33. Staffer *D*, who works in a personal Senate office, wishes to serve as a paid director of his family's majority owned beverage manufacturing and bottling company. The staffer is paid at a rate less than 120% of GS–15 by the Senate. The term ''publicly regulated'' as used in Senate Rule 37.6 means a corporation which is part of an industry subject to specific regulation by a Federal agency, e.g. a broadcasting company which would be regulated by the FCC. The term does not include a corporation which is subject only to the general effect of broad-based regulations such as those issued by OSHA. Thus, Staffer *D* may serve as a compensated director of the company if the supervising Senator determines that such service would not create a conflict of interest with his official Senate duties.

Example 34. Staffer *E*, employed in the state office of a Member, is paid at a rate less than 120% of GS–15 and is responsible for managing constituent services, various types of case work, and promoting public awareness of the Member's priorities. The Staffer has been asked by a local women's business organization to serve as an uncompensated member of its board of directors. The group does not receive any Federal funding. The staffer may accept the position with the approval of her supervising Senator.

Example 35. Staffer *F* works on a Senate committee with duties involving social service issues, including child welfare issues. A non-profit child welfare foundation has asked the staffer to serve as an uncompensated member of the group's board of trustees. The foundation does not lobby Congress and does not accept Federal money. The Committee

[174] *See* Interpretative Ruling No. 126 (May 5, 1978).
[175] *See* Interpretative Ruling No. 297 (Dec. 18, 1979).
[176] *See* Interpretative Ruling No. 359 (Jan. 3, 1983).

notes that the foundation appears to have an interest in legislation in the area of child welfare, that such legislation appears to be within the jurisdiction of the staffer's employing committee, and that if the supervising Senator deals with issues which would be of concern to the foundation, it is likely that the Senator would come to the staffer for input. Thus, the Committee recommends that the staffer refrain from serving on the foundation's board of trustees.

Teaching

In addition to the fiduciary restrictions, Rule 37(5)(b) also contains a limit on teaching. By its terms, Members and covered employees may *not* teach for compensation, *unless* they receive prior written permission from the Committee on Ethics (those earning less than 120% of GS–15 may, but are not required to, obtain prior permission from the Committee). This requirement ensures that teaching does not become an avenue for circumventing the honoraria ban. The Committee therefore scrutinizes each request. In order to receive approval, the individual seeking to teach must generally affirm in writing that the teaching meets the following criteria:

1. The teaching is part of a regular course of instruction at an established academic institution, involving services on an ongoing basis, rather than payment for individual appearances.

2. The compensation is reasonable and derived from the institution's general funds, not supported by earmarked grants, appropriations, or contributions by other entities.

3. Responsibilities include class preparation, lecture presentation, and student evaluation (grading papers, testing, and homework, etc.).

4. Students receive credit for the course taught.

5. No Senate resources or time are used in connection with the teaching.

Each teaching arrangement is evaluated on its own merit. There may be situations where the Committee approves a teaching arrangement even though one or more of the general criteria are not met. For example, the Committee has found it appropriate to approve a teaching arrangement for a continuing adult education course where the other criteria were met, but the course was not for credit and the students were not given tests. The Committee will only approve teaching that comports with Rule 37's other provisions. Notably, the compensation may not result from the improper exertion of official influence (Rule 37, ¶ 1) and the employment may not be inconsistent or in conflict with the conscientious performance of official duties (Rule 37, ¶ 2). The Committee will also approve requests to teach for compensation in less formal settings such as Sunday school, piano lessons, aerobics classes, specialized or continuing professional training courses, and other situations, where the teaching is clearly unrelated to official duties or an individual's Senate position.

Legal Practice

While the Ethics Reform Act severely curtails the paid practice of law by Members and senior staffers (those earning 120% of GS–15 or more), these persons may still practice without compensation, and other Senate employees may practice for compensation (without affiliating and with the approval of their supervisors),[177] within the following parameters:

1) No public official should take on a private obligation that conflicts with his or her primary duty to serve the public interest.[178] The lawyer's duty of undivided loyalty to his or her clients[179] makes the practice of law particularly susceptible to conflicts with the wide-ranging responsibilities of Members and staff.

[177] *See* Interpretative Ruling No. 238 (Mar. 26, 1979), and PROFESSIONAL/FIDUCIARY RESTRICTIONS, *supra*.

[178] *See* Senate Rule 37(2).

[179] *See, e.g.*, ABA MODEL RULES OF PROFESSIONAL CONDUCT RULE 1.7; MODEL CODE OF PROFESSIONAL RESPONSIBILITY, Canon 7, DR 5–105, EC 5–1, EC 5–14, EC 5–15, EC 5–21.

2) Senate lawyers who wish to maintain private practices should also consult their local bar associations with respect to professional restrictions on them.

3) Federal law prohibits Members from practicing in the United States Claims Court or the United States Court of Appeals for the Federal Circuit[180] or from serving as attorneys to contractors or charterers holding contracts under the Merchant Marine Act.[181]

4) In addition, Members and employees may not privately represent others before federal agencies, as described below.

REPRESENTING OTHERS BEFORE THE FEDERAL GOVERNMENT

Federal criminal law prohibits Members, officers, and employees from privately representing others before the Federal Government. One provision bars these individuals from seeking or receiving compensation (other than as provided by law) for ''representational services'' before any Government agency, department, court, or officer in any matter or proceeding in which the United States is a party or has an interest (18 U.S.C. § 203; see Appendix D). A second provision forbids any officer or employee from acting ''as agent or attorney for anyone'' (other than in the proper discharge of official duties) before any Government entity in any particular matter in which the Government has an interest, *whether or not the individual is compensated* (18 U.S.C. § 205; see Appendix D). The individual need not actually be an attorney or have a strict common law agency relationship with another in order to be restricted by the statute.[182] It does not appear that representations before Congress are a restricted activity under section 205, since Congress does not appear to be a department, agency, or court under the terms of section 205 (See Memorandum from Walter Dellinger, Assistant Attorney General, U.S. Department of Justice, November 7, 1994). However, while section 205 may not apply to representations before Congress made by a Senate officer or employee in a private capacity, such representations may well raise issues of possible improper conduct reflecting upon the Senate, as well as conflict of interest questions under Senate Rule 37, depending upon the facts of the particular case.

Under section 203, a Member, officer, or employee of the Senate may not receive compensation, other than congressional salary, for any dealings with an administrative agency on behalf of a constituent or any other person or organization. Even if contacting a federal agency on behalf of a private individual or organization is within the scope of official duties, an individual who accepts additional compensation for such services has violated the law.[183] In this sense, Section 203 supplements the law against illegal gratuities discussed in Chapter 1.

Section 203 prohibits the receipt of compensation ''directly or indirectly'' for services before federal agencies. Therefore, if a Member or employee is in a partnership arrangement or otherwise shares in fees from services rendered before federal agencies, a violation of this provision may occur even if the individual did not personally perform the services. The Department of Justice has stated, for example, that section 203 ''bars a partner in a law firm from sharing in any fees received by the firm before any Federal department or agency during the time he is or was a Federal employee.''[184] This same informal letter opinion notes, however, that the Justice Department ''has interpreted § 203 not to apply to a person who receives a fixed salary as an employee of a firm (as opposed to someone who shares in the firm's profits), even though some of the firm's overall income may be attributable to service covered by § 203.''

Both sections 203 and 205 carry the same possible penalties: imprisonment for up to one year (or five years if the violation is willful); a civil fine of up to $50,000 per violation or the amount

[180] 18 U.S.C. § 204.

[181] 46 U.S.C. § 1223(e).

[182] *United States v. Sweig*, 316 F. Supp. 1148, 1157 (S.D.N.Y. 1970).

[183] *May v. United States*, 175 F.2d 994 (D.C. Cir.), *cert. denied*, 338 U.S. 830 (1949).

[184] Letter from Leon Ulman, Dep. Ass't Att'y Gen., Office of Legal Counsel, Dep't of Justice (Mar. 14, 1978).

received or offered for the prohibited conduct (whichever is greater); and/or a court order prohibiting the offensive conduct.[185] In one case, a federal court held a former Member of Congress liable for repayment of compensation unlawfully received. The court ruled that a violation of section 203—

> . . . unquestionably demonstrates a breach of trust, for in order to fall within its prohibition, a member of Congress must shed the duty of disinterested advocacy owed the government and his constituents in favor of championing private interests potentially inconsistent with this charge.[186]

Sections 203 and 205 exempt certain activities. Individuals may represent themselves before the Government. One may also represent one's spouse, parent, child, or any person for whom one serves as guardian, trustee, or personal fiduciary.[187] Even on behalf of these people, however, the individual must refrain if the matter at issue is one in which he or she participated personally and substantially on behalf of the Government or one which falls within his or her official responsibilities. A staffer needs the approval of his or her employing Member.[188] In addition, one may, without compensation, represent anyone in a disciplinary, loyalty, or other personnel administrative proceeding.[189] For further exemptions, one should refer to the text of sections 203 and 205 in Appendix D of this manual.

> ***Example 36***. Staffer *Z* is a caseworker. Because of his sophistication in dealing with Government agencies, *Z*'s sister asks him to represent her at an FCC hearing at which she is contesting the agency's denial of her license application. *Z* must decline.
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> ***Example 37***. Staffer *A*'s parents have a dispute with the Social Security Administration. Staffer *A*'s official responsibilities do not involve the matter in dispute and, thus, *A* may represent her parents at their hearing.
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> ***Example 38***. Staffer *B* is a tax lawyer. *B*'s college roommate has a dispute with the IRS and asks *B* to accompany her and to assist her at the hearing. *B* may *not* do so, even if she receives no compensation.
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> ***Example 39***. Staffer *C* has a friend who is applying for a federal grant in an area unrelated to *C*'s official duties. The friend asks *C* to help him prepare the grant application. *C* will accept no compensation for writing the grant application, on her own time, and her name will not appear anywhere on the application. *C* will not have any contact with the staff of the agency administering the grant. *C* may help her friend in this way as it does not constitute representation.
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> ***Example 40***. Staffer *D* has a friend who is applying for a federal grant in an area unrelated to *D*'s official duties. The friend asks *D* to help prepare the grant application, and to sign it on her behalf (in case the administrator reviewing it has further questions). *D* may *not* sign the application or otherwise represent his friend before the agency.

Pursuant to Senate Rule 37, paragraph 10, any employee of the Senate who is required to file a public financial disclosure report may not participate personally and substantially as an employee of the Senate in any contact with any agency of the executive or judicial branch of government with respect to non-legislative matters affecting any non-governmental person in which the employee has a significant financial interest. This restriction does not apply if an employee first advises her supervising authority of her significant financial interest and obtains from her supervising authority a written waiver stating that the participation of the employee is necessary. A copy of each such waiver is placed on file with the Ethics Committee.

Finally, employees of the Senate are advised that, other than in the performance of official duties, a Senate employee should not represent others before Congress as this could reflect upon

[185] 18 U.S.C. § 216.

[186] *United States v. Podell*, 436 F. Supp. 1039 (S.D.N.Y. 1977), *aff'd*, 572 F.2d 31 (2d Cir. 1978); *also United States v. Eilberg*, 507 F. Supp. 267 (E.D. Pa. 1980).

[187] 18 U.S.C. §§ 203(d), 205(e).

[188] *See* Senate Rule 37, paragraph 3.

[189] 18 U.S.C. § 205(d).

the institution. That is, a Senate employee should not lobby Members, officers, or employees of the Congress on behalf of others, except as part of his or her Senate duties. See the discussion of ''Negotiating for Future Employment'' later in this chapter.

CONTRACTING WITH THE FEDERAL GOVERNMENT

Under the Federal Criminal Code, a Senator may not enter into a contract or agreement with the United States Government. Any such contract is deemed void, and both the Member and the officer or employee who makes the contract on behalf of the government may be fined (18 U.S.C. §§ 431–32). Public contracting law further provides that no Member of Congress may share in or benefit from any contract entered into by or on behalf of the United States. (41 U.S.C. § 22).[190]

The criminal law precludes Members from ''directly or indirectly'' holding, executing, undertaking, or enjoying ''in whole or in part'' any contract with the Government. The Attorney General has interpreted this language to prohibit a general or limited partnership that includes a Member of Congress from entering into a contract with the federal government.[191] There are no definitive federal rulings as to whether a Member of Congress may receive compensation as an employee, rather than a partner, of an organization holding a government contract. Some state decisions, however, do prohibit such arrangements.[192] Even a Member of Congress who receives compensation (*e.g.*, as salary or subcontract) under an independent organization's government contract might be considered to be improperly benefiting from that federal contract.

Unlike a partnership, a corporation with a relationship to a Member of Congress *may* enter into a contract with the federal government for the general benefit of the corporation.[193] Thus, a Member of Congress apparently may be a stockholder, even a principal stockholder, or an officer of a corporation that holds a Government contract without incurring criminal liability.[194] Similarly, the spouse of a Member may enter into a contract with the federal government. Incorporating for the obvious purpose of circumventing the statute's prohibition might, however, give rise to a cause of action, and justify a ''piercing of the corporate veil.''[195] It would appear that the statutory exception in the criminal law for contracts with corporations would likewise apply to the contract law provision of 41 U.S.C. § 22, since all the provisions discussed, and the exceptions to them, were originally passed as part of the same act.[196]

In addition, Federal Acquisition Regulations state that contracts between the government and federal employees (including employees of the Senate), or firms substantially owned or controlled by federal employees, should not knowingly be made ''except for the most compelling reasons,'' such as where the needs cannot otherwise be reasonably fulfilled.[197] The Senate Code of Conduct generally prohibits any outside activity that ''is inconsistent or in conflict with the conscientious

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[190] The criminal statute specifically exempts contracts entered into under the Reconstruction Finance Corporation Act, the Agricultural Adjustment Act, the Federal Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Farm Credit Act of 1933, the Home Owners' Loan Act of 1933, the Farmers' Home Administration Act of 1946, the Bankhead-Jones Farm Tenant Act, crop insurance agreements and contracts that the Secretary of Agriculture enters into with farmers (18 U.S.C. § 433). In addition, contracts under the Federal Farm Mortgage Corporation Act are exempt from 41 U.S.C. § 22, as are contracts that the United States Information Agency makes in foreign countries (22 U.S.C. § 1472). The public contracting clause must appear, however, in contracts for the acquisition of land pursuant to flood control laws (33 U.S.C. § 702m).

[191] Memorandum from Lynda Guild Simpson, Deputy Ass't Att'y Gen., Office of Legal Counsel, Dep't of Justice, to Robert C. MacKichan, Jr., Gen. Counsel, Gen. Services Admin. (Aug. 3, 1989); 4 Op. Att'y Gen. 47 (1842).

[192] *See* Bernard J. McNamee & Edward M. Payne, III, Note, *Conflict of Interests: State Government Employees*, 47 Va. L. Rev. 1034, 1050–1051 (1961).

[193] 18 U.S.C. § 433.

[194] *See* 39 Op. Att'y Gen. 165 (1938) (Member held 30% of corporation's stock and was president of company); 33 Op. Att'y Gen. 44 (1921).

[195] 39 Op. Att'y Gen. 165, 170–171 (1938).

[196] Revised Statutes §§ 3739–3741, 2 Stat. 484, ch. 48 (Apr. 21, 1808).

[197] 41 C.F.R. §§ 3.601 - 3.602. *See also* 41 Comp. Gen. 569; Interpretative Ruling No. 367 (Apr. 11, 1983).

performance of official duties.''[198] While not enforced as a disciplinary standard in the Senate, the Code of Ethics for Government Service, which may nonetheless provide useful guidance, specifically states that an employee ''[s]hould engage in no business *with the Government*, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.''[199]

> ***Example 41***. The Resolution Trust Corporation holds an auction of assets of failed banks. Senator *E* may *not* purchase anything at the auction because the contract of sale would be a contract with the government.
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> ***Example 42***. Senator *F* is invited to speak at a conference sponsored by the executive branch. Although private sector speakers at this conference are receiving fees, *F* may *not* accept payment. *F* may accept reimbursement from the sponsoring agency for necessary travel, food, and lodging expenses.

DUAL GOVERNMENT EMPLOYMENT

A Senate employee may not hold another non-Senate federal job if the salaries of the two positions combined exceeds $25,362 for CY 2000.[200] A ''position'' means ''a civilian office or position (including a temporary, part-time, or intermittent position), appointive or elective, in the legislative, executive, or judicial branch of the [Federal] Government.''[201] The dual employment bar does not apply when the positions involved are expert or consultant positions and pay is received on a ''when-actually-employed'' basis for different days.[202] An individual also may not hold two Senate jobs, if the combined salary exceeds the maximum annual rate of pay authorized to be paid out of a Senator's clerk hire allowance.[203] Thus the law allows Senate employees to work part-time and allows Senate personal offices to share employees, as long as each employee receives pay commensurate with the work done for each office and no individual's combined salary exceeds the cap. No authority permits an employee to receive compensation simultaneously from a personal office and a committee (with a statutory exception applicable to only the Chairman and Vice Chairman of the Ethics Committee), nor is there any authority for an employee to receive compensation simultaneously from two committees.

> ***Example 43***. Staffer *G* works Mondays, Wednesdays, and Fridays in Senator H's office. *G* is offered a job working Tuesdays and Thursdays in Senator *I*'s office. As long as both Senators approve the arrangement, *G* may work part-time in each of two Senate offices.[204]

CAMPAIGN WORK

Senate Rule 41 provides that no officer or employee of the Senate may receive, solicit, be a custodian of, or distribute any funds in connection with any campaign for the nomination for election, or the election, of any individual to be a Member of the Senate or to any other federal office, unless the employee is appropriately designated by a Senator to receive such funds. Such political fund designees may raise federal campaign funds only for a campaign committee established and controlled by a Senator or group of Senators.[205] Thus, an employee could not be a political fund designee with respect to a campaign committee unless it was organized and controlled by a Senator or group of Senators.

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[198] Senate Rule 37(2).

[199] Code of Ethics for Government Service, 72 Stat., pt. 2, B12, ¶ 7 (1958) (emphasis added).

[200] 5 U.S.C. § 5533(c)(1); the dual compensation figure was $23,165 for CY 1997. *See* Interpretative Ruling No.30 (June 13, 1977).

[201] 5 U.S.C. § 5531.

[202] 5 U.S.C. § 5533(c)(4). *See* Interpretative Ruling No. 367 (Apr. 11, 1983).

[203] 5 U.S.C. § 5533(c)(2).

[204] *See* Interpretative Ruling No. 207 (Dec. 11, 1978).

[205] *See* Interpretative No. Ruling 387 (Sept. 17, 1984).

As long as they do not use any official resources and they have the approval of their supervisors, Senate employees are free to engage in other campaign work, as volunteers or for pay, on their own time, so long as such activity complies with Senate Rule 41.1.[206] An employee's ''own time'' includes non-Senate hours such as weekends, or vacation time accrued and taken in accordance with established office policy. If an employee intends to spend substantial time on campaign activities, over and above accrued leave, the supervising Senator should reduce the individual's Senate salary proportionately or remove the person from the Senate payroll.[207]

Members, officers and employees earning at or above 120% of GS–15 (**$93,137 in CY 2000; $89,728 in CY 1999**) are subject to the limits on outside earned income imposed by Rule 36 and the Ethics in Government Act. For CY 2000, the outside earned income limit is **$21,195 ($20,505 in CY 1999**). In addition, pursuant to Rule 37.6(b), it appears that an employee earning at or above 120% of GS–15 could not serve for compensation as an officer (or member of the board, if applicable) of the campaign organization. Senate Rule 41.1 and political activity in general by Senate Members, officers, and employees are discussed in more detail in Chapter 5.

Holding State or Local Office

Senate employees are often tempted to run for local offices themselves. No federal statute or Senate rule prohibits this.[208] Senate Rule 35, paragraph 1(c)(2) [the Senate Gifts Rule] is interpreted to authorize contributions to state and local campaigns. Also, several rulings of this committee specifically permit running for and holding state and local elected office, assuming that the employee's supervisor approves and that the local service will not interfere with Senate duties.[209] Holding elective office is not deemed to be a restricted professional activity involving a fiduciary relationship under Rule 37.5(b), nor is it restricted service as an officer of an association, corporation, or other entity under Rule 37.6(b). However, officers and employees earning at or above 120% of GS–15 (**$93,137 in CY 2000; $89,728 in CY 1999**) are subject to the limits on outside earned income imposed by Rule 36 and the Ethics in Government Act. Staff should take care to avoid any undertaking that is inconsistent with congressional responsibilities. The Committee suggests that supervising Senators consider whether salary adjustments or restrictions in Senate duties might be appropriate for staffers who take on such substantial outside time commitments (e.g., where a staffer serves in a state legislature which meets for only a portion of the year, a temporary adjustment in the staffer's Senate duties and pay might be in order during the state legislative session).

Employees who hold local office may not do so to the neglect of Senate duties, nor on ''official time'' during which they receive a government salary.[210] No local elective service may be performed in the congressional office or in a manner that utilizes any official resources, including the telephones. In dealing with the public, staff who serve as local officials should always make clear in which capacity they are acting. They should discourage any suggestion that their local constituents will receive special treatment from the Senate office, beyond that received by other residents of the state.[211]

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[206] *See* Interpretative Ruling No. 402 (Oct. 18, 1985); Interpretative Ruling No. 326 (July 1, 1980); Interpretative Ruling No. 288 (Oct. 16, 1979); Interpretative Ruling No. 269 (June 26, 1979); Interpretative Ruling No. 194 (Oct. 18, 1978); Interpretative Ruling No. 154 (June 22, 1978); Interpretative Ruling No. 153 (June 22, 1978); S. Rep. No. 95–241.

[207] *See* Interpretative Ruling No. 197 (Oct. 31, 1978); Interpretative Ruling No. 59 (Sept. 13, 1977).

[208] Local laws should be consulted as some jurisdictions bar their officials from simultaneously holding federal positions.

[209] *See* Interpretative Ruling No. 312 (Mar. 20, 1980) (state commission); Interpretative Ruling No. 273 (July 9, 1979) (state legislature); Interpretative Ruling No. 155 (June 28, 1978) (unnamed state office); Interpretative Ruling No. 109 (Mar. 23, 1978) (state legislature); Interpretative Ruling No. 55 (Sept. 7, 1977) (city council).

[210] *See* Senate Rule 37(2). *See also* Code of Ethics for Government Service, Appendix E, ¶ 3.

[211] *See* Senate Rule 37(1); Code of Ethics for Government Service, Appendix E, ¶ 5.

Senate employees should also recall that they are prohibited by 18 U.S.C. § 205 from acting as an agent in connection with any particular matter in which the United States has a direct and substantial interest, except in the course of their official Senate duties. Section 203 of Title 18 makes it unlawful, except in the course of Senate duties, to be compensated for representing others (presumably including a local government) before any federal department or agency in any matter where the United States has an interest. While the Committee is not aware of any local official being prosecuted under these statutes, employees should avoid situations that might be construed as unlawful representation of a locality before the federal government.

Holding Federal Office

Senate Rule 41.1 limits the handling of federal campaign funds by Senate employees to designated staff. Pursuant to these restrictions, the Committee has previously held that a Senate employee is prohibited from forming a principal campaign committee pursuant to the Federal Election Campaign Act (FECA), and from receiving, soliciting, being the custodian of, or distributing funds in connection with his campaign for federal office except where the employee is a political fund designee and the employee's campaign committee is established and controlled by a Senator or group of Senators. Absent such an arrangement, the employee must leave the Senate payroll in order to run for federal office.

FOREIGN GOVERNMENTS

The United States Constitution prohibits any Member or employee of the Senate (as well as any other federal official) from receiving a ''molument'' of ''any kind whatever'' from a foreign government or a representative of a foreign state, without the consent of the Congress (Article I, Section 9, clause 8). An ''emolument'' means ''any profit, gain, or compensation received for services rendered.''[212] Although Congress has consented, in the Foreign Gifts and Decorations Act, to the acceptance by federal officers of certain *gifts*, no statute grants a general consent for the receipt of emoluments or other *compensation* from foreign governments.[213]

Therefore, Members and employees may *not* receive any payment for services rendered to official foreign interests, such as ambassadors, embassies, or agencies of a foreign government. Caution should thus be exercised in accepting expenses or other compensation from any foreign organization (such as a foundation) that receives sponsorship, funding, or licensing from a foreign government because it could be considered an official arm or an instrumentality of the government. The Comptroller General has ruled, for example, that a Member of Congress could not accept a fee from the British Broadcasting Corporation for participation in a television program to discuss the American Presidency. The BBC, because of its funding relationship and regulation by the British Government, was considered an instrumentality of the British Government, and thus a ''foreign state'' under the constitutional ban.[214] A Member or employee could, however, accept necessary expenses to speak before or perform some other service for an organization that is incorporated in the United States, even one that is foreign owned.

Regardless of compensation, a public official may not act as an agent or attorney for a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, that is, generally, those individuals engaged in lobbying, political, or propaganda activities on behalf

[212] Comp. Gen. Op. B–169035, 49 Comp. Gen. 819, 820 (1970); *see also* Comp. Gen. Op. B–180472 (Mar. 4, 1974).

[213] 5 U.S.C. § 7342. *But see* 37 U.S.C. § 908, consenting to the civilian employment of retired military members and members of the reserve by foreign governments, when approved by the relevant Cabinet Secretaries.

[214] Comp. Gen. Op. B-l80472, *supra* note 97.

of foreign governments or political parties.[215] In addition, United States officials may not accept campaign contributions from foreign nationals.[216]

POST-EMPLOYMENT RESTRICTIONS

Senate rules have long barred Senators and their staffs from lobbying former Senate colleagues, employees, and employers for one year after leaving office. The Ethics Reform Act of 1989 enacted, for the first time, statutory post-employment restrictions on certain legislative branch officials, codified at section 207 of the Federal Criminal Code.[217] These limitations went into effect for Members with the swearing in of the 102d Congress on January 3, 1991 at noon, and for staff on January 1, 1991. The law applies only to Members, officers, and those employees who earn at least 75% of a Member's salary (**$105,975 in CY 2000; $102,525 in CY 1999**).[218] An employee must have earned that salary for at least 60 days in the year prior to leaving government service for the statutory restrictions to apply. Senate rules, on the other hand, set some post-employment lobbying limits on *every* Senate Member and employee for one year after leaving the Senate, regardless of Senate salary.

Restrictions Under Senate Rule

Senate Rule 37(8) and (9) limit the activities of those who leave the Senate and become registered lobbyists (under the Federal Regulation of Lobbying Act of 1946 or any successor statute, i.e. the Lobbying Disclosure Act of 1995). *Senators* who become registered lobbyists, or who are employed or retained by such persons for the purpose of influencing legislation, may not lobby Members, officers, or employees of the Senate for a period of one year after leaving office. *Employees* who become registered lobbyists, or who are employed or retained by such persons for the purpose of influencing legislation, may not lobby their former offices for one year after leaving the Senate. That is, an employee on the personal staff of a Senator may not lobby that Senator or his or her personal staff for one year; an employee on a committee staff may not lobby the members or staff of that committee (including all subcommittee's thereof) for one year; an employee on a leadership staff may not lobby any member or staff of the leadership of the same party (including the personal staff of the leadership Member employing the staffer).[219] A former leadership staffer could lobby the leadership of the other party under the Senate Rule (but see 18 USC 207, to the contrary).

Occasionally, a staffer hired for one Senate position is required to take on substantive responsibilities usually associated with a position on a different payroll, thereby incurring post employment restrictions with respect to both positions. For example, a staffer on the Member's personal staff who also undertakes substantive responsibilities for a committee on which the staffer's supervising Member sits, should refrain from lobbying the committee members or committee staff for one year from the date the staffer last performed services for the committee. Substantive committee responsibilities include assisting in the drafting of committee bills or assisting at hearings and in mark-up (as opposed to committee monitoring and liaison services for a Member's personal office). Such a staffer typically is based in the personal office, but is given full access to Committee

[215] 18 U.S.C. § 219; *see* Foreign Agents Registration Act, 22 U.S.C. §§ 611–621.

[216] 2 U.S.C. § 441e.

[217] *See generally* 18 U.S.C. § 207(e)-(f). Executive branch officers and employees have long labored under restrictions on their professional activities upon leaving office. Depending on how closely those activities touch upon their former Federal responsibilities, the restraints could last one year, two years, or permanently. *See generally* 18 U.S.C. § 207(a)-(d).

[218] 18 U.S.C. § 207(e)(6)(A).

[219] While Senate Rule 37(8) and (9) do not, by their terms, preclude communications by a former committee staffer with personal office staff (or the converse), caution is advised with respect to such communications. Also, for some leadership staffers, it is possible that more than one Senator could be considered ''the leadership Member employing the staffer.'' For example, the party leader may authorize a staffer's pay and a leadership committee chairman may directly supervise the staffer, such that both could be Members whose personal staff that former staffer may not lobby.

staff files. The staffer, of course, would also be banned for a period of one year from lobbying the employing Member and the staff of the Member's personal office. For example, a staffer on the personal office payroll of a Senator on the Agriculture Committee, whose responsibilities included representing his or her Senator at committee bill drafting sessions, and attending committee meetings and mark-ups with the Senator, and who was given access to committee staff files would be prohibited from lobbying the Senator and his personal office staff AND the Members of the Agriculture Committee and its staff.

Rule 37(11) sets forth various definitions in the context of this lobbying restriction:

- An employee is anyone whose salary is disbursed by the Secretary of the Senate; or, whose services, as an officer or employee of the government, are utilized by a Senate committee; or, whose services, regardless of Government employment, are utilized on a full-time basis, for more than ninety days in a calendar year, in the conduct of official duties of any Senate committee or office.[220]
- A subcommittee staffer is treated as an employee of the relevant full committee.
- ''Lobbying'' means ''any oral or written communication to influence the content or disposition of any issue before Congress, including any pending or future bill, resolution, treaty, nomination, hearing report, or investigation.'' This definition specifically excludes:

(1) a communication (i) made in the form of testimony given before a committee or office of the Congress, or (ii) submitted for inclusion in the public record, public docket, or public file of a hearing; or

(2) a communication by an individual, acting solely on his own behalf, for redress of personal grievances, or to express his personal opinion.

The Committee construes these restrictions to apply to anyone required by the Lobbying Registration Act to register as a lobbyist, whether or not they actually do register.[221] As long as any partner or associate in a law firm is a registered lobbyist, then any former Senator or staffer employed by that firm, within a year of leaving the Senate, for the purpose of influencing legislation, is covered by the lobbying restriction. Having a restricted former Senate individual join a firm, however, does not bar any other member or employee of the firm from lobbying.[222] An individual who leaves the Senate and then returns for a period of time will be restricted for one year from his or her final termination date.[223]

The Lobbying Registration Act also limits the exemption from registration for those who lobby on behalf of certain government entities. Employees of the following types of government groups must register under the Act if they meet the Act's lobbying thresholds: college or university employees; employees of a government-sponsored enterprise; employees of a public utility that provides gas, electricity, water or communications; or employees of a guaranty agency. Thus, if a Senate personal office employee leaves the Senate to join a state college as a lobbyist and is required to register under the Act, under Rule 37.9, the employee would be restricted from lobbying his former employing Senator and the personal office for a period of one year from his final termination date.

The Secretary of the Senate implements the Lobbying Registration Act for the Senate and is the appropriate office with jurisdiction to answer questions about the Act's application to particular situations or individuals.

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[220] *See* Senate Rule 41(2)-(4); *see also* Interpretative Ruling No. 432 (Apr. 20, 1988). This definition of employee includes fellows who perform full-time Senate services for more than 90 days and who receive compensation therefor from any source other than the United States Government.

[221] *See* Interpretative Ruling No. 218 (Jan. 15, 1979).

[222] *See* Interpretative Ruling No. 275 (July 17, 1979).

[223] *See* Interpretative Ruling No. 396 (May 13, 1985).

Restrictions Under Criminal Law

The criminal law (18 U.S.C. 207(e)-(f)) imposes a similar, but not identical, one-year ''cooling-off period.'' Under the law, for one year after leaving office, a covered former legislative employee (i.e., who is paid at a rate of at least 75% of a Member's salary for a period of at least 60 days (in the aggregate) during the last year of employment, **$105,975 in CY 2000; $102,525 in CY 1999**) may not ''knowingly [make], with the intent to influence, any communication to or appearance before [specified current officials] on behalf of any other person (except the United States) in connection with any matter'' on which the former officeholder seeks official action. This ban applies to all covered former employees regardless of whether the employee is a registered lobbyist. Thus:

- Former **Members** may not seek official action, on behalf of others, from current Members, officers, or employees of either the Senate or the House of Representatives or from current employees of any other legislative office.[224]
- Former **elected officers** of the Senate may not seek official action, on behalf of others, from current Members, officers, or employees of the Senate.[225]
- Covered former employees on the **personal staff** of a Member may not seek official action, on behalf of others, from that Member or from any of the Member's current employees.[226]
- Covered former **committee staff** may not seek official action, on behalf of others, from any current Member or employee of the employing committee (including all subcommittees thereof) or from any Member who was on the committee **during the last year that the former employee worked there**.[227]
- Covered former employees on the **leadership staff** may not seek official action, on behalf of others, from current Members of the leadership[228] or any current leadership staff employees.[229]
- Covered former employees of any **other legislative office** may not seek official action, on behalf of others, from current officers and employees of that legislative office.[230]

For the purposes of this statute, detailees are deemed to be employees both of the entity from which they come and the entity to which they are sent.[231]

These restrictions bar certain types of contacts with certain categories of officials, basically former colleagues and those most likely to be influenced on the basis of the former position. Note that the scope of covered activities (''any communication to or appearance before'') is broader

[224] 18 U.S.C. § 207(e)(1). Other legislative offices include the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, and the Capitol Police. *See* 18 U.S.C. § 207(e)(7)(G).

[225] 18 U.S.C. § 207(e)(1).

[226] 18 U.S.C. § 207(e)(2).

[227] 18 U.S.C. § 207(e)(3).

[228] The ''leadership'' of the Senate consists of the Vice President, the President pro tempore, Deputy President pro tempore, majority leader, minority leader, majority whip, minority whip, chairman and secretary of the Conference of the Majority, chairman and secretary of the Conference of the Minority, chairman and co-chairman of the Majority Policy Committee, chairman of the Minority Policy Committee, and any similar later-created position. 18 U.S.C. § 207(e)(7)(M).

[229] 18 U.S.C. § 207(e)(4). While the statute does not, by its terms, preclude contacts with the personal office staffs of members of the leadership, such contacts might be deemed indirect efforts to influence the Members themselves (which would be barred if done directly) and therefore should probably be avoided under section 207, particularly given the ambiguity of the definition of ''employee on the leadership staff'' in section 207(e)(7)(I). Moreover, the Committee has determined that, under Senate Rule 37.9, a former employee on a leadership staff may not lobby the personal office staff of the leadership Member who employed him or her for one year.

[230] 18 U.S.C. § 207(e)(5). For these employees, like executive branch employees, post-employment restrictions do not go into effect unless their rate of basic pay equalled or exceeded that in effect for level V of the Executive Schedule (*$110,700* in 1998). 18 U.S.C. § 207(e)(6)(B).

[231] 18 U.S.C. § 207(g).

than the lobbying activities prohibited by the Senate Rule. The law focuses on communications and appearances. By contrast, if a former official plays a background role, does not appear in person or convey his or her name on any communications, the law apparently does not prohibit that person from advising those who seek official action from the Congress.[232]

The law does, however, absolutely preclude two sets of activities regardless of whether the former official acts openly or behind the scenes. None of the officials subject to the limitations described above may represent, aid, or advise a foreign entity (that is, a foreign government or political party) with the intent to influence *any* officer or employee of any department or agency of the United States Government.[233] In addition, in a provision applicable to **any** former legislative employee, regardless of salary level, if, during the employee's last year of service, he or she participated personally and substantially in any trade or treaty negotiations on behalf of the United States, and had access to confidential information about those negotiations, the former official may not use that information to represent, aid, or advise anyone other than the U.S. Government concerning those negotiations.[234] Both of these restrictions again last for one year after leaving office.

Note that for Members, the law is more restrictive than the Senate rule. The law bars former Senators from lobbying any Member or staffer of either the Senate or the House; the rule bars former Senators from lobbying only *Senate* Members and staff. With respect to employees, the law only restricts staff who were at the top of the Senate pay scale[235], but those employees are limited in their contacts regardless of whether they become, or are employed by, registered lobbyists. All persons are advised to obey the broadest applicable restriction, whether it be under law or rule, and individuals should be particularly careful to keep within the law, as it carries criminal penalties.

Penalties

Violation of § 207 is a felony, carrying penalties of imprisonment and/or fines. The statute authorizes imprisonment for up to one year (or up to five years for willfully engaging in the proscribed conduct). Additionally, an individual may be fined up to $50,000 for each violation or the amount received or offered for the prohibited conduct, whichever is greater. The statute further authorizes the Attorney General to seek an injunction prohibiting a person from engaging in conduct that violates the Act.[236]

Exceptions

Under the law, the restrictions do not apply to official actions taken by employees or officials of: the United States Government; the District of Columbia; state and local governments; accredited, degree-granting institutions of higher education; and hospitals or medical research organizations.

Bear in mind that due to limitations placed on certain government employees (e.g., state university employees) by the Lobbying Registration Act, Senate Rule 37.8 and 9 (which apply to all salary levels) restrict some lobbying activities which are not prohibited by the criminal statute (which applies to salaries at or above **$105,975 CY for 2000**). Thus, for example, a Senate employee who leaves a Senate committee position at a salary greater than $105,975 and joins a state university as a registered lobbyist, would not be prohibited under the criminal statute from lob-

[232] Former officials who are lawyers may be precluded from playing such background roles by bar association rules mandating disclosure of their activities to their former agencies. *See, e.g.*, ABA MODEL RULE OF PROFESSIONAL CONDUCT 1.11. Lawyers who leave government service should consult their local bar associations for guidance.

[233] 18 U.S.C. § 207(f).

[234] 18 U.S.C. § 207(b).

[235] However, Senate Rule 37.9 covers all Senate employees, regardless of salary level.

[236] *See* 18 U.S.C. § 216.

bying her former committee colleagues, but would be prohibited by Senate Rule 37.9 from doing so (at any salary level).

The criminal law restrictions further do not preclude activities on behalf of international organizations in which the United States participates, where the Secretary of State certifies in advance that such activities serve the interests of the United States. In addition, section 207 does not prevent individuals from making uncompensated statements based on their own special knowledge, from furnishing scientific or technological information in areas where they possess technical expertise, or from testifying under oath.[237] Similarly, as noted above, for purposes of the Senate rule, lobbying does not include congressional testimony under oath, formal public comments, and expressions of personal opinion. Further, the restrictions of the statute do not apply to a communication or appearance made solely on behalf of a candidate in his or her capacity as a candidate, an authorized campaign committee (which does not include a multi-candidate committee), a national committee, a national federal campaign committee, a state committee, or a political party, by an employee of the persons or entities described above or by an employee of a person or entity who represents, aids or advises only persons or entities described above. (See 18 U.S.C. 207(j)(7))

> ***Example 44***. Senator *J* retires in the middle of the 103d Congress to accept an appointed position in an executive branch agency. *J* may lobby Congress on behalf of the agency.
>
> ***Example 45***. Senator *K* retires at the end of the 103d Congress. During the 104th Congress, a bill is considered that would repeal the law that *K* considers to be his finest legislative achievement. *K* may contact any Member or employee of Congress, on his own behalf, to express his personal opinion of the bill, taking care that he is not acting on behalf of a client or employer.
>
> ***Example 46***. Staffer *L*, who earns more than 75% of a Member's salary, resigns from her position on Senator *M*'s personal staff to join a lobbying firm. She may not lobby M or anyone on his personal staff for one year, but may lobby any other Member of Congress as soon as she leaves.
>
> ***Example 47***. Staffer *N*, who earns more than 75% of a Member's salary, resigns from his position on the Finance Committee to join a law firm which includes registered lobbyists. Both law and rule prohibit him from lobbying any current member or staffer of Finance for one year. The law further prohibits him from lobbying any Member who was on that committee during *N*'s last year of Senate service (except on behalf of a legally exempt person or entity), for one year. He may, however, lobby any other Member or staffer on any issue.

Negotiating for Future Employment

Members and employees, like all individuals in society, are entitled to search the marketplace in order to secure employment after terminating their current positions. On the other hand, because of the unique nature of their responsibilities to the Senate, including the influence which they exercise over the legislative process, and because all their actions are open to public scrutiny, Members and employees seeking future employment are under a substantial obligation to avoid not only an actual conflict of interest, but also the appearance of a conflict between their duties to the Senate and the interests of the prospective employers with whom they are negotiating.[238]

Senator Paul Douglas vividly described the potential for corruption when a government official seeks employment with those who have public business before him or her.

> The official becomes dissatisfied with his salary and his job. He begins to cast envious glances at better-paid men in the private industry with which he is dealing. He wants to join them, and he begins to wonder how he can do so if he offends the companies which are involved. If he is to make the transfer, must he not stand well in the estimation

[237] *See* 18 U.S.C. § 207(j).

[238] *See* Interpretative Ruling 380 (Mar. 1, 1984).

> of those who can hire him? As the official broods over these facts, the virtue begins to ooze out of him.[239]

The Senate Code of Official Conduct prohibits Senators and staffers from receiving compensation ''by virtue of influence improperly exerted'' from Senate positions or from engaging in any outside activities that are inconsistent ''with the conscientious performance of official duties.''[240] In light of these restrictions, individuals should be particularly careful in how they go about negotiating for future employment, especially when negotiating with someone who could be substantially affected by the performance of official duties. It would be improper to permit the prospect of future employment to influence official actions. Therefore, it is advised that a Senate employee should recuse himself from any contact or communication with a prospective employer on issues of legislative interest to the prospective employer while job negotiations are under way (and that the recusal should be expanded to include entities associated with the prospective employer once an offer has been accepted). Under normal circumstances, a Senate employee who delivers his or her resume to a group of fifty prospective employers would not, at this early stage, need to recuse him or herself. Whether recusal would be necessary after the employee met with ten of those prospective employers would depend, of course, upon the results of each meeting. On the other hand, once the employee has directed his or her attention on two or three of the prospective employers for further discussions, recusal is likely necessary. A Senate employee, however, with the supervising Senator's approval, may continue to staff Members and employees of the Senate on issues which may be of interest to the prospective employer during the limited period that the employee remains with the Senate. Generally, each Member must decide for himself or herself, as well as for his or her staff members, what steps would be necessary to avoid not only the conflict which may arise from negotiating or accepting prospective employment, but the appearance of such a conflict as well. Thus, as negotiations with prospective employers advance, there necessarily comes a point where it is imperative that a staffer inform his or her supervising Senator of negotiations, so that the Senator may make an informed decision as to how best to protect against a conflict of interest.

Consistent with all of the above, Members and employees may carry out negotiations regarding terms and conditions of employment with prospective employers, and sign employment contracts.[241] They may accept travel expenses from potential employers for the purpose of attending job interviews.[242] Agreements for future employment and expenses from any one source exceeding $250 must be reported on the annual financial disclosure statements of any individuals required to file. With the exception of a ''displaced staff employee'' (see, Standing Orders of the Senate, section 72.6), an employee may begin a new job and accept compensation for it while still collecting Senate pay for accrued annual leave, so long as no services are performed for the Senate during this period (if no Senate services are performed, there is nothing with which an outside activity could conflict) and one's Senate supervisor approves of the arrangement.[243] Such individuals otherwise remain subject to all other provisions of the Senate Code of Official Conduct during the leave pay-out period, and the post-employment lobbying restrictions of Rule 37, paragraph 9 and 18 U.S.C. 207 will expire one year after the individual's final day on the Senate payroll. Also, such individuals must refrain from lobbying or otherwise contacting anyone in the federal government (including Congress) on behalf of any person or entity during the period that they remain on the Senate payroll to be paid for accrued annual leave. (See the criminal provisions at 18 U.S.C. 203 and 18 U.S.C. 205, the section on ''Representing Others Before the Federal Govern-

[239] Paul H. Douglas, Ethics in Government 52 (1952).

[240] Senate Rule 37(1) - (2).

[241] *See* Interpretative Ruling No. 380 (Mar. 1, 1984).

[242] *See* Interpretative Ruling No. 79 (Oct. 11, 1977), and Section 1(c)(7)(A) & (B) of Senate Rule 35.

[243] *See* Interpretative Ruling No. 177 (Sept. 26, 1978); Interpretative Ruling No. 131 (May 15, 1978).

ment'', infra, this chapter, and Appendix E discussing ''Improper Conduct Reflecting Upon the Senate'').

EMPLOYMENT CONSIDERATIONS FOR SPOUSES

Being married to a Senator or Senate staff member does not, of course, preclude one from earning a salary. Certain aspects of a spouse's employment, however, may have ramifications for the Member.[244]

Neither federal law nor Senate rules specifically preclude a Member's spouse from engaging in any activity on the ground that it could create a conflict of interest with the Member's official duties. However, Senate rules and statutory provisions impute to the Member certain benefits that are received by the spouse. Thus the question may arise as to whether the Member is improperly benefiting as a result of the spouse's employment.

Senate Rule 37, paragraph 1, part of the Code of Official Conduct, prohibits a Member from receiving any compensation, or *allowing any compensation to accrue to the Member's beneficial interest*, from any source as a result of an improper exercise of official influence. The income received by a spouse from employment usually accrues, albeit indirectly, to a Member's interest. Nonetheless, this provision is not triggered by a spouse's employment unless the Member has improperly exerted influence or performed official acts in order to obtain compensation for or as a result of compensation to the spouse.

Standing Rule 34 (Public Financial Disclosure), requires a Senator to disclose the source of any earned income in excess of $1,000 received by a spouse. The Committee has recognized that the compensated employment of spouses is a matter of interest to the public. Thus, in Interpretative Ruling No. 336 (Sept. 5, 1980), the Committee stated its view that a Senator's spouse's lobbying on behalf of a corporation on whose board the spouse served, might, under certain circumstances, reflect adversely upon the Senate as an institution. The Committee has subsequently ruled that the decision on whether a spouse may lobby the Senate is generally a decision for the Senator and his or her spouse, giving due regard to the potential reflection upon the Senate. In Interpretative Ruling No. 397 (May 24, 1985), the Committee found that no rule of the Senate prohibited the spouse of a Senator from accepting compensated employment with a tax-exempt educational organization where the spouse's responsibilities were to be focused on educational activities for the public rather than lobbying the Congress. A spouse may, of course, supervise others who lobby the Senate. As noted, compensated spousal employment must be disclosed by the Senator on the annual financial disclosure statement. Given the heightened public interest in the professional activities of spouses of Members, the Committee hopes that spouses, as well as Members, will conduct their professional and business activities so as not to reflect adversely upon the Senate as an institution.

With respect to the lobbying activities of spouses of Senate employees, the Committee has concluded that the position of the Senate employee may, in certain circumstances, limit the ability of the spouse to lobby. For example, to avoid any adverse reflection upon the Senate, the Committee has previously advised that the spouse of a Senator's chief of staff should not lobby the supervising Senator or the Senator's other employees who are supervised by the chief of staff, although the employee's spouse would be free to lobby non-supervising Senators and other Senate employees. In addition, the spouse's associates would not be prohibited from lobbying any Members or staff so long as the Senate employee's name is not used by the associates in such communications.

Federal law, at 5 U.S.C. § 3110, generally prohibits a federal official from hiring or promoting a relative, including a spouse. A Member's spouse may work in the Senate office, but only on

[244] *See generally MARC E. MILLER, POLITICIANS AND THEIR SPOUSES' CAREERS* (Congressional Management Foundation 1985).

an unpaid basis (unless the employment predated the marriage).[245] The Committee does not construe this law to prohibit a Senate employee from being the supervisor of a relative as long as the employee is not *in any way* involved in the decision to appoint, employ, promote or advance the relative and as long as the employee recuses him- or herself from any appointment, employment, promotion, or advancement decisions concerning that relative.[246]

Spouses who accept positions with the federal government should be aware of a political limitation. Under the ''Hatch Act Reform Amendments of 1993,'' most employees in the executive branch of Government, while now free to take active part in political campaigns on their own time, still may not run for office themselves or solicit, accept, or receive political contributions for individual candidates' campaign committees.[247] Thus, an individual employed by the federal government may be prohibited from any involvement in fund-raising for the campaign of his or her spouse. Because the penalty for violation ranges up to removal or suspension, the employed spouse should consult with his or her supervising ethics office to determine the propriety of proposed campaign activities.

As explained in more detail in Chapter 4, official resources may only be used for official purposes. Thus a Member may not use any congressional resources (including, e.g., staff time or the office computer) on behalf of any private enterprise, including a spouse's professional activities.

[245] *See* Chapter 9 of this Manual for further discussion of the law against nepotism.

[246] Interpretative Ruling No. 441 (April 4, 1989).

[247] 5 U.S.C. §§ 7321–7326; *see also* 5 C.F.R. Part 733.

OUTSIDE ACTIVITY/INCOME SUMMARY

Income Level	Restriction
Members of the Senate	*May not contract* with the federal government. *May not practice* in the United States Claims Court or the Court of Appeals for the Federal Circuit.
All Members, officers, and employees	*May not receive an honorarium* for an appearance, speech, or article, or a series thereof, if directly related to Senate duties or payment is made because of Senate position. *May not use official influence* to further personal financial interests. *May not represent* others in a private capacity before the government. *May not accept* compensation of any kind from a *foreign* government or act as an agent for a foreign principal. *May not engage* in outside activities that are inconsistent with the conscientious performance of official duties. *May not lobby* former colleagues (Senate and House for Members) for one year after leaving office.
All officers and employees	*May not hold* outside jobs without prior approval of supervising officer or Senator.

Income Level	Restriction
Members, officers, and those employees earning at least *$25,000* a year	*May not affiliate* for the purpose of providing professional services for compensation. *May not allow* their *names* to be used by organizations providing professional services for compensation. *May not practice* a profession for compensation on Senate time. *May not serve as officer or board member* of any publicly held or regulated entity, except: 1) a 501(c) organization, if unpaid; 2) an organization principally available to Senate individuals and their families, if unpaid; 3) an organization on whose board the person served for at least 2 years prior to coming to Senate, if time required is minimal and person is not on committee with legislative jurisdiction over relevant regulatory body. *Committee staff must divest* of substantial holdings affected by actions of employing committee, absent permission of Select Committee and supervising Senator.

Income Level	Restriction
Members and those employees earning at least 120% of the GS–15 rate of basic pay (**$93,137 in CY 2000; $89,728 in CY 1999**)	*May not* receive more than *15%* of the Member's base salary in total outside earned income (**$21,195 in CY 2000; $20,505 in CY 1999**). *May not* receive compensation for providing professional services involving a *fiduciary* relationship, or for being employed by an organization that provides such services. *May not allow* their *names* to be used, regardless of compensation, by organizations providing fiduciary services. *May not* accept compensation for serving as a *board member or officer* of any organization. *May not* accept compensation for *teaching*, without prior written approval from the Select Committee on Ethics. *Must file* annual financial disclosure forms. Absent waiver from supervising Senator, employee *may not contact* executive or judicial branch on non-legislative matters affecting own significant financial interests.
Members and those employees paid at least 75% of a Member's rate of basic pay (**$105,975** in CY 2000; $102,525 in CY 1999)	*May not lobby* former colleagues (Senate and House for Members) for one year after leaving office (criminal penalties).

OUTSIDE EARNED INCOME AND HONORARIA (RULE 36)

THE 15 PERCENT LIMIT

(Affecting Members and Senior Staff)

For Members and those officers and employees earning above 120% of the base salary for the GS–15 level (i.e., **$93,137 in CY 2000; $89,728 in CY 1999**), federal law and Senate rule limit both the total amount of outside earned income and the type of permissible outside employment. Senate Rule 36 caps the amount of permissible outside earned income in a calendar year at 15 percent of the Executive Level II salary(that is, the Members' base annual salary). In 2000, the cap is **$21,195 ($20,505 in CY 1999**), for both Members and covered employees.[248] For persons who earn above GS–15 for only part of the year, the cap is pro-rated.[249] Rule 37 (discussed below) restricts, and in some cases prohibits, compensation for certain types of activities, regardless of whether the individual's income has reached the cap. Rule 36 restricts compensation for personal services (termed ''earned income''), but not moneys received from ownerships or other investments of equity (so-called ''unearned'' or ''passive income''). The distinction between earned and unearned income is thus important because only earned income is subject to the 15-percent cap.

What Is Outside Earned Income?

The Committee defines the term ''outside earned income'' as follows.

For purposes of Senate Rule 36, 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, other than the salary of such individual as a Senator, officer, or employee of the Senate, but *does not include* –

> (1) any compensation received by the individual for personal services actually rendered prior to the effective date of the earned income rule, or during a time when the individual was not a Senator, officer or employee of the Senate;
>
> (2) investment income (e.g., dividends, capital gains, interest, rents), provided that the individual's services do not materially contribute to the production of the income;
>
> (3) income from enterprises in which the individual or his or her immediate family owns a majority interest in which both personal services and capital are income-producing factors, so long as the personal services provided by such individual are managerial or supervisory in nature, necessary to protect the interests of the immediate family members, and do not consume significant amounts of time; or
>
> (4) copyright royalties or their functional equivalents from the use or sale of copyright, patent, and similar forms of intellectual property rights, when received from established users or purchasers of those rights pursuant to usual and customary contractual terms. [Note that, by exclusion, lump sum payments which are neither royalties nor their functional equivalent ARE are considered to be outside earned income subject to limitation under Rule 36.

''Investment income'' refers to dividends or distributions based on the profitability of an entity, rental income, royalty income from mineral rights, capital gains from sales of investments, or other income based on the activity or increase in value of the entity in which the individual has invested capital. The Committee does not believe that personal management (e.g., through purchase, rent, or sale) of one's own assets or the assets of one's family transforms investment income into restricted personal service income. Where an individual serves as a manager to preserve the financial interests of the family (for example, as a trustee of a family trust or executor of a family will), reasonable compensation from one's family for this service does not raise the potential for conflicts of interest at which this provision was directed and is *not* considered outside

[248] In 1995 and 1996, the cap was also $20,040.

[249] 5 U.S.C. app. § 501(a)(2).

earned income. Thus, the Committee has previously approved compensated service as executor of a relative's will. (See Senate Rule 34 or 5 U.S.C. app. Sec. 109(16) for definition of relative, and discussion of Rule 37(5)(b),infra, this Chapter). However, if these types of management functions were performed for a person or entity outside the family and some form of compensation were provided, that compensation would be considered outside earned income and would be subject to the cap.

Copyright royalties and similar fees (including advance payments of such royalties and fees) for the use or sale of copyright, patent, and other forms of intellectual property rights are also not considered earned income. Although the original copyrighted property was created by the individual's personal efforts, this type of income is made possible by the actions of others (such as the publisher, promoter, and bookstores), and calculated on the basis of income received by another person or entity (the publisher) as a result of the property's appeal to the purchasing public. In order to prevent abuses of this provision, the Committee has determined that such fees must be in accordance with usual and customary contractual terms governing the transfer of copyright, patent, or other intellectual property with established users or purchasers of those rights.

Also, the Committee has previously approved the receipt of income from a liscensing agreement, where the individual was liscensing the use of his or her autograph, where the value of the autograph derived solely from the fame or notoriety of the individual due to that individual's accomplishments prior to coming to the Senate.

All other income which is derived from the personal services of the individual will be considered outside earned income even if it is labeled ''investment'' income by the payer or the payee. An individual cannot circumvent the restriction by recharacterizing the nature of the income.

> ***Example 48***. Senator *A*, a former business executive, receives a pension under the terms of his former employer's pension plan. Although these payments arise out of the personal services that *A* provided to the company during his years of employment there, the pension is not subject to the outside earned income cap because the services were provided before *A* became a Senator. The pension must nonetheless be disclosed on *A*'s annual financial disclosure statement.
>
> ***Example 49.*** Senator *B* participates in a golf tournament (either open to the public, or where contestants were selected on the basis of athletic talent) and wins $500 for achieving the lowest score. Since the award is based on *B*'s skill and performance, it is considered earned income, not subject to the gift rule's limits, but subject to the outside earned income cap and reportable as earned income on the annual financial disclosure statement.[250]

HONORARIA BAN

(Affecting All Members, Officers, and Employees)

An individual may not receive any honorarium while that individual is a Member, officer or employee.

5 U.S.C. app. 7 § 501(b); Senate Rule 36

Effective August 14, 1991, honoraria are banned for Members, officers, and employees of the Senate. Federal law defines an honorarium as a payment of money or any thing of value for an appearance, speech, or article (including a series of appearances, speeches, or articles if the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the government) by a Member, officer or employee, excluding any actual and necessary travel expenses . . .''[251] The ban on the acceptance of honoraria is absolute. It

[250] *See* Interpretative Ruling No. 414 (Nov. 18, 1986).

[251] 5 U.S.C. app. § 505(3).

encompasses every single appearance, speech, or article, regardless of its subject matter or relationship to official duties. The statute does not authorize the Committee to grant waivers under any circumstances.[252]

The Senate honoraria ban was enacted as part of the Legislative Appropriations Act for Fiscal Year 1992, and went into effect on August 14, 1991. Note that unlike all the other income restrictions, this provision bars the *receipt* of the payment after the effective date. As the Committee construes this law, an individual may be paid for work contracted for and completed before he or she became a Member, officer, or employee of the federal government, or before the statute's effective date, as long as the payment was or is received within a reasonable period of time after the start of the individual's Senate service or August 14, 1991, whichever is later. An offer to republish, after the ban's effective date, a current Member, officer, or employee's prior writings would be subject to the ban. On the other hand, absent an arrangement to defer payment until after the author's Senate service, an individual whose article happens to be republished after he or she leaves the Senate may be paid for the republication, even though the original piece was written while the author was a Member, officer, or employee. One may not evade the restriction by purposely deferring payment or placing the payment in escrow.

Finally, no contribution in lieu of an honorarium should be made in connection with an event in Senate space (pursuant to Rules Committee policy). Also, such payments should not be made in connection with an official activity, regardless of location. Contributions in lieu of honoraria are typically associated with officially connected activities where expenses are reimbursed by an entity other than the Senate. Thus, for example, where a Member makes a speech at an organization's annual meeting in an official capacity (e.g., uses Senate money to travel to the event, as opposed to accepting necessary expenses from the organization or using campaign funds) the organization should not make a contribution to charity in lieu of an honorarium.

> ***Example 50***. Staffer *C* works for the Health, Education, Labor, and Pensions Committee. A teacher's union offers her $2,000 to write an article for the union newsletter on legislative initiatives to improve the quality of public education. The staffer may write the article in her spare time but may not accept any payment.
>
> ***Example 51***. Staffer *D*, who works for the Foreign Relations Committee, writes an article on rare butterflies for a nature magazine. *D* writes the article in his spare time, on his home computer. Even though this has nothing to do with *D*'s official duties or status, he uses no official resources, and the magazine has no interests that could be substantially affected by the performance of *D*'s official duties, Staffer *D* may not accept payment for the article.

Definitions

The Committee defines the terms ''speech,'' ''appearance,'' and ''article'' as follows:

A *speech* means an address, oration, talk, lecture, or other form of oral presentation, whether delivered in person, transmitted electronically, recorded, or broadcast over the media, but does not include teaching in an established educational program that conforms to teaching criteria established by the Committee.

An *appearance* means attendance at a public or private conference, convention, meeting, social event or like gathering, possibly but not necessarily involving incidental conversation, discussion, or remarks.

An *article* means a writing, other than a book, which has been or is intended to be published.

[252] In *United States v. National Treasury Employees Union*, 115 S. Ct. 1003 (1995), the U.S. Supreme Court held that the ban was unconstitutional as applied to the executive branch. The legislative branch was not a party to the suit. On February 26, 1996, the Office of Legal Counsel at the Department of Justice opined that in view of the Supreme Court's holding in this case, the Department could not enforce the statutory honoraria ban against any Federal employee or official. Nonetheless, Senate Members, officers, and employees remain subject to a complete ban on honoraria pursuant to Senate Rule 36, which is unaffected by either the Court decision or the Office of Legal Counsel opinion.

Example 52. Staffer *E* works in a Senator's home state and is an avid weekend hiker. A publishing company offers to pay *E* to evaluate the outline of a proposed book on regional hiking trails. *E*'s review is for the internal use of the publisher, and is not intended for publication. *E* will prepare the review at home, on her own time. With the approval of her supervising Senator, *E* may accept the compensation.

Example 53. The New York Review of Books offers to pay staffer *F* to review a new book on the joys of hiking. Since the review is intended for publication, *F* may not receive the payment.

Exclusions

The Committee has determined that certain types of income are not honoraria. Payment for the following is not banned:

- editing, as distinguished from writing original material for publication;
- writings to be published or republished as books or chapters or parts of books (royalties and advances on royalties);
- works of fiction (including poetry, lyrics, or scripts), where the payment is not offered because of the author's Senate status;
- paid engagements to perform or to provide entertainment where the artistic, musical, or athletic talent of the individual is the reason for the employment, rather than the person's status as a Member or employee of the Senate;
- qualified individuals conducting worship services or religious ceremonials, but not for delivering speeches or invocations at religious conventions.

While not honoraria, payments for most of these services (with the exception of book royalties) are subject to the 15% outside earned income cap (discussed above), for those individuals earning above the GS–15 salary level.

The Committee does not apply these exceptions mechanically. One cannot avoid the honoraria ban merely by describing one's services as editorial or artistic, or by calling a speech a script. Thus, a staffer who writes and edits articles on subjects related to official duties cannot escape the prohibition on the ground that some of the work is editorial. Similarly, just as a Senator may not be paid for delivering a speech, a staffer may not be paid for writing the speech, even if it is denominated a script. Whatever the parties call it, it is still a payment for a speech by a Member, and thus banned. All outside employment is subject, moreover, to Rule 37(2)'s prohibition on non-Senate activities that are inconsistent or in conflict with the conscientious performance of official duties.

Example 54. Senator *G* writes an article on foreign policy. A journal offers to pay *G* for the right to publish it. *G* may authorize publication but may not receive the payment. A publisher offers to pay *G* for the right to publish the article as a chapter in a book. *G* may accept payment from the book publisher.

Example 55. Staffer *H* is Senator *I*'s health care specialist. An association of health care providers is putting together a book on reforming America's health care system and offers *H* a fee for writing a chapter in it. Although being paid for writing a chapter in a book is generally exempt from the honoraria ban, under these circumstances, where the work is not being undertaken for a disinterested publisher, the Committee believes that the potential for a conflict of interest or the appearance thereof make it inadvisable to undertake the project.[253]

Example 56. Staffer *J* auditions for and gets a part in a local theater company production. Rehearsals and performances are to take place outside *J*'s regular working hours. Assuming that the part was given to *J* based on his talent, rather than his Senate position, and with the approval of his supervising Senator, *J* may perform and be compensated for his performance.

[253] Contrast Interpretative Ruling No. 56 (Sept. 7, 1977), where the Committee ruled that a Senator and staffer could be compensated for writing a book concerning certain hearings before the Member's committee, where they wrote the book on their own time, based on public documents.

Stipends

A regulation of the Federal Election Commission interpreting prior law on honoraria excluded stipends, that is payments ''for services on a continuing basis.''[254] Congress addressed this issue, effective August 14, 1991, by amending the definition of honorarium to include a payment for ''a series of appearances, speeches, or articles if the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the Government.''[255] Thus, stipends are now banned if one or more appearances, speeches, or articles in the series are related to the individual's official duties or status in Congress. Conversely, one may accept a payment for a series that is totally *unrelated* to one's official duties or status.

The Committee has determined that in order to be ''related to'' official duties, the series must relate to the subject matter of the individual's official duties, not simply to one's general field of technical expertise. As with any outside professional activity or employment, staffers must notify their supervisors in advance of accepting stipends.[256] Members and staffers who are unsure as to whether the ban applies to a particular activity should seek the Committee's guidance.

> ***Example 57***. A network news affiliate in Senator *K*'s state capitol invites her to deliver a regular two-minute commentary on their Saturday evening news show on the topic, ''This Week in Congress.'' The affiliate offers the Senator a stipend of $5,000 a year for her time. While the Senator may do the commentary, she may not accept the stipend because the offer is related to her official duties and status.
>
> ***Example 58***. A philatelic magazine commissions Staffer *L* to write a series of articles on stamp collecting. Since stamp collecting is unrelated to *L*'s official duties and status, and *L*'s supervising Senator approves, *L* may accept payment for the series.
>
> ***Example 59***. Staffer *M*, an experienced computer operator and trainer, is the systems manager in Senator *N*'s office. *M* is invited to write an ongoing column offering tips on how to use computers to maximize office efficiency. The column would not discuss computer use in the Senator's office and would not be written on Senate time or with Senate resources. With the approval of the Senator, *M* may be paid for the series.

Donations to Charity

The honoraria statute authorizes the sponsor of a speech, appearance, or article to make a payment in lieu of an honorarium to a charity qualified under § 170(c) of the Internal Revenue Code.[257] The sponsor may make a donation of up to $2,000 per speech, appearance, or article.[258] If an article is republished, an additional $2,000 charitable donation may be made upon each republication. As long as the sponsor makes the check payable to the charity, the Member or employee may accept the check for the purposes of forwarding it to the charity, and keeping records for the statutorily required public disclosure.[259] The Senate individual may *not*, however, accept

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[254] 11 C.F.R. § 110.12(c)(3) (1991).

[255] 5 U.S.C. app. § 505(3), as amended by the Legislative Branch Appropriations Act, 1992, sec. 314(b), 105 Stat. 447, 469 (1991).

[256] Senate Rule 37(3).

[257] Section 170(c) defines charitable contributions that are tax deductible. It includes contributions to the United States; the District of Columbia; any state, possession or political subdivision; religious, charitable, scientific, literary, or educational organizations; and organizations to foster amateur sports competition or for the prevention of cruelty to children or animals. These organizations may not be operated for profit, nor may they attempt to influence legislation or participate in political campaigns for public office. 26 U.S.C. § 170(c). Since an organization's tax status is determined by the Internal Revenue Service, a Member or employee who wishes to designate a particular organization to receive payments in lieu of honoraria should verify with the organization that the IRS has granted it tax deductible status under § 170(c).

[258] The amendments to Senate Gifts Rule 35, pursuant to S. Res. 158, and effective January 1, 1996, provide that a registered lobbyist or foreign agent may make payments in lieu of honoraria to section 170(c) charities so long as such payments are reported by the Member, officer or employee making the designation to the Secretary of the Senate within 30 days after such designation or recommendation.

[259] The financial disclosure requirements related to charitable donations in lieu of honoraria are described in Chapter 5.

a check made out to him or her personally and then endorse it over to a charity or write a personal check in the same amount to the charity.

The Senator or staffer may suggest a particular charity to receive the donation, within the following limits. The Senate individual may not receive any tax benefit from the donation. Accordingly, the individual should neither add the donation to income nor deduct it for income tax purposes.[260] The charity may not be one from which the individual or his or her immediate family (parent, sibling, spouse, child, or dependent relative) derives any financial benefit (such as a salary).[261] For the purposes of this rule, the Committee construes ''financial benefit'' to mean a direct monetary benefit to the individual or a family member that is separate from any general benefit that the institution and all those who utilize its services derive. Thus, this provision would not prohibit a payment to the general fund of a school at which the Member or employee's child is a student, or to the general fund of a health care facility at which a family member is a patient.[262] The amendments to Senate Gifts Rule 35, pursuant to S. Res. 158 and effective January 1, 1996, prohibit the donation of anything provided by a registered lobbyist or foreign agent to an entity that is maintained or controlled by a Member, officer, or employee. Therefore, a lobbyist may not donate a payment in lieu of honoraria to a charity that is controlled by a Member, officer or employee.

Finally, no contribution in lieu of an honorarium should be made by an organization in connection with the Member's official activity. Contributions in lieu of honoraria are typically associated with officially connected activities where expenses are reimbursed by an entity other than the Senate. Thus, for example, where a Member makes a speech at an organization's annual meeting in an official capacity (e.g., uses Senate money to travel to the event, as opposed to accepting necessary expenses from the organization or using campaign funds) the organization should not make a contribution to charity in lieu of an honorarium.

> ***Example 60***. Senator *O* gives a speech to a trade association in New Orleans. The association pays *O*'s travel, food, and lodging expenses and sends a check for $2,000 to the Boy Scouts, with a note saying: ''In lieu of an honorarium, Senator *O* has asked us to make this donation to the Boy Scouts in honor of his speech to our association.'' *O* and the association have complied with the honorarium law.
>
> ***Example 61***. Senator *P* gives a speech to a political club in Chicago. The following week, she receives a check for $1,500, payable to her, with a note from the club saying: ''Thank you for addressing our club. We did not know which charities you support, so we are sending you this check, knowing that you will pass it along to some worthy organization.'' Senator *P* may *not* keep the check, even if she immediately endorses it over to a charity. She must return the check to the club. If she wishes, she may suggest that the club donate the money to a specific charity of her choice or to any charity of the club's choice that is qualified under § 170(c) of the tax code.
>
> ***Example 62***. Senator *Q* gives a speech at an executives' roundtable in Kansas City. In honor of the event, the executives' group presents *Q* with a check for $1,000, made out to his favorite charity. *Q* may accept the check and send it on to the charity.
>
> ***Example 63***. Senator *R* establishes a charitable foundation, the *R* Fund, to assist disabled residents of her state. The Senator heads the board of directors, but receives no salary from the Fund. She may request that payments in lieu of honoraria for her speaking engagements be donated to the *R* Fund. However, if the sponsor of a speaking engagement is a registered lobbyist or foreign agent, such payments in lieu of honoraria may not be made by the lobbyist or foreign agent to the *R* fund, since the Senator controls the charity.
>
> ***Example 64***. Staffer *S* writes an article that is accepted for publication by a magazine. The magazine normally would pay $500 for a comparable article and asks *S* if he would

[260] 26 U.S.C. 7701(k).

[261] *See* 5 U.S.C. app. § 501(c).

[262] *Accord HOUSE BIPARTISAN TASK FORCE REPORT*, at 15, 135 CONG. REC. H9257.

like the money to be donated to a charity. *S*'s favorite charity is a homeless shelter in his home town where his sister works as a counselor. Since his sister receives a direct financial benefit from the shelter (her salary), *S* may *not* designate the shelter to receive the payment from the magazine. He may designate another charity.

Example 65. Staffer *T*, in an arrangement approved by his supervising Senator and the Committee on Ethics, holds a paid, part-time teaching position at Grover's Corners Community College. He also writes occasional op-ed pieces for the Grover's Corners Gazette. He may *not* ask the Gazette to make a donation in lieu of honorarium to the College's scholarship fund because he derives a financial benefit (his teacher's salary) from the same institution. He may designate another charity.

Example 66. Staffer *U*'s child attends a private school qualified under § 170(c) of the Tax Code to receive tax-deductible contributions. *U* may designate the school to receive a $2,000 payment in lieu of an honorarium for a speech *U* gives, as long as she does not receive any tuition reduction or other benefit in consideration for arranging the donation.

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Chapter 4

PROHIBITION ON UNOFFICIAL OFFICE ACCOUNTS

Rule 38, Interpretative Ruling No. 442, and Interpretative Ruling 443

INTRODUCTION

Senate Rule 38 and 2 U.S.C., section 59e(d) prohibit ''unofficial office accounts'', that is, private donations, in cash or in kind, in support of official Senate activities or expenses. Only appropriated or a Member's personal funds may be used to pay for official Senate business. Activities that are connected to official duties or status, but are not themselves core Senate functions, may be supported by excess campaign funds, Members' personal funds, or reimbursement by third parties for which some service is performed (e.g., fact-finding travel, or expenses in connection with giving a speech). Chapter Four details the Committee's Interpretative Ruling 442 in which the Committee provides guidelines on the payment of specific expenses and also discusses the Committee's Interpretative Ruling 443 on the application of Rule 38 to the exchange of information between private parties and Senators and their staffs.

INTERPRETATIVE RULING 443

The issue has arisen as to how Rule 38 applies to the relationship between a Senate office and a non-Senate organization or individual participating in the legislative process. In Interpretative Ruling 443, the Committee addressed this issue as follows:

''Senate Rule 38 prohibits unofficial office accounts, that is, private supplementation of expenses incurred in connection with the operation of a Member's office and the activities of a committee as well. Thus, private contributions of money or private, in-kind contributions of goods or services for official purposes are prohibited by Senate Rule 38.

On the other hand, no Senate rule prohibits a Senator from seeking advice on legislative issues from individuals or organizations outside the Senate. Nor does any Senate rule prohibit any individual or organization outside of the Senate from voluntarily providing to a Senator or his or her staff research, memoranda, legislative language, or draft report language for the Senator's or staff's consideration. The nature of the legislative process contemplates and even encourages the free flow and exchange of ideas and information between interested individuals or organizations and Senators and their staffs. Such exchanges are common and acceptable Senate practices.[263]

As stated in Committee Interpretative Ruling 442 interpreting Rule 38, however, neither official nor officially connected expenses, goods, or services used in the operation of a Senator's office may be provided or paid for by private parties. This rule provides a broad prohibition on the use of private resources to do the work of a Senate office. It does not, however, prohibit a Senate office from receiving from the public information, ideas, comments, or proposals about legislative or other matters of public policy or interest being considered by the Senate. In contrast, the rule would prohibit a Senate office from indirectly using the resources of private parties to do Senate work by exercising direction and control over the activities of an outside individual or organization in an effort to supplement office resources.''

[263] Interpretative Ruling No. 443 (June 22, 1995).

BACKGROUND TO INTERPRETATIVE RULING 442

Between 1977, when Rule 38 was adopted, and 1992, when its amendment went into effect, Rule 38 allowed Members to use four sources to pay for expenses that were related to their official duties: (1) personal funds, (2) appropriated funds, (3) excess campaign funds provided by their principal campaign committees, and (4) reimbursements from the sponsors of private events in which the Members participated. This system allowed Members to engage in many worthwhile activities without taxpayer expense. At the same time, the system provided for accountability by requiring public disclosure of the use of campaign funds and acceptance of reimbursements.

Section 311(d) of the Legislative Appropriations Act of 1991 (P.L. 101–520; codified at 2 U.S.C. 59e(d)) amended Senate Rule 38 so as to restrict the use of campaign funds for official purposes. In Interpretative Ruling 442 (April 15, 1992), the Ethics Committee found that there was no indication that the law was intended to change the existing practice of paying ''officially *connected*'' expenses from certain sources in addition to appropriated funds or the personal funds of a Senator. Specifically, both before and after the enactment of section 311(d), the Senate has allowed a third party to reimburse for expenses (such as travel expenses) in connection with services provided by a Member, officer, or employee of the Congress to that third party. In addition, the Senate continues to allow the use of campaign funds for expenses that are not official, but are officially connected (that is, campaign funds from a Member's principal campaign committee, not from multi-candidate, party, or any other campaign committee). This use of campaign funds is consistent with federal election law, at 2 U.S.C. 439a, which provides that excess campaign funds may be used ''to defray any ordinary and necessary expenses incurred *in connection with* [one's] duties as a holder of Federal office'' (emphasis added).

GENERAL RULE

As of May 1, 1992, the Ethics Committee ruled that official expenses were only to be paid with appropriated funds or the personal funds of a Member. However, Senate offices may continue to pay officially connected expenses with excess campaign funds[264] and with reimbursements for expenses necessary to perform some service for the payor (such as giving a speech or conducting factfinding). The restrictions of Senate Rule 38.1 are applicable to individual Senators, Party Conferences, and caucuses. Pursuant to Rules Committee Regulations, Committees may pay official expenses only from appropriated (i.e. official) funds, except for refreshments or meals at official events which may be paid by committee Members as an officially connected expense (i.e., campaign funds from a Member's principal campaign committee, not from multi-candidate, party, or any other campaign committee) pursuant to Interpretative Ruling 442.

DEFINITIONS

> *Official expenses* are those expenses that are essential to the conduct of the routine legislative or representational business of the Senate. These include: Senate staff salaries, office space, envelopes, furniture, letterhead and blank paper for official correspondence, the purchase of mailing lists, office equipment, and postage and other expenses associated with franked mail.
>
> *Officially connected expenses* are expenses that are associated with the performance of a Senator's official responsibilities, but which might not be directly related to the routine legislative or representational business of the Senate. Also, as a general rule of limited application, an expense which is connected to the official business of the Senate, but which cannot be reimbursed with official funds, may be considered ''officially connected.''[265] The limited nature of this provision will be explained in more detail below.

[264] The use of campaign funds to defray officially connected expenses must be itemized and publicly disclosed, either on filings pursuant to the Federal Election Campaign Act, or on the Senator's personal financial disclosure statement. Interpretative Ruling No. 389 (July 2, 1984).

[265] *See* Interpretative Ruling No. 442 (April 15, 1992).

Senators' Discretion

Other than for the official expenses specifically mentioned below and the limitations imposed by the Rules Committee on the use of appropriated funds, Members have great discretion in determining whether an event is official or officially connected. Generally, once the Member makes that determination, he or she is bound by it. That is, if a Member determines that an event is official, the Senator may use official funds to pay for the event. Once having made this determination, however, the Senator could not then allow a private party or campaign committee to pay for his or her transportation to the event or for other reimbursable expenses of the event. Conversely, if a Member determines an event to be officially connected, rather than official, the Senator may not use official funds to pay for his or her transportation to the event, or use the frank to advertise it.[266] It is appropriate, however, for a Senator to use staff and Senate facilities in support of officially related activities if such use would not be prohibited by other Senate Rules. Senate resources may not, however, be used in support of campaign activities, personal business, or charitable fundraising (other than through participation in the Combined Federal Campaign).

> ***Example 1.*** Senator *B* has been invited to speak at an out-of-state labor convention. The inviting union is paying the Senator's travel expenses. *B* may ask Senate employees on government time to draft his speech and make his travel arrangements for this officially connected event.
>
> ***Example 2.*** Senator *C* is holding an out-of-state political fundraiser. Such campaign events are not officially connected. *C* may *not* ask a Senate staffer on government time to take any action respecting the fundraiser, although the Senator's Senate scheduler may include the event on the Senator's schedule.
>
> ***Example 3.*** Senator *D* may not use Senate staff time, stationery, or the frank to pay *D*'s personal bills or prepare personal correspondence.

The legislative history of section 311(d) makes clear that Senate offices may continue to take part in intern, volunteer, and fellowship programs that are primarily of educational benefit to the participants. Additionally, Rule 38 does not preclude the news media from paying the expenses associated with broadcasting any official event. Finally, Members may accept donations from domestic, state, and local government entities to defray expenses for particular official or officially connected events or activities, if such donations are in compliance with the domestic government's laws and regulations. However, with very limited exceptions (typically involving specific and time-limited joint-effort events), a Senate office may not accept the following from any other government agency: equipment, furnishings, space, or staff (other than federal fellows or detailees).

Limited Exception

In most instances, as noted above, official funds and officially connected funds may not be commingled, and the Senator must make an election as to whether a given activity is being undertaken on an ''official'' or ''officially connected'' basis and use only the appropriate source of funds. In an exception of very limited application, an expense which is incurred in connection with an official event, but which is not the kind of expense which is reimbursable from official funds, may be considered officially connected and paid with campaign funds. Thus, for example, food provided in connection with an official event, which can never be paid as an official expense, may be paid as an officially connected expense. Similarly, advertisements to promote an official event, which can never be paid as an official expense, may be paid from officially connected funds. Also, travel per diem expenses in connection with official activities, which are normally paid with official funds, but which may never be paid with official funds during the 60-day period immediately before an election in which the relevant Senator is a candidate, may be paid as officially connected expenses during those periods. Other items to which this limited exception applies

[266] Also, I.R. 442 specifies that the Senate Service Department may not be used for officially connected co-sponsored constituent service events.

are: room reservation or cancellation fees or other similar penalties; insurance premiums related to Senate business, such as insuring a painting on loan from a home state artist; per diem expenses for employees attending an official office retreat within their duty station; and spousal travel connected with official travel. On the other hand, this exception does not apply to the provision of office space, furnishings, equipment, or employees, i.e. the kinds of items which may generally be paid for or provided with Senate funds.

> ***Example 4.*** Senator *A* is hosting an all-day official town meeting to discuss health care reform with her constituents. *A* would like to provide lunch for the attendees. She may use campaign funds for this officially connected purpose.

In each of the above instances, the specific item in question, be it food or advertising, is paid from one expense source only (officially connected campaign funds), with the result that in the conduct of an official event, officially connected funds are permitted to pay for a particular **item** in its entirety, but there is no mixing of official and officially connected funds in the payment of an item. Thus, an office may not pay with officially connected funds the excess per diem expenses of a staffer on official travel because the per diem expenses have been paid with official monies. To pay the excess per diem with officially connected monies would constitute an impermissible commingling of expenses for that **item** (per diem expenses).

Due to the limited nature of this exception, a Member, officer, or employee who believes that the exception might apply to a particular expense, should first contact the Ethics Committee for confirmation.

EXPENSES THAT ARE ALWAYS OFFICIAL

Some expenses are so central to the running of a Senate office that they are always deemed official and must be paid with Senate funds or a Member's personal funds. Consistent with Senate Rule 38's prohibition on unofficial office accounts and the current Gifts Rule, the Committee has interpreted the federal, state, or local government exception to permit state and local governments to defray expenses in connection with specific official Senate events, but not to provide employees or office space, equipment, or furnishings. This permits a Senator to undertake limited cooperative efforts with state and local governments to sponsor specific events or activities, while prohibiting those governments from making a continuing or sustaining contribution to a Senator's office.

Equipment

The purchase of office equipment is an official expense. Therefore, Members may not accept office equipment or the loan of office equipment from third parties (including campaign committees), nor may Members purchase Senate equipment with campaign funds. Equipment purchased with campaign funds prior to May 1, 1992 may remain in the Senate office but may not be maintained or repaired at Senate expense. This rule does not prohibit a Member from accepting the use of equipment for testing or demonstration purposes, where the arrangement is of limited duration and is specifically approved and administered under the authority of the Senate Rules Committee.

Senators may keep their own personal equipment in Senate offices to use in the performance of Senate duties. Staff, on the other hand, may voluntarily provide audio, video, or other equipment only on a de minimis basis for their own use in Senate offices. Personal equipment may not be maintained or repaired with Senate funds or with campaign funds. Neither may Senate equipment be maintained or repaired with campaign funds.

> ***Example 5.*** Senator *E* may not use campaign funds to install or maintain a telephone in her Senate office.

> ***Example 6.*** Chairman *F* may not accept an offer of free computer software for the committee office from the local branch of Computers R Us.

Example 7. Senator *G* may not accept free cable installation or service from the home state cable franchise for his state offices.

Furniture, Furnishings, and Artwork

The purchase of furniture or furnishings for a Senate office is an official expense. Therefore, a Member may not purchase such furniture or furnishings with campaign funds. Furniture or furnishings purchased with campaign funds before May 1, 1992 may remain in the Senator's office, but may not be maintained or repaired at Senate expense. Should a Member use personal funds to install wallpaper, carpeting, or other types of fixtures, the Member must pay with personal funds for the removal and restoration of these items (pursuant to Rules Committee and Superintendent rulings).

A Member may accept a *loan* of non-Senate issued furniture or art, for display in his office, **from home-state producers or distributors.** However, fixtures (e.g., wallpaper, carpeting) may not be accepted on loan. Loans must be approved by the Ethics Committee; the approval letters are publicly available.[267] A home-state constituent who is neither a producer nor a distributor is not a permissible source for loaned furniture or art.

An office seeking to accept a loan of furniture or art should write to the Committee asking for such approval, and include in the letter the source of the loan item, the expected duration of the loan, and the value of the item. The Committee's response is retained in Committee files and made available to the public as set forth in Interpretative Ruling 386.

A Member may insure home-state furniture or artwork on loan with officially connected funds. Also, the frank may be used to ship such loan items from the home-state to the Washington, D.C. office. However, to avoid an improper loan of the frank, a Senate employee should personally affix the franked label to the item prior to shipment.

Living plants for display in the office constitute a narrow exception to this policy. Since living plants may not be purchased with official funds, they may be accepted on loan from the Botanical Gardens, or a home state nursery, or purchased with campaign funds or the personal funds of a Senator.

Example 8. Senator *H* may accept a loaned painting for display in her office from the Home State Art Gallery (a seller of local artwork), or from Home State University (a public entity), but not from Art Fancier, a private collector from *H*'s home town.

Staff Salaries

Staff (including interns) employed to assist a Senator or Committee in the conduct of official and officially connected duties may be compensated only from official Senate funds or the personal funds of a Senator. If such a staffer is compensated in whole or in part from the personal funds of a Senator, however, the Senator is responsible for complying with all laws and regulations with respect to such compensation, such as income tax and FICA withholding, unemployment compensation insurance payments, and worker's compensation. Additionally, the payments such staffers receive from the Senator's personal funds must be publicly reported pursuant to Senate Rule 41.6. Also, even if such a staffer is paid entirely with the Senator's personal funds, under Rule 41.4 such a staffer is subject to the Senate Code of Official Conduct if the staffer performs services for a period of more than 90 days.

For those staffers receiving pay from both the Senate and a Senator's personal funds, any payment from the Senator's personal funds which compensates an employee for performing Senate duties is counted as if part of the individual's Senate pay when determining whether the employee is covered by those provisions of the Code which are triggered by particular rates of pay (e.g., financial disclosure under Rule 34; outside earned income and teaching restrictions under Rule 36;

[267] *See* Interpretative Ruling No. 386 (Aug. 8, 1984).

and conflicts of interest under Rules 37.5 and 37.6). However, benefits provided by the Senate, such as life insurance, health insurance, and retirement, will be based on the compensation actually paid by the Senate. Moreover, compensation from the personal funds of a Senator are not considered outside earned income, and are not counted for purposes of the limit on compensation from appropriated funds.

While campaign funds may not be used to compensate Senate employees for the performance of their official duties, a Senate employee may be paid by a campaign for campaign activity. Such activity must be conducted on the employee's own time, without the use of Senate facilities, and is subject to the approval of the supervising Senator, and the limitations of Rule 41.1 (see Chapter 6 for a full discussion of political activity).

The Ethics Committee has ruled that all Senate employees and consultants regardless of the form or nature of their employment by the Senate (including individuals paid on a per diem basis) are subject to the Code of Conduct.[268]

Senate committees may accept the services of non-Senate Federal Government employees as **detailees** upon the written permission of the Committee on Rules and Administration.[269] Any such employee must agree in writing to comply with the Senate Code of Official Conduct, as if he or she were a Senate employee compensated by the Senate at his or her regular rate of government pay.[270] In addition, government regulation (5 C.F.R. 2635.104) provides that a government employee on detail to the legislative or judicial branches in excess of 30 days is subject to the ethical standards of the branch or entity to which the employee is detailed. For the duration of the detail, such an employee is not subject to the employing agency's ethics regulations, but remains subject both to the conflict of interest prohibitions of Title 18 of the United States Code and to any applicable supplemental agency regulations of the employing agency that implement an agency statute which restricts employee activities or financial holdings specifically on the basis of status as an employee of that agency. Detailees to the Senate should consult their ethics officer at the employing agency concerning agency ethics rules and regulations governing employees on detail. (Note: For a discussion of government fellows, see section on private intern, fellow, and volunteer programs in this chapter.)

Consultant, Per Diem, and Special Government Employees

Committees often seek to hire ''consultants'', ''per diem'' employees (paid ''when actually employed'') or other employees to perform temporary or special services for the Senate. Some such employees may also be ''special government employees'' within the meaning of 18 U.S.C. 202, an employment status which has relevance for purposes of applying certain conflict of interest laws and for purposes of granting waivers from certain other statutory provisions. Personal offices are precluded by provisions within the jurisdiction of the Senate Rules Committee from hiring ''consultants'' or ''per diem'' employees. The Ethics Committee has previously concluded in Interpretative Ruling 61 (September 14, 1977) that individuals who provide services to the Senate, whether as a **consultant** or on some other part-time basis, are subject to the Senate Code of Official Conduct, as are individuals paid on a per diem basis. Therefore, consultants and other special employees providing personal services (not including certain product contracts or contracts for certain technical services, as determined by the Committee on a case-by-case basis) to the Senate are subject to the same restrictions and requirements as regular full-time Senate employees gov-

[268] *See* Senate Rule 41.2; Interpretative Ruling No. 432 (April 20, 1988); Interpretative Ruling No. 238 (Mar. 26, 1979) (employee paid on per diem basis); Interpretative Ruling No. 61 (Sept. 13, 1977) (consultants and part-time employees).

[269] Rule 27.4.

[270] Rule 41.3.

erning such things as gifts, conflict of interest and outside employment, including the post employment lobbying restrictions.[271]

These restrictions and requirements pose particular problems for professionals who seek to work for a Senate committee. For example, the affiliation restrictions of Senate Rule 37, paragraph 5, will restrict individuals who remain affiliated with their outside employer from providing professional services to the Senate.

Respecting **per diem** employees, on a handful of occasions the Committee has agreed to waivers of certain provisions of the Code of Conduct where the employee is critically needed by the Senate. As a general proposition, the Committee is authorized to grant waivers from provisions of the Code of Conduct only for ''per diem'' employees (Senate Rule 41.5). The exceptions to this general proposition are that the Committee can grant waivers relating to receipt and disclosure of gifts (on a gift by gift basis, see Chapter 2), and to the financial disclosure requirements for temporary employees (whether per diem or not, see Chapter 5). The situations where the Committee has granted waivers for per diem employees have been limited to special investigative committees of limited duration, such as the special committee investigating Iran-Contra, impeachment committees concerning federal judges, and the special committee investigating the Whitewater Development Company. In doing so, the Committee must account for certain statutory provisions of the Ethics Reform Act of 1989 which (as of August 14, 1991) are applicable to the Senate and which are also part of the Senate Code of Official Conduct, specifically: the Outside Earned Income Limitation; the Honoraria Ban; the prohibition on earning any money from fiduciary services; and the prohibition on earning any money for holding any fiduciary position. If an individual works less than 130 days during the 365 day period following his or her appointment as a per diem employee, he or she would qualify as a ''**special government employee**'' for purposes of the Ethics Reform Act, and would not be subject to the statutory limitations set out in that Act. However, since the provisions are also part of the Senate Code of Official Conduct and the Standing Rules of the Senate, it would be necessary for the Committee to grant a waiver of these applicable Senate Rules.

Any committee contemplating employing per diem employees and seeking waivers should write the Ethics Committee seeking advance approval of such waivers.

Stationery for Official Correspondence

Only stationery purchased with official funds (Senate funds or a Member's personal funds) may be used for official correspondence. Such stationery may also be used for officially connected correspondence. On the other hand, stationery purchased with officially connected funds (i.e. with campaign funds) may not be used for official correspondence.

Use of Senate Space

The Rules Committee has jurisdiction over assignment and use of all space in the Senate Office Building, the Senate Wing of the Capitol, and the Courtyard of the Russell Building. In the Rules Committee's ''Policy for Use of Senate Rooms, The Russell Rotunda and Courtyard and the Hart Atrium'', the Rules Committee notes that Senate rooms are available only for Senate-related business. Under the Rules Committee's policy, no charge is permitted in connection with the use of Senate space, nor may any charge be assessed for admittance or refreshments; no products may be sold on the premises or displayed for future sale; and Senate space may not be used

[271] On only one occasion has the Committee found that a group of individuals providing personal services to the Senate was not fully subject to the Code of Conduct: individuals providing highly specialized technical advice without pay to the Intelligence Committee on matters affecting national security, where the individuals were placed on the Senate payroll solely to facilitate travel at Senate expense, and such advisory services were limited to a few days per year, and where the Intelligence Committee insured no conflict of interest occurred. Also, pursuant to S.Res. 338, 84th Congress, Section 3(b)(1), outside counsel hired by the Ethics Committee are not subject to the Code of Conduct.

for any political campaign, fund-raising (including charitable contributions in lieu of honoraria), commercial, promotional or profit-making purpose whatsoever. Please contact the Rules Committee if you need further information about its policy. (The Rules Committee policy statement on use of Senate space is reprinted in Appendix J).

Senators often reserve Senate space for the use of outside organizations and individuals having no connection with the Senate. Simply because a Senator reserves space for use does not mean that the Senator becomes the ''sponsor'' of the event which occurs in the reserved space for purposes of the Senate Code of Official Conduct (although a Senator may be deemed a sponsor for purposes of the Rules Committee's Policy).

Also of interest on the use of space is section 193d of Title 40 of the United States Code pertaining to the Capitol Grounds. Section 193d states that ''it is forbidden to offer or expose any article for sale in said United States Capitol Grounds; to display any sign, placard, or other form of advertisement therein; to solicit fares, alms, subscriptions, or contributions therein.'' Thus, care should be taken to avoid any commercial activity, or campaign or charitable solicitations on the Capitol grounds.

EXPENSES THAT ARE GENERALLY DEEMED OFFICIALLY CONNECTED

The items discussed above (Senate salaries, furniture, and equipment, rent for Senate offices, paper and printing for franked mail) are considered official expenses that may only be paid with appropriated funds or a Senator's personal funds. The items discussed below are generally handled as officially connected activities, the costs of which are borne by campaign or personal funds or other sources, subject to the restrictions set forth below.

Private Intern, Fellow, and Volunteer Programs

The hiring of interns for the primary purpose of performing the official and officially connected activities of a Senate office is deemed an official Senate activity, and all expenses associated with such interns may be paid only from appropriated funds or personal funds of the Member. Thus, even though designated as an ''intern,'' any individual retained for the purpose of performing such activities is treated the same as any other Senate employee.

In contrast, many non-government organizations have established ''intern'' or ''fellow'' programs, where the organization will attempt to place an individual in a Senator's office on an interim basis, for the purpose of exposing the individual to the workings of government. Such *private* volunteer, internship, and fellowship programs are deemed to be officially connected. Before accepting the services of such an individual, the supervising Senator must determine that the program is primarily for the educational benefit of the volunteer, intern, or fellow, rather than being primarily a means of performing the official or officially connected activities of the Senate office.

Senate offices may then utilize the services of volunteers, interns, and fellows who receive travel expenses, lodging, or compensation from programs sponsored by private parties, subject to the following restrictions. The Senator may not solicit for or receive reports on who contributes to any program established by or for him.[272] The participant may not work on issues related to the interests of an individual, company, industry, or non-profit organization providing substantial funding for his or her internship or fellowship.[273] Conflicts of interest and the appearance of conflicts between the participant's duties to the Senate and his or her responsibilities to the private

[272] Thus, unlike other officially connected activities, an internship in a Senate office may not be supported by the Senator's campaign funds.

[273] *See* Interpretative Ruling No. 442 (April 15, 1992).

sponsor must be avoided.[274] For example, if a university professor on a fellowship to the Senate has her funding for the fellowship paid in whole or in part by a foundation, a government grant, or other contractor, the interests of the sponsoring foundation, government agency, or contractor will determine the scope of any possible recusal in the professor's Senate fellowship (and, in some instances, may preclude the professor from working for certain Senate committees altogether).

With respect to **government employees** who come to the Senate as fellows, because the salary of the fellowship program participant is being paid with federal government funds, the Committee views such an individual as being engaged in public service in the public interest regardless of the sector of the federal government in which those services may be provided. Nevertheless, such individuals may not be permitted to work on public matters which may give rise to a conflict with the public interest. Thus, for example, a naval officer who is selected to serve as a LEGIS fellow in the Senate may work on matters of general interest to the Department of Defense or the Navy, but should not be permitted to work on issues which could particularly benefit her or her government position. As with any employee, the initial decision of whether a government employee should work on a particular issue should be made by the supervising Senator and it would be the supervising Senator's continuing duty to monitor the government employee's activities to insure that no conflict arises in connection with the employee's Senate duties. Absent an actual conflict of interest, the Committee will not normally interfere with the judgment of the supervising Senator.

Foreign nationals (who are not employees of a foreign government) who wish to perform unpaid volunteer services for the Senate are subject to the same criteria as other fellows and volunteers. Thus, to the extent that the foreign volunteer's employer, if any, has interests in any matters before the Senate office or committee where the individual volunteers, the individual's duties for the Senate should not involve matters of interest to the employer. Also, given the individual's status as a foreign national, the volunteer should refrain from performing Senate duties that would be of benefit to the home country. In addition, if the individual performs full-time services for more than 90 days for the Senate (whether compensated by an outside source or not), the individual is required, as set forth below, to agree in writing to comply with the Senate Code of Official Conduct and; if the individual is paid at a rate equal to or in excess of 120% of GS–15 ($93,137 for CY 2000) per year by the outside entity and works for the Senate more than 60 days, the individual will be required to file a financial disclosure report.

The supervisor of any person working for a Senate office for more than four weeks and receiving compensation for those services from anyone other than the United States Government must publicly report the amount or rate and source of compensation to the Office of Public Records when the person begins service, when he or she ends the service, and on a quarterly basis in between.[275] Anyone working full-time in a Senate office for more than 90 days in a calendar year (whether compensated by an outside source or not) must agree in writing (Rule 41.4 form) to comply with the Senate Code of Official Conduct.[276]

Such a person is treated under the Code as if he or she were receiving from the Senate compensation equal to whatever pay the individual is receiving from any source for the service to the Senate.[277] The only exception to this policy is that university grants or stipends provided to academic interns or fellows, such as professors on sabbatical, are not considered to be contributions to defray official expenses, provided the individual on sabbatical is free to undertake any number of various activities and has picked the option of coming to the Senate. Non-academic

[274] *See* Interpretative Ruling No. 385 (July 31, 1984).

[275] Rule 41.6. The Committee has forms available for purposes of compliance with Rule 41.6 disclosure.

[276] Rule 41.4; *see also* Interpretative Ruling No. 111 (April 5, 1978). The Committee has forms available for compliance with Rule 41.4 disclosure.

[277] Under Rule 41.4, if the individual's outside salary exceeds 120% of GS–15, the individual must file a financial disclosure report.

interns or fellows who must file a Rule 41.4 form and who receive outside compensation (which, as noted above, is treated as a Senate salary) are subject to the Rule 37 provisions on conflict of interest among other provisions of the Code. Thus, such an individual earning at a rate equal to or in excess of 120% of GS–15 will be subject to Senate Rule 37.5(b) restrictions on receiving compensation for practicing a profession which involves a fiduciary relationship. Also, if the fellow or intern works for the Senate for over 60 days and is paid a rate at or in excess of 120% of GS–15 by the outside entity, he or she will be required to file a financial disclosure report as required by the Ethics in Government Act. If a fellow or intern is paid at a rate below 120% of GS–15 per year by the outside entity, the restrictions on affiliation of Rule 37.5(a) would apply. Whether paid or not, and whether for one day or one year, the general conflict of interest provisions of Rule 37.1, 37.2 and 37.3 apply to any intern, fellow, or volunteer providing Senate services.

Where voluntary (gratuitous) service of any kind to the Senate is provided by any individual, an appropriate disclaimer must be on file with the Financial Clerk of the Senate. Voluntary service is service which is not compensated by anyone.

The restrictions described above are intended to apply to all volunteers who are associated with the office on a formal repetitive, intermittent, or continuous basis. Thus these limits do not apply to individuals who help out on an occasional, discrete basis, such as sign language or other interpreters at town meetings.

Legal Expenses

There is generally little need for a Member to seek legal advice outside of the Senate in relation to official matters. Thus, the Senate will provide reimbursement for legal expenses from appropriated funds in very few instances, e.g., for legal assistance in completing certain documents, such as financial disclosure reports, required by the Senate Rules.[278]

A Member may accept pro bono legal services for the purpose of submitting an amicus curiae brief in the Member's official capacity. However, if a Member is a *party* in a lawsuit, he or she must pay for his or her pro rata share of the legal expenses (or provide his or her pro rata share of legal work), even where the involvement is in his or her official capacity and there is no personal financial benefit to the Member. A Member may pay these expenses by using personal funds, legal expense trust funds, and/or campaign funds, as described below.

Pursuant to S.Res. 321 (Oct. 3, 1996), a Member may accept pro bono legal services with respect to a civil action challenging the validity of a federal statute that expressly authorizes a Member to file an action. The provision of such pro bono services shall not be deemed a gift to the Member under Senate Rule 35 or a prohibited contribution to the office account of the Member under Senate Rule 38, and shall not require the establishment of a legal expense trust fund. (For Committee regulations implementing S. Res. 321, see the Appendices in this Manual).

When a Member, officer, or employee is a party in a lawsuit as a result of his or her official status or responsibilities, a legal expense trust fund may be established, upon the approval of the Committee, under the Regulations Governing the Use of Legal Expense Trust Funds[279] to allow the individual to accept pro bono legal services or other allowable contributions. A legal expense trust fund may be set up regardless of whether the legal expenses are official or officially connected, provided the requirements of the Regulations are met.

A Member may also treat legal expenses arising from or related to service in the Senate as officially connected and pay them with campaign funds, if such payment is approved by the Ethics

[278] The question of whether a legal expense is payable with official funds is within the jurisdiction of the Rules Committee.

[279] These regulations are discussed in more detail in Chapter 4. A Member need not establish a legal expense trust fund to accept pro bono legal services for the purpose of submitting an amicus curie brief.

Committee. Establishing a legal expense trust fund does not preclude a Member from using campaign funds as an additional expense source. A Member may use either or both of these sources to pay his or her own expenses in connection with the legal matter, as well as those of his or her staff.

A Member may not use a contested election fund under Federal Election Commission regulations (11 C.F.R. 100.7(b)(20)) to defray legal expenses incurred in connection with or arising by virtue of Senate services. The Committee has determined that either the use of excess campaign funds (subject to the contribution source and amount limitations) or the establishment of the legal expense trust fund (which would permit solicitation by the Senator up to a limit of $10,000 per donor) provides sufficient alternative means to raise such funds without the creation by the Committee of a third avenue of funding.

Travel Expenses for Non-Senate Individuals

Official funds are not available to provide travel expenses for non-Senate individuals (except witnesses in limited circumstances), even when they are traveling to attend official events. Such travel expenses might be either officially connected or personal, depending on the circumstances. A Senator could pay for them with personal funds in either event, or with campaign funds, if the travel were officially connected. For example, a Member attending an official function in City A could use campaign funds to pay the travel expenses of her spouse to accompany her.

Caucuses

The Committee has previously ruled that caucuses are subject to Rule 38's limitations on the sources of funds; that is, private contributions of money, goods, or services to caucuses are prohibited. Also, caucus mailings using the United States postal service may not be sent under the frank, since caucuses are not among the groups authorized by law to use the frank.

No Senate rule prohibits one or more Senators from forming a forum or caucus, provided that the caucus adheres to the limitations imposed by Senate Rule 38. Thus, based upon prior Committee rulings under Rule 38, outside entities may not support a caucus by organizing caucus events, reimbursing the expenses of speakers, or otherwise supporting caucus events by providing goods, services, or money.

It is permissible for a caucus to co-sponsor an officially connected constituent service event with an outside organization, provided that the requirements of Interpretative Ruling 442 are met. In such a case, the event would be convened for the purpose of performing some constituent service (as opposed to a meeting held for purposes of educating Members or staff on issues). The use of the frank, printing of notices in Senate facilities, and officially paid travel would be prohibited, and the expense of the Senator or employee's participation could not be paid by the co-sponsors of the event. Such expenses could be paid with the Members' personal funds, or campaign funds, or with registration fees from the participants (provided the outside co-sponsor handles such fees, see I.R. 428).

The Rules Committee does not recognize caucus groups as official organizations and, therefore, vouchers seeking official funds for the payment of caucus expenses will not be honored. However, it also appears that the Rules Committee may allow Senators limited use of Senate facilities (for non-fundraising purposes) and staff in connection with caucus activities where no expenses need be vouchered. It is recommended that interested parties contact the Rules Committee concerning its policies regarding the expenditure of official Senate funds in connection with caucus activities.

EXPENSES THAT A SENATOR MAY DEEM OFFICIAL OR OFFICIALLY CONNECTED

With the notable exceptions discussed above, where some items or activities are always official and others are always officially connected, a Senator has wide latitude in deciding whether a particular activity is to be undertaken as official or, alternatively, officially connected. This decision then controls how he or she may pay for it, consistent with the guidelines set forth below.

Accounts

Accounts used in operating a Senate office should be arranged so that official funds are not co-mingled with officially connected funds. An office checking account used to pay official expenses may only contain appropriated funds or a Member's personal funds. An account used to pay officially connected expenses may contain only a Senator's personal funds, campaign funds,[280] and/or reimbursements for expenses incurred in providing services to third parties.

Mail

Postage for official mail may be paid only from the Member's postage allowance or through use of the Member's frank. Most official mail is sent under the frank, subject to the Member's franking allowance, which may not be supplemented with campaign funds.[281] In order to be frankable, *mass mailings* must be prepared and printed exclusively with appropriated funds.[282] Postage for *frankable mail that is not part of a mass mailing* may also be paid from the official mailing allowance or personal funds of the Senator. Similarly, postage and other mail costs associated with *non-frankable official mail* (such as otherwise frankable mail sent as express mail or to foreign countries, except to APO and FPO boxes) may be paid from the official mailing allowance or the personal funds of the Senator. Postage and other mail costs associated with *non-frankable, officially connected mail* (such as a letter of congratulations on achieving a ''personal distinction'' or a notice of or invitation to an officially connected event) may be paid with personal funds or campaign funds.

Senate stationery (the official letterhead) may be used for official or officially connected mail.[283] Similarly, a Senate facsimile machine may be used to transmit non-frankable, officially connected documents, but not documents of a personal or campaign nature.

Occasionally, the line between matter which is frankable, and matter which is frankable (although officially connected) is unclear. Where it is not clear that the material to be mailed is frankable, campaign or personal funds should be used. Members may ask the Ethics Committee to review a mailing for frankability.

Cars

As an officially connected expense—A Senator may deem the purchase, lease, or long-term rental of a motor vehicle to be an officially connected expense. As such, it may be paid with campaign funds and then used without reimbursement for official or officially connected purposes, as well as for campaign purposes. Personal use of the car (that is more than de minimis) requires reimbursement. A Senator may also, if he or she so chooses, personally reimburse the campaign for official uses of the vehicle. Reimbursement should be made on a reasonable basis, but must be made at least once each year by determining the proportion of the vehicle's usage attributable to personal and (if desired) official use. Reimbursement need not be made for de minimis or inci-

[280] *See* Interpretative Ruling No. 400 (Aug. 2, 1985) (campaign may set up separate bank account for the purpose of defraying officially connected expenses).

[281] *See* Interpretative Ruling No. 442 (April 15, 1992). The franking regulations are discussed in detail in Chapter 6.

[282] 39 U.S.C. § 3210(f).

[283] *See* Interpretative Ruling No. 407 (Jan. 28, 1986).

dental use of a campaign vehicle, such as driving the car to one official event in the course of a day on which the car is used to drive to three campaign events.

As a campaign expense —A car that is designated as a campaign car (as opposed to an officially connected car) may be used for official business or personal use if the Senator personally reimburses the campaign for such use or if such use is de minimis or incidental to the campaign use. Reimbursement should be made on a reasonable basis, but an apportionment of costs must be made at least once each year .

Short-term car rentals—A Senator who rents a car on a short-term basis for several events, some of which are official, some officially connected, and some campaign, may divide the rental costs between the Senate and the campaign, as appropriate.

Photographic Studio

The purchase of photographs from the Photographic Studio may be an official or officially connected expense at the discretion of the Senator, depending on the purpose of the photograph and the nature of the event photographed. A Senator may not use an official photograph for any campaign or commercial purpose.

Publications

A book, magazine, newspaper, or other publication, or a subscription for a magazine or newspaper may be accepted from the publisher, producer, or author, paid for as an officially connected expense with campaign funds, or paid for as an official expense at the discretion of the Senator. A Senate office may in some cases also accept from those sources a series or collection of books or tapes. For example, the Committee approved acceptance of the video series on ''The Civil War'' provided by its producer, PBS. However, the Senate does not permit a Senator to accept a collection of materials, such as a specialized reporting service or other collections issued periodically. For example, a Member could not receive a set of encyclopedias, or the U. S. Code Annotated, or other materials which constitute a specialized updated reporting service. The policy would not prohibit a home-state publisher of an encyclopedia from providing a set on loan for display in the office, with the approval of the Ethics Committee.

Radio and Television Studio

Production and/or transmission charges associated with programs at the Senate Radio and Television Studio may be paid for—

(1) as an official expense, if the event being broadcast is official (e.g., if an event is advertised using the frank, the event will be deemed official);

(2) as an officially connected expense, if the event being broadcast is officially connected;

(3) by the radio or TV stations or broadcasters producing and transmitting the program, as long as the program is either official or officially connected;

(4) by tax exempt organizations, in the case of public service announcements or other officially connected programs made by Senators at the request of such organizations;

(5) by corporate sponsors of public interest programs or other officially connected programs made by Senators at the request of such organizations;

(6) by a federal or state agency, in the case of TV or radio productions made by Senators with such an agency.

Although a Senator may make a public service announcement in the official studio at the request of an outside organization that is later used in a fundraising drive, an actual fundraising request by the Senator should not be taped at the studio, since the Rules Committee's Policy on the use of Senate space prohibits ''fundraising.'' In addition, the cost of a program made by a

Senator at the request of an outside organization may not be split by the Senator and the organization, but rather must be paid solely by the organization (if it is the organization's program) or solely by the Senator (if the Senator chooses to have the program be his or her program).

The Senate and House radio and television studios are subject to a pre-election moratorium on use by a Senator or an individual who is either a candidate for nomination for election or a candidate for election to the Senate. The Senate and House radio and television studios may not be used less than 60 days immediately before the date of any primary or general election (whether regular, special, or runoff) in which that Senator is a candidate for public office or that individual is a candidate for Senator, unless the candidacy of the Senator in such election is uncontested [See Rule 40.6]. This prohibition does not apply if the facilities are to be used at the request of, and at the expense of, a licensed broadcast organization or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954. Moreover, facilities of the Republican Conference and the Democratic Policy Committee may not be used during the pre-election moratorium period, except to produce only bona fide ''electronic news releases'' for distribution to radio and television stations in the home state. (See Chapter 7 for other moratoria).

Purchase of tapes of official events produced by the Recording Studio may be treated as an official or officially connected expense, as appropriate, depending on the purpose for which the tapes are being purchased. Tapes of officially connected events may be purchased with campaign funds or by others who wish to use the tape. The costs of taping an officially connected event should not be borne by the Senate. A Member may, however, rebroadcast, as an officially connected event, a tape which was originally produced for official broadcast. Tapes purchased with campaign funds may not be mailed under the frank.

Staff Purchases

Senate staff may make official or officially connected purchases and pay for travel expenses authorized by the Senate travel regulations if they are reimbursed either as an official or officially connected expense as appropriate. Staff may generally *not* pay official or officially connected expenses without being reimbursed, except for voluntary, de minimis expenditures such as: travel expenses in excess of maximum per diem, officially connected travel expenses beyond the time limits in the Gifts Rule, audio or video equipment for personal use in the office, and local travel expenses.

Travel

Depending on the circumstances, travel expenses may be paid with official funds, campaign funds, personal funds, or private reimbursements. Privately provided travel or reimbursement for such travel, including lodging and other necessary expenses, for officially connected functions or providing services to others (such as giving a speech or conducting fact-finding) may only be accepted within the limits established under Senate Rule 35 (the Gifts Rule).[284] Expenses for official travel may not be reimbursed by private parties.

The primary purpose of a trip must of course be official in nature to justify the use of official funds for the airfare. If the purpose of the trip is to campaign for re-election, all expenses associated with the trip must be paid with campaign (or personal) funds. Expenses for mixed-purpose trips, those involving stops for campaign as well as official or officially connected activities may be pro-rated, to appropriately reflect the expenses associated with each segment of the trip. However, a trip that involves both campaign and official or officially connected business must comply not only with Senate rules, but with federal election laws. A Senator may thus find it helpful to consult the Federal Election Commission with respect to dual purpose trips, since the Commis-

[284] *See* Chapter 1.

sion's regulations relating to ''contributions'' of travel expenses may in some cases dictate that a particular expense be reimbursed by a campaign.

> ***Example 9.*** Senator *J* flies to his home state for an official event on Monday, paying for Monday's per diem with official (or personal) funds. Tuesday, he participates in an ''officially connected'' event. *J* must pay Tuesday's per diem with campaign (or personal) funds. Since the trip was necessitated by both official and ''officially connected'' activities, however, *J* may pay for the airfare with official, campaign, or personal funds, or he may split the fare.
>
> ***Example 10.*** Senator *K* travels on official business, using appropriated funds for the airfare, but incurs expenses in excess of the official per diem. Because official funds were used for the trip, *K* must pay the excess with personal funds. She may not use campaign funds for that purpose.
>
> ***Example 11.*** Staffer *L* travels to the home state for vacation and pays for the airfare with personal funds. While there, *L* spends one day doing official business. It is appropriate for *L* to seek official reimbursement for that day's expenses.
>
> ***Example 12.*** Senator *A* flies from D.C. to a non-home state location for separate campaign and official events. Pursuant to federal election rules, the campaign must pay for the actual cost-per-mile of the means of transportation used, starting at the point of origin of the trip, via every campaign-related stop and ending at the point of origin. Thus, the campaign must pay for Senator *A*'s flight costs from D.C. to the non-home state location and back to D.C. (as well as any expenses associated with the campaign event itself). Any per diem costs associated with the official stop should be paid with official funds.

During the 60 days before an election in which a Senator is a candidate, neither the Member nor his or her staff may accept **official per diem** for travel in the home state, even if the travel is for official purposes. However, travel expenses may be allowed if information is submitted to the Rules Committee which establishes that the Senator's candidacy was uncontested. Official funds, whether the Senator's candidacy is contested or uncontested, may still be used for airfare. During this moratorium period, because per diem is non-reimbursable for contested candidacies, a Senator traveling home on official business may determine per diem to be officially connected and use campaign funds, even though the airfare was paid with official funds. The moratorium on per diem expenses does not apply to a Member's candidacy in a state or local race. (See Chapter 7 for other moratoria).

> ***Example 13.*** It is less than 60 days before an election in which M is a candidate. During this moratorium period, *M* travels to the home state on official business and pays for the flight with official funds. Because his other travel expenses are not now reimbursable, he may determine that they are officially connected and pay them with campaign funds.

Meetings and Conferences

Co-Sponsored Events—Generally, Senate Rule 38 prohibits third parties outside the Senate from providing funds, goods, or services in connection with an event sponsored by a Senator. The Committee has recognized a limited exception to Rule 38's restrictions for ''co-sponsored constituent service events.'' Such events, which may vary dramatically in scope and purpose, typically involve participation by, providing information to, or getting input or information from, a Senator's constituents.

Official constituent service events may be co-sponsored only with entities of Federal, State, or local governments. Senators co-sponsoring such events with such entities may support the events by: having notices of the events printed in Senate facilities, producing mailing labels, mailing notices of the events under the Senator's frank, or any combination thereof. All official co-sponsors should be listed on invitations and pamphlets or brochures concerning the event. While this permits a Senator to undertake a limited cooperative effort with other government entities in sponsoring a specific event, other government agencies or entities are prohibited from making a continuing or sustaining contribution to a Senator's office. Official events may not be co-sponsored

with non-governmental entities, nor may a Senate individual's participation in an official event be underwritten by a private source.

A Senator may co-sponsor a constituent service event which is *officially connected* with a non-governmental entity, so long as the co-sponsor is not a lobbyist or lobbying firm. Co-sponsors should have an interest in the subject matter of the event and be able to attend the event, and not be mere financial contributors. Material published in connection with such an event may note that the event is co-sponsored by or is sponsored in cooperation with the Senator, as long as the co-sponsors are also listed. However, use of the Senator's frank, printing of notices in Senate facilities, and officially paid travel are prohibited with respect to such events. Additionally, the expenses of a Senator or employee's participation may not be paid by the co-sponsors of the event. Such expenses could be paid with the Member's personal funds, campaign funds, or registration fees from the conference.[285] If registration fees are involved, a co-sponsor other than the Senator's office must handle the collection and distribution of funds connected with the event as set forth in Interpretative Ruling 428.[286] Pursuant to Senate Rule 40.5, official mailing lists should not be turned over to co-sponsors for mailing purposes. However, the Member's official letterhead may be used in connection with the event.

Participation in Third Party Events—A Member or employee may participate in an event sponsored by a third party and have the expense of such participation reimbursed by the third party in accordance with Rule 35. The literature promoting such an event may note the Senator's or employee's participation, but should not list the Senator or employee as a co-sponsor of the event. Alternatively, a Member or employee may, as an official activity, participate in an event sponsored by a third party. That is, the Member or employee may have the Senate pay travel and lodging expenses to enable him or her to attend an event that is being put on by a private organization. This use of official funds would not preclude the Member or staffer from accepting a waiver of conference fees or meals provided at the event from the sponsor, consistent with the Senate Gifts Rule.

Meetings—A Member may deem a public meeting to be either official or officially connected. If official, all expenses associated therewith must be paid from the official account or personal funds of the Senator. A meeting advertised with the frank would be considered as having been declared an official activity.

Meeting Space—The use of privately owned space to meet with constituents is permitted, provided that the normal practice of the owner is to make such space available to other persons for similar civic or public purposes on a similar and non-partisan basis.

Office Retreats—An office retreat may be paid for as either an official expense or an officially connected expense, but it may not be paid partly from official funds and partly from campaign funds. Private parties may not pay expenses incurred in connection with an office retreat. Campaign workers may attend, at campaign expense, official or officially connected retreats if their purpose in attending is to engage in official or officially connected activities, such as providing feedback from constituents on legislative or representational matters.

Political Events—Official funds may not be used to support political events. Third party contributions to political events are governed by the Federal Election Commission. If a retreat is organized to discuss campaign issues, Senate staffers may only attend if they are on their own time.

Meals and Refreshments

A Senator may use campaign funds to pay for meals with constituents if the meals are either officially connected or campaign events. In addition, a Member may use officially connected funds to pay for an office gathering in honor of a departing staffer and may purchase a commemorative

[285] *See* Interpretative Ruling No. 428 (Feb. 5, 1988).

[286] **Id.**

item for the staffer in recognition of the staffer's service to the Senate (See Interpretative Ruling 330).

Refreshments or meals at official events (for example, a town meeting advertised with a notice mailed under the frank) may be paid for as an officially connected expense. Other than for refreshments or meals of nominal value (e.g., cookies or donuts and coffee at a town meeting) provided by constituent groups, third parties may *not* pay for such refreshments or meals. Committee Members may pay for a meal for a committee event with officially connected funds (i.e., campaign funds from a Member's principal campaign committee, not from multi-candidate, party, or any other campaign committee). This is a limited exception to the general rule that campaign funds may not be used to pay for committee activities, which are always official rather than officially connected.

ISSUES FOR SENATORS-ELECT

Many questions about Senate administration and rules face Senators-elect. These issues are usually addressed during a comprehensive orientation provided to Members and their spouses shortly after the general election. A portion of the orientation is devoted to a discussion of ethics laws, Senate ethics rules, and the functions of the Committee. While this section is not meant to substitute for the ethics orientation briefing, the following are highlights of ethical concerns that may be of immediate interest to incoming Senators.

* Gifts—The Committee has previously ruled (Interpretative Ruling 345) that a Senator-elect is not subject to Senate Gifts Rule 35 prior to his or her swearing-in. However, Senators-elect **are** subject to statutory ethics provisions (e.g., illegal gratuity, bribery).

* Franking—The Franking Statute permits a Senator-elect to use the frank to mail matter relating to his or her official duties and functions. A Senator-elect may begin using the frank when official notification of the election results from the appropriate state official are received by the Secretary of the Senate. (Consult with the Rules Committee concerning notification of election results).

* Swearing-in ceremony—The Committee has ruled that a Senator-elect may frank letters of invitation to his or her official swearing-in ceremony.

* Responding to letters of congratulations—A Senator-elect's response to a letter of congratulations on the Senator's election is frankable mail matter.

* Swearing-in receptions—

** A Member-sponsored reception may be treated as a **campaign** event, in which case the Senator's campaign committee must use campaign funds to pay for the event, Senate space may not be used, and the frank may not be used in connection with the event. A Member may also sponsor an **officially connected** reception which may be paid for with officially connected funds (i.e., excess campaign funds) or personal funds. Senate space may be used for officially connected receptions; however, the use of either the frank or campaign stationery is prohibited.

** A reception sponsored by third parties in honor of the Member is analyzed under Senate Gifts Rule 35, which prohibits a Member, officer, or employee of the Senate from receiving any gift of a value of $50 or more, or gifts from one source that aggregate $100 or more during a calendar year, unless one of the Rule's exceptions applies. Meals are counted as gifts. The Committee has held that a Member who attends a party or other function in his or her honor receives a gift of the value of any food or refreshments consumed by the Member, plus the value of the Member's pro-rata share of any entertainment that is provided. However, the so-called ''reception exception'', Senate Rule 35.1(c)(22), provides that the Gifts Rule does not apply to ''food or refreshments offered other than as a part of a meal''. Thus, if the sponsors of a swearing-in reception offer food or refreshments that are not part of a meal (e.g., hors d'oeuvres), then pursuant to para-

graph 1(c)(22) the value of such reception-type food consumed by the Member will not be a gift to the Senator. An event also may meet the Gifts Rule exception (paragraph 1(c)(18)) for attendance at a ''widely attended'' event. If an event is attended by at least 25 persons outside Congress, attendance is open to individuals from throughout a given industry or profession, or to a range of persons interested in an issue, and if the Member determines that attendance at the event is appropriately connected with his or her official duties or position, then the Member may accept ''free attendance'' at the event, including a meal or refreshments and the provision of local transportation.

* Nepotism statute—The nepotism statute, 5 U.S.C. 3110, prohibits federal officials, including Members, officers and employees of the Senate, from appointing, employing, promoting, or advancing or recommending for appointment, employment, promotion, or advancement any ''relative'' of the official to any agency or department over which the official exercises authority or control. (See discussion of statute in Chapter 9).

* ''Winding Up'' prior business—Conflict of interest rules limit the performance of professional services by Members. For Committee discussion of issues raised by new Members, see I.R. 344 and I.R. 358.

* House vs. Senate Rules—The ethics rules in the House and Senate differ in several important respects. For example, Senate Rule 41.1 states that officers or employees of the Senate may not solicit, receive, have custody of or distribute federal campaign contributions unless they are one of three political fund designees (and then only for certain campaign committees). The House has no such restriction. Therefore, new Members coming from the House should familiarize themselves with Senate rules.

* Informed staff—Experience indicates that a well-informed office avoids ethical problems. It may be useful to designate certain staffers to know the rules well. Ethics Committee staff is available for office briefings or individual questions, or to provide written materials.

ISSUES FOR MEMBERS LEAVING OFFICE

The Senate provides detailed sessions for offices on the issues surrounding the closing of a Senate office. The following is a brief list of ethical considerations for Members leaving the Senate.

* Financial disclosure—Senators, and all other reporting individuals, who leave the Senate must file termination reports. No report is required with respect to Senators who have died while in office.

* Post-employment restrictions and negotiating for future employment—See discussion in Chapter 3 of post-employment restrictions (regulated by criminal statute, 18 U.S.C. 207) and for conflict of interest concerns on negotiating for future employment.

* Use of Frank—The Franking Statute provides that a Senator is authorized to use the frank until the expiration of a 90-day period immediately following the date on which he or she leaves office in order to close the official business of the Senate office.

* Lame Duck travel—Senate Rule 39.1 prohibits United States government-funded foreign travel by any Senator whose term will expire at the end of a Congress after, (1) the date of the general election in which his or her successor is elected, or (2) if the Member is not a candidate in the general election, the date of that election or the adjournment sine die of the second regular session of that Congress, whichever is earlier. These restrictions also apply to employees of terminating Senators, whether personal or committee, and to officers and committee employees whose employment will terminate at the end of a Congress.

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Chapter 5

FINANCIAL DISCLOSURE

Rule 34

INTRODUCTION

Public disclosure of a public official's personal financial interests is often considered the key component to an effective code of conduct for legislative ethics. In a recent Congressional Research Service survey of ethical regulations governing the financial interests of legislators in twenty-four countries, the United States was found to have the most clearly restrictive scheme of laws, regulations, and rules respecting the financial interests and conduct of its members, with its disclosure requirements more detailed and extensive than any of the surveyed countries.[287] Pursuant to statute and rule, Members, officers, and certain employees of Congress are required to file comprehensive annual public financial disclosure reports. This chapter focuses on the disclosure filing process and report requirements for Members, officers, and employees of the Senate.

FINANCIAL DISCLOSURE

Background

The drafters of the original Senate Code of Official Conduct, in the 95th Congress, considered ''full and complete public financial disclosure'' to be ''the heart of the code of conduct.''[288] Financial interests and investments of Members and employees, as well as those of candidates for the Senate, may present conflicts of interest with official duties. Members and employees (with the exception of certain committee staffers) need not, however, divest themselves of assets upon assuming their positions, nor must Members disqualify themselves from voting on issues that generally affect their personal financial interests. Instead, public financial disclosure provides the mechanism for monitoring and deterring conflicts.

Senators enter public service owning assets and having private investment interests like other citizens. Members should not ''be expected to fully strip themselves of worldly goods''[289]— even a selective divestiture of potentially conflicting assets is not required. Unlike many officials in the executive branch, who are concerned with administration and regulation in a narrow area, a Senator exercises judgment concerning legislation across the entire spectrum of business and economic endeavors. The wisdom of complete (unlike selective) divestiture may also be questioned as likely to insulate a legislator from the personal and economic interests that his or her constituency, or society in general, has in governmental decisions and policy.

Thus, public disclosure of assets, financial interests, and investments has been required and is generally regarded as the preferred method of monitoring possible conflicts of interest of Members of the Senate and certain Senate staff. Public disclosure is intended to provide the information

[287] CRS Report for Congress—Legislative Ethics in Democratic Countries: Comparative Analysis of Financial Standards, April 14, 1994.

[288] *Senate Code of Official Conduct, Report of the Special Committee on Official Conduct, United States Senate, to accompany S. Res. 110*, S. Rep. No. 95–49, 95th Cong., 1st Sess. 3 (1977) (known and hereinafter referred to as the NELSON REPORT, after the Chairman of the Special Committee, Senator Gaylord Nelson).

[289] JAMES C. KIRBY, JR. (exec. director), ASS'N OF THE BAR OF THE CITY OF NEW YORK SPECIAL COMM. ON CONGRESSIONAL ETHICS, CONGRESS AND THE PUBLIC TRUST 47 (1970).

necessary to allow Members' constituencies to judge official conduct in light of possible financial conflicts with private holdings. In drafting the financial disclosure provisions of the Senate Code of Official Conduct, the Special Committee ''sought to strike a balance . . . to mandate disclosure and prohibit practices in a way that would restore the public confidence and serve the public's legitimate interests without condoning wholesale, unwarranted invasions of privacy.'' [290]

The Senate has required some financial disclosure by rule since 1968, and public reporting by statute since 1978. The Ethics in Government Act of 1978 mandated annual financial disclosure by all senior Federal personnel, including all Members and some employees of the Senate. [291] The Ethics Reform Act of 1989 [292] revised and condensed what had been different requirements for each branch into one uniform title covering the entire Federal Government. [293] Filers now *must* indicate outside compensation, holdings, transactions, liabilities, positions held and gifts received on their Financial Disclosure Reports (the **''Reports''**). In all instances and within their discretion, filers *may* disclose additional information or provide explanation.

The Committee develops forms and instructions for financial disclosure, gives advice regarding compliance and reviews the completed Reports of Members, officers, employees, candidates, and certain other legislative branch personnel for compliance with applicable laws and Senate Rules. The Secretary of the Senate is responsible for making the forms available for public inspection. The discussion that follows focuses primarily on those requirements that apply to Members, officers, and employees of the Senate. Additional details for all filers within the Committee's jurisdiction are included in the instructions for completing the Report, appended to the Report forms issued by and available from the Committee.

Filing Procedures

A. Who Must File and When

Senators and Senate employees [294] earning at a rate of at least 120 percent of the Federal GS–15 base level salary (hereafter sometimes referred to as being paid at a rate ''above GS–15''), [295] must file Financial Disclosure Statements by May 15 of each year. An individual who works less than full time must compute his or her ''rate of pay'' by pro-rating annual salary. For example, if you work two and one half days per week (i.e. 1/2 time) and are paid $50,000 per year, your ''rate of pay'' for purposes of financial disclosure and other provisions of the Senate Code of Official Conduct is $100,000 per year. This salary threshold, for both 1993 and 1994, was $79,930. In 1995, it was $81,529; for 1996, it was $83,160; for 1997, it was $85,073; for 1998, it was $87,030; for 1999, it was $89,728; and for 2000, it is $93,137. [296] If a Member has no employee on his or her personal staff who receives equal to or in excess of 120 percent of the GS–15 salary, the Member must designate at least one ''principal assistant'' to file a Report.

[290] NELSON REPORT, at 3–4.

[291] Pub. L. No. 95–521, 92 Stat. 1824 (Oct. 26, 1978). Legislative branch disclosure requirements were then codified at 2 U.S.C. § 701 *et seq.*

[292] Pub. L. No. 101–194, 103 Stat. 1716 (Nov. 30, 1989), as amended by Pub. L. No. 101–280, 104 Stat. 149 (May 4, 1990) and Pub. L. No. 102–90, 105 Stat. 447 (Aug. 14, 1991) (the Ethics in Government Act and the foregoing are collectively referred to as the ''Act''); and see Senate Rule 34, as amended (specifically, S. Res. 158, 104th Congress, First Session) for further revised and additional disclosure requirements of Senate Members, officers and employees.

[293] Financial Disclosure Requirements of Federal Personnel have been codified since 1991 at 5 U.S.C. app. §§ 101–111.

[294] A Senate employee is anyone whose salary is disbursed by the Secretary of the Senate, including part-time staff and consultants. *See* Interpretative Ruling No. 61 (Sept. 13, 1977).

[295] Pub. L. No. 101–509, 104 Stat. 1389 (Nov. 5, 1990) eliminated the GS–16 classification and replaced it with ''above GS–15'' meaning 120 percent of the GS–15 base level salary.

[296] For financial disclosure purposes, the rate of pay of an employee who receives a bonus is determined by adding the bonus to the base rate of pay. *See* Interpretative Ruling No. 435 (June 13, 1988). The Committee has ruled that if an employee receives a bonus, the employee must file disclosure only if the bonus raised the employee's gross salary over the filing threshold of 120% of GS–15 base salary.

Political fund designees (that is, up to three Senate staffers per Member who are authorized under Rule 41.1 to handle campaign funds) also must file Reports for each calendar year in which they are so designated.[297] In addition, anyone who takes a Senate position at a starting salary that exceeds the filing threshold must file a New Employee report within 30 days of commencing employment if he or she expects to be on the payroll for more than 60 days in the calendar year, unless the employee left another filing position within 30 days of beginning Senate employment.[298]

Senate candidates must also file Reports. An individual who qualifies as a ''candidate'' for the Senate must file within 30 days of becoming a ''candidate,'' or on or before May 15, whichever is later, but in any event at least 30 days before the election. ''Election'' is defined as any type of primary, run-off, nominating convention, caucus, or general election. One becomes a candidate, according to the Federal Election Campaign Act, by either (i) raising or spending more than $5,000 for a campaign, or (ii) authorizing another to raise or spend $5,000 upon their behalf.[299] An individual who does *not* raise or spend (and does not authorize another to raise or spend) $5,000 has no financial disclosure obligations. All individuals who do meet this definition must file Reports each year that they continue to be candidates. Individuals who do not qualify as candidates until within 30 days of the election must file as soon as they do qualify. A candidate who takes the necessary steps under state law to withdraw either before the Report is due, or before the date of any extension granted by the Committee, need not file a Report.[300]

Leaving the Senate: Within 30 days of leaving his or her government position, a reporting individual generally must file a termination report.[301] The termination report covers all financial activity through the person's last day on the Senate payroll. An individual who leaves one position requiring a Financial Disclosure Statement for another such position need not file a termination report.

> ***Example 1.*** Senator *Q* resigns from Congress to take a position as a Cabinet Secretary. *Q* need not file a termination report.

B. Filing Deadlines, Committee Review, and Amendments

All reports are filed with the Office of Public Records of the Secretary of the Senate. A report must be physically filed or postmarked by the due date, unless an extension has been granted by the Committee in response to a written request by the filer. Total extensions for any report may not exceed 90 days.[302] The Committee may not grant an extension that was requested by the filer after expiration of the 30 day ''grace'' period following the Report's due date. An individual who files a report more than 30 days after it is due must pay a penalty of $200 when he or she files the report, unless the Committee waives the penalty.[303] Requests for waivers must be made to the Committee in writing and are granted by the Committee in extraordinary circumstances.

Within 60 days of receipt, the Committee reviews the Reports to determine whether they have been filed in a timely manner and whether their contents have been disclosed accurately and in compliance with the law[304] and Senate Rule. If the review indicates a possible problem, or that the Report appears to be in the need of additional information or clarification, the filer is notified

[297] *See* Interpretative Ruling No. 292 (Nov. 27, 1979).

[298] 5 U.S.C. app. § 101(a). *See* Interpretative Rulings No. 321 (May 13, 1980); No. 224 (Jan. 30, 1979).

[299] *See* 2 U.S.C. § 431(2). This does not include money received or spent solely to ''test the waters'' (i.e., explore the plausibility of the candidacy) *if* the individual never actually becomes a candidate, does not take any steps necessary under state law to become nominated or elected, and does not receive or spend any campaign funds for purposes other than exploring the viability of the candidacy. *See* Interpretative Ruling No. 266 (June 13, 1979).

[300] *See* Interpretative Ruling No. 413 (Sept. 22, 1986).

[301] 5 U.S.C. app § 101(e).

[302] *Id.* at § 101(g).

[303] *Id.* at § 104(d).

[304] *Id.* at § 106.

and should respond and amend his or her Report, if necessary, within thirty days of his or her notification.

A filer may also amend a Report on his or her own initiative. To amend a Report, a filer need not submit an entirely new form. Instead, an amendment may simply revise a given page or part of the Report, or may be in the form of a letter. All amendments should be addressed to, and filed with, the Secretary of the Senate, Office of Public Records, Room 232, Hart Senate Office Building, Washington, D.C. 20510. Both the original filing and the amendment are made public and are available for public viewing at the Office of Public Records—NOT at the Committee.

Within thirty days of filing, Reports will be disclosed to any requesting party by the Senate Office of Public Records. All Reports will remain available on microfilm for public inspection for a period of six years after receipt. Any person requesting actual copies of Reports is required to pay a reasonable fee ($0.20 per page in 2000) to cover production and mailing. Filers may also inspect applications by the public for review of their own Report at the Office of Public Records.

C. Failure to File or Filing False Disclosure Statements

The financial disclosure provisions of the Ethics in Government Act have been incorporated as Senate Rule 34, over which the Committee has jurisdiction. In addition to any Committee action, the Ethics in Government Act authorizes the Attorney General of the United States to seek a civil penalty of up to $11,000 against an individual who knowingly and willfully falsifies or fails to file or to report any required information.[305] Moreover, anyone who knowingly and willfully falsifies or conceals any material fact in a statement to the Government may be fined up to $11,000 and is subject to criminal prosecution and sentencing.[306]

The Committee is authorized to render advisory opinions interpreting the financial disclosure provisions of the Ethics in Government Act for any person under its jurisdiction. An individual who acts in good faith in accordance with a written advisory opinion shall not be subject to any sanction under the Act.[307]

SPOUSE AND DEPENDENT INFORMATION

In general, reporting individuals must also disclose the financial interests of their spouses and dependent children.[308] Only where the financial interest of a spouse or dependent child meets *all three* standards listed below, may a filer omit disclosure:

(1) The item is the sole interest or responsibility of the spouse or dependent child, and the reporting individual has no knowledge of the item;

(2) The item was not in any way, past or present, derived from the income, assets, or activities of the reporting individual; **and**

(3) The reporting individual neither derives, nor expects to derive, any financial or economic benefit from the item.[309]

This three step test is met only in the rarest of circumstances. For instance, if a filer has a dependent child who was adopted and a natural parent without notice to the filer sets up an educational trust for the dependent child, the above three step test, for the trust fund, is seemingly met. However, since the filer will no longer have to contribute as much to the child's education, the filer does derive some financial benefit. Hence, it appears this trust fund is reportable.

[305] *Id.* at § 104(a).

[306] 18 U.S.C. 1001, and 18 U.S.C. 3571.

[307] 5 U.S.C. app. § 106(b)(7).

[308] 5 U.S.C. app. § 102(e)(1). *See* Interpretative Ruling No. 397 (May 24, 1985); Interpretative Ruling No. 336 (Sept. 5, 1980).

[309] 5 U.S.C. app. § 102(e)(1)(E).

An individual is not required to disclose financial information about a spouse from whom he or she has separated with the intention of terminating the marriage or providing for a permanent separation.[310]

> ***Example 2.*** Senator *A* sets up an account in her 10-year-old son's name, into which she deposits funds that she has earmarked to pay for his college education. Senator *A* must disclose the account.
>
> ***Example 3.*** Senator *B*'s wife has a stock portfolio, entirely in her own name. She uses the income from these investments to finance family vacations and other non-routine family expenses. Senator *B* must disclose the stock portfolio.
>
> ***Example 4.*** Senator *C*'s husband inherits some commercial real estate in which he is the sole owner. Senator *C* must disclose the property.
>
> ***Example 5.*** Senator *D* lives separate and apart from her husband and intends to initiate divorce proceedings. The Senator and the estranged husband inherit money from the same source. Senator *D* need only disclose HER inheritance, not that of her estranged husband.

THE DISCLOSURE REPORT FORM

Part I: Payments in Lieu of Honoraria

While Members, officers, and employees may not themselves *receive* honoraria, the sponsor of a speech, article or appearance may make a payment in lieu of honoraria to a charity.[311] Reporting individuals (with the exception of candidates) must publicly disclose on Part I the date, source, and amount of any payment in lieu of honoraria that is directed to charity, as well as the nature of the activity that gave rise to the payment (i.e., speech, article, or appearance).[312] In addition, a separate form listing the recipient charities must be filed with the Committee, where it is considered confidential between the filer and the Committee, and NOT with the Office of Public Records.[313] This form is available from the Committee. If the filer's spouse or a candidate received honoraria, the source, date the honoraria was earned, and exact amount of honoraria exceeding $200 must be publicly disclosed and listed on Part II, as such payments would qualify as ''earned income'' (see below).

Part II: Earned and Non-Investment Income

Earned and non-investment income refers to compensation derived from employment, personal efforts,[314] or other non-investment sources. It includes all fees, commissions, salaries, income from personal services, retirement income, pension payments, and royalty payments. Such income must be disclosed when it totals $200 or more from any one source in a calendar year.[315] Income received from employment by the Federal government (including military pay from Federal Reserve programs), social security income, and retirement income from the federal government is not required to be disclosed. The source, type, and exact dollar amount of the reporting individual's

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[310] *Id.* § 102(e)(2).

[311] *See* Chapter 3 of this Manual for a discussion of the honoraria ban.

[312] *See* Chapters 2 and 3 for additional limitations and disclosure requirements required by Rule 35 for Members, officers, or employees who designate or recommend to a lobbyist a contribution in lieu of honoraria.

[313] 5 U.S.C. app. § 102(a)(1)(A).

[314] *See* Interpretative Ruling No. 414 (Nov. 18, 1986) (a trophy earned at an athletic contest is not a gift subject to Rule 35's limits, but should be disclosed as earned income). A monetary or monetary equivalent ''award'' or ''prize'' won at such an athletic competition may be accepted only if the competition is open to the public.

[315] *See, e.g.*, Interpretative Ruling No. 359 (Jan. 3, 1983); Interpretative Ruling No. 344 (Feb. 16, 1981); Interpretative Ruling No. 319 (May 9, 1980); Interpretative Ruling No. 56 (Sept. 7, 1977). Rulings No. 359 and 344 reflect the fact that the disclosure threshold for earned income was formerly $100.

earnings must be stated.[316] Only the source and type of non-honoraria earned income of a spouse need be reported. Earned income of a dependent child need not be reported.[317]

Staff should note that disclosure of income earned from outside employment is not a substitute for obtaining the approval of one's supervisor for such employment under Senate Rule 37.3. Additionally, disclosure does not waive Senate Rules 36 and 37 which contain various outside earned income restrictions for individuals whose salaries exceed $25,000 and further limits for persons whose salaries exceed the statutory financial disclosure filing threshold. These and other income restrictions are discussed in detail in Chapter 3.

Parts IIIA and IIIB: Assets and Unearned Income Sources

Any property held by the filer, his/her spouse, and/or dependent children for investment or the production of income (e.g. real estate, stocks, bonds, accounts, and business income) must be disclosed if the property is worth more than $1,000 at the close of the reporting period or the property generated income of more than $200 during the reporting period.[318]

Defining Value: Filers have seven options to determine value –

1. recent appraisal of asset;
2. book value of non-publicly traded stock, or the exchange/face value of corporate stock, bonds or comparable securities;
3. the net worth of the interest (as in a business partnership/interest);
4. the equity value of the interest (as in a solely owned business);
5. statement balance (e.g. bank accounts, excepted investment fund, or any investment portion of an insurance policy);
6. for real estate—where the value is not ascertainable without an appraisal, (a) the assessed value for tax purposes adjusted to reflect current market value if the assessment is computed at less than 100% of current value (with this option, the filer must describe the method used to determine this value and list the actual and not the category of amount); or (b) the actual purchase price of the real property and the date of purchase (but both should be listed on the report form).
7. any other recognized indication of value (filer must describe the method of determination of value).

Where the value of an item is difficult to determine (or cannot be determined through the above seven options), a good faith estimate of fair market value may be used to determine the value of an asset. The filer must value assets as of any date that is within 31 days of the close of the reporting period (e.g. for an annual Report, assets may be valued as of any date in December or January). The exact value of assets that qualify as ''unearned income sources'' (i.e. those assets reportable on Part III) need not be disclosed; only the range of value within which an asset falls – called the ''category of value'' – is required to be disclosed.

Defining Unearned Income: If an asset generates more than $200 during the reporting period, the source, category of value, type of income and either the exact amount of or category of income must be disclosed.[319] ''Unearned'' income includes (but is not limited to) income derived from dealings in property; interest; rents; dividends; capital gains; income from annuities, retirement income, the investment portion of life insurance policies, endowment contracts, forgiveness of debts owed by you; your distributive share of partnership or joint venture income; gross business income; income from an interest in an estate or trust; and other amounts received as a return on investment. The filer *must* report the *gross* amount of unearned income; net figures may

[316] 5 U.S.C. app. § 102(a)(1)(A).

[317] *Id.* § 102(e)(1)(A).

[318] *Id.* § 102(a)(3), (a)(1)(B). *See* Interpretative Ruling No. 311 (Mar. 17, 1980) with respect to reporting of inheritances.

[319] 5 U.S.C. app. § 102(a)(1)(B).

also be disclosed if the filer so chooses. For purposes of determining whether the $200 threshold has been met, the filer must aggregate all types of investment income from the specific source.

Income from dividends, rents, interest, capital, qualified trusts, excepted trusts, or excepted investment funds may be reported by the category of the amount of the income (i.e. a range of income as provided for in the Report).[320] All other investment income must be reported by the actual dollar amount of the income from each source. The unearned income of a spouse or dependent child must be reported along with that of the reporting individual.

Distinguishing Publicly from Non-Publicly Traded Assets: Non-publicly traded assets require more detailed disclosure than publicly traded assets, because they are not depicted in publicly available financial indices (e.g. Moody's Complete Corporate Index, Standard and Poor's Register) and there is generally no publicly available source of information about them. For this reason, Part III of the Report is divided into two sections. Part IIIA requires the disclosure of the full name of each publicly traded stock, bond, mutual fund, publicly traded partnership interest,[321] excepted investment fund, bank account, annuity, futures contract, excepted or qualified blind trust, and publicly traded asset of an IRA or other retirement plan, in which the filer's investment exceeded $1,000 at the end of the reporting period or which generated more than $200 of income within the reporting period. *Non*-publicly traded assets and unearned income sources include real property,[322] closely held corporations, pension interests, non-public IRA assets, private tax shelters, beneficial interests in trust or estates,[323] commercial crops, livestock, accounts receivable, and collectable items held for resale or investment. In order to disclose the identity of these non-publicly traded assets, the name, address (city and state), and description (including underlying assets and nature of business) must be disclosed on Part IIIB—along with the disclosure of the assets' correlating categories of value, income and type of income.

Types of Traded Assets and Unearned Income Sources

1. Personal Savings Accounts must be disclosed *if*, (i) at the end of the reporting period, all such accounts at a single institution total more than $5,000 in value or (ii) during the reporting period, all such accounts generated combined income of more than $200. Savings accounts include checking, savings, certificates of deposit, and any other types of accounts offered through financial institutions. Financial interests in U.S. Government retirement programs (e.g., the Thrift Savings Plan) and social security benefits are *not* required to be reported.

2. Each Publicly Traded Stock or Bond needs to be identified by listing its complete name (and preferably the exchange upon which it is listed) so that any person examining the Report may locate information regarding the holding through publicly available reports or reference materials. Optionally, the filer may identify the stock using the symbol by which it is traded, but the filer MUST also include the exchange upon which the stock is traded. If a filer holds different types of securities of the same corporation (i.e. both common and preferred stock), these securities should be aggregated to determine whether the holding is above or below the $1,000 reporting threshold. The Committee will accept statements from a broker or investment advisor that are offered as attachments to Part III.

3. Municipal Bonds must be identified by the name of the municipality offering the bond and the complete name of the bond which generally indicates its type.

[320] *Id.*

[321] Additional disclosure is required for publicly traded partnerships which (i) do not meet the test of an excepted investment fund and (ii) are held for the purposes of investment. A filer needs to disclose each underlying asset of a partnership where (i) the filer's (or his/her spouse or dependent child's) interest in that asset exceeds $1,000 in value or (ii) where that asset generated more than $200 in income for the filer (or his/her spouse or dependent child).

[322] *See* Interpretative Ruling No. 125 (May 25, 1978) (reporting of various types of real property interests).

[323] *See* Interpretative Ruling No. 311 (Mar. 17, 1980).

4. Real Property must be reported (with the state and city or county also listed) if the property is held for investment or production of income (e.g. commercial property, a summer home rented during parts of the year). Conversely, property which is held or maintained solely for recreational or personal purposes does not have to be reported. However, if any portion of the personal residence or recreational property was rented or offered for rent or if the property includes, for example, a working farm, ranch, mineral excavation, or other buildings for rent, that property is considered to be used for the production of income and must be reported.

5. Personal Property not held for investment or the production of income does not have to be reported. Intermittent sales from personal property (e.g. antiques or art holdings) demonstrate that the items are held for investment and/or the production of income and should therefore be reported.

6. Non-Public Securities or Partnership Interests must be reported by listing the complete name of the interest, its location (city and state) and the character or nature of the business, interest, or property. The primary trade or business of non-public entities (as well as interests and activities which are not solely incidental to such a trade or business) must also be disclosed. Investment clubs or other asset holding relationships which are organized to hold publicly traded assets for the purposes of investment must be disclosed by not only identifying the name of the investment club/entity, but by disclosing each underlying investment asset or property held by the club/entity (and each asset's underlying category of value) where (i) the filer's (his/her spouse or dependant child's) interest in a particular asset exceeds $1,000 in value or (ii) a particular asset generated more than $200 in income for the filer (his/her spouse or dependant child). However, if the investment club/entity meets the test for an excepted investment fund (see below), then only the full name of the club/entity need be disclosed, as well as its correlating category of value and amount of income.

7. Interests in Estates must be reported by giving a brief and general statement of any interest prior to distribution. Assets distributed during the reporting period and income for the estate are reported in the same manner as other assets and income.

8. Excepted Investment Funds—defined as a mutual fund; common trust fund of a bank, pension or deferred compensation plan; or any other investment fund, which is (a) widely held (i.e. more than 100 participants or investors), (b) publicly traded (or available) or widely diversified and (c) held under circumstances where the filer/spouse/dependent child neither exercises control over nor has the ability to exercise control over the financial interests held by the fund. A fund is widely diversified when it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the U.S. Government) and no more than 20% in any particular economic or geographic sector.

For these funds, the filer is only required to indicate that the holding is an excepted investment fund and is not required to identify the specific or underlying assets of the fund. The filer still, using the categories of value and income, must disclose the amount of income received from the fund during the reporting period and the asset's value as of the close of the reporting period.

9. Mutual Funds must be identified by their complete names (e.g. Templeton Income Fund, Fidelity Magellan Fund).

10. Retirement Plans: An individual who has a retirement plan (including an IRA, SEP, 401K plan or other pension plan) must identify each publicly traded asset which is held by the retirement plan. If the retirement plan meets the definition of an excepted investment fund (described above), the underlying assets of that plan do not have to be disclosed. An IRA generally will not meet the test for an excepted investment fund because the IRA is only held by one person (either the filer/spouse/dependent child) and is thus not ''widely held.'' Even if the underlying asset of the plan is an excepted investment fund, the specific excepted investment fund must be

disclosed as a holding of the plan (listing the underlying assets of that excepted investment fund is not required). For example, if a filer's IRA is invested solely in Templeton World Fund, the filer should indicate ''IRA: Templeton World Fund'' and this would be sufficient identification. As stated before, the Committee will accept statements from a broker or investment advisor that are offered as attachments to Part III.

Example 6. Senator *E* has a stock portfolio, managed by a stock broker. Senator *E* must disclose each stock in the portfolio that is worth more than $1,000 at the end of the reporting period or generates more than $200 in income during the year.

Example 7. Senator *F* begins the year with $1,200 of stock in Z-corp. Z-corp suffers losses during the reporting period such that it declares no dividends during the year and *F*'s stock declines in value to $900 by the end of the reporting period. *F* need not disclose her stock in Z.

Example 8. Senator *H* was a state legislator before becoming a Member of Congress. Her interest in the state employees' retirement program is worth $15,000. Senator *H* must disclose this interest as an asset on her Financial Disclosure Statement.

Example 9. Senator *I*'s wife has an IRA, worth $12,000. Senator *I* must disclose (i) the IRA and (ii), provided the IRA does not meet the test of an excepted investment fund, each asset in the IRA which was worth more than $1,000 or generated more than $200 in income.

Example 10. Senator *J* owns a vacation home, which she uses for one month during the year. The rest of the time, she allows family members and close friends to use it at no charge. Senator *J* need not disclose this property, since there was no rental or other kind of income derived from it.

Example 11. Senator *K* owns a vacation home, which he uses for one month during the year. The rest of the time, he rents it out. Senator *K* must disclose this property.

Example 12. Senator *L* rents a basement apartment in her home for $400 a month. Senator *L* must disclose this rental income, as well as the property that generated it.

Example 13. Senator M owns an antique car, worth $50,000. *M* never uses the car for commercial purposes; he uses it exclusively for his personal enjoyment. Senator *M* need not disclose the car.

Example 14. Senator *N* invested in ''Beltway'' Investment Club, a club with nineteen other participants all of whom invested the same amount. An underlying asset of the club is worth $2,000 and generated $500 of income during the reporting period. This asset is not reportable since the Senator's interest in the asset is presumed to be $100 and the Senator's income is presumed to be $25, both of which are less than the disclosure thresholds.

Trusts

On Part III, a reporting individual must provide the same information for underlying trust assets and income as for other items disclosable under Part III. A filer must list the complete name of the trust and its underlying assets and also must disclose the corresponding categories of value and income, as appropriate. The two instances when underlying trust assets need not be disclosed are when the assets are held in (1) an ''excepted'' trust, or (2) a qualified blind trust.[324] For these two types of trusts, the category of income and the category of value for the trust as a whole must still be reported (on Part IIIA).[325]

(1) An Excepted Trust: An ''excepted trust'' is one that was not created by the filer, his or her spouse or dependent, and one in which none of these persons has specific knowledge of the holdings or the sources of income of the trust. Although the filer may know the total value of the trust, contributions to the trust by the filer, the filer's spouse, and/or dependent child (including payment of trust taxes) will remove a trust from this ''excepted'' status.

[324] 5 U.S.C. app. § 102(f)(2).

[325] If the category of value for an excepted trust is unknown, the filer may indicate ''unknown.''

(2) A Qualified Blind Trust: A ''qualified blind trust'' must satisfy a number of requirements, including the following:

(1) The trustee must be an independent financial institution, lawyer, certified public accountant, broker, or investment advisor who (a) is independent of and not associated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party, (b) is not and has not been an employee of or affiliated with any interested party and is not a partner with any interested party, and (c) is not a relative of any interested party;

(2) There may be no restrictions on the disposal of the trust assets;

(3) The trust instrument must limit communications between the trustee and interested parties; and

(4) The trust instrument and the trustee must be approved by the Committee on Ethics.

In creating such a trust, a Member, officer, or employee places financial assets under the exclusive control of an independent party. All assets or holdings transferred to a qualified blind trust at the time of its creation or anytime thereafter must be identified, valued, and publicly disclosed. The public disclosure filings of initial trust assets and asset transfers to the trust are made with the Senate Office of Public Records, where any member of the public may inspect them.

A trust agreement is not recognized by the Senate as creating a blind trust for any purpose under Federal law or Senate Rules unless it has been approved by the Ethics Committee PRIOR to its execution. A non-Senate, federal employee who has, or an individual who is an ''interested party'' with respect to, a qualified blind trust recognized by the appropriate supervising ethics office, and who becomes a reporting individual for purposes of public financial disclosure with the Senate would need approval from the Senate Ethics Committee if the trust is to be recognized as a qualified blind trust by the Senate. For this reason, the Committee has drafted a model blind trust agreement (available at the Committee), although no form language should unqualifiedly be relied upon. Each provision of this model agreement should be considered in connection with the circumstances of the particular case and modified to the extent that may be appropriate. Nevertheless, many of the provisions are required by statute and therefore must be included in a proposed trust in order for it to be approved by the Committee.

In order for the Committee to approve a trustee, a trustee must execute a certification of independence (available at the Committee). Additionally, information must be submitted to the Committee respecting the relationship among the grantor, family members, the proposed trustee and any proposed investment advisor for the Committee's consideration in approving the trustee as truly independent. Prospective trustees should contact the Committee to discuss the procedures and legal requirements concerning blind trust communication restrictions and administration prior to the certification of the trust.

Part IV: Transactions

Senate Members, officers and employees must include in the Report a brief description, the date, and the category of value of any purchase, sale, or exchange of real property, stocks, bonds, excepted investment fund (e.g. mutual fund) shares, commodities futures, or other forms of securities (including trust assets) that exceeds $1,000.[326] The category of value to be reported is the total *purchase or sale price* (or the fair market value in the case of an exchange), regardless of any capital gain or loss on the transaction.

[326] 5 U.S.C., app. § 102(a)(5). This Section/Part does not apply to Candidates.

Stock and commodity options, futures contracts, and bonds (corporate and government) are considered types of securities. As such, transactions in these items are reportable. Transactions by a partnership in which the reporting individual has an interest must be disclosed when the partnership is organized for the investment or production of income and is not actively engaged in a trade or business. These partnership transactions need only be reported, however, to the extent that the filer's share of the transaction exceeds $1,000.

The purchase or sale of property used solely as a personal residence (including a secondary residence not used for rental purposes) of the reporting individual or spouse and transactions solely by and between the reporting individual, spouse, or dependent children need not be disclosed. Likewise, the opening or closing of bank accounts, the purchase or sale of certificates of deposit, and contributions to or the rollover of IRAs and other retirement plans need not be reported.

> ***Example 14.*** Senator *N* sells stock in Company *Z* for $5,000, realizing a $700 capital loss. *N* must report the $5,000 sale as a transaction. *N may* add that the sale represents a loss if she so chooses, but this information is not required.
>
> ***Example 15.*** Member *O* has a 25 percent interest in a partnership that buys and sells real estate for investment purposes. The partnership buys a piece of property for $400,000. *O* must disclose the partnership's purchase and identify the property, in the category of value reflecting his $100,000 share of the transaction.

Part V: Gifts

Senate Rule 35 limits the value of gifts that Members, officers, and employees of the Senate may accept in a calendar year (see Chapter 2). The threshold for reporting gifts differs from the rule on acceptance.

As of January 1, 1996, the Gifts Rule limit on acceptance of gifts is $49.99 per gift, with an annual aggregate limit on gifts from a single source of $99.99 (gifts valued less than $10 are nonaggregative). The disclosure threshold for gifts is $260. That is, Members, officers and employees are only required to disclose on the Report gifts valued at more than $260.[327]

As a consequence of this difference between the acceptance limits of Rule 35 and the disclosure threshold of Rule 34, any gift which must be disclosed could not have been taken without a waiver from the Committee permitting acceptance. Disclosure of gifts does not authorize their acceptance, which may otherwise be a violation of Senate Rule 35 and/or other applicable laws or rules.

> ***Example 16.*** In 1999, Member *Q* was offered by an association a crystal vase worth $150. The gift would violate the gift rule since it is worth more than $49.99 and, thus, could not be accepted without a waiver from the Committee. If *Q* receives a waiver to accept the gift, the gift would not have to be disclosed on the report filed in 2000, since its value was less than $260. However, a copy of the waiver and the Senator's request for a waiver would be publicly available at the Committee's offices.

If the gift must be disclosed, the donor, description, and value of the gift must be listed on the Report. The Committee may waive the requirement that certain gifts be aggregated and disclosed for good cause, upon written request. Such requests, however, are publicly available.

The following gifts do not have to be disclosed:

1. Gifts from relatives;
2. Bequests and other forms of inheritance;
3. Suitable mementos of a function honoring the filer;
4. Food and beverages not consumed in connection with a gift of overnight lodging;
5. Gifts given to a spouse or dependent child completely independent of the relationship to the filer;

[327] 5 U.S.C., app. § 102(a)(2)(A). This Section/Part does not apply to Candidates.

6. Gift items in the nature of communications to the filer's office (e.g. subscriptions to newspapers);

7. Gifts received during non-Federal Government employment periods;

8. Campaign contributions;

9. Food, lodging, transportation and entertainment or reimbursements provided by a foreign government within a foreign country, or by the Federal, D.C., state or local governments;

10. Gifts of personal hospitality (i.e. hospitality extended for a nonbusiness purpose by an individual, at the individual's residence or other property); and

11. Gifts for which a publicly available waiver was received for this reporting requirement.

Example 17. Member *B* receives from her father a gift of $10,000. *B* need not disclose the gift.

Part VI: Reimbursements

Members, officers and employees must report travel-related expenses provided by nongovernmental sources for such activities as speaking engagements, conferences, or factfinding events when they aggregate more than $260 in value from one source in a year.[328] These expenses include those reimbursed to the filer as well as those paid directly by the sponsoring organization. For reimbursements and gifts of travel, the Report must list the source, travel itinerary, inclusive dates, and nature of expenses provided. This reporting requirement applies to spouses and dependent children as well; however, it does not apply if the reimbursement was given to the spouse/dependent child completely independent of the relationship to the reporting individual.

Example 18. Member *B* gives a speech in Chicago at a meeting of a trade association which pays airfare, food, and lodging for *B* and his wife to attend. The expenses for Senator and Mrs. *B* exceed $260. *B* must disclose the source, dates and nature of expenses, but need not report any dollar amounts.

Travel reported on campaign filings, such as Federal Election Commission reports, need not be disclosed on the Report, nor need travel provided on an official basis by Federal, state or local governments be reported. Reimbursements received during non-Federal Government employment periods do not have to be disclosed. Travel provided by a foreign government pursuant to the Foreign Gifts and Decorations Act[329] must be disclosed on a separate form for that purpose available from the Committee. Travel expenses accepted pursuant to a program approved under section 108A of the Mutual Educational and Cultural Exchange Act must be disclosed on the Report.

Disclosure of expenses to the Secretary of the Senate within 30 days after the travel is completed, as required by Senate Rule 35 (see Chapter 2), removes the obligation to disclose those reimbursed expenses on the Report.

Part VII: Liabilities

Personal obligations aggregating over $10,000 owed to one creditor at any time during the reporting period, regardless of repayment terms or interest rates, must be reported.[330] The identity (name of the creditor), type, interest rate, term and amount of the liability must be stated. Except for revolving charge accounts (e.g. credit card accounts), the largest amount owed during the calendar year is the value to be reported. For revolving charge accounts, the value is determined by using the balance occurring within 30 days of the end of the reporting period (e.g. for annual

[328] 5 U.S.C., app. § 102(a)(2)(B). This Section/Part does not apply to Candidates.

[329] 5 U.S.C. § 7342.

[330] 5 U.S.C. app § 102(a)(4).

Reports, the year-end or December balance is used); however, if the revolving charge account is less than $10,000 at the close of the reporting period, no reporting is required.

Just as personal liabilities *owed to* a filer by certain relatives need not be reported as assets, liabilities *owed by* a filer to a spouse, parent, brother, sister, or child of the filer or of the filer's spouse need not be listed. Mortgages secured by a personal residence (including secondary residences) that are not used for rental purposes do not have to be disclosed. Personal loans secured by motor vehicles, household furniture, or appliances do not have to be disclosed, as long as the indebtedness does not exceed the purchase price of the item. Filers are also not required to report tax deficiencies and contingent liabilities, such as that of a guarantor, endorser, or surety.

Part VIII: Positions Held Outside U.S. Government

Filers must disclose any compensated or uncompensated nongovernmental positions that they held during the reporting period or currently hold to the date of filing.[331] Examples of reportable positions are officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States Government. Positions held in a religious, social, fraternal, or political entity, and positions solely of an honorary nature need not be disclosed.

The title or nature of each position and the name of the organization must be reported. Only positions held by the filer need to be disclosed, not those held by a spouse or dependent child.

Any earned income over $200 received due to such an above position must be reported on Part II as well. See Chapter 3 regarding an absolute prohibition on receiving compensation for certain fiduciary positions.

Part IX: Agreements or Arrangements

Any agreements or arrangements of the reporting individual concerning future employment, leave of absence during government service, continuation of payments from a private, state or local government source, deferred compensation plans (including stock options), or continued participation in an employee benefit or welfare plan of a former private employer must be disclosed.[332] The parties, dates, and terms of the agreement must be reported. Only such agreements or arrangements by the filer need to be disclosed, not those agreements or arrangements of the spouse or dependent child of a filer.

Continued payments or benefits from a former employer include interest in or contributions to a pension fund, profit-sharing plan, or life and health insurance; buy-out agreements; and severance payments. A deferred compensation plan would include an arrangement for the delayed payment of amounts due for services rendered by a reporting individual. Deferred compensation (based on services rendered prior to Senate service) is not subject to outside earned income limitations, but must be disclosed on the Report.

Part X: Compensation in Excess of $5,000 Paid by One Source

Candidates and new officers and employees must disclose any compensation in excess of $5,000 received from a single source other than the United States.[333] This disclosure requires not only the source of a filer's salary or other fees, but requires the disclosure of clients (other than the Federal Government) for whom the filer personally provided $5,000 or more in services even though the client's payments might have been made to the filer's employer, firm, or other business affiliate. Filers need disclose only their own compensation in this section, not that received by

[331] 5 U.S.C. app. § 102(a)(6)(A).
[332] *Id.* at § 102(a)(7).
[333] *Id.* at § 102(a)(6)(B).

their spouses or children. Disclosure is required for the current (up to the date of filing) and the previous two calendar years.

Both the name and location of the entity that made the payment must be specified. Although the amount of compensation does not have to be disclosed, the nature of the duties performed must be described—albeit generally. Thus, a firm name and ''legal services'' would be sufficient for services rendered by an attorney. When a source has paid a filer directly, a corresponding entry may be needed on Part II.

A filer does not have to disclose (a) information that is by law privileged and confidential and (b) information about clients for whom services were provided by a business of which the filer was a member/general partner/employee, unless the filer was directly involved in the provision of services. This disclosure does not require disclosure of protected confidential relationships (such as doctor/patient), but does generally require disclosure of other non-protected fiduciary relations (such as attorney/client and accountant/client).

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Chapter 6

POLITICAL ACTIVITY[334]

Rules 38.2, 40, and 41

INTRODUCTION

Title 31 of the United States Code, section 1301(a) states that ''appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.'' This principle of federal appropriations law has been interpreted in Congress to mean that congressional employees receive publicly funded salaries for performance of official duties and, therefore, campaign or other non-official activities should not take place on Senate time, using Senate equipment or facilities. However, the Ethics Committee has previously ruled that it is not improper for a Senate employee to engage in campaign activity on his or her own time so long as such activity complies with Senate Rule 4l.l that prohibits fundraising by most Senate employees for federal campaigns.

In addition to campaign work by staff, the topic of political activity also includes the uses of campaign funds, and restrictions applicable thereto, by Members of the Senate. Like all candidates for federal office, Members are subject to regulations on campaign finance pursuant to the Federal Election Campaign Act of 1971, as amended.[335] Under the provisions of that Act, the Federal Election Commission (FEC) has been established as an independent regulatory agency to oversee federal campaign finance procedures and practices. Senators should thus examine closely provisions of the Federal Election Campaign Act, regulations promulgated by the FEC, and explanatory publications prepared by the FEC.[336] Moreover, certain campaign activities may run afoul of provisions of the Federal Criminal Code.

This chapter will focus on those provisions not specifically under the authority of the FEC, including campaign activities by Senate staff, restrictions in Senate Rules, and criminal code provisions. In addition, it will briefly highlight the major provisions of the large body of federal campaign law relating to registration, disclosure, and use of campaign contributions. Advisory opinions interpreting specific provisions of that law may be requested from the FEC.

CAMPAIGN WORK BY CONGRESSIONAL STAFF

Senate employees are compensated from funds of the Treasury for regular performance of official duties. They are not paid to do campaign work. In the words of the United States District Court for the District of Columbia: ''It is clear from the record that Congress has recognized the basic principle that government funds should not be spent to help incumbents gain reelection.''[337]

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[334] This chapter draws extensively from *Campaign Activities by Congressional Employees*, by Jack H. Maskell, Legislative Attorney, American Law Division, Congressional Research Service, Library of Congress, previously published as Part IV of COMM. ON RULES AND ADMINISTRATION, *Senate Election Law Guidebook*, S. Doc. No. 102–15, 102d Cong., 2d Sess. 283–312 (1991).

[335] 2 U.S.C. §§ 431–455.

[336] Title 11 of the Code of Federal Regulations.

[337] *Common Cause v. Bolger*, 574 F. Supp. 672 (D.D.C. 1982), *aff'd*, 461 U.S. 911 (1983).

Nonetheless, the ''Hatch Act,'' which until recently prohibited partisan political activity by federal civil service employees, never applied to congressional staff.[338] As discussed more fully below, Senate Rule 41 prohibits Senate staff, with the exception of specified ''political fund designees,'' from handling federal campaign funds. Subject to that restriction, however, and as long as they do not neglect their official duties, Senate employees are free to engage in campaign activities on their own time, as volunteers or for pay,[339] provided they do not do so in congressional offices or otherwise use official resources.[340] An employee's ''own time'' includes time beyond regular working hours,[341] any accrued annual leave,[342] or non-government hours of a part-time employee. Staff may not be required to do political work as a condition of Senate employment. Just as Senate employees are free to campaign for their employing Members on their own time, they may also use their free time or, with the permission of their employing Members, reduce their Senate hours, to campaign for presidential candidates,[343] other federal candidates, or state or local aspirants.[344] With respect to the question of leave time to perform campaign activities, it is the Committee's understanding that the Senate does not recognize a ''leave of absence''.

The Committee has ruled that it is proper for a Senator to either reduce the salary or remove the employee from the Senate payroll when the employee intends to spend additional time on campaign activities, over and above accrued leave time or vacation time (see I.R. 194). However, in order to receive any level of Senate salary, pay should be commensurate with actual duties performed for the Senate. Moreover, if the amount of time an individual continues to provide services to the Senate were to go too low (the Committee has previously approved a 1 day Senate work/ 4 day campaign work arrangement, where the individual's salary was reduced by 80%) the arrangement could raise a question as to whether Senate benefits are being used for an individual whose benefits should more appropriately be paid by the campaign. Such dual employment situations, particularly those involving significant reductions in the amount of time an individual provides Senate services have also generally been time-limited, usually confined to the employing Senator's election cycle. An employee may be terminated from the Senate and return at a later date.

The difference between official representational and legislative duties on the one hand and political activities on the other has long been recognized in Congress, specifically in such provisions as the franking law,[345] the rules on unofficial office accounts[346] and computer facilities,[347] and the Federal Election Campaign Act.[348] Moreover, the Supreme Court has acknowledged the distinction ''between the legitimate and necessary efforts of legislators to communicate with their

[338] Employees in the Office of the President were similarly not covered. Most restrictions prohibiting voluntary campaign activities on one's free time have now been removed from the ''Hatch Act'' for most federal employees. *See* P.L. 103–94, 107 Stat. 1001; 5 U.S.C. §§ 7321 *et seq*.

[339] *See, e.g.*, Interpretative Ruling No. 357 (Dec. 16, 1982); Interpretative Ruling No. 402 (Oct. 18, 1985).

[340] *See, e.g.*, Interpretative Ruling No. 49 (Aug. 5, 1977); Interpretative Ruling No. 86 (Nov. 8, 1977); Interpretative Ruling No. 153 (June 22, 1978); Interpretative Ruling No. 154 (June 22, 1978); Interpretative Ruling No. 194 (Oct. 18, 1978); Interpretative Ruling No. 197 (Oct. 31, 1978); Interpretative Ruling No. 269 (June 26, 1979); Interpretative Ruling No. 288 (Oct. 16, 1979); Interpretative Ruling No. 302 (Feb. 21, 1980); Interpretative Ruling No. 349 (Oct. 5, 1981); Interpretative Ruling No. 357 (Dec. 16, 1982); Interpretative Ruling No. 402 (Oct. 18, 1985). *See also* SENATE COMM. ON RULES AND ADMIN., *Review of Laws Related to Contributions Made by or Solicited from Senate Officers and Employees and the Use of Official Staff by Holders of Public Office in Federal Campaigns*, S. Rep. No. 95–500, 95th Cong., 1st Sess. 4 (1977); S. REP. NO. 95–241, 95th Cong., 1st Sess. 1.

[341] A staffer may also attend campaign events during non-working hours of an otherwise official trip. Interpretative Ruling No. 88 (Nov. 16, 1977).

[342] *See, e.g.*, Interpretative Ruling No. 194 (Oct. 18, 1978); Interpretative Ruling No. 263 (June 12, 1979).

[343] Interpretative Ruling No. 302 (Feb. 21, 1980).

[344] Interpretative Ruling No. 153 (June 22, 1978).

[345] 39 U.S.C. § 3210(a).

[346] Senate Rule 38.

[347] Senate Rule 40.5.

[348] 2 U.S.C. § 439a.

constituents'' on the one hand, and ''activities designed to win elections by legislators in their other role as politicians,'' on the other.[349] While some legitimate representative duties, such as services and communications to constituents, might yield some political benefits, they are generally distinguishable from those activities typically understood by congressional rule, statute, and practice to be political ''campaign'' activities, such as the solicitation of political contributions, canvassing votes, organizing political fundraisers, and coordinating campaign volunteer lists.

Traditionally, the specific duties of a Member's staff are within the discretion of the employing Member to best meet the Member's needs and those of his or her constituents. As one court observed: ''To state the obvious, it is simply impossible to draw and enforce a perfect line between the official and political business of Members of Congress.''[350] It is recognized that in the practical operation of a Member's office some minimal campaign-related activities might unavoidably be performed by a Member's staff in the course of their official congressional duties for a Member. In responding to ''official'' inquiries from the press or constituents, for example, congressional staffers may need to address questions that relate to a Member's political campaign. Similarly, scheduling assistance and information from the official staff may be requested by the campaign staff to ensure that no conflict occurs between the Member's campaign schedule and official agenda. Moreover, since congressional staff may work irregular hours often depending upon the time the Senate or House stays in session, a staffer's ''free time'' or ''off-duty'' hours might occur in what is typically considered the conventional work day. Although some minimal ''overlap'' may thus reasonably exist, it is the Member's responsibility to keep campaign related activities by staff during duty hours to a ''de minimis'' amount, and to observe the general principle that staff are compensated from public funds for their assistance in the Member's official legislative and representative duties, rather than for services to the Member's political campaign.[351]

> ***Example 1.*** A reporter calls Senator *A*'s congressional press secretary to obtain information on some legislation *A* is sponsoring. In the course of the interview on the legislation, the reporter asks how A perceives the bill will affect his upcoming reelection campaign. The press secretary *may* answer the question.
>
> ***Example 2.*** Senate staffer *B* works for Senator *C* and also volunteers on *C*'s campaign. *C*'s political opponent levels charges of ethical improprieties against her, which *C* believes require an immediate response. *B* may *not* spend official work time preparing the campaign's response. He may use his lunch hour or accrued leave time to do the campaign work during what would normally be his working hours, assuming that his official duties will not thereby be neglected.
>
> ***Example 3.*** *C* asks *B* to prepare a response, after official working hours, to the charges raised by her political opponent. *B* may comply, but *B* may *not* stay late at the office, using Senate resources such as the office computer and the official mailing list, to do the campaign assignment.
>
> ***Example 4.*** Senator *D* asks his campaign workers, including some volunteers from his Senate staff, to come to his campaign headquarters on a Saturday to help stuff envelopes for a campaign mailing. The congressional staff *may* attend.
>
> ***Example 5.*** Various employees on Senator *E*'s official staff have volunteered to help *E*'s campaign run a telephone fund drive. The employees may *not* stay late at the Senate office and make the calls from there, moreover, only those employees who were Political Fund Designees under Rule 41 could participate in fundraising.

To avoid some of the more serious problems which may arise from the performance of regular campaign responsibilities by a staff employee on the public payroll, the Senate Select Committee on Ethics has recommended on various occasions that when a staffer is to engage in campaign activities on behalf of the Member for any ''extended'' period or to any ''substantial'' degree that

[349] *Buckley v. Valeo*, 424 U.S. 1, 84 n. 112 (1976); *see also Common Cause v. Bolger*, *supra* note 334.

[350] *Common Cause v. Bolger*, *supra note* 334.

[351] *See* Interpretative Ruling No. 154 (June 22, 1978); Interpretative Ruling No. 263 (June 12, 1979).

the Member either remove the staffer from the Senate payroll for that period and compensate the staffer with campaign funds, or reduce the staffer's compensation from public funds commensurately with the reduction in official duties of the staffer during his time of increased campaign activities.[352] Finally, at any time, but particularly during a campaign, the public's *perception* of the conduct of an elected official and his or her staff may have significance beyond the mere conformity with the technical requirements of rules or statutes. When official staff are involved in a Member's reelection campaign, such activity may be an easy target for political opponents seeking media attention by charging that official government personnel are being used for private political campaigning, raising the specter of appearances of impropriety. Although one can not insulate a Senator/candidate completely from specious and unfair political attacks, sufficiently precise and accurate record keeping and time logs of one's official congressional work and duties, for which one receives a salary from the government, may be useful for documentation during a period when the staffer is also working on the campaign during his or her ''free'' or ''non-official'' time.

Political Fund Activity

As mentioned above, Senate Rules restrict campaign fund activity by Senate officers and employees. Senate Rule 41.1 prohibits most Senate officers and employees from handling any campaign funds for a federal election.[353] An employee or officer of the Senate may not ''receive, solicit, be a custodian of, or distribute'' campaign funds of any federal candidate, unless the employee is one of three assistants specially designated by his or her employing Senator to perform such activities. Each of these assistants, commonly referred to as a ''political fund designee'' (or ''PFD''), must earn more than $10,000 in Senate salary and must file a financial disclosure statement, under Rule 34, for each year in which he or she is so designated. One of the three assistants must be in Washington, D.C. Rule 41 permits the Majority Leader and the Minority Leader each to designate a leadership office employee as one of the three assistants. All designations must be in writing and filed for public inspection with the Secretary of the Senate.

The Select Committee on Ethics has ruled that a political fund designee may handle funds for the principal campaign committee of the employing Senator, for a committee or organization established and controlled by a Senator or a group of Senators,[354] or for a state or local committee of a national political party,[355] as long as the employing Member gives permission. Note that the group of political committees for which a political fund designee may solicit or handle funds does NOT include House (or Senate) candidate committees, unless that committee is established and controlled by a Senator or group of Senators. Employees may also *not* handle funds for committees set up by trade associations, interest groups, corporations, labor unions, or groups advocating particular public policy or ideological causes.[356] The Committee has construed Rule 41 to mean that non-designated Senate employees may not ''solicit others to solicit funds or otherwise become involved to any substantial degree in political fund activity.''[357] Non-designees may help plan fundraising events but may not host such events or otherwise be involved in the actual solicitation or acceptance of funds.[358]

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[352] *See* Interpretative Ruling No. 3 (May 5, 1977); Interpretative Ruling No. 5 (May 11, 1977); Interpretative Ruling No. 59 (Sept. 13, 1977); Interpretative Ruling No. 194 (Oct. 18, 1978); Interpretative Ruling No. 263 (June 12, 1979); Interpretative Ruling No. 326 (July 1, 1980).

[353] Rule 41.1 addresses the tangible aspects of fundraising, i.e., who may actually ask for and receive funds. The more difficult intangible issues, e.g., avoiding the appearance that campaign contributors are accorded special Senate access or influence, are discussed in Chapter 7, concerning Senate Rule 43, Constituent Service.

[354] *See* Interpretative Ruling No. 387 (Sept. 17, 1984).

[355] *See* Interpretative Ruling No. 291 (Nov. 26, 1979).

[356] *See* Interpretative Ruling No. 387 (Sept. 17, 1984).

[357] *See* Interpretative Ruling No. 326 (July 1, 1980).

[358] *See* Interpretative Ruling No. 3 (May 5, 1977); Interpretative Ruling No. 5 (May 11, 1977); Interpretative Ruling No. 22 (May 26, 1977); and Interpretative Ruling No. 88 (Nov. 16, 1977).

Rule 41's restrictions do not extend to campaign finance activity related to strictly state or local political contests.[359] The Senate Select Committee on Ethics has made clear, however, that the state or local political fund activity must be clearly distinguishable from any activities in connection with a federal election in order to be permitted under the Rule.[360] Since Rule 41 restricts only those on the Senate payroll, an individual who terminates his or her Senate employment, even with the expectation of being rehired at a later date, would be free to handle federal campaign funds during the period he or she was off the payroll, whether or not the employee had been a political fund designee.[361]

> ***Example 6.*** Senator *F* has established and controls a multi-candidate political committee. Employee *G*, who works for another Senator, may raise funds for *F*'s committee, as long as *G* has the permission of and is a political fund designee of her employing Member, and she does the fundraising outside of Senate hours and premises.[362]
>
> ***Example 7.*** Staffer *H*, a political fund designee, may, on his own time and with the permission of his employing Member, raise funds for the Democratic or Republican Senatorial Campaign Committee.[363]
>
> ***Example 8.*** Staffer *I*, a political fund designee of Senator *J*, may, with *J*'s approval, raise funds for the campaign of Senator *K*.[364]
>
> ***Example 9.*** *L* works two days a week in Senator *M*'s senatorial office and spends the rest of her time as a paid employee of *M*'s campaign committee. Unless *L* is a political fund designee, she may not handle campaign funds in either office.[365]
>
> ***Example 10.*** The political action committee of the National Association of Rubber Ducky Manufacturers (QuackPAC) asks Staffer *N* to take a part-time, after hours position soliciting funds to be distributed to candidates for federal elections. Although *N* is a political fund designee, he may *not* take the job.[366]
>
> ***Example 11.*** Staffer *O*, who is not a political fund designee, may serve as a party's local precinct chairman, a position involving periodic solicitation of funds for exclusively state and local candidates.[367]

Seeking and Holding Local Offices

As noted in Chapter 3, Senate employees may run for elective office, although they may effectively be barred from simultaneously *holding* a full-time elective office and retaining their congressional employment. Federal statutes such as those dealing with dual pay and dual employment,[368] and precedents and constitutional provisions with regard to ''incompatible offices'' would in most cases bar a Senate employee from simultaneously holding another paid position or office within the Federal Government.

As far as State, local, or any other outside positions, common sense, as well as various Senate Rules concerning outside employment and conflicts of interest, dictates that a full-time congressional employee may not simultaneously hold an outside, full-time position. Many State or local elective positions, however, involve merely part-time commitments, entailing only evening and weekend hours or intermittent duties. Thus, any potential ''time'' conflict with one's Senate job may be avoided, perhaps with an adjustment in Senate hours and pay. If there is also no apparent

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[359] *See* Interpretative Ruling No. 204 (Dec. 5, 1978); Interpretative Ruling No. 182 (Sept. 29, 1978).

[360] *See* Interpretative Ruling No. 326 (July 1, 1980); Interpretative Ruling No. 204 (Dec. 5, 1978).

[361] *See* Interpretative Ruling No. 59 (Sept. 13, 1977).

[362] *See* Interpretative Ruling No. 387 (Sept. 17, 1984).

[363] *Id.*

[364] *Id.*

[365] *See* Interpretative Ruling No. 154 (June 22, 1978).

[366] *See* Interpretative Ruling No. 387 (Sept. 17, 1984).

[367] Interpretative Ruling No. 204 (Dec. 5, 1978). *See also* Interpretative Ruling No. 182 (Sept. 29, 1978).

[368] 5 U.S.C. § 5533.

incompatibility or ''subject matter'' conflict with the Senate employment, and the employee's supervising Senator approves, a Senate staffer could hold a State or local office.[369]

Interpretative Rulings by the Senate Select Committee on Ethics have, for example, expressly permitted a full-time employee of a Member (the Member's press relations coordinator) to serve as a city council member at a salary of less than $200 a month.[370] Similarly, the Select Committee ruled that if adjustments were made in the official congressional salary of a staff member to reflect the decrease in the congressional work performed by the staffer because of a new position held, and if a restriction on Senate duties were imposed when necessary to avoid conflicts of interest, the staffer could run for and hold a compensated elected office in the state legislature and still remain a Senate employee in the district office of the Member.[371]

Although federal laws and rules might not prohibit such office-holding, state and local statutes and ordinances of the jurisdiction concerned should be examined, as those provisions often expressly prohibit an elected or appointed officer of the jurisdiction from simultaneously holding federal office or employment.

Members and staff are also permitted to seek and hold party positions.[372] Determinations as to whether particular positions would necessarily entail soliciting or handling federal campaign funds and therefore only be available to political fund designees will be made by the Committee on a case-by-case basis.[373]

Campaign Activity in a Federal Building

When congressional employees become involved in campaign financing activities, an important consideration is a provision now codified at 18 U.S.C. § 607, which restricts the solicitation or receipt of political contributions in federal buildings or other federal facilities. The amended and renumbered version of the prohibition states as follows:

> **Section 607. Place of Solicitation**
>
> (a) It shall be unlawful for any person to solicit or receive any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties by any person mentioned in section 603, or in any navy yard, fort, or arsenal. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

Although it prohibits the receipt or solicitation of campaign contributions in a federal building, the amended statute recognizes that it is often unavoidable that unsolicited campaign contributions will be received through the mail or a contribution by a supporter will be tendered in person, within a congressional office. When this situation occurs the statute specifically provides that a staff employee of a Member of Congress may accept the contribution and forward it within seven days of receipt to an appropriate campaign organization outside of the congressional office. This provision of 18 U.S.C. § 607 states as follows:

> **Section 607**
>
> (b) The prohibition in subsection (a) shall not apply to the receipt of contributions by persons on the staff of a Senator or Representative in, or Delegate or Resident Commis-

[369] General restrictions on outside employment are discussed in more detail in Chapter 3. Also, elected or appointed positions with the District of Columbia government present conflict of interest considerations not present with state or local governments.

[370] *See* Interpretative Ruling No. 55 (Sept. 7, 1977).

[371] *See* Interpretative Ruling No. 109 (Mar. 23, 1978); *see also* Interpretative Ruling No. 155 (June 28, 1978).

[372] *See, e.g.*, Interpretative Ruling No. 359 (Jan. 3, 1983).

[373] *See* Interpretative Ruling No. 326 (July 1, 1980) (non-PFD might be state party's National Committee Chair); Interpretative Ruling No. 291 (Nov. 26, 1979) (only PFD could serve as CEO of state party committee); Interpretative Ruling No. 204 (Dec. 5, 1978) (non-PFD could be party's precinct chair).

> sioner to, the Congress, provided that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided that such contributions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.

The prohibition of this statute and the exception to it were discussed on the floor of the Senate prior to the adoption of this provision as part of the Federal Election Campaign Act Amendments of 1979:

> Solicitation or receipt of contributions in any room or building occupied by a Federal employee in the course of official duties is prohibited. The sole exception is for contributions received by an individual on the staff of a Member of Congress, provided the contributions are transferred to the Member's political committee within 7 days. This exception is intended to cover situations in which a contributor, although not requested to, mails or delivers a contribution to a Federal office. The exception does not authorize solicitation from a Federal office, nor does it permit receipt of contributions in a Federal office where such contributions have been solicited in any manner which directs the contributor to return contributions to a Federal office.[374]
>
> Note well that the seven day provision of 18 U.S.C. § 607 applies to unsolicited contributions only: it does not authorize solicitation from a federal (including congressional) office nor does it permit receipt of contributions in a federal office where the contributions have been solicited in a manner which directs the contributor to return contributions to a federal office.

As for the act of soliciting contributions from a congressional office, it should be noted that while this criminal prohibition has thus far not specifically been construed by the courts to prohibit the solicitation of campaign contributions from a federal building by letter or telephone to persons who are not located in a federal building, such activities would be barred by other provisions of law and regulation relating to appropriations and official allowances. The criminal prohibition at section 607 was originally intended and was historically construed to prohibit anyone from soliciting contributions from federal clerks or employees while such persons were in a federal building.[375] In interpretations of this provision, the focus of the prohibition has been directed to the location of the individual from whom a contribution was requested, rather than the location from which the solicitation had originated. In 1908 the Supreme Court had occasion to interpret the statute which was the predecessor of the current section 607. The Court in United States v. Thayer, stated that the act of ''solicitation'' is completed, and therefore arises, at the location where the request for a contribution is received by the person to whom the request is made. The Court stated: ''. . . the solicitation was in the place where the letter was received.''[376] The Department of Justice has noted that the statute was intended to fill a gap in protecting federal employees from assessment by prohibiting all persons from soliciting such employees while they are in a federal building.[377]

The use of federal office space, including congressional office space, official government equipment and supplies paid for from federal tax dollars for purposes of soliciting campaign contributions or for other clearly political campaign activities could involve violations of other federal laws, congressional regulations and standards. Provisions of the United States Code, congressional

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[374] 125 Cong. Rec. S19099–19100 (daily ed. Dec. 18, 1979) remarks of Sen. Hatfield.

[375] *See* Pendleton Act, 22 Stat. 403, 407, 14 1Cong. Rec. 640, 865; note specifically 62 Stat. 722, 18 U.S.C. § 603 (1948); see H.R. Rep. No. 305, 89th Cong. 1st Sess. A51.

[376] 209 U.S. 39, 44 (1908).

[377] Although questions might be raised as to the criminal provision's technical coverage of solicitations from a congressional office directed to persons not in a federal building, the House Standards Committee has stated that regardless of the target of the solicitation or its coercive nature, ''no activities of a political solicitation nature should occur with the support of any federal resources (staff or space) in order to avoid any question that a violation of 18 U.S.C. § 607 has occurred.'' ''Dear Colleague'' letter from Committee on Standards, November 21, 1985, at 2. *See also* Maskell Report for CRS, *infra*.

regulations governing allowances, and appropriations provisions specify that amounts provided a Senator from appropriated funds for such items as telephone, mail, office space, stationery, etc., are for the use of such items only for ''official'' or ''strictly official'' purposes.[378] These provisions appear to bar the use or conversion of such supplies, equipment, or facilities for ''campaign'' purposes, rather than for ''official'' congressional business. Also, section 193d of Title 40 pertaining to the Capitol Grounds states that ''it is forbidden to offer or expose any article for sale in said United States Capitol Grounds; to display any sign, placard, or other form of advertisement therein; to solicit fares, alms, subscriptions, or contributions therein.'' As discussed earlier in this report with respect to the official allowances for congressional staff, the use of official allowances or supplies, services, or goods secured by such allowances, for other than the official purposes for which the appropriations were made, or for other purposes than those which the Member had certified or documented in vouchers, might potentially subject someone to legal liabilities concerning false claims, fraud or possibly even conversion or theft. The ethics committees in both the House and the Senate have thus found that general campaign or campaign fund activities should be conducted outside of the official office space provided Members of Congress, and should generally be conducted with equipment, supplies or other facilities which are secured by private funds or contributions and not official congressional allowances or appropriations.[379]

The following excerpt from the Congressional Research Service may provide useful guidance on the issue of the use of federal funds and facilities:

> There is no overall, express restriction in federal statutory law concerning the use of appropriated funds for partisan ''political purposes,'' and Congress may appropriate, and has appropriated, federal funds for use in political campaigns, such as in the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act. However, a general appropriations principle, codified in federal law at 31 U.S.C. § 1301(a), states that monies appropriated by Congress may only be spent for the purposes for which they were appropriated. This provision bars the misapplication or misuse of federal funds by federal agency personnel. That is, funds appropriated by Congress for an agency or a federal office for official purposes, may not be diverted and used for partisan political campaigns. As the General Accounting Office explains, ''Generally speaking, funds appropriated to carry out a particular program would not be available for political purposes, i.e., for a propaganda effort designed to aid a political party or candidate. If for no other reason, such an expenditure would be improper as a use of funds for other than their intended purpose in violation of 31 U.S.C. § 1301(a).'' [GAO. *Principles of Federal Appropriations Law*, at 4–178 (1992)]
>
> Federal agencies and departments have discretion to expend federal funds to promote and to further the legitimate, official governmental objectives of the federal agency, department, or entity and the programs and policies within their jurisdiction. See *Principles of Federal Appropriations Law, supra* at 4–14 to 4–20. Federal monies may not be expended merely for any purpose, however, and the expenditure must ''contribute to accomplishing the purpose of the appropriation the agency wishes to charge.'' lat. at 4–16. The Comptroller General has thus looked to activities to determine if they ''can be said to be so completely devoid of any connection with official functions or so political in nature that [the expenditures] are not in furtherance of purposes for which Government funds were appropriated.'' Decision of the

[378] *See* for example 2 U.S.C. §§ 58 and 59, among others. The U.S. Senate Handbook (1996 edition) prepared by the Committee on Rules and Administration provides further examples of official allowances such as Senate equipment (I–44);Internet services (I–44&45); and telecommunications (I–46). *See also* Appendix J in this manual for the Rules Committee policy on use of Senate Rooms, the Russell Rotunda and Courtyard, the Hart Atrium, and the Capitol Rotunda that prohibits among other activities the use of Senate space for any political campaign activity.

[379] See, for example, disciplinary report from House Committee on Standards of Official Conduct, H.R. Rep. No. 101–293, 101st Cong., 1st Sess. (1989), *In the Matter of Representative Jim Bates*, at 8, 10–11. The Committee concluded: ''Moreover, use of House resources (including employees on official time) to solicit political contributions is improper.'' *Id*. at 12.

> Comptroller General, B–147578, November 8, 1962, at p. 5; see also B–144323, November 4, 1960, *Principles of Federal Appropriations Law, supra* at 4–178. Where there has been a ''determination'' made by the President, cabinet officer, agency head or assistant that certain activities ''are in connection with official duties,'' the Comptroller General would look merely to see if ''there is a reasonable basis for such a determination.'' Id. 5. It may be noted that the issue of whether an activity is ''official'' or ''political'' has arisen from time to time with respect to travel by the President and Vice President, and that guidance given by the Department of Justice concerning the expenditure of funds for travel, including the reimbursement of the Government from campaign funds for ''political'' travel, stated that ''funds appropriated for the official functioning of the offices of the President and the Vice President'' may be used ''only if the [activity] is *reasonably related* to an official purpose.'' See 6 Op. O.L.C. 214 (1982).

See Campaign Fund-Raising Controversy and Investigation, Kevin Coleman, Joseph Cantor, Jack Maskell, Marie Morris and L. Paige Whitaker, Congressional Research Service, The Library of Congress (August 26, 1998, Order Code IB97045).

Political Contributions from Senate Employees

An employee of the Federal Government may *not* make a political contribution to a Member of Congress or another federal official who is the employer or employing authority of the contributor.[380] Prior to an amendment effective in 1980,[381] congressional staff and other employees of the Federal Government were prohibited from making political contributions to any other federal officer, employee, or Member of Congress, regardless of the employment relationship of the parties.[382] Although in practice the statute was not strictly enforced,[383] such a restriction on employees had been in effect in some form since the late 1800's.[384]

Under current 18 U.S.C. § 603, a Senate employee is prohibited from making political contributions only to the ''boss,'' that is, the employer or employing authority. A Senate employee who is prohibited from making a contribution should be aware that a contribution by another (a spouse, for example) under certain circumstances (from joint assets or a joint account with the Senate employee, for example) may be attributed to the employee, thereby implicating the statute. As explained in the House Report accompanying H.R. 5010 (96th Congress, 1st Session):

> Section 603 has been amended to allow voluntary contributions from federal employees to other federal employees. If, however, the individual is employed by a Senator, Representative or Delegate or Resident Commissioner to Congress, that employee cannot contribute to his or her employer although voluntary contributions to other Members of Congress would be allowed. An individual employed by a congressional committee cannot contribute to the chairman of that particular committee. If the individual is employed by the minority that individual cannot contribute to the ranking minority member of the committee or the chairman of the committee.[385]

Senate staff *may* contribute to any candidate, including a Senator, except the employer or employing authority of the staffer.[386] In addition, a Senate employee may contribute to a committee

[380] 18 U.S.C. § 603.

[381] Pub. L. No. 96–187, 96th Cong., 2d Sess., 93 Stat. 1367 (1980).

[382] *See* 18 U.S.C. § 607 (1976 Code); *See generally* S. Rep. No. 95–500, at 5–7.

[383] Letter from Henry E. Peterson, Ass't Att'y Gen., Crim. Div., by Thomas J. McTiernan, Chief of the Fraud Section, U.S. Dep't of Justice (Aug. 12, 1974) *reprinted in* S. Rep. No. 95–500, *supra* note 7, app. at 43–44.

[384] *See* Section 14 of the Pendleton Act, 22 Stat. 403 (1883). Similar restrictions on some federal employees making political contributions to other employees, and receiving such contributions from other employees, have been upheld against constitutional challenge. *See Ex parte Curtis*, 106 U.S. 371 (1882); *United States v. Wurzbach*, 280 U.S. 396 (1930).

[385] Federal Election Campaign Act Amendments of 1979, H.R. Rep. No. 96–422, at 26.

[386] *See* Interpretative Ruling No. 301 (Feb. 21, 1980).

or organization that is not the ''authorized committee'' or campaign committee of the candidate. Generally, under federal campaign law, a multi-candidate committee or a PAC, which supports more than one federal candidate, may not be designated as an ''authorized committee'' of a candidate.[387] Therefore, Senate staff may make political contributions to multi-candidate political committees such as the Democratic or Republican Senatorial or Congressional Campaign Committee, the Republican or Democratic National Committee, or any PAC, even though some of the proceeds received by such committees may eventually be expended for the benefit of the contributor's employer. In making such a contribution, however, an employee should not specifically earmark it for use in the campaign of the employing Member, since that could be deemed a contribution from the employee to the Member.[388]

For the purposes of current restrictions on contributions by Senate employees, the term ''contribution'' is defined in 2 U.S.C. § 431, the Federal Election Campaign Act, as amended. This definition specifically excludes the value of voluntary services provided by an individual to a candidate or committee. Thus, staffers may voluntarily provide services on their own free time to their employing Members' campaigns. However, the FEC includes within its definition of contribution most outlays that an individual makes on behalf of a campaign, regardless of expectation of reimbursement. Under this regulation, a Senate employee (including a PFD) who volunteers on his or her employing Member's campaign may not pay expenses for the campaign, even if the campaign promptly pays the staffer back.[389] In addition, the definition of ''contribution'' refers only to federal election campaigns, so a Senate employee may make a monetary contribution in any state or local contest, including one in which a federal officer or employee is running or soliciting funds. Similarly, since Senate Rule 41 restricts political fund activity relating only to federal elections, Senate staffers would not be barred from soliciting and receiving voluntary contributions strictly for state or local candidates from fellow staffers or from other federal employees.

Fundraising dinners, testimonials, and similar events are common methods for candidates to raise money for an upcoming political campaign or to pay off previous campaign debts. The price of a ticket to such an event is generally considered a campaign contribution from the purchaser of the ticket to the candidate on whose behalf the event is being held.[390] Thus, a Senate employee should not purchase such a ticket or contribute money to a fundraiser or testimonial given for his or her employing Senator. An employee could, however, attend a fundraiser as a non-paying guest. Furthermore, a Senate employee may volunteer his or her own free time to work on the fundraiser since voluntary services are not considered ''contributions'' under federal campaign law.[391] As described above, however, Senate Rule 41 prohibits any employee from handling federal campaign funds unless the individual is one of three persons specified by his or her employing Senator as a ''political fund designee.'' Unless so designated, a Senate employee should not solicit, receive, disburse, or hold the contributions, and should not be a host of the event, but may be involved in the planning of the fundraiser.[392]

Political Contributions From Other Federal Employees

The Criminal Code specifically prohibits Members of Congress, candidates for Congress, and federal employees from soliciting political contributions for federal elections from Federal Govern-

[387] 2 U.S.C. § 432(e)(3).

[388] *See* 11 C.F.R. § 110.6.

[389] 11 C.F.R. § 116.5(b) (issued June 27, 1990). This and other provisions defining ''contributions'' under federal election law contain exceptions for certain travel, food, and lodging expenses personally incurred by a campaign worker and for certain costs incidental to hosting a campaign event in one's home or in a church or community center. *See* 2 U.S.C. § 431(8)(B)(ii); 11 C.F.R. §§100.7(b)(6) and (8).

[390] *See* 11 C.F.R. section 100.7(a)(2).

[391] § 301(8)(B)(i) of the FECA, as amended.

[392] *See* Interpretative Ruling No. 3 (May 5, 1977); Interpretative Ruling No. 5 (May 11, 1977); Interpretative Ruling No. 22 (May 26, 1977); Interpretative Ruling No. 88 (Nov. 16, 1977).

ment employees, including employees of the Senate.[393] Unlike the statute prior to its 1980 amendment, the current provision prohibits only the solicitation of political contributions from federal employees and does not prohibit the receipt of such contributions.[394] As discussed above, however, criminal law prohibits both the solicitation and receipt of contributions in any building where federal employees work, including Senate office buildings and Members' district offices,[395] and prohibits employees from contributing to their employing authority.[396]

The statute (at 18 U.S.C. § 602) prohibits the ''knowing'' solicitation of political contributions from any other federal employee or officer. Inadvertent solicitations of federal employees, therefore, such as when part of a general fundraising campaign aimed at the public at large, were not intended to be violations of this provision or its predecessor.[397] As stated in the House Report on the Federal Election Campaign Act Amendments revising section 602:

> In order for a solicitation to be a violation of this section, it must be actually known that the person who is being solicited is a federal employee. Merely mailing to a list [which] will no doubt contain names of federal employees is not a violation of this section.[398]

Since the statute aims to protect employees who, because of their employment and position, may be subject to coercion or ''political assessment,'' section 602 ''does not apply to solicitation of Members of Congress.''[399] This interpretation is consistent with the construction of the predecessor statute to 18 U.S.C. § 602.[400]

QUICK REFERENCE TO FREQUENTLY ASKED CAMPAIGN-RELATED QUESTIONS

The Committee is often asked about the application of campaign laws and Senate rules to the following situations:

•Unsolicited campaign contributions in the mail—By law, an unsolicited campaign contribution may be received within a congressional office but must be transferred within seven days of receipt to the appropriate campaign organization (18 U.S.C. § 607). For the purposes of transferring any such unsolicited contributions received in the mail, a Senate office may keep handy an envelope (or envelopes) addressed to the campaign; the envelope and any necessary postage should be paid for by the campaign. The Committee recommends that the political fund designee (PFD) should be the Senate employee assigned to handle the collection and transfer of any unsolicited checks, although, if circumstances (such as the PFD's absence) require it, the PFD may delegate these duties to another responsible employee of the Member's office, provided the Member approves of this delegation. [*Note well* that the seven day provision of 18 U.S.C. § 607 applies to unsolicited contributions only; it does not authorize solicitation from a federal (including congressional) office nor does it permit receipt of contributions in a federal office where the contributions have been solicited in a manner which directs the contributor to return contributions to a federal office.]

•Unsolicited campaign contributions delivered in person to Senate facilities—The seven day transferral provision of 18 U.S.C. § 607 (see above) also applies to unsolicited contributions de-

[393] 18 U.S.C. § 602.

[394] *See* Comm. on House Admin., *Federal Election Campaign Act Amendments of 1979*, H. Rep. No. 96–422, 96th Cong., 1st Sess. 25 (1979). Under the former statute, Members of Congress were also prohibited from *receiving* contributions from Federal employees, including their staff, even when no solicitation of the contribution was shown. *See Brehm v. United States*, 196 F.2d 769, 770 (D.C. Cir.), *cert. denied*, 344 U.S. 838 (1952) (upholding the conviction of a Member of Congress for receiving campaign contributions from staff even without specific finding of solicitation or shakedown).

[395] 18 U.S.C. § 607.

[396] 18 U.S.C. § 603.

[397] *See* 113 Cong. Rec. 25703 (Sept. 11, 1973).

[398] H. Rep. No. 96–422, *supra* note 391, at 25.

[399] 125 Cong. Rec. 36754 (Dec. 18, 1979).

[400] *See* 6 Clarence Cannon, *Cannon's Precedents of the House of Representatives* § 401, at 571–573 (1935).

livered in person to the Senate: an unsolicited contribution check delivered in person to a Senator's office may be given to the PFD directly, or placed by the receiving employee in the PFD's in-box, for timely transfer to the appropriate campaign office; alternatively, a pre-addressed, pre-stamped campaign envelope (paid for by the campaign) may be given to the would-be contributor for his or her later use in forwarding the check to the campaign. Of course, as discussed above, campaign contributions may not be solicited from, or for delivery to, a federal office.

While unsolicited contributions may be delivered in person to a Senate office, special care should be exercised regarding such contributions. Often the individual tendering the contribution in the Senate office also has official business to conduct in the office. When this is the case, to avoid the appearance of any connection between official Senate activities and the receipt of campaign contributions, it is advisable that the office not accept the contribution and emphasize that the Senate office is not connected with the campaign and that the provision of Senate services can have no connection with any campaign contribution. Similarly, contribution checks received in Senate office mail, even if unsolicited, should not be accepted if there is an indication of a connection between the contribution and official business.

•Status of political fund designees in Senate offices—Rule 41.1 permits political fund designees (PFD's) to solicit and otherwise handle federal campaign contributions for a political campaign committee controlled by a Member or group of Members. This campaign activity must be done on the PFD's own time, away from Senate facilities, and without using any Senate equipment or supplies. The status of PFD does not give the staffer license to perform campaign activities, whether or not they involve fundraising, in Senate facilities or on Senate time, nor may a PFD make an advance to the campaign.

•Constituent official correspondence misdirected to the campaign, and campaign correspondence misdirected to the Senate office—A Member's principal campaign committee often is not equipped to respond to written inquiries concerning legislative/representational matters. In such cases, the campaign may forward the name, address, and nature of the official question to the Senate office for response. Pursuant to Rule 40.5, the names and addresses may be added to the Senate office's mailing list so long as the list does not identify the individuals as campaign contributors, workers or members of a political party and also does not contain any other partisan information. Similarly, if the Senate office receives an inquiry that refers to a campaign matter, the office may forward the name and address and nature of the inquiry to the campaign for response.

•Telephone inquiries on campaign topics—The receptionist in a Senate office may inform callers who seek campaign information or who express a desire to make a campaign contribution to direct their inquiries to the Member's campaign committee, and also may give the caller the address and telephone number of the campaign. The Senate press secretary may respond to unsolicited telephone inquiries, even where the caller asks questions related to a Member's political campaign, if such campaign questions are incidental to official questions (Interpretative Ruling 263). However, a Senate office should not function as the campaign press shop or otherwise engage in proactive campaign activity.

•Use of official resources to assist campaign organization—Senate space, equipment, staff time, and resources generally should not be used to assist campaign organizations. Certain *de minimis* overlap between the official office and the campaign inevitably may occur and is permissible; such *de minimis* overlap includes scheduling assistance between offices and, as noted above, press response to ''official'' inquiries that may also include inquiries about campaign matters. Also, the campaign may be treated in the same manner that the Senate office would treat any other outside organization on a non-partisan basis. Thus, a Senate office may make available with officially connected funds a copy of the Member's floor speech to the campaign committee at its request so long as the Senate office would provide the speech to any other organization or individual who asks, without regard to political affiliation. Similarly, the office may make available with officially

connected funds information about the Senator's legislative accomplishments to the campaign committee at its request, if the office would do the same for anyone who asks for it. Conversely, however, the Senate office should not provide press clips about the Senator that were collected by the office to the campaign because Senate offices do not routinely provide clipping services to anyone who asks for them.

•Unsolicited e-mail which asks a campaign-related question— As in the case of unsolicited telephone calls concerning campaign matters, a Senate office that receives an unsolicited e-mail inquiry on a campaign-related question may inform the sender that the communication was addressed to the Senate office, which is not related to the Senator's campaign, and that, if the sender wishes, the campaign may be contacted at its e-mail address, mailing address, or telephone number. Alternatively, the message may be treated as misdirected mail and simply forwarded to the campaign (in many instances this may involve less involvement of Senate time or facilities than providing the correct address, etc.).

•Great Seal, Senate Seal, on campaign documents—The Seal of the U.S. Senate is in the custody of the Secretary of the Senate and generally is used only to authenticate official Senate documents (an alternative, non-official seal has been authorized for use by Senate offices and on items sold in the Senate gift shop). Both the Senate Seal and the Great Seal of the United States (depicting an eagle clutching items in its talons) are protected by 18 U.S.C. 713, a criminal statute. That provision is intended to restrict the knowing display of the Senate Seal or the Great Seal or any facsimile thereof in any manner reasonably calculated to convey a false impression of sponsorship or approval by the Government of the United States. Thus, commercial use, personal use, or campaign use of these seals would be improper. (See section on the Senate and Great Seal in Chapter 7 and 18 U.S.C. 713 in Appendix D). If a Member's campaign wants to use a symbol of government on its campaign stationery, a depiction of the Capitol dome would be appropriate.

•Purchase of campaign lists for official use—The Committee has previously ruled that a mailing list that is acquired from a private source (including a campaign committee or political organization) must be paid for at fair market value. Senate Rule 40.5 and I.R. 44 require that Senate computers not be used to store, maintain, or otherwise process any list of names and addresses that identifies the listed individuals as campaign workers or contributors, as members of a political party, or by any other partisan political designation. Thus, a Senate office may use official funds to purchase mailing lists from outside sources, including the Member's campaign committee, as long as fair market value is paid for the mailing list, the list is stripped of any partisan or contributor information before entry into the Member's office mailing list, and the list is incorporated into the office list such that it cannot be separately recalled. An office should not purchase solely partisan-based lists (thus creating an office database of mainly partisan information); purchased lists should include those derived from non-partisan sources.

•Campaign website and the Senate website — The Rules Committee policy on Senate Internet services prohibits any linkage on the Member's official website to his or her (or any) campaign web site. The Ethics Committee has advised that a Member's principal campaign committee website should not include a link to his or her Senate office website.

GENERAL CAMPAIGN FINANCE REQUIREMENTS

Under the Federal Election Campaign Act (FECA), each candidate for federal office, including any Member of the Senate who is running for reelection, must designate a principal campaign committee.[401] This committee, like all other political committees, must register with the FEC[402]

[401] 2 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1. Regardless of whether action is not taken to qualify under state law, an individual is deemed a candidate under the FECA once $5,000 has been raised or spent towards an election. 2 U.S.C. § 431(2); 11 C.F.R. § 100.3.

[402] 2 U.S.C. § 433; 11 C.F.R. § 102.1.

and be organized and keep records according to Federal campaign laws.[403] Each candidate must also designate one or more national or state banks or similar, government-insured financial institutions, as a campaign depository.[404]

The campaign committees of candidates for the Senate must file periodic, detailed reports, on forms provided by the FEC, with the Secretary of the Senate as custodian for the FEC, showing the receipt of political contributions and the making of political expenditures.[405] Each committee must also file copies of such statements with the Secretary of State, or similar state officer, of the relevant state.[406]

Restrictions on Receipt of Contributions

Federal campaign laws prohibit Members of and candidates for Senate from receiving political contributions from the treasury funds of a corporation, labor organization, or national bank.[407] Additionally, contributions may not be accepted from federal government contractors.[408] Corporations, labor organizations, membership organizations, or cooperatives may, however, establish separate segregated funds, often referred to as political action committees, or ''*PACs*.'' Even a government contractor may set up a PAC. PACs collect voluntary contributions from which they may then make their own political expenditures and contributions. PACs may *not* solicit funds by threats of job discrimination or reprisals or by requiring dues or assessments as a condition of employment.[409] Members and candidates for the Senate may receive contributions from PACs, up to the contribution limits specified by federal law.

Federal law restricts the amount of political contributions that may be made by, and accepted from, individuals and political committees. A ''*Multi-candidate'' political committee*—which is registered for at least 6 months with the FEC, receives contributions from more than 50 people, and contributes to at least 5 federal candidates—may contribute up to *$5,000* to a candidate for every primary, runoff, or general election in which the candidate's name appears on the ballot (and may contribute up to $5,000 to other political committees during a calendar year and up to $15,000 to national political party committees).[410] The PACs of corporations and labor unions are often multi-candidate committees which may make contributions of up to $5,000 per candidate per election (primary and general). If a political committee is not a qualified multi-candidate committee, it may make contributions of up to only $1,000 per election to a candidate.[411] The FEC maintains a list, updated monthly, of committees that have qualified as multi-candidate.[412]

An *individual* may contribute up to *$1,000* to any candidate for each primary, runoff, or general election. An individual may contribute no more than $5,000 per year to any other political committee, $20,000 per year to a national political party committee, and $25,000 in total in a calendar year.[413]

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[403] 2 U.S.C. § 432(a)-(d); 11 C.F.R. Part 102.
[404] 2 U.S.C. § 432(h)(1); 11 C.F.R. § 103.2.
[405] 2 U.S.C. § 434; 11 C.F.R. Parts 104–105.
[406] 2 U.S.C. § 439; 11 C.F.R. Part 108.
[407] 2 U.S.C. § 441b; 11 C.F.R. Part 114.
[408] 2 U.S.C. § 441c; 11 C.F.R. Part 115.
[409] 2 U.S.C. §§ 441b(b)(3), 441c(b); 11 C.F.R. §§ 114.5(a), 115.3.
[410] 2 U.S.C. § 441a(a)(2), (4); 11 C.F.R. § 110.2
[411] 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1.
[412] 2 U.S.C. § 438(a)(6).
[413] 2 U.S.C. § 441a(a)(1), (3); 11 C.F.R. §§ 110.1, 110.5.

Political contributions may *not* be made by foreign nationals not lawfully admitted to the United States for permanent residence,[414] by public utility holding companies[415] and by one person in the name of another.[416] Cash contributions of over $100 are also prohibited.[417]

CAMPAIGN USE OF OFFICIAL RESOURCES

Official resources may only be used for official purposes. This principle derives in large part from 31 U.S.C. § 1301(a), providing that official funds are to be used only for the purposes for which appropriated, as well as from statutory authorizations for allowances.[418] It is thus inappropriate to use any official resources to conduct campaign or political activities. [See also page 216.]

The Committee on Ethics has long acknowledged that there may be some inadvertent and minimal overlap between the conduct of official Senate duties and campaign activities. However, a Senator has the responsibility to ensure that such an overlap is of a de minimis nature and that any campaign responsibilities do not conflict with or detract from official staff duties.[419] Similarly, campaign materials that are needed for reference purposes or public disclosure and that do not require substantial storage space may be kept in Senate facilities.[420]

A Senator may sometimes be asked to donate an item, such as a book prepared by the Government (e.g., a book on the Capitol or an *Agricultural Yearbook*), for auction. The Committee has ruled that the donation of public property for auction by political or for-profit groups could reflect discredit upon the Senate.[421] However, if the item is of nominal value and was not intentionally procured with Senate funds for that purpose, or is a book printed at Government expense and allotted to a Senator for public distribution, the Senator may donate the item for auction to a *non-profit* organization that will be using the auction proceeds for a non-profit, non-political purpose.[422]

Mailing Lists

Mailing lists procured, compiled, maintained, or produced with appropriated funds may be used only for official purposes. *Official mailing lists may not be shared with a Member's campaign committee or a national political committee or otherwise be used for any political or personal purposes.*[423] Under Senate Rule 40.5, Senate computers may not be used to store, maintain, or otherwise process any list of names and addresses that identifies the listed individuals as campaign workers or contributors, as members of a political party, or by any other partisan political designation. Senate facilities may not be used to produce computer printouts except as authorized by the Committee on Rules and Administration. Moreover, if mailing labels, computer tapes, or discs for mass mailings are produced with Senate computers, the mailings may only be sent out from facilities maintained and operated by the Senate or under contract to the Senate. A mailing list may be purchased at fair market value with official funds from a private source (including a campaign committee or political organization), so long as the incorporation of the list complies with Senate Rule 40.5, that is, the list bears no identification of individuals as campaign workers, contributors, or as members of a political party and does not contain any other partisan information. A mailing list that is so acquired from a private source and updated using Senate facilities

[414] 2 U.S.C. § 441e; 11 C.F.R. § 110.4(a).
[415] 15 U.S.C. § 79l(h).
[416] 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b).
[417] 2 U.S.C. § 441g; 11 C.F.R. § 110.4(c).
[418] *See, e.g.*, 2 U.S.C. §§ 58 and 59.
[419] *See* Interpretative Ruling No. 154 (June 22, 1978).
[420] *See* Interpretative Ruling No. 24 (May 26, 1977).
[421] *See* Interpretative Ruling No. 175 (Sept. 21, 1978).
[422] *See* Interpretative Ruling No. 351 (May 7, 1982).
[423] *See* Interpretative Ruling No. 318 (May 9, 1980).

may not then be returned to the private organization in its enhanced form.[424] For further information on official mailing lists, see discussion in Chapter 7 under the headings ''Nonfrankable Mail'', item number 9, and subparagraph D, ''Mailing Lists and the Senate Computer Facilities''.

> ***Example 12.*** National Party *X* sends out a newsletter on government issues of interest to senior citizens. The editor of this newsletter asks Senator *P* for the names and addresses of the seniors in her state so that they might get the benefit of receiving the information in the newsletter. *P* may *not* provide the party with a copy of any list maintained on her Senate computer. She *may* share with the party any relevant list maintained by her campaign committee.[425]

USE OF CAMPAIGN FUNDS

By statute, federal campaign funds may be used as follows: to defray any campaign expenditure allowed under the federal election laws; to defray any ordinary and necessary expenses incurred in connection with duties as a holder of federal office; to donate to charities described in § 170(c) of the Internal Revenue Code;[426] to contribute to any national, state, or local committee of a political party; or for ''any other lawful purpose.''[427] This statute was amended in the 96th Congress to prevent all candidates, whether incumbent or not, from using excess campaign funds for personal purposes.[428] Diversion of campaign funds to personal use is not only illegal under federal campaign law, but such diversion could also transform the funds into taxable personal income to the individual.[429]

No Personal Use

Like the statute, Senate Rule 38.2 prohibits all Members and former Members from converting federal campaign funds to personal use. By both law and rule, ''personal use'' is defined to exclude the reimbursement of expenses incurred by a Member in connection with official duties. However, a Member may not borrow from his or her own principal campaign committee.[430]

> ***Example 13.*** Senator *Q* takes his family on a Caribbean vacation to rest up after a particularly grueling but successful campaign. *Q* may *not* pay for the vacation with campaign funds.
>
> ***Example 14.*** Senator *R* and her spouse go on an officially connected trip. Under Senate rules, *R* may pay their travel expenses with campaign funds.[431]

The Senate's antipathy to the conversion of political funds to personal use was established even before the enactment of the statute or the rule. In 1967, the Select Committee on Standards and Conduct investigated and the Senate censured a Member for having exercised, over a five year period, ''the influence and power of his office as a United States Senator . . . to obtain, and use for his personal benefit, funds from the public through political testimonials and a political campaign . . .'' This conduct, while not then illegal, was deemed ''contrary to accepted morals . . . [and] the public trust expected of a Senator, and tends to bring the Senate into dishonor and

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[424] *See* Interpretative Ruling No. 421 (Oct. 16, 1987); Interpretative Ruling No. 280 (Sept. 10, 1979).

[425] *See* Interpretative Ruling No. 318 (May 9, 1980).

[426] *See also* Interpretative Ruling No. 206 (Dec. 11, 1978) (donation of a retiring Senator's excess campaign funds to a tax-exempt state university for a scholarship program to be named for the Senator was a permissible charitable donation and not a conversion to personal use).

[427] 2 U.S.C. § 439a. *See also* FEC Advisory Op. No. 1980–113, 1 Fed. Election Camp. Fin. Guide ¶ 5562, at 10,692 (Nov. 7, 1980).

[428] At the time, this prohibition exempted those who were Members of Congress on January 8, 1980, the date the amendment became effective. However, in the Ethics Reform Act of 1989, Congress repealed this ''grandfather'' provision, such that all Members of the 103d and subsequent Congresses have been barred from using campaign funds for any personal purposes. The FEC has issued detailed regulations clarifying ''personal use'' at 11 CFR Part 113 and those regulations should be consulted for guidance.

[429] Rev. Proc. 68–19, 1968–1 C.B. 810; Rev. Rul. 74–23, 1974–1 C.B. 17.

[430] *See* Interpretative Ruling No. 405 (Dec. 18, 1985).

[431] The use of campaign funds for officially connected purposes, pursuant to Senate Rule 38 and Interpretative Ruling No. 442, is discussed in Chapter 3.

disrepute.'' [432] More recently, a Member was denounced by the Senate for a number of breaches, including violating Rule 38.2 by transferring a check made out to his campaign committee to the book publisher which was paying the Senator for promotional appearances. [433]

No Franked Documents

Federal law and Senate rule provide that only appropriated funds, and not private contributions, may be used to pay the cost of preparing, printing, and distributing mass mailings under the frank. [434]

Legal Defense Funds

The Committee on Ethics has determined that Members may use campaign funds to defend legal actions arising out of their campaign, election, or the performance of their official duties. These funds remain campaign contributions, however, subject to all the restrictions and prohibitions of other campaign contributions, including the reporting requirements, contribution limits, and prohibitions on corporate, labor union, and government contractor contributions. Such treatment accords with rulings of the Federal Election Commission. [435] An individual using campaign funds to defend such legal actions should obtain the approval of the Ethics Committee. (See discussion of Legal Expenses in Chapter 4.)

In addition (or instead), a Member, officer, or employee may choose to set up a ''legal expense trust fund'' independent of any campaign fund. (Officers and employees obviously do not have the option of using campaign funds and would have to resort to separate legal defense funds for actions arising out of their official duties.) Such legal expense funds, however, must be approved by the Committee and are subject to the Legal Expense Trust Fund Regulations, promulgated by this Committee under Senate Rules 35 and 37, and discussed in detail in Chapter 4.

FEDERAL CRIMINAL LAW: FALSE CLAIMS, FRAUD AND THEFT

In addition to the congressional ethical standards and guidelines discussed, legal implications may arise for Members and staff if individuals, compensated from public funds, perform no congressional duties or only a nominal percentage of official duties for such compensation, but rather mainly provide campaign services to the Member. Since a Member makes a claim to the United States Government for the staffer's salary, and since such salary is intended as compensation for assisting the Member in his ''official'' duties, then using that individual for other than the official purposes contemplated might involve a false claim, a false statement, or a fraud upon the government.

There have been several civil suits initiated by private citizens under the False Claims Act (31 U.S.C. §§ 3729, 3730) against Members of Congress for compensating individuals from the clerk-hire or other staff allowances when those individuals allegedly did not perform any, or did not mainly perform, official congressional duties for such compensation. These civil suits, how-

[432] REPORT OF THE SELECT COMMITTEE ON STANDARDS AND CONDUCT, UNITED STATES SENATE, ON THE INVESTIGATION OF SENATOR THOMAS J. DODD OF CONNECTICUT, TO ACCOMPANY S. RES. 112, S. REP. NO. 193, 90th Cong., 1st Sess. 26–27 (1967). The Senator was also found to have requested and accepted reimbursements from both the Senate and private organizations for the same travel.

[433] INVESTIGATION OF SENATOR DAVID F. DURENBERGER, REPORT OF THE SELECT COMMITTEE ON ETHICS AND THE REPORT OF SPECIAL COUNSEL ON S. RES. 311, S. REP. NO. 101–382, 101st Cong., 2d Sess. (1990).

[434] 39 U.S.C. § 3210(f); Senate Rule 40.2.

[435] *See* FEC Advisory Op. 1986–9, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5851, at 11267 (Apr. 22, 1989); FEC Advisory Op. 1977–39, 1 *id.* ¶ 5264, at 10,211 (Aug. 26, 1977).

ever, have generally been dismissed on jurisdictional or procedural grounds without a trial on the merits of the facts alleged.[436]

In *United States ex rel. Joseph v. Cannon,*[437] for example, a three judge panel of the United States Court of Appeals for the District of Columbia dismissed as a non-justiciable ''political question'' a civil suit under the False Claims Act initiated by a private citizen against a Member of Congress for making claims for a staffer's official salary when that staffer allegedly worked extensively and exclusively on the Member's reelection campaign for a period of time while continuing to receive a salary from appropriated funds. In an appeal of a criminal case,[438] however (*United States v. Diggs*), the United States Court of Appeals for the District of Columbia upheld the conviction of a Member of the House for false statements (18 U.S.C. § 1001) and mail fraud (18 U.S.C. § 1341) where individuals were being compensated from public funds, but were performing only nominal official congressional duties. The Court of Appeals found that there was thus sufficient evidence for a jury to conclude that the employees were paid from the clerk hire allowance ''with the intention of compensating them for services rendered to the [defendant's private business concern] or the defendant.''[439] Rejecting the argument that ''it was a matter of [the Member's] discretion to fix their duties and salaries as congressional employees,'' the Court upheld the determination that ''defendant's representations to the House Office of Finance that [the employees] were *bona fide* congressional employees were fraudulent and material in violation of 18 U.S.C. § 1001.''

Although in a 1995 decision[440], the Supreme Court held that section 1001 did not apply to false or fraudulent writings or documents submitted to the legislative branch, the 104th Congress subsequently passed the False Statements Penalty Restoration Act, which now makes it clear that 18 U.S.C. 1001 applies to all three branches of the government, including Congress. Thus, individuals who knowingly and willfully make a false statement in financial disclosure or other reports required to be filed with Congress, or who knowingly and willfully make a false statement in connection with a congressional investigation, inquiry, or review, are once again subject to criminal penalties under this statute.

United States v. Pintar,[441] did not involve Members of Congress and congressional employees, but did involve a fact situation where federal monies in a federal program were being used to pay persons for political campaign activities. In that case the court upheld a charge of a conspiracy to defraud the United States (18 U.S.C. § 371) where there was ''strong evidence that the Pintars used [their authority] to direct employees whose salaries were funded by federal grants to perform political work during office hours,''[442] and that such concerted activities constituted a ''scheme to impair, obstruct, defeat or interfere with lawful governmental functions.''[443]

In a criminal action specifically involving campaign activities by congressional employees compensated from clerk-hire funds, the Department of Justice in 1978 obtained a criminal indictment against a former Member of the House of Representatives, charging that the former Member while in Congress had defrauded the United States by placing 11 persons on his congressional payroll to pay them for operating and staffing various campaign headquarters in the former Mem-

[436] *United States ex rel. Thompson v. Hays*, Civ. Nos. 76–1068, 1132 and 1140; *United States ex rel. Martin-Trigona v. Daley*, Civ. No. 1164 (D.D.C. 1976); *United States ex rel. Joseph v. Cannon*, 642 F.2d 1373 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 999 (1982); *but see United States ex rel. Hollander v. Clay*, 420 Supp. 853 (D.D.C. 1976), concerning appropriations for transportation.

[437] 642 F.2d 1373 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 999 (1982).

[438] *United States v. Diggs*, 613 F.2d 988 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 982 (1980).

[439] *Id.* at 1002.

[440] *Hubbard v. United States*, 115 S. Ct. 1754 (1995).

[441] 630 F.2d 1270 (8th Cir. 1980).

[442] *Id.* at 1276.

[443] *Id.* at 1278.

ber's reelection campaign.[444] The indictment specifically charged violations of the mail fraud statute (18 U.S.C. § 1341), among other violations, for using the mails to send payroll checks in executing ''a scheme and artifice to defraud the United States of America, and to obtain money and property by means of false and fraudulent pretenses, representations and promises.''[445] The ''scheme,'' as charged in the indictment, was that the defendant ''would prepare and submit . . . clerk-hire allowance and payroll authorization forms to the Office of Finance of the House of Representatives which falsely represented that [certain named individuals] were bona fide employees of the defendant's congressional staff and that they were performing the type of services which entitled them to salaries stated in the clerk-hire forms,'' while willfully concealing that those named individuals were in fact placed on the House payroll ''in order to pay them for their work in maintaining, staffing, and operating various campaign headquarters opened for the purpose of reelecting the defendant to Congress.''[446] The defendant/former Member pleaded guilty to mail fraud and income tax evasion, and was sentenced to two years in prison and fined $11,000.

More recently, a congressional staff employee has also pleaded guilty in United States District Court to a criminal information[447] concerning the receipt of a government salary and expenses for performing campaign duties in a congressional campaign. The criminal information charged that the defendant, an Administrative Assistant to a Member of Congress, ''traveled and caused other employees'' of the Congressman to travel across the country ''to work on the primary and general election campaign of a Congressional candidate.'' During the time they worked on the congressional campaign, the employees ''claimed to be performing official business, [and] the United States House of Representatives reimbursed the defendant and the other employees for per diem expenses . . . [and they] also received money in the form of salary paid for the time that they campaigned.'' The congressional staffer pleaded guilty to 18 U.S.C. § 641, theft of government property, that is, the ''salary and expenses paid to them by the United States House of Representatives.''

LIST OF CAMPAIGN ACTIVITIES PROHIBITED BY STATUTE

The following is a brief list of specific statutory prohibitions relating to campaign activities by Members and employees of the Senate.

A Member or employee of the Senate *may not*—

(1) promise to use support or influence to obtain federal employment for anyone in return for a political contribution (18 U.S.C. § 211).

(2) deprive, attempt to deprive, or threaten to deprive anyone of employment or any other benefit, provided for or made possible by an Act of Congress appropriating relief funds, because of that person's political affiliation (18 U.S.C. § 246).

(3) pay or offer to pay any person to vote or to withhold a vote or to vote for or against any candidate in a federal election (18 U.S.C. § 597).

(4) solicit, accept, or receive an expenditure in consideration of a vote or the withholding of a vote in a federal election (18 U.S.C. § 597).

(5) use any appropriation by Congress for work relief or for increasing employment, or exercise any authority conferred by any appropriations act, for the purpose of interfering with, restraining, or coercing any individual in the exercise of the right to vote (18 U.S.C. § 598).

(6) as a candidate, directly or indirectly promise to appoint any person to any public or private position for the purpose of procuring support for that candidacy (18 U.S.C. § 599).

[444] *United States v. Clark*, Crim. No. 78–207 (W.D. Pa. 1978).

[445] Grand Jury indictment, at 2.

[446] Grand Jury indictment, at 2–3.

[447] *United States v. Bresnahan*, Crim. No. 93–0409 (D.D.C. 1993).

(7) promise employment or any other benefit provided for or made possible by any Act of Congress as a reward for political activity or support (18 U.S.C. § 600).

(8) cause or attempt to cause anyone to make a political contribution by denying or threatening to deny any government employment or benefit provided for or made possible, in whole or in part, by any Act of Congress (18 U.S.C. § 601).

(9) solicit political contributions from any other federal employee or from any person receiving salary or compensation for services from money derived from the United States Treasury (18 U.S.C. § 602).

(10) (staffers only) make a political contribution to any Member of Congress who is one's employer or employing authority (18 U.S.C. § 603).

(11) solicit or receive political contributions from persons known to be entitled to or to be receiving relief payments under any Act of Congress (18 U.S.C. § 604).

(12) furnish, disclose, or receive for political purposes the names of persons receiving relief payments under any Act of Congress (18 U.S.C. § 605).

(13) intimidate any federal officer or employee to secure political contributions (18 U.S.C. § 606).

(14) solicit or receive political contributions in a federal building, other than unsolicited contributions that are transferred to a political committee within seven days (18 U.S.C. § 607).

(15) knowingly accept a contribution in excess of limitations under federal law of $1,000 to a candidate from any person or $5,000 to a candidate from a multi-candidate political committee (2 U.S.C. § 441a(a), (f)).

(16) receive any political contribution from the organizational or treasury funds of a national bank, corporation, or labor organization (2 U.S.C. § 441b(a)).

(17) knowingly solicit contributions from government contractors (2 U.S.C. § 441c(a)(2)).

(18) make an expenditure for any general public political advertising that anonymously advocates the election or defeat of a clearly identified candidate (2 U.S.C. § 441d).

(19) solicit, accept, or receive a contribution from a foreign national (2 U.S.C. § 441e).

(20) knowingly accept a contribution made by one person in the name of another person (2 U.S.C. § 441f).

(21) fraudulently misrepresent oneself as speaking or acting on behalf of a candidate (2 U.S.C. § 441h).

To the extent that an individual may make political contributions or expenditures as discussed above, the individual may not—

(a) make cash contributions to any candidate which total more than $100 (2 U.S.C. § 441g);

(b) make contributions in excess of $1,000 per election to any candidate, $5,000 per calendar year to political committees, or $20,000 per calendar year to national party committees, or make contributions aggregating over $25,000 per calendar year (2 U.S.C. § 441a(a)).

(c) make a contribution in the name of another (2 U.S.C. § 441f).

(d) make independent expenditures in excess of $250 without filing a report with the Federal Election Commission (2 U.S.C. § 434(c)(1)).

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Chapter 7

USE OF THE FRANK, STATIONERY AND SENATE FACILITIES

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INTRODUCTION

Created by statute, the franking privilege authorizes Members and certain officers to send official material through the domestic mail, as franked mail, without prepayment of postage. The franking privilege is the personal responsibility of each Senator (or officer authorized to use the frank) and the Senator bears the responsibility of ensuring that the use of the mailing frank by employees in his or her office is consistent with the requirements established by statute, Senate rules, Ethics Committee interpretative rulings, and regulations established by the Committee on Rules and Administration. The following discussion details the various requirements for use of the frank in Senate offices, and also addresses the use of Senate stationery, the letterhead, and Senate facilities relative to mail activity.

THE FRANK

The term ''frank'' denotes the autograph or facsimile signature of a person authorized to transmit matter through the domestic mails without prepayment of postage.[448] Members of Congress and certain officers are authorized to send, as franked mail, material relating to the official business, duties, and activities of their offices.[449] Use of the franking privilege is governed by Federal law at 39 U.S.C. § 3210, *et seq*., (''the Franking Statute'').

The 1991 Legislative Branch Appropriations Act established an ''official mail allowance'' (franking allowance) for franked mail and mandated public disclosure of Members' expenditures under the frank and the contents of their mass mailings.[450] A Member's franking allowance is capped at the cost of a first class mailing to every address in the state. This amount is reduced, or prorated, for each Member if the budgetary allocation to the franking allowance is not enough to mail a letter to every address in the country (e.g. If it costs $33 million to mail a letter to every address in the country, but only $11 million was appropriated by Congress toward the franking allowance, then each Member's allowance would be prorated by two-thirds based on the reduction).

A Member's franking allowance, for use in franked mailings other than mass mailings, is part of the official office account. An office that has exceeded its franking allowance may supplement that allowance with other funds from the official office account for franked mailings other than mass mailings. A Member may also enhance his or her ability to use official office accounts for official mail by purchasing stamps that are paid for with official funds. Mass mailings must be done with the frank, but expenses for mass mailings must be paid with official office account funds specially appropriated for that purpose (other than the franking allowance). These mass mailing funds are currently subject to a maximum of $50,000 in any fiscal year. (See, mass mailing

[448] 39 U.S.C. § 3201.
[449] 39 U.S.C. § 3210(b)(1).
[450] *See* 2 U.S.C. § 59e.

section below for further details on mass mailings; contact the Rules Committee for any questions on franking or mass mailing allowances or any changes thereto).

The franking allowance may not be used for special mail services such as express mail, certified mail, registered mail, address corrections, postal insurance, and return receipt.[451] These services may be purchased, but only with official funds.

It is illegal to use a franked envelope to avoid paying postage on a private letter or package. Criminal fines may be levied for such abuse.[452] The Committee will view as an act of good faith an offer by a Member to pay **restitution** to the Treasury for the cost of improper use of the franking privilege.[453]

Franking allocations and appropriations are governed by the Rules Committee; use of the frank is regulated by the Ethics Committee. The Ethics Committee provides guidance and gives advisory opinions on the frankability of mail matter.[454] The Ethics Committee also issues regulations and is authorized to hear complaints of abuses of the use of the frank. ''Inside mail,'' without use of the U.S. Postal Service is not subject to the franking statute.

The Committee's regulations are available in booklet form and should be consulted by Senate employees involved in mailing material under the frank. In addition to providing guidelines and requirements for franked mail, the booklet includes examples of permissible and impermissible items or mailings.[455]

The franked mail privilege is the personal responsibility of each Senator.[456] While individual employees within the office of a Senator have the day-to-day use of the mailing frank, as authorized by the Franking Statute, and as directed by the Senator, it remains the responsibility of the Senator to oversee the use of the franked mail privilege by his or her office and to ensure that the use of the privilege is consistent with the requirements established by the Franking Statute, the Committee's Franking Regulations, the Standing Rules of the Senate, Interpretative Rulings of the Committee, and Regulations established by the Committee on Rules and Administration.

The Committee has emphasized that Members remain ultimately responsible for their staffs' decisions on using the frank:

> The actual determination of whether or not to send a particular piece of mail under a Member's frank probably will be made by his staff who prepare his mail for delivery. *An improper use of the frank by an assistant, ranging from an inadvertent mistake on a single letter to a willful abuse of the frank in connection with a mass mailing, will be imputed to the employing Senator under most circumstances.* To help avoid these violations of the franking law, Senators should assure that their assistants know what kinds of mail are frankable by providing for the training and supervision of these employees and their familiarization with these regulations.[457]

All franked mail prepared in Washington, D. C. Senate offices must be mailed in Senate facilities.

Authorization to Use the Frank

The following are those authorized to use the mailing frank:[458]

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[451] SENATE SELECT COMMITTEE ON ETHICS, REGULATIONS GOVERNING THE USE OF THE MAILING FRANK BY MEMBERS AND OFFICERS OF THE UNITED STATES SENATE, Regulations Governing Franked Mail at 29 (Jan. 1995) (hereinafter Franking Regs.), and *see* Interpretative Ruling 249.

[452] 18 U.S.C. § 1719.

[453] Franking Regs., ch. 4, para. 4.

[454] 2 U.S.C. § 502(a).

[455] *See generally* Franking Regs.

[456] Franking Regs., ch.1, para. 2.

[457] Franking Regs., ch. 4, para. 2.

[458] 39 U.S.C. § 3210–11, 3218.

1. a Senator, until the expiration of a 90-day period immediately following the date on which he or she leaves office, in order to close the official business of the Senate office;[459]

2. a Senator-elect;

3. the Vice President;

4. the Secretary of the Senate;

5. the Sergeant at Arms of the Senate;

6. Legislative Counsel of the Senate;

7. Senate Legal Counsel;

8. any authorized person in case of a vacancy in the offices of 3, 4, or 6 above; and

9. the surviving spouse of a Senator who died during his or her term of office, for 180 days after the Senator's death (for nonpolitical correspondence relating to the death of the Member).[460]

Material relating to the official business of any Senate committee, or of any joint committee whose chair is a Senator, may be sent under the frank of the chairman. Such mail ''must relate exclusively to the official business of the committee and may not focus unduly upon the chairman or any other Member of the Committee.''[461] The Republican Conference and the Democratic Caucus may use the frank, but ''mail matter must relate to the official legislative and related activities of the Congress and may not be partisan or political.''[462]

Loan of Frank Prohibited

The franking law specifically prohibits the loaning of a Member's frank to any group, organization, or person other than the official committees noted above and the Republican Conference or Democratic Caucus of the Senate.[463] The use of the frank by charitable organizations, political action committees, trade organizations, bar committees, state societies and political parties is also prohibited.[464] Thus, for example, the enclosure of a brochure from a non-Senate organization in an otherwise frankable mailing is almost always a loan of the frank to the organization and renders the entire mailing unfrankable. Also, discussion of a Member's charity activities in a letter renders the letter unfrankable as a loan of the frank to the charity. The enclosure of a newspaper clipping or article in a frankable mailing is not a loan of the frank, and may be mailed under the frank so long as the content of the article or clip meets the franking requirements.

In addition, ''because of the potential for abuse, a non-Senate organization is not permitted to stuff or mail franked envelopes, or to prepare and mail self-mailers.''[465] The use of the frank for any solicitation of funds for any purpose is likewise prohibited.[466] The franking regulations also ban providing franked envelopes to members of the public for return mail to a Member or committee of Congress, with limited exceptions.[467]

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[459] 39 U.S.C. § 3210(b)(3).

[460] 39 U.S.C. § 3218 and Interpretative Ruling No. 377 (Oct. 31, 1983). If there is no surviving spouse, then a member of the immediate family of the Member may be designated by the Secretary of the Senate.

[461] Franking Regs., ch. 1, para. 7.

[462] *Id.*

[463] 39 U.S.C. § 3215.

[464] Franking Regs., ch. 1, para. 4.

[465] *Id.* and Interpretative Ruling No. 66. (Sept. 26, 1977)

[466] Franking Regs., ch. 1, para. 4, and ch. 2, para. 18.

[467] Franking Regs., ch.1, para. 4. The sending back of a return-addressed and franked piece of mail to a Senator or officer of the Senate is allowed only in the following circumstances: a Senator may provide a franked envelope to a radio or television station to facilitate the return of a frankable radio or television tape; the Secretary of the Senate may enclose a franked self-addressed envelope in a letter to State officials requesting the return of certain forms and reports required to be filed under Federal election laws; a Senate committee which maintains a mailing list for its official reports may use a franked return-address postal card for an addressee to indicate its continued desire to receive reports; a Senator may provide a franked, pre-addressed mailer or envelope for the return to the Senator of responses to a qualified survey questionnaire (only for statistically valid opinion surveys sent as a mass mailing and certified by the Rules

General Standards of Frankability

The franking privilege is available only for the transmittal of material that concerns ''the official business, activities, and duties of the Congress,'' entailing all matters that ''directly or indirectly pertain to the legislative process or to any congressional representative functions generally.'' [468] Material that is purely personal or political may not be sent under the frank. No material that is not independently frankable may be inserted into a franked envelope. Thus, each piece of mail to be sent under the frank must be reviewed for frankability, including direct response letters and attachments to correspondence. The franking statutes list the following examples of frankable and nonfrankable mail, respectively.

Frankable Mail

1. Mail to any person and to any government agency relating to matters and programs of public concern and Congressional actions (39 U.S.C. § 3210(a)(3)(A)).

The franking statue authorizes the franking of mail matter ''regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress.'' Thus, a Member may use the frank to mail materials that ''generally relate to legislative actions or the official business of a Senator's office and which relate principally to the Federal government.'' A Senator ''may communicate with State and local officials on matters of State and local concern, and with constituents who have inquired or communicated on State or local matters.'' Mass mailings, however, should relate to federal matters and the impact of federal policies on states, communities, and citizens. [469]

2. Newsletters and press releases dealing with the impact of laws on governments and the public, official actions of Members, discussions of proposed or pending legislation, and positions of Members on, and arguments for and against such matters (39 U.S.C. § 3210(a)(3)(B)).

For details of the regulations concerning the contents and layout of newsletters, see the section on mass mailing below.

3. Questionnaires seeking public opinion (39 U.S.C. § 3210(a)(3)(C)).

Senators may use the frank to mail questionnaires ''seeking public opinion on any law, pending or proposed legislation, public issue, or subject.'' Under guidelines established by the Rules Committee a ''mass mailing'' may include franked response cards or forms only if the questionnaire is a statistically valid opinion survey. Any mass mailing containing a questionnaire must contain instructions to the recipients on how properly to return their responses, including information on whether or not return postage is required.'' [470]

4. Mail between a Senator's Washington Office and Home State offices (39 U.S.C. § 3210(a)(3)(D)).

This kind of mail must relate to a Senator's official duties and is subject, like any other kind of mail, to the franking regulations—including those relating to the use of personal or political material. The Senate Postmaster provides ''Orange Bags'' for expedited delivery of franked mail between a Member's Washington, D.C. and state offices. See Franking Regs., ch.2, para. 6.

Committee); and where no mass mailing is involved, a Senator may provide a franked envelope bearing a return-address to the Senator's office, specifying the material to be returned to the Senator (for example, a constituent requests assistance with a social security matter and the Senator in turn asks the constituent to complete and return an authorization form allowing the Senator access to certain records).

[468] 39 U.S.C. § 3210(a)(2).

[469] Franking Regs., ch. 2, para. 3, and *see* Interpretive Ruling No. 117 (Apr. 10, 1978).

[470] Franking Regs., ch. 2, para. 5.

5. Mail to other Members of Congress and all other legislators (39 U.S.C. § 3210(a)(3)(E)).

This kind of mail must relate to a Senator's official duties and is subject, like any other kind of mail, to the franking regulations—including those relating to the use of personal or political material.[471]

6. Mail expressing congratulations to a person who achieved some public distinction (39 U.S.C. § 3210(a)(3)(F)).

Letters of congratulations may be franked only when the occasion involves a public distinction, rather than a personal distinction (Franking Regs., ch. 2, para. 8). Examples of NON-frankable personal mail include letters of congratulations (and condolences) upon occasions such as birth, graduation from high school and college, marriage, and death.[472] These examples mark neither a unique public occasion, nor the achievement of a public distinction accorded in recognition of unusual public service to the community, state or nation. Other examples include: promotion in a business; establishing a new business; continuous family ownership of a farm for one hundred years; receiving an award from a local farming organization; being mentioned in an article appearing in a trade association journal; registering to vote; graduating as class valedictorian; or being in the top ten percent of a high school government class. Mail related to a personal distinction should be sent using officially connected funds (or personal funds) of the Senator. Letters of personal distinction are not rendered frankable when mailed in direct response.

Examples of frankable ''public distinctions'' for which the frank could be used to mail a letter of congratulations include: recent naturalization as an American citizen; receipt of a high school diploma by a senior citizen through an adult education program; enlistment or re-enlistment in the Armed Forces; becoming an Eagle Scout or a VFW Commander or an American Legion State Commander; being elected to a public office; becoming director of a state museum; being commissioned upon graduation from one of the U.S. Service Academies; being the recipient of a Harry S. Truman Scholarship or a Robert Byrd honor scholarship; or receiving the ''Employer of the Year'' Award presented by the President's Committee on Employment of the Handicapped. The Committee has also ruled that a Senate office may frank correspondence responsive to condolences on the death of a Senator or a Senator's spouse, however, mail sent in response to the illness of a Senator or spouse is not frankable. If a Senate office is unsure whether a particular occasion merits the use of the frank as a public distinction, the office may contact the Committee to obtain a ruling on the specific event.

7. Mail consisting of Federal regulations or other publications containing general information (39 U.S.C. § 3210(a)(3)(G)).

This provision authorizes the franking of ''mail matter, including general mass mailings, which consist of Federal laws, Federal regulations, other Federal publications, publications purchased with Federal funds, or publications containing items of general information.'' (See Franking Regs., ch. 2, para. 9) Examples of such frankable material are the Agricultural Yearbook, Congressional Directory, Senate wall calendar, Agriculture Department pamphlets, and any other publication printed by order of Congress which relates to the legislative process.

8. Mail containing nonpartisan voter registration or election information (39 U.S.C. § 3210(a)(3)(H)).[473]

This section authorizes the franking of ''mail matter which consists of voter registration or election information or assistance prepared and mailed in a non-partisan manner.'' (See Franking Regs., ch.2, para. 13) Letters from a Senator may be sent under the frank to new voters

[471] *See* Franking Regs., ch.2, para. 7, and also Interpretative Ruling 393 (Jul. 31, 1984).
[472] *See* Interpretative Ruling Nos. 296, 325, 381, 382, 395, 407 and 417.
[473] *See* Interpretative Ruling No. 415 (Mar. 24, 1987).

and recently naturalized citizens encouraging them to vote by providing information or assistance. This kind of mailing must NOT include otherwise unfrankable political material.

9. Mail containing biographical material or pictures in Federal publications or in response to specific requests (39 U.S.C. § 3210(a)(3)(I)-(J)).[474]

Section 3210(a)(3)(I) authorizes the franking of biographical matter and photographs of a Senator only in response to specific requests from the public, a biography or photograph contained in a Federal publication, or a photograph contained in a newsletter or other general mass mailing of any Member or Member-elect (see section on mass mailing below for details on picture requirements in newsletters and mass mailings).[475] The material may be in the form of all of or parts of a book, a newspaper or magazine article, a specially printed brochure, a copy of a speech, or in some other form. ''The frankability of biographical matter could be affected by the inclusion of personal matter for publicity, advertising or potential use for political purposes.''[476]

10. The whole or "any part of the . . . *Congressional Record,* if such matter is mailable as franked mail." (39 U.S.C. § 3212a).

Section 3212 of the Franking Statute authorizes Senators to send the Congressional Record as franked mail. If a Senator wishes to mail a portion of or excerpt from the Congressional Record, that portion or excerpt must independently qualify as frankable material. (See Franking Regs., ch. 2, para. 10)

11. Public service material (39 U.S.C. § 3210(f)).

Section 3210(f) requires that mass mailings may only be mailed if the cost of preparing and printing of the mail matter is paid exclusively from funds appropriated by Congress, except that an otherwise frankable mass mailing may contain as an enclosure or supplement public service material which is purely instructional or informational in nature and which in content is frankable. Members and staff are cautioned to employ a narrow reading of ''public service material''. (See Franking Regs., ch. 2, para. 12)

12. Seeds and agricultural reports (39 U.S.C. § 3213).

Section 3213 authorizes the use of the frank to mail seeds and agricultural reports emanating from the Department of Agriculture in response to a specific request of a Senator. (See Franking Regs., ch. 2, para. 19)

Nonfrankable Mail

No material that is not independently frankable may be inserted into a franked envelope.

1. Mail containing laudatory and complimentary articles or texts concerning Members on a personal basis rather than based on official duties or activities of a Member (39 U.S.C. § 3210(a)(5)(A)).

''Mail matter complimenting a Senator is frankable only if it relates to achievements in the performance of Senate duties. However, the use . . . of matter which is laudatory or complimentary to the Senator, no matter how deserving or how accurate may give the impression that the Senator is advertising himself for political purposes.''[477]

2. Mail containing greetings from a Member's family unless the greeting is a brief and incidental reference in otherwise frankable mail (39 U.S.C. § 3210(a)(5)(B)(i).

[474] *See* Interpretative Ruling Nos. 42 and 112.
[475] Franking Regs., ch. 2, para. 14 and 15.
[476] *Id.*
[477] Franking Regs., ch. 2, para. 16.

Pursuant to this section, a Senator may add a greeting from a spouse or members of the family only if the greeting is incidental to an otherwise frankable mailing.

3. Any card expressing holiday greetings (39 U.S.C. § 3210(a)(5)(B)(iii)).

Senators may not use the frank to mail holiday cards. However, Senators may use officially connected funds to mail holiday cards to constituents. Holiday cards to friends should be sent with personal funds, not using Senate facilities. Senators also may NOT acknowledge holiday greetings that were sent to them. Senators may express holiday greetings at the commencement or conclusion of otherwise frankable mail.[478]

4. Mail containing reports of a Member's or his/her family's activities other than in connection with official functions and activities of the Member (39 U.S.C. § 3210(a)(5)(B)(ii)).

It is prohibited to use the frank for ''reports of how or when such Member or Member-elect, or the spouse or any other member of the family of such Member or Member-elect, spends time other than in the performance of, or in connection with, the legislative, representative, and other official functions of such Member or the activities of such Member-elect as a Member-elect.''

5. Mail containing solicitations for political support for the sender or any person or party or a vote or financial assistance for any candidate (39 U.S.C. § 3210(a)(5)(C)).[479]

Mail matter may include arguments or opinions which explain support and opposition to legislative or policy matters, so long as the focus of the mailing is on the merits of the policy issues and not on political considerations. This provision calls upon Senators and the Committee to distinguish between ''fair comment'' on an issue and ''political material.'' The line between the two is often difficult to discern. However, under this section, the Committee has on many occasions recommended against using the frank to send material which is unduly or unnecessarily disparaging of another's actions, motives, or intent.

The Committee has routinely found unfrankable mail matter that uses the terms ''Democrat'' and ''Republican'' unless such terms are used to identify a title or office. However, the use of the political designation ''D'' or ''R'' when used for purposes of party identification in an otherwise frankable mailing is permitted.[480]

After the general election for the Senatorial office, a Senator who was a candidate in that election ''may send under his frank and in response to a specific request from a scholar, library, museum, or collector . . . platform statements, bumper stickers, posters and buttons.''[481]

6. Mail that is purely personal to the sender or to any other person (39 U.S.C. § 3210(a)(4)).

The use of the frank is prohibited for purely personal matters, unrelated to the official business, activities, and duties of the public official. (See Franking Regs., ch. 2, para. 16)

7. Mail matter expressing condolences to a person who has suffered a loss or expressing congratulations on a personal distinction (Franking Regs., ch. 2, para 8).

See the discussion above concerning letters of congratulations involving a public distinction. Also, the franking statute does not authorize the use of the frank to mail letters of condo-

[478] *Id.*

[479] *See* Interpretative Ruling Nos. 306 and 420. For example, references to upcoming campaigns, filings for reelection, or expressions of gratitude for election are nonfrankable items in newsletter or news releases. See also Franking Regs., ch. 2, para. 17.

[480] Interpretative Ruling No. 278 (Jul. 23, 1979).

[481] Franking Regs., ch. 2, para. 17.

lence to the public. The franking privilege may, however, be used to send replies to letters of condolence received from the public upon the death of a member of the Senator's immediate family. Prior rulings have held that a Senator's spouse or father are members of the immediate family.

8. The personal books belonging to a Senator, other than Federal publications (Franking Regs., ch. 2, para. 11).

The personal books belonging to a Senator, other than Federal publications, are not frankable.

Surplus and other books and publications from the Library of Congress are frankable to other libraries or persons. A Senator may provide franked labels to the Library of Congress to be used in shipping such books or publications as long as the Senator takes such steps as may be necessary to avoid misuse resulting in an improper loan of the frank. (See paragraph 4 of Chapter 1).

Ordinarily, a book which is printed privately under the authorship or editorship of a Senator is not frankable; however, if the book is substantially biographical under the provisions of paragraph 14 of this chapter, it may be mailed under the frank in response to a specific request for biographical material.

9. A Senator may not use the mailing list of a private organization in a franked mailing (Franking Regs., ch. 2, para. 20).

A Senator may not use the mailing list of a private organization in a franked mailing. Mailing lists from outside sources, including campaign or political organizations, may be purchased for fair market value with official funds (subject to the rules and regulations of the Committee on Rules and Administration), but may only be used in Senate offices if such lists bear no identification of individuals as campaign workers, contributors, or as members of a political party, and if the lists do not contain any other partisan political information.[482] Likewise, the Senator may NOT provide the organization with information to be used to update its mailing list.[483] The mass mailing of franked return address cards to correct general mailing lists is also prohibited.[484] For further discussion on mailing lists, see heading under Mass Mailing, section D, ''Mailing Lists and the Senate Computer Facilities'' in this chapter.

10. Other mail

The frank is not recognized by the Postal Service for use in mailings to foreign addresses and for express mail. However, franked mail sent to APO addresses will be processed.

Mass Mailings

A. Definition

In addition to meeting the usual requirements for material to be sent under the frank, special additional requirements and regulations apply to franked mass mailings.

A ''mass mailing'' is a mailing of more than five hundred newsletters or other pieces of mail with substantially identical content (whether such mail is deposited singly or in bulk, or at the same time or different items), during one session of Congress. See 39 U.S.C. 3210(a)(6)(E), as amended by the Legislative Branch Appropriations Act, 1995 (P.L. 103–283). Thus, for example, mailing 600 pieces of substantially identical mail in one mailing within a session is a mass mailing. Also, mailing substantially identical pieces of mail in groups of 200 at different times, totaling over 500 pieces of mail within a session, is a mass mailing (even though each individual mailing event totaled less than 500 pieces).

A mass mailing does not include pieces of mail that consist of the following:

[482] *See* Senate Rule 40.5 and Interpretative Ruling 44 (July 18, 1977).
[483] Interpretative Ruling No. 135. (May 22, 1978)
[484] Interpretative Ruling No. 416. (Apr. 28, 1987)

1. Mail in direct response to a communication from a person to whom the matter is mailed. With respect to this exception, follow-up franked mailings made specifically and solely in response to, and mailed not more than 120 days after the date of the original receipt of a written request, inquiry or expression of opinion or concern from the person to whom it is addressed is not a mass mailing [S. Res. 212 (101st Congress)]. A petition that is sent to a Member's office by an organization and that contains the names and addresses of the signatories to the petition may be responded to by writing to each signatory as direct response mail. However, if an organization forwards a list of more than 500 names to a Senate office, absent a petition, the response from the office should be treated as a mass mailing.

2. Mail to other Members of Congress, or to federal, state or local government officials (i.e. any elected or appointed official of the United States and of any state or territory or a political subdivision thereof)[485];

3. News releases to the communications media;

4. Town meeting notices—except that, town meeting notices in excess of 500 notices per town meeting may not be sent fewer than 60 days immediately before the date of any primary or general election (whether regular, special, or runoff) for any federal, state or local office in which a Senator is a candidate for election. There is no exception for uncontested candidacies (P.L. 103-283). [The Rules Committee places additional strict limitations on the content of such notices, and should be consulted about including on a notice a picture of the Senator, or the Senator's state office address or committee appointments]; or

5. A federal publication or other item that is provided by the Senate to all Senators or made available by the Senate for purchase by all Senators from official funds specifically for distribution (a limited exception applicable to items such as U.S. flags flown over the Capitol and ''We The People'' calendars).

B. Content

''A mass mailing by a Senator shall not exceed two sheets of legal size paper (or their equivalent), including any enclosure that (1) is prepared by or for a Senator who makes the mailing; or (2) contains information concerning, expresses the views of, or otherwise relates to the Senator who makes the mailing.''[486] Mass mailings sent by Committees under the frank of the chairman, relating to the normal and regular business of the committee, are not subject to the two sheet limit.

''The type in which the Senator's name appears anywhere in a newsletter or mass mailing, other than the masthead, may not exceed one-quarter inch in height.''[487]

Personal references (i.e. the use of a Senator's name or the word ''Senator'' in place of the Senator's name) may not appear in a newsletter or other mass mailing more than an average of eight times per page. ''Page'' is defined as each side of an 8 1/2 x 11 inch, or 8 1/2 by 14 inch sheet of paper.[488] For purposes of this limitation, the use of a Senator's name, preceded by the word ''Senator,'' as in ''Senator Jones,'' constitutes only one personal reference.[489] The personal reference limitation does not include the use of pronouns, the Senator's name in the frank itself or on the masthead, ''nor does it apply to the mass mailing of otherwise frankable official Government records or publications'' such as a hearing transcript or a complete copy of the Congressional Record.[490] The limitation does apply, though, if the governmental record or publication material

[485] Interpretative Ruling No. 117 (Apr. 10, 1978).
[486] Franking Regs., pg. 27.
[487] Franking Regs., ch. 2, para. 4.
[488] *Id.* and Interpretative Ruling 236.
[489] Franking Regs., ch. 2, para. 4.
[490] *Id.*

is excerpted and incorporated into a mass mailing or newsletter.[491] The personal reference limitation is also not applicable to a frankable opening statement by a Senator before a congressional Committee.[492]

Any picture, sketch or other likeness of a Senator which appears in a newsletter or mass mailing must relate to the content of the newsletter or mass mailing.[493] A caption will not be sufficient as accompanying text if the text of the mailing is otherwise unrelated to the picture. A picture of a Senator alone may be no larger than twelve square inches and a picture of a Senator with one or more persons may be no larger than twenty square inches.[494] The total number of pictures, etc. (excluding the masthead) in which the Senator appears in a single newsletter may not be more than four.[495]

The following notice must be in no less than seven point type and must appear at a prominent place on the bottom of the first page of each mass mailing: ''PREPARED, PUBLISHED, AND MAILED AT TAXPAYER EXPENSE.''

The same rules that apply to regular mail matter regarding biographical information, personal material and material of a partisan political nature also apply to newsletters and mass mailings (see discussion above).

At the request of a Member, officer or employee, the Committee will examine proposed mail matter and render an opinion as to whether the matter is in compliance with the law and Senate rules.

C. Payment for, Preparation, Mailing and Registration of Mass Mail Material

ALL mass mailings must be prepared and mailed by the Senate Service Department.[496] The Service Department will provide the Financial Clerk of the Senate a monthly statement of each Senator's mass mailing costs. The Clerk will use this statement to debit the appropriate cost from the Senator's Personnel and Office Expense Account. As stated above, mass mailings must be done with the frank, but expenses, up to the maximum $50,000, must be paid with official funds provided for that purpose and NOT through the franking allowance. Private funds may not be used to prepare, to print, or to distribute any material for a franked mass mailing. A Senator may use only official Senate funds to purchase paper, to print, or to prepare any mass mailing material which is to be sent out under the frank.[497]

Every calendar quarter, a Senator must register each mass mailing which he or she has sent under the frank.[498] A Senator files with the Secretary of the Senate a copy of the actual mass mailing matter and a statement providing a description of the groups of people to whom the mailing was sent. Two weeks after the close of each quarter, the Secretary of the Senate prepares a statement concerning mass mail costs for each Senatorial office. This statement is then published in the Congressional Record and is also included in the semiannual Report of the Secretary of the Senate.

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[491] Interpretative Ruling No. 40 (Jul. 1, 1977).
[492] Franking Regs., ch. 2, para. 4.
[493] *Id.* ch. 2, para. 15.
[494] *Id.*
[495] *Id.*
[496] Franking Regs., app. at pg. 27.
[497] Senate Rule 40.2.
[498] Senate Rule 40.3.

D. Mailing Lists and the Senate Computer Facilities

The Senate Computer facilities may NOT be used to store, maintain, or otherwise process any lists of names and addresses that identify persons as campaign workers or contributors, as members of a political party, or by any other partisan designation.[499] Senators may input into Senate computer systems and then use voter address records, but only if those lists do not identify individuals as campaign workers, contributors, or members of a political party and also do not contain any other partisan information.[500]

Senate computer facilities also may not be used to ''produce mailing labels for mass mailings, or computer tapes and discs, for use other than in service facilities maintained and operated by the Senate or under contract to the Senate.''[501] Thus, mailing labels and tapes cannot be produced by the Senate facilities for use in any other facility or by any other group or entity, such as a campaign or a charitable organization. For example, a Senator cannot furnish to a political committee a list of names and addresses that are stored in the Senate computer facilities.[502]

Under Rule 38, Senators may not accept a mailing list free of charge from a private, nongovernmental source since this would constitute a prohibited in-kind contribution to an unofficial office account. However, a Senator may use his or her discretionary allowance to purchase such a list.[503] The donation of in-kind services from federal agencies (if such in-kind donations are similarly available to other Members) would not be considered a Rule 38 violation; for example, a Member may accept the donation of a computerized mail list from another Member.[504]

For further information on the use of the Senate Computer facilities, the reader should contact the Senate Rules Committee.

E. Moratorium on the Use of Mass Mailing Prior to A Primary, Caucus, Election, or Nominating Convention

Senate rules and the Franking Statute also restrict franked mass mailings during political campaigns. ''No Member of the Senate may mail any mass mailings as franked mail if such mass mailing is mailed fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) for any national, State, or local office in which such Member is a candidate for election, unless such candidacy is uncontested.''[505] While the moratorium for Senators who are candidates also does not apply to a Senator who does not face any opposition, nevertheless, if there is even the possibility of any opposition, including write-in opposition, the moratorium does apply.[506] This sixty day moratorium also applies ''to the period before any convention which has the authority to nominate a candidate for the Senate.''[507] The 60-day limitation is calculated by excluding the actual day of the election. For example, the last permissible date for delivering a mass mailing to a postal facility before a September 10 primary would be July 12.[508]

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[499] Senate Rule 40.5.
[500] Interpretative Ruling 44.
[501] *Id.*
[502] Interpretative Rulings 318 and 346.
[503] Interpretative Rulings 134 and 160.
[504] Interpretative Rulings 195, 196, 198, 241 and 255.
[505] Franking Regs., ch. 3, para. 7, and app. at pg. 28; and see 39 U.S.C. § 3910(a)(6)(C); IR 366.
[506] Franking Regs., ch. 3, para. 7; and Interpretative Rulings Nos. 152 and 154.
[507] Franking Regs., ch. 3, para. 5.
[508] Interpretative Ruling 149.

The 60-day moratorium does not apply to a committee when such mass mailings are mailed under the frank of the **chairman** and relate to the normal and regular business of the committee.[509]

The moratorium upon mass mailings to home state constituents is not triggered by participation in a presidential primary in another state. However, the 60-day moratorium applies to any mass mailing to a state in which the Senator participates in a primary or election.[510]

Finally, IN ADDITION to the moratorium applicable to Senators who are candidates, no Senator may send mass mailings during the period beginning 60 days before the date of any biennial Federal general election, as set forth under Regulations of the Senate Rules Committee.[511] Town meeting notices, which are not included in the definition of mass mailings, that number in excess of 500 notices per town meeting may not be sent fewer than 60 days immediately before the date of any primary or general election for any federal, state, or local office in which a Member is a candidate for election, unless the candidacy of the Senator in such election is uncontested. (For a discussion of other moratoria, including Internet and e-mail policies, see heading in this chapter).

SENATE LETTERHEAD

A Senator may NOT authorize or allow a non-Senate individual, group, or organization to use the words ''United States Senate'' or ''Official Business,'' or any combination thereof, on any letterhead or envelope.[512] The Senator's loan of ''United States Senate'' letterhead is prohibited no matter what type style or lettering is chosen by the outside organization.[513] Senator's also may not use ''United States Senate'' letterhead and/or ''Official Business'' where ''the correspondence involves a request for a financial contribution or other form of assistance for any campaign or election or reelection to any federal, state, or local office.[514] Additionally, ''thank you'' letters to contributors or campaign workers may not be sent on ''United States Senate'' letterhead.[515] This limitation was intended to preclude a mistaken impression by the recipient that the letter was an official communication from the Senate.''[516]

Official ''United States Senate'' letterhead and unfranked envelopes may be used in connection with officially connected activities of a Member's office.[517]

A Senator may authorize an outside group or organization to use letterhead which states the Senator's name followed by the words, ''United States Senator.''[518] ''United States Senator'' letterhead is, therefore, acceptable for use where a Senator is signing a letter soliciting contributions on behalf of a charity. Such a charitable solicitation is, of course, also acceptable on the letterhead of the charity preparing the solicitation. Such solicitations should not be carried out using the resources of a Senate office. See also the discussion of limitations on charitable solicitations in Chapter 2, ''OTHER PROHIBITED GIFTS FROM LOBBYISTS, LOBBYING FIRMS, AND FOREIGN AGENTS.''

Senators may use Senate letterhead for ''inside mail Dear Colleague'' letters that notify fellow Senators of the fact that a particular charitable solicitation is in progress or to invite fellow Senators to fund-raising events which are hosted off U.S. Capitol facilities. However, given the policy

[509] Franking Regs., app. at pg. 30; and Interpretative Ruling 141.

[510] Interpretative Ruling 313.

[511] Franking Regs. ch. 3, para. 6; and app. at pg. 28.

[512] Interpretative Ruling 408.

[513] Interpretative Ruling 169.

[514] Interpretative Rulings 408 and 370.

[515] *Id.*

[516] Interpretative Ruling 270.

[517] *See* I.R. 442 which permits a Senator to use staff and Senate facilities, including supplies, in support of officially connected activities.

[518] *Id.*; and Interpretative Ruling 408.

behind the Combined Federal Campaign and statutory restrictions, Senators should not become involved in charitable solicitations within U.S. Capitol facilities.[519]

USE OF THE GREAT SEAL AND THE SENATE SEAL

The Seal of the U.S. Senate is in the custody of the Secretary of the Senate and is used only to authenticate official Senate documents. With the written permission of the Secretary, images of the Seal may be reproduced in educational publications for educational purposes. In addition to the official Senate Seal, the Secretary has also authorized an alternative, non-official Senate Seal. This alternative seal, which features an eagle clutching arrows and an olive branch in its talons, surrounded by the words ''United States Senate,'' is commonly used by Senate offices and is often displayed on items sold in the Senate Gift Shop. Even more commonly seen perhaps is the Great Seal of the United States (also depicting an eagle clutching arrows and an olive branch in its claws). Both the Senate Seal and the Great Seal are protected by 18 U.S.C. 713, a criminal statute. That provision is intended to restrict the knowing display of the Senate Seal or the Great Seal or any facsimile thereof in any manner reasonably calculated to convey a false impression of sponsorship or approval by the Government of the United States. While the interpretation of this statute is a matter for the Department of Justice, it appears that in most cases use of the Senate Seal or the Great Seal for normal official Senate business would be appropriate; by contrast, commercial use, personal use or campaign use would be improper.

Although the Committee has not issued an Interpretative Ruling on the use of the Senate Seal (official or alternative) or the Great Seal, many of the practical restrictions on their use are similar to the restrictions on the use of the ''United States Senate'' letterhead. See, for example, the discussion on use of the Senate letterhead above, which states that the letterhead should not be used for campaign or other fundraising purposes.

SENATE FACILITIES:

AUCTION ITEMS, MORATORIA, THE INTERNET, AND USE OF OFFICIAL FUNDS

Auction Items

A Member may donate for auction an item purchased on his or her official stationery account if the item is of nominal value, was not intentionally procured for the purpose of donation, and the donee group is either non-profit or a non-political organization. See IR 351. [Compare: offering flags flown over the Capitol or Senate Gallery passes in return for campaign contributions may reflect discredit on the Senate, and making campaign solicitations offering either special treatment or special access to the Senator is discouraged. See IR 427.]

Often, Members are asked by constituent charity (i.e., 501(c)(3)) groups to donate items for charitable auction; such items typically involve a lunch or dinner with a Member or a tour of the Capitol to be conducted by a staffer. The Committee has previously ruled in Interpretative Ruling 438 that the prohibition on soliciting anything of value contained in 5 U.S.C. 7353 does not prohibit charitable solicitations. Thus, in clarification of its policy on auction items, the Committee notes that items such as visits to the Senate Dining Room or tours of the Capitol could be offered to a charity for auction. Within the discretion of the Member, no rule or law prohibits the offering of such items for charitable auction with or without the presence of a Member or staffer. As in all such matters, absent conduct that would reflect discredit upon the Senate, the Committee will not interfere with the judgment of the Member.

Pursuant to S. Res. 294, 96th Congress, as amended by S. Res. 176, 104th Congress, payments or reimbursements from Senate funds shall not be made for donation or gifts of any type, except gifts of flags which have been flown over the Capitol, copies of the book ''We, the People'',

[519] Interpretative Ruling 365.

and copies of the calendar ''We the People'' published by the United States Capitol Historical Society. (*See also*, Paragraph 79.27 of the Standing Orders of the Senate). The legislative history of S. Res. 294 limits the groups to which a gift of a flag may be made to public organizations only, such as churches, schools, and patriotic service groups.

Moratoria

In addition to the 60-day pre-election moratoria on the use of the **mailing frank** (for **mass mailings and town meeting notices**), on **''lame duck'' travel**, and on the payment of **per diem expenses** for home state travel before an election, which have previously been discussed, other Senate facilities are also subject to pre-election moratoria on their usage. The Rules Committee's policy on such moratoria may be reviewed in the January 6, 2000 Rules Committee Notice (check with the Rules Committee for later versions) regarding Senate allowances and facilities in Appendix L of this Manual. An ''election'' for purposes of the 60 day pre-election moratoria includes any nominating convention or caucus, as well as any regular, special, or runoff election.

The **Senate and House radio and television studios** are subject to a pre-election moratorium on use by a Senator or an individual who is either a candidate for nomination for election or a candidate for election to the Senate. The Senate and House radio and television studios may not be used less than sixty days immediately before the date of any primary or general election (whether regular, special, or runoff) in which that Senator is a candidate for public office or that individual is a candidate for Senator, unless the candidacy of the Senator in such election is uncontested [See Rule 40.6]. This prohibition does not apply if the facilities are to be used at the request of, and at the expense of, a licensed broadcast organization or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954. Moreover, facilities of the Republican Conference and the Democratic Policy Committee may not be used during the pre-election moratorium period, except to produce only bona fide ''electronic news releases'' for distribution to radio and television stations in the home state.

Also, during the 60 day period immediately preceding the date of any election (whether regular, special or runoff) for any national, state, or local office in which the Senator is a candidate, no Member may place, update or transmit information using a **Senate Internet Server** (FTP Server, Gopher, and World Wide Web), unless the candidacy of the Senator in such election is uncontested. A Senate office that receives over 500 e-mail inquiries on a topic may respond in writing to such inquires without the mailing being treated as a mass mailing, so long as the correspondence complies with the direct response requirements of the franking statute. As to whether a Member's response to an individual's request to be added to the Member's e-mail address list for periodic updates will qualify as direct response e-mail, contact the Senate Rules Committee. For this and other possible use restrictions in the pre-election periods, see the February 9, 1998 Rules Committee statement reprinted in the Appendices in this Manual.

Finally, **mobile office rental** payments and operating costs may not be paid for use during such 60 day pre-election period if the Senator is a candidate for public office, unless his or her candidacy is uncontested. See the Rules Committee Internet statement of February 9, 1998 in the Appendices.

The Internet

The Rules Committee has issued an Internet policy to provide guidance to Senate offices concerning Senate Member, officer, and employee responsibilities in using Internet services provided by the Senate. The specifics of the July 22, 1996 policy and a November 14, 1996 update are set forth in Appendix K in this Manual. Briefly, Senate Internet services may only be used for

official purposes. The use of the Senate Internet for personal, promotional, commercial, or partisan political purposes is prohibited. Thus, a Member's Senate web site should not include a link to his or her (or any) campaign web site. In addition, the Committee has advised that a Member's principal campaign committee web site should not include a link to his or her Senate office web site.

As noted in the moratoria section above, a Senate office that receives over 500 e-mail inquiries on a topic may respond in writing to such inquires without the mailing being treated as a mass mailing, so long as the correspondence complies with the direct response requirements of the franking statute. Also, where a Senate office receives an unsolicited e-mail which asks a campaign related question, the recommended approach to minimize involvement of official resources is to: a) respond to the e-mail by informing the sender that the Senate office is not related to the Senator's campaign and that any campaign communication may be sent to the campaign's e-mail address or phone number, or b) forward the misdirected e-mail to the campaign.

The growth of e-mail as a means of communicating with constitutents continues to raise unique questions about application of the Senate's Code of Official Conduct (Senate Rules 34 thru 43) to this method of transmitting, receiving, and responding to information. The Ethics Committee has issued two recent rulings in this area. In a case involving an internet service provider which provides extensive news content free to any internet user accessing its server, the Committee concluded that such a provider should be treated the same as other news publishers (i.e. print, television, radio, etc.), in that, a Senator's favorable response to such a provider's request that the Senator author an ''op-ed'' piece for publication on its site would be consistent with the Code of Official Conduct (in particular, Rule 38). In another case, the Committee decided that the Senate Code of Conduct (again, Rule 38 in particular) did not prohibit a Senator from accepting petitions from the public (and a related demographic analysis of petitioners) through an internet company which provides a free contact point, available to any internet user accessing its server, for transmitting petitions to public officials; nor does the Code prohibit the Senator from responding to the petitioners either directly or through the point of contact server used by the petitioner.

Use of Official Funds

The following excerpt from the Congressional Research Service may provide useful guidance on the issue of the use of federal funds and facilities: [See also page 189].

> There is no overall, express restriction in federal statutory law concerning the use of appropriated funds for partisan ''political purposes,'' and Congress may appropriate, and has appropriated, federal funds for use in political campaigns, such as in the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act. However, a general appropriations principle, codified in federal law at 31 U.S.C. § 1301(a), states that monies appropriated by Congress may only be spent for the purposes for which they were appropriated. This provision bars the misapplication or misuse of federal funds by federal agency personnel. That is, funds appropriated by Congress for an agency or a federal office for official purposes, may not be diverted and used for partisan political campaigns. As the General Accounting Office explains, ''Generally speaking, funds appropriated to carry out a particular program would not be available for political purposes, *i.e.*, for a propaganda effort designed to aid a political party or candidate. If for no other reason, such an expenditure would be improper as a use of funds for other than their intended purpose in violation of 31 U.S.C. § 1301(a).'' [GAO. *Principles of Federal Appropriations Law*, at 4–178 (1992)]
>
> Federal agencies and departments have discretion to expend federal funds to promote and to further the legitimate, official governmental objectives of the federal agency, department, or entity and the programs and policies within their jurisdiction. See *Principles of Federal Appropriations Law*, *supra* at 4–14 to 4–20. Federal monies may not be expended merely for any purpose, however, and the expenditure must ''contribute to accomplishing the purpose of the appropriation the agency wishes to charge.'' lat. at 4–

> 16. The Comptroller General has thus looked to activities to determine if they ''can be said to be so completely devoid of any connection with official functions or so political in nature that [the expenditures] are not in furtherance of purposes for which Government funds were appropriated.'' Decision of the Comptroller General, B–147578, November 8, 1962, at p. 5; see also B–144323, November 4, 1960, *Principles of Federal Appropriations Law, supra* at 4–178. Where there has been a ''determination'' made by the President, cabinet officer, agency head or assistant that certain activities ''are in connection with official duties,'' the Comptroller General would look merely to see if ''there is a reasonable basis for such a determination.'' Id. 5. It may be noted that the issue of whether an activity is ''official'' or ''political'' has arisen from time to time with respect to travel by the President and Vice President, and that guidance given by the Department of Justice concerning the expenditure of funds for travel, including the reimbursement of the Government from campaign funds for ''political'' travel, stated that ''funds appropriated for the official functioning of the offices of the President and the Vice President'' may be used ''only if the [activity] is *reasonably related* to an official purpose'' [*See* 6 Op. O.L.C. 214 (1982)].

See Campaign Fund-Raising Controversy and Investigation, Kevin Coleman, Joseph Cantor, Jack Maskell, Marie Morris and L. Paige Whitaker, Congressional Research Service, The Library of Congress (August 26, 1998, Order Code IB97045).

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Chapter 8

CONSTITUENT SERVICE

Rule 43

INTRODUCTION

The First Amendment of the U.S. Constitution guarantees the ''right of the people . . . to petition the government for a redress of grievances.'' Responding to inquiries of petitioners and assisting them before executive or independent government officials and agencies is an appropriate exercise of the representational function of each Member of Congress, as well as an important function of congressional oversight. In 1992, following the Committee's investigation in the Keating matter, the Senate adopted S. Res. 273, which created Senate Rule 43. Rule 43 incorporates a standard that prohibits Members from basing the decision to assist a petitioner before Federal agencies and officials on whether the petitioner has contributed to the Member's campaign or causes. The Rule also provides general guidance to Members and staff on permissible contacts with government officials on behalf of petitioners. This chapter sets forth the language of Rule 43 and reprints the Committee's report from the Keating matter on the issue of federal agency intervention.

SENATE RULE 43

On July 2, 1992, the Senate adopted S. Res. 273, which incorporates, as part of the Code of Official Conduct, Senate Rule 43, governing representative functions of Members of the Senate with respect to communications from petitioners.

Senate Rule 43 states, in part, that: ''in responding to petitions for assistance, a Member of the Senate, acting directly or through employees, has the right to assist petitioners before executive and independent government officials and agencies.''

Furthermore, Rule 43 provides that:

''at the request of a petitioner, a Member of the Senate, or a Senate employee, may communicate with an executive or independent government official or agency on any matter to—

(a) request information or a status report;

(b) urge prompt consideration;

(c) arrange for interviews or appointments;

(d) express judgments;

(e) call for reconsideration of an administrative response which the Member believes is not reasonably supported by statutes, regulations or considerations of equity or public policy; or

(f) perform any other service of a similar nature consistent with the provisions of this rule''.

Rule 43 also provides that:

''The decision to provide assistance to petitioners may not be made on the basis of contributions or services, or promises of contributions or services, to the Member's political campaigns or to other organizations in which the Member has a political, personal, or financial interest.''

> ''A Member shall make a reasonable effort to assure that representations made in the Member's name by any Senate employee are accurate and conform to the Member's instructions and to this rule.''
>
> ''Nothing in this rule shall be construed to limit the authority of Members, and Senate employees, to perform legislative, including committee, responsibilities.''

Rule 43 is intended as general guidance on permissible contacts with Federal agencies and officials on behalf of petitioners, who may or may not be constituents. The central provision of the rule prohibits Members from basing the decision to assist a petitioner before a federal agency or official on whether the petitioner has contributed to the Member's campaign or causes. Rule 43 does not, and was not intended to, govern the entire range of issues that might arise with respect to interventions with other government agencies. Because each situation is unique on its facts, each Member should review a proposed intervention in its entirety.

The Committee has recommended that prior to intervention with a government agency, a Member consider both the merits of the constituent's case, as well as the kind of agency involved and the nature of the agency proceedings. A review of the case might include consideration of whether the Senator's office would perform the same service for any constituent similarly situated; the extent to which the proposed action or pattern of action deviates from normal office practice; and, if the Senator or staff member knows that an individual is a contributor, the history of donations by a contributor and the proximity of money and action, i.e. how close in time the Senator's official action would be to his or her knowledge of or receipt of contribution(s).

In reviewing the type and nature of agency proceeding, the Committee has recommended that a Member consider whether the agency is performing a quasi-judicial, adjudicative, or enforcement function. Such formal agency adjudications and rulemaking proceedings require that the agency's decision be based only upon a record developed during a trial-like hearing. Ex parte communications (oral or written communications made without notice and off the public record) are generally prohibited during formal adjudication periods and, typically, are placed on the public record. Absent a formal adjudicative proceeding, a Senate office that seeks to communicate with a federal agency may find it useful to contact the agency congressional liaison or similar functionary to determine with respect to the matter in question whether the agency is operating under any internal restrictions on outside communications.

The general advice of the Ethics Committee concerning pending court actions is that Senate offices should refrain from intervening in such legal actions (unless the office becomes a party to the suit, or seeks leave of court to intervene as *amicus curiae*) until the matter has reached a resolution in the courts. The principle behind such advice is that the judicial system is the appropriate forum for the resolution of legal disputes and, therefore, the system should be allowed to function without interference from outside sources. See, for example, the Committee's Interpretative Ruling 237 (March 21, 1979) in Appendix A. Because the rules governing judicial proceedings vary widely from jurisdiction to jurisdiction, and from case to case, and because the nature of an intervention with a court cannot be known in advance, a final determination as to the propriety of a particular intervention with a court in a legal matter will depend upon the totality of the circumstances in a given case.

Notwithstanding these limitations respecting court interventions, the Committee has ruled that communications with an agency with respect to a matter which may be the subject of litigation in court is, nevertheless, generally permitted, where the communication is with the agency and not directed at the court, where the agency is not engaged in an on-going enforcement, investigative, or other quasi-judicial proceeding with respect to the matter, and where the communication is based upon public policy considerations and is otherwise consistent with Rule 43.

****

At the conclusion of the Committee's investigation in the Keating matter in 1991, the Committee issued a report which articulated the standards governing the conduct of Members and staff with respect to federal agency intervention.[520] The following is a pertinent excerpt from the Committee report, which was provided at the time to give interim advice pending issuance of written guidance by the Senate. Rule 43 has subsequently been adopted by the Senate on the subject of intervention with Federal executive agencies. Although the Senate Rule now provides written guidance from the Senate on the subject, the Committee's discussion of interventions (which follows) is consistent with Senate Rule 43 and continues to provide useful guidance in making decisions on the appropriateness of planned interventions.

****

EXCERPT FROM THE COMMITTEE'S 1991 KEATING REPORT CONCERNING INTERVENTIONS WITH ADMINISTRATIVE AGENCIES

1. The Necessity of Interventions

This Committee is not the first to address the question of limits on interventions with administrative agencies. In his 1954 book, Ethics In Government, Senator Paul Douglas noted that many believed that:

> ''. . . the function of the legislators is to make the laws and that of the public administrators is to administer them, and that consequently neither should interfere with the work of the other.'' [521]
>
> Senator Douglas rejected such an analysis. He noted that:
>
> ''the truth of the matter is that both civil servants and Public administrators are all too human.'' They both make mistakes, are frequently arbitrary, and are often imperfectly acquainted with the facts. They may both suffer from an undue power complex. Administrators also have a frequent weakness of ignoring the conditions and needs of the men and women who are involved in their rulings and of treating them as ''cases'' rather than as people. Furthermore, some are indolent. Red tape is multiplied while papers and the attendant fate of individuals get lost, ignored, and delayed. . . For these reasons, the intervention of legislators corrects injustices in a large number of cases and also helps to check tendencies of administrators towards personal and class aggrandizement . . .
>
> ''The truth is that legislation and administration should not be kept in air-tight and separate compartments. In order that each group may perform its own job adequately, it should, within limits, interest itself in the work of the other. There is, then, a sound ethical basis for legislators to represent the interests of constituents and other citizens in their dealings with administrative officials and bodies.'' [522]

Similarly, the House of Representatives' Select Committee on Standards of Official Conduct also recognizes the legitimacy of congressional intervention with administrative agencies in its Advisory Opinion 1, it noted that:

> the first Article in our Bill of Rights provides that ''Congress shall make no law . . . abridging the . . . right of the people . . . to petition the government for a redress of grievances.'' The exercise of this Right involves not only petition by groups of citizens with common objectives, but increasingly by individuals with problems or complaints involving their personal relationships with the Federal Government.

The Committee also noted that increasingly individuals, in petitioning the government, have turned to their most ''proximate connection'' to the government, their elected representatives. Therefore, it has concluded that:

> it is logical and proper that the petitioner seek the assistance of his Congressman for an early and equitable resolution of his problem, and a Member of the House of Rep-

[520] Senate Report 102–223.
[521] P. Douglas, Ethics in Government, 85 (Cambridge: Harvard University Press, 1952), (''Ethics in Government'').
[522] Id. at 86–87.

resentatives, either on his own initiative or at the request of a petitioner, may properly communicate with an Executive or Independent Agency on any matter to:

–request information or a status report;

–urge prompt consideration;

–arrange for interviews or appointments; express judgments;

–call for reconsideration of an administrative response which he believes is not supported by established law, Federal Regulation or legislative intent; perform any other service of a similar nature in this area compatible with the criteria hereinafter expressed in this Advisory Opinion.'' [523]

2. Limitations on Interventions

There are ethical limits to a Member's intervention [524] in agency matters which exist regardless of whether the individual on whose behalf the Member intervenes is a contributor, or for that matter, a noncontributor. In reviewing these limits, the Committee has drawn from statutory law and case law. The Committee has also reviewed generally accepted standards of congressional conduct and other sources. No one of these other sources is controlling, nor is any one of them adopted by reference in its entirety. The Committee notes that neither the Senate, nor the House, has to date, disciplined a Member solely because of that Member's intervention with an executive agency.

a. Statutory and Judicial Limitations on Congressional Intervention

The extent of the statutory and judicial limitations imposed on congressional intervention depends on the kind of administrative proceeding involved, with the most stringent limitations placed on congressional contacts involving pending agency adjudications. Adjudication is the resolution of factual and legal disputes in particular situations involving existing statutes or regulations. [525] In contrast, rulemaking (which may be formal or informal) is the formulation, amending, or repealing of prospective and generally applicable rules and standards. [526] In addition to adjudication and rulemaking, many agencies engage in a myriad of procedures which are neither adjudicatory nor rulemaking.

(i) Limitations on Ex Parte Communication

As part of the Government in the Sunshine Act, [527] Congress enacted Section 557(d)(1)(A) of Title 5, which prohibits ex parte communications by an interested party, which may include Members of Congress, [528] with an agency employee reasonably expected to be involved in decision-making regarding the merits of a proceeding. [529] Ex parte communications are oral or written communications made without proper notice to all parties and which are not on the public record. This prohibition against ex parte contacts applies only to formal agency adjudications and rulemaking proceedings which are adjudicative in nature (so-called formal on-the-record rulemaking), both of which require that the agency's decision be based only upon a record developed during

[523] House Committee on Standards of Official Conduct Advisory Opinion No. 1 (1970) (''House Advisory Opinion No. 1), reprinted in House Committee on Standards of Official Conduct, 100th Cong., 1st Sess., Ethical Manual for Members, Officers, and Employees of the U.S. House of Representatives 175–77 (Comm. Print 1987) (''House Manual'').

[524] References to intervention by a member encompass intervention by the Member's staff.

[525] *See* United States v. Florida E. Coast Ry. Co., 410 U.S. 224, 244–45 (1973).

[526] *Id.*; see also 5 U.S.C.A. § 551 (4)-(7) (West 1977).

[527] Pub. L. No. 94–409, 90 Stat. 1241 (1976).

[528] *See* H.R. Rep. No. 880, 94th Cong., 2d Sess. pt. 1, at 19–20 (1976); S. Rep. No. 354, 94th Cong., 2d Sess. 36 (1975), both reprinted in Senate Committee on Government Operations and House Committee on Government Operations, 94th Cong., 2d Sess. Government in the Sunshine Act – S. 5, Source Book: Legislative History, Texts, and Other Documents (Joint Comm. Print 1976).

[529] *Id.*

a trial-like hearing.[530] This provision was intended to ensure that decisions required by law to be made solely on the basis of a public record will not be influenced by secret discussions that some of the parties to the proceeding, or the public, do not know about.[531]

Status inquiries are considered an exception to the prohibition on ex parte communications.[532] The Governmental Affairs Committee report accompanying the Sunshine Act, however, stated that only requests for status reports that do not affect the way a case is decided are exempted from the statute.[533] The Committee noted that some requests for status reports could be subtle attempts to influence the outcome of agency proceedings and that agencies should treat such status inquiries as ex parte when the purpose is not clear.[534]

An agency employee who receives an ex parte communication is required to include it in the public record of the proceeding.[535] In addition, the presiding officer of a proceeding in which an ex parte communication has been made in knowing violation of the statute may dismiss the claim or otherwise decide the matter adversely to the party involved in the improper communication.[536] A court that finds that agency action did not comply with the procedures established by law shall set aside that action.[537] The various FHLBB proceedings at issue in this case were neither formal agency adjudications nor formal rulemaking, and thus were not subject to the ban on ex parte communications.

(ii) Interference with Agency Proceedings

Courts also have set aside agency action when congressional intervention into an ongoing adjudication created the appearance of partiality. In Pillsbury Co. v. Federal Trade Commission,[538] the court found that a hearing held by a Senate subcommittee regarding a particular Federal Trade Commission (''FTC'') adjudication then underway violated the plaintiff's procedural due process rights. The questioning of FTC officials about the adjudication by the Senate panel was found to violate the right to the ''appearance of impartiality'' due private litigants in agency adjudications.[539] Under Pillsbury, therefore, congressional intervention in agency adjudications which creates an appearance of partiality may result in a court nullifying the agency's resolution of the case.

A different standard has been applied to congressional interventions if the matter under consideration involves rulemaking which is more legislative than judicial in character.[540] In the context of actions which are not adjudicatory or quasi adjudicatory, an agency determination will be voided only if the congressional contacts resulted in the decision-maker taking into consideration factors ''not made relevant by Congress in the applicable statute.'' [541] For example, in one case, a threat by a Member of Congress to cut funding to an agency unless a particular result was achieved in a rulemaking was deemed ''extraneous'' and sufficient to set aside the agency action.[542] In contrast, discussions about the merits of a decision would be permissible. No evidence

[530] H.R. Rep. No. 880, pt. 1, at 19 and pt. 2, at 18; S. Rep. No. 354 at 3; see also *United States Steelworkers of Am. v. Marshall*, 647 F.2d 1189, 1213 (D.C. Cir. 1980), cert. denied sub nom. *Lead Indus. Assoc. Inc. v. Donovan*, 453 U.S. 913 (1981)

[531] S. Rep. No. 354 at 1: see also H.R. Rep. No. 880, pt. 2, at 18.

[532] 5 U.S.C. § 551(14)

[533] H.R. Rep. No. 880, pt. 1, at 20–21.

[534] Id. at 20–21.

[535] 5 U.S.C. § 557(d)(1)(C).

[536] 5 U.S.C. § 557(d)(1)(D).

[537] 5 U.S.C. § 706(2)(D). *See also Raz v. Inland Navig. Co., v. Interstate Commerce Comm'n*, 625 F.2d 258 (9th Cir. 1980)

[538] 354 F.2d 952 (5th Cir. 1956).

[539] *Id.* at 964.

[540] *See* Sierra Club v. Costle, 657 F.2d 298, 400–01 (D.C. Cir. 1981).

[541] *Id.* at 409.

[542] *D.C. Fed'n of Civic Ass'ns v. Volpe*, 459 F.2d 1231, 1246 (D.C. Cir. 1971), cert. denied, 405 U.S. 1030 (1972); *see also Peter Kiewit Sons' Co. v. U.S. Army Corps of Eng'rs*, 714 F.2d 163, 169 (D.C. Cir. 1983).

was presented during the Committee's hearings into this matter indicating that any of the Senators in this case threatened the agency officials or suggested that those officials should base their decision on anything other than the merits of Lincoln's case.

In cases of agency investigations, the courts have been extremely hesitant to interfere on the basis that there were congressional contacts. In SEC v. Wheeling-Pittsburgh Steel Corp., [543] the court refused to enforce a subpoena issued by the SEC in an investigation undertaken at the request of a Senator. But the court noted that the fact that the SEC commenced these proceedings as a result of the importunings of a Senator, even if the importunings were made with malice on his part, was not a sufficient basis to deny enforcement of the subpoena. In order to quash the subpoena, the plaintiff had to show that the SEC issued it without an objective determination by the Commission and only because of political pressure. [544]

Several courts have subsequently applied the Wheeling-Pittsburgh rationale. In each case, the defendant company claimed, inter alia, that a Member of Congress had exerted improper influence on the agency official making the decision to issue the subpoena. In each instance, the courts rejected the claims. [545] In United States v. Armada Petroleum Corp., [546] for example, the court acknowledged Wheeling-Pittsburgh's holding that an agency may not order an investigation ''because of political pressure to do so,'' but found that where congressional involvement is directed at accelerating the disposition and enforcement of the pertinent regulations, it has been held that such legislative conduct does not affect the fairness of the agency's proceedings and does not warrant setting aside its order. [547]

b. Congressional Standards of Intervention with Federal Agencies.

Nearly 40 years ago, Senator Paul Douglas outlined standards of conduct for Members to observe when intervening with the executive branch. He stated that Members have two ''moral obligations'' in this regard: (1) to pursue cases only on their merits, and (2) to ensure that they do not intervene in a manner and to a degree that damages the administrative process. [548]

With regard to merit-based decisions, Senator Douglas noted that by limiting interventions to meritorious cases, the fact of a Senator's intervention is unlikely to be deemed improper. [549] The Committee believes the duty of a Member to determine the merits of a case is related to the level of action he or she is going to take. For example, a routine status inquiry would not require the same level of familiarity with the merits of a case as would proposing a possible solution. The Committee also appreciates the fact that in the normal course of daily events a Senator's staff, without the Senator's knowledge or involvement, provides many routine constituent services which by their nature require little or no inquiry into the merits. Furthermore, the fact that a Member may turn out to be wrong as to the merits of a case does not make his or her intervention unethical. Such mistakes of judgment are between a Senator and his or her constituents.

The manner and degree of intervention also may become improper, according to Senator Douglas, when a legislator's conduct implies that a particular decision is not the administrator's to make, but has been mandated by the Member. [550]

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[543] 648 F.2d 118 (3d Cir. 1981).

[544] *Id.* at 126 and 130. *United States v. Corless*, 614 F. 2d 914 (3rd Cir. 1980).

[545] *United States v. RFB Petroleum, Inc.*, 703 F.2d 528,532 (C.A. Em. App. 1983); *United States v. Phoenix Petroleum*, 571 F. Supp. 16 20 (S.D. Tex. 1982); *United States v. Armada Petroleum Corp.*, 562 F. Supp. 43, 50–51 (S.D. Tex. 1982). *See also, United States v. Merit Petroleum, Inc.*, 731 F.2d 901,904 (C.A. Em. App. 1984)

[546] 562 F.Supp. 43, 50–51 (S.D. Tex. 1982)

[547] GULF OIL CORP. V. FPC, 563-F. 2d 588, 610 (3rd Cir. 1977), cert. denied, 434 U.S. 1062, 98 S. Ct 1235, 55 L.Ed. 2d 762 (1978).

[548] Subcommittee of the Senate Committee on Labor and Public Welfare, 82nd Cong., 1st Sess., Ethical Standards in Government, 29–30 (Comm. Print 1951) (''Douglas Report'').

[549] *Id.* at 29.

[550] Ethics in Government at 90.

The writings of Senator Douglas helped shape the guidelines applicable to Members of the House of Representatives in their dealings with administrators. Advisory Opinion No. 1 states that ''[d]irect or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representational role.'' [551]

Because the Senate has not had written guidelines in this area as does the House, the Committee recommended on February 27, 1991, that the Senate Rules Committee or a bi-partisan Senate Task Force develop written standards governing Senators' intervention with the executive branch on behalf of individuals. On April 16, 1991, the leadership of the Senate appointed six Members to undertake this task. Until such time as the Task Force has finished its work and the Senate has adopted specific standards respecting contact or intervention with executive or independent regulatory agencies, all Senators are encouraged to use House Advisory Opinion No. 1 as a source of guidance for their actions. [NOTE: As noted earlier in this Chapter, the work of the Task Force was completed, and the Senate has now adopted Senate Rule 43.]

3. Intervention on Behalf of Contributors

As the Keating case has demonstrated, special issues of ethics and propriety are raised when Members intervene in a particular matter before a federal agency on behalf of an individual who is a contributor to or fundraiser for their campaigns or other causes.

Under our current system of campaign finance, candidates are required to rely upon numerous individuals and organizations to contribute or raise substantial sums of money, and it is likely that some of those individuals will at some point request assistance from their elected representatives. In light of this systemic condition, Members justifiably ask for guidance on how to avoid fundraising or constituent service practices that are improper, or that appear to be improper. Senator Douglas' advice on this problem was:

> It is probably not wrong for the campaign managers of a legislator before an election to request contributions from those for whom the legislator has done appreciable favors, but this should never be presented as a payment for the services rendered. Moreover, the possibility of such a contribution should never be suggested by the legislator or his staff at the time the favor is done. Furthermore, a decent interval of time should be allowed to lapse so that neither party will feel that there is a close connection between the two acts. Finally, not the slightest pressure should be put upon the recipients of the favors in regard to the campaign. [552]

The Committee wishes to make clear that constituent service, even for contributors, is a legitimate and appropriate senatorial function. There are limits, however, to what constitutes appropriate conduct in this regard.

The cardinal principle governing Senators' conduct in this area is that a Senator and a Senator's office should make decisions about whether to intervene with the executive branch or independent agencies on behalf of an individual without regard to whether the individual has contributed, or promised to contribute, to the Senator's campaigns or other causes in which he or she has a financial, political or personal interest. [553] Senators should make reasonable efforts to ensure that they and their staff members, including campaign staff, conduct themselves in accordance with this principle.

This principle is consistent with Senate Resolution 266, which admonishes Members that ''[a] public office is a public trust'' and states that each Senator ''has been entrusted with public power

[551] House Advisory Opinion No. 1.
[552] Ethics in Government at 89–90.
[553] *See* House Advisory Opinion No. 1.

by the people; that the officer holds this power in trust to be used only for their benefit and never for the benefit of himself or a few.'' [554]

4. The Appearances Created by Conduct

The American people rightfully expect that Members of the Senate will use the power entrusted to them by the people of their states, and by virtue of the office of trust which they hold, only for the public good and never for their own benefit or the benefit of a few. [555] Citizens' respect for, and thus adherence to, the law will decline if they lose respect for their representatives in government or believe that the governmental process reflects the desires of special interests rather than the public good. [556] As stated in the report of the Special House Committee investigating the Credit Mobilier scandal more than 100 years ago:

> No member of Congress ought to place himself in circumstances of suspicion so that any discredit of the body shall arise on his account. It is of the highest importance that the national legislature should be free of all taint of corruption, and it is of almost equal necessity that the people should feel confident that it is so. [557]

Because Senators occupy a position of public trust, every Senator always must endeavor to avoid the appearance that the Senator, the Senate, or the governmental process may be influenced by campaign contributions or other benefits provided by those with significant legislative or governmental interests. Nonetheless, if an individual or organization has contributed to a Senator's campaigns or causes, but has a case which the Senator reasonably believes he or she is obliged to press because it is in the public interest or the cause of justice or equity to do so, then the Senator's obligation is to pursue that case. In such instances, the Senator must be mindful of the appearance that may be created and take special care to try to prevent harm to the public's trust in the Senator and the Senate. This does not mean, however, that a Member or employee is required to determine if one is a contributor before providing assistance.

House Advisory Opinion No. 1 also recognizes:

> Caution should always be exercised to avoid the appearance that solicitations of campaign contributions or the receipt of gifts or entertainment from constituents are connected in any way, as a quid pro quo, with a legislator's intervention in the administrative process on behalf of a constituent. [558]

During the course of the hearings in the Keating matter, several lawmakers, Senate employees and former public officials described the practices they followed in order to ensure that their fundraising activities were above reproach. The Committee notes that a number of Senators have instituted practices to strictly separate fundraising from substantive legislative or constituent casework activities.

The Committee does not endorse or require any specific procedures and does not seek to elevate form over substance. There are a variety of ways a Member may avoid engaging in improper conduct and minimize the possibility that his or her conduct will create an appearance of impropriety.

5. Guidance for Future Conduct

During the time that the Committee had the Keating matter before it, the Committee had the opportunity to review the sources discussed above and to consider at length the issue of the propriety of interventions with a federal agency on behalf of an individual who has made or raised

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[554] S. Res. 266, 90th Cong. 2d Sess. (1968). The Committee's sources of subject matter jurisdiction include S. Res. 266. Senate Select Committee on Ethics, 103d Cong., Rules of Procedure, Part III (rev. 1993) (S. Prt. No. 103–13) (''Rules of Procedure'').

[555] *Id.*

[556] H.R. Rep. No. 77, 42nd Cong., 3d Sess. X (1873), reprinted in Cong. Globe, 42nd Cong., 3d Sess. 1462–66 (1873).

[557] *Id.* at 170.

[558] House Advisory Opinion No. 1 at 170.

significant political contributions. Based on this experience, the Committee suggests that until written guidelines have been adopted, a Member who has any reasonable doubt about whether to proceed in a particular matter consider the following issues:

> The merits of the constituent's case.
>
> The continuing viability of the constituent's claim. If the constituent's claim initially appeared to have merit, has the Senator acted despite facts or circumstances that later undermined the merits of that claim?
>
> The kind of agency involved and the nature of its proceedings. Is the agency performing in a quasi-judicial, adjudicative or enforcement function?

If the Senator or staff member knows that an individual is a contributor, the following issues should also be considered. (If the Senator or staff member does not know if an individual is a contributor, he or she is not required or encouraged to find out. Most Senate staff members are not provided with information regarding contributions and are unaware of whether an individual seeking assistance is a contributor.)

> The amount of money contributed. Has the contributor given or raised more than an average contribution?
>
> The history of donations by a contributor. Has the constituent made contributions to the Senator previously?
>
> The nature and degree of the action taken by the Senator. To what extent does the action or pattern of action deviate from that Senator's normal conduct?
>
> The proximity of money and action. How close in time is the Senator's action to his or her knowledge of or receipt of the contribution(s)?

****

As noted at its beginning, the above is a pertinent excerpt from the Committee's report issued at the conclusion of the Keating matter in 1991. At that time, it was provided as interim advice pending issuance of written guidance by the Senate. Rule 43 has subsequently been adopted by the Senate on the subject of intervention with Federal executive agencies. Although the Senate Rule now provides written guidance from the Senate on the subject of interventions, the Committee's discussion (set out immediately above) is consistent with Senate Rule 43, and continues to be a useful aid in making decisions on the appropriateness of planned interventions.

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HATCH ACT: LETTERS OF RECOMMENDATION

In 1993, Congress passed the Hatch Act Reform Amendments, which prohibited Members of Congress and congressional employees from making certain recommendations or statements regarding personnel actions for non-political federal employment. The previous law had simply prohibited executive branch officials making personnel decisions from receiving or considering recommendations from Members of Congress, except as they related to the character or residence of the individual.

The 104th Congress, in a provision included in the Legislative Branch Appropriations Act for fiscal year 1997, has reinstated the old law, thus removing the prohibitions against Members of Congress or staff making recommendations regarding executive branch personnel decisions. The law (Title 5 United States Code Section 3303) as of October 16, 1996 now reads as it did before the 1993 amendments:

''An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant.''

The 104th Congress has also amended Title 5 U.S.C. Section 2302(b)(2) to provide that employees in the Executive Branch may consider any recommendation or statement, oral or written,

with respect to any individual who requests or is under consideration for any personnel action [if] such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

> ''(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
>
> (B) an evaluation of the character, loyalty, or suitability of such individual.''

Therefore, it appears that Executive Branch employees may consider a statement made by a Member in connection with a personnel action, if it is based on the Member's personal knowledge or records, as it pertains to work performance, ability, aptitude, character, loyalty, suitability, or general qualifications of the person under consideration.

Thus, it appears that Members are now free to write a letter on behalf of or relating to a person who is applying or under consideration for a position, or who is up for promotion in the Executive Branch, and to include any information bearing on the suitability of the person for the position. It also appears that Executive Branch employees may take such a letter into consideration only if it is based on the Member's personal knowledge or records.

In contrast, restrictions and prohibitions substantially identical to those in the 1993 Hatch Act Reform Amendments continue to prohibit recommendations made in connection with personnel decisions by the United States Postal Service. (See Title 39 United States Code Section 1002.)

MAY 1,1997

LETTERS OF RECOMMENDATION: OPM GUIDANCE

Dear Colleague:

You may find useful the enclosed guidance from the Office of Personnel Management (OPM) on the recent amendment to the Hatch Act that removed the prohibitions against Members of Congress or staff making recommendations regarding executive branch personnel decisions for competitive service positions. The OPM guidelines appear generally consistent with the Committee's earlier advice on the amendment contained in an October 16, 1996 dear colleague letter. As a result of the amendment, which reinstates prior law, Members are now free to write a letter on behalf of or relating to a person who is applying or under consideration for a position, or who is up for promotion in the Executive Branch, and may include any information bearing on the suitability of the person for the position. However, Executive Branch employees may only be able to take such a letter (whether in the form of a recommendation or a statement) into consideration if it is based on the Member's personal knowledge or records, or if the recommendation is limited to the applicant's character and residence.

We hope that this information is helpful.

Sincerely,

Bob Smith
Chairman

Harry Reid
Vice Chairman

Honorable Robert Smith
Chairman
Committee on Ethics
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Legislative Branch Appropriation Act for fiscal year 1997 (Public Law 104–197) amended section 3303 of title 5, United States Code, by reinstating prior law relating to Congressional recommendations on certain personnel decisions in the Executive Branch. Public Law 104–197 also amended a related provision, 5 U.S.C. § 2302(b)(2), by reinstating prior law concerning the consideration of recommendations or statements about individuals who request, or are under consideration for, any personnel action. The Office of Personnel Management has prepared the guidance in the form of answers to questions that we think are likely to arise. We are making this guidance available to the heads of Executive Branch departments and agencies, and would like to share it with you as well.

If you or your staff have any questions or comments about this guidance, we would be pleased to further discuss this issue. Please feel free to contact my Director of the Office of Congressional Relations, Cynthia Brock-Smith, at 202 606–1300.

Very truly yours,

James B. King
Director

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: JAMES B. KING - DIRECTOR

SUBJECT: Political Recommendations for Federal Jobs

The Hatch Act Reform Amendments of 1993 (Reform Amendments) placed restrictions on political recommendations for Federal jobs with the exception of political appointments. The Legislative Branch Appropriations Act for fiscal year 1997 (Public Law 104–197) amends section 3303 of title 5, United States Code, by reinstating the prior law relating to Congressional recommendations on certain personnel decisions in the Executive Branch. Public Law 104–197 also amends a related provision, 5 U.S.C. § 2302(b)(2), by reinstating the prior law concerning the consideration of recommendations or statements about individuals who request, or are under consideration for, any personnel action. The Office of Personnel Management has prepared the following guidance in the form of answers to questions that we think are likely to arise in dealing with application of these two amended provisions.

Does the new law prohibit Members of Congress, Congressional employees, elected State or local government officials, or political party officials from making political recommendations? No, it focuses on the solicitation, receipt, or consideration of certain recommendations by Executive Branch officials. While the new law no longer specifically prohibits Members and others from making political recommendations, a recommendation that is not consistent with the new law could cause an official, who is concerned with examining or appointing, to be in violation of the law. In no circumstances should such an official actually consider any recommendation which is in violation of the law. Agencies covered by the new law should make every practicable effort to ensure that officials who are concerned with examining and appointing do not actually receive political recommendations that are inconsistent with the new law. This might be accomplished by preliminary review in the correspondence control process, through congressional relations offices, or through review by offices of counsel.

Does the new law require Executive Branch officials to return political recommendations to the sender? The new law does not require these officials to return a political recommendation to the person who sent it.

Does the new law also apply to the United States Postal Service? No. A separate law, 39 U.S.C. § 1002, still applies to political recommendations concerning applicants for positions with, and employees of, the United States Postal Service.

Does the new law apply to oral as well as written recommendations? Yes.

Who is subject to the prohibitions in the amended 5 U.S.C. § 3303? Executive Branch officials who have the authority to examine applicants for, or appoint individuals to, positions in the competitive service are subject to these prohibitions.

What does the amended section 3303 prohibit? It prohibits individuals concerned in appointing or examining officials from receiving or considering a recommendation from a Member of Congress concerning an individual who has applied for a competitive service position, except as to the character or residence of the applicant. A competitive service position is defined in 5 U.S.C. § 2102.

Does the amended section 3303 permit appointing and examining officials to consider any recommendations from Members of Congress? Section 3303 permits such officials to receive and consider Congressional recommendations concerning the character or residence of applicants for competitive service positions. (Example: ''I have known Mary Smith, a resident of my State, for many years, and she is a very fine person. She has always been reliable, and shown good judgment and integrity. She is very highly regarded in the community.'') A recommendation under section 3303, which is limited to the applicant's character or residence may not, however, discuss the qualifications of an applicant or assess the applicant's suitability for employment with a particular agency or in a particular job. A communication that includes a request that a covered official consider an applicant for specific employment would violate 3303. (Example: ''I have known Mary Smith, a resident of my state, for many years and she is a fine person of good moral character. I would like you to consider her for the currently vacant position of policy analyst in your office.'') In addition, OPM recommends against any communication that requests employment consideration even where such request is general in nature, as such a communication goes beyond a statement of character and residence. (Example: ''I have known Mary Smith, a resident of my State, for many years and she is a fine person of good moral character. Please consider her for appointment, in accord with applicable civil service procedures.'') Consistent with the additional guidance set forth below, recommendations or statements from Members of Congress based on actual personal knowledge of the applicant's work performance and qualifications may be acceptable under section 2302(b)(2).

What positions are subject to the amended section 3303? Section 3303 applies to positions in the competitive service, including Administrative Law Judges. Section 3303 does not apply to excepted service positions, as defined in 5 U.S.C. § 2103.

What does 5 U.S.C. § 2302 describe and who is subject to the amended section 2302(b)(2)? Section 72302 describes prohibited personnel practices and section 2302(b)(2) applies to Executive Branch officials who have the authority to take, direct others to take, recommend, or approve any personnel action.

What does ''personnel action'' mean? The definition of ''personnel action'' in section 2302(a)(2)(A) includes appointments; promotions; disciplinary or corrective actions; details; transfers; reassignments; restorations; re-employments; some performance evaluations; decisions about pay, benefits, or certain awards concerning education or training; decisions ordering psychiatric tests or examinations; or, any other significant changes in duties, responsibilities, or working conditions of an individual.

What does the amended section 2302(b)(2) prohibit appointing and examining officials from doing? Section 2302(b)(2) prohibits them from soliciting or considering oral or written recommendations or statements about an individual who requests, or is under consideration for, any personnel action, unless the recommendation or statement fulfills the requirements in that section.

What kind of recommendation or statement does the amended section 2302(b)(2) permit these officials to solicit or consider? They may ask for, or consider, a recommendation or a statement based on the personal knowledge or records of the person furnishing the recommendation or statement. Additionally, the recommendation or statement must consist of an evaluation of an individual's: (1) work performance, ability, aptitude, or general qualifications; or (2) character, loyalty, or suitability.

Is the amended section 2302(b)(2) limited to personnel actions affecting competitive service employees? No, it applies to covered positions as defined in section 2302(a)(2)(B), including any position in the competitive service, all career SES and Administrative Law Judge positions, and any position in the excepted service which has not been excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character.

Does the new section 2302(b)(2) apply to personnel actions that affect political appointees or individuals seeking political appointments? No, consistent with section 2302(a)(2)(B)(I), applicants for and employees in ''political'' positions such as those under Schedule C or the non-Career SES are not covered by section 2302(b)(2). It should be noted, however, that where the political appointee is an incumbent of a position with authority to take, direct others to take, recommend, or approve any personnel action, concerning covered positions, that political appointee becomes subject to section 2302(b)(2) and can be in violation of the statute for soliciting or considering a recommendation that is inconsistent with this law. For example, a Member of Congress or a representative of a political party could recommend someone for a political position (one covered by Schedule C or the non-career SES) and the potential appointing official receiving that recommendation could consider it without violating 2302(b)(2). However, a political appointee with authority to fill a competitive service position cannot solicit or consider a recommendation that does not meet the requirements of section 2302(b)(2).

May agency officials consider Congressional recommendations that meet the requirements of section 2302(b)(2) when section 3303 states that these officials are prohibited from receiving or considering such recommendations (except as to character or residence)? Yes. Section 2302(b)(2) permits agency officials to solicit or consider a recommendation or statement from anyone (including a Member of Congress) when the recommendation or statement consists of an evaluation concerning an individual's work performance, qualifications, ability, aptitude, character, loyalty, or suitability and it is based on the sender's personal knowledge or records. Because Congress amended sections 3303 and 2302(b)(2) in the same law, both provisions should be read together to avoid conflict and achieve a harmonious result. Accordingly, agency officials may solicit and consider recommendations from Members of Congress that meet the specific criteria described in section 2302(b)(2). If, however, recommendations from Members of Congress do not meet the criteria in section 2302(b)(2), such recommendations fail under section 3303 and should be treated under the guidance set forth above dealing with that newly amended section of law.

What if a communication meets the requirements of section 2302(b) but also includes a specific political recommendation. (Example: ''I know Mary Smith's work from when she was employed in my office. She is an outstanding employee, has extensive technical skills, is a loyal and hardworking employee, and is also a long standing member of my political party and frequently contributes to its causes.'') Can the recommendation be solicited or considered? No. Reading Section 3303 and 2302(b) together, it is clear that Congress did not want consideration for personnel actions to be unduly or unfairly influenced by references to political affiliation or membership. Communications that include direct or specific references to political affiliation or membership are inconsistent with that intent, as evidenced by section 2302(b)(1)(E), which, among other factors, makes it a prohibited personnel practice to discriminate for or against any employee or applicant on the basis of political affiliation. Absent such political affiliation or membership references, communications that otherwise meet the requirements of section 2302(b)(2) are acceptable. Uncertainty as to the legality of any specific communication should be referred to our office of counsel for review.

For further details about these new rules, you should consult the law itself, 5 U.S.C. §§ 3303 and 2302(b)(2), as amended by section 315 of Public Law 104–197, 110 Stat. 2394, 2416.

Chapter 9: EMPLOYMENT PRACTICES

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Chapter 9

EMPLOYMENT PRACTICES

INTRODUCTION

Historically, the general terms, conditions, and specific duties of Senate employees were within the discretion of the employing Members or committees. Nonetheless, certain general principles applied to all Senate employees: Senate employees were paid with public funds to perform official duties on Senate time, not personal, campaign, or other non-official activities; and Senate facilities were not to be used for non-official activities.

Since 1979 the Senate's anti-discrimination Rule (Senate Rule 42) has prohibited any Member, officer, or employee of the Senate from discriminating on the basis of race, color, religion, sex, national origin, age, or disability in hiring and employment decisions. Beginning in 1991, the Government Employee Rights Act (GERA) applied a number of anti-discrimination statutes to employees of the Senate, and established a procedure for enforcement, including the right to appeal to Federal Court. In 1995, Congress passed the Congressional Accountability Act, which supersedes the GERA, and applies eleven civil rights, labor and other workplace laws to employees of the legislative branch, including the Fair Labor Standards Act of 1938; Title VII of the Civil Rights Act of 1964; Americans with Disabilities Act of 1990; Age Discrimination in Employment Act of 1967; the Family and Medical Leave Act of 1993; and the Occupational Safety and Health Act of 1970. The CAA establishes a procedure outside the Senate for relief for violations of these statutes. Passage of the CAA did not, however, affect the Committee's separate and independent authority to discipline a Member, officer, or employee of the Senate for a violation of Senate Rule 42.

This chapter on employment practices includes a short notice on the CAA, a brief history of anti-discrimination rules in the Senate, a discussion of the anti-nepotism law, and a discussion of the prohibitions on personal use of staff by Members and on staff personal use of government facilities and equipment.

CONGRESSIONAL ACCOUNTABILITY ACT

In the first two weeks of the 104th Congress, the House and Senate completed action on the Congressional Accountability Act of 1995 (CAA) (Pub. L. No. 104–1, 109 Stat. 3) and sent the measure to President Clinton, who signed the bill into law. The Act applies eleven civil rights, labor, and workplace laws to employees of the legislative branch of the federal government, and establishes remedies and procedures for aggrieved employees in instances of violations of the laws. Some of the eleven laws had previously been extended to certain employees of the legislative branch, but the CAA expanded the scope of employees covered by the laws and granted, as specified in the Act, a right of judicial review to all covered employees. Enforcement authority under the CAA is vested in the Office of Compliance, to be headed by a five-member Board of Directors.

The CAA states that ''the following laws shall apply, as prescribed by this Act, to the legislative branch of the Federal Government'': Fair Labor Standards Act of 1938; Title VII of the Civil Rights Act of 1964; Americans with Disabilities Act of 1990; Age Discrimination in Employment Act of 1967; Family and Medical Leave Act of 1993; Occupational Safety and Health Act of

1970; Chapter 71 of Title 5, U.S. Code (relating to federal service labor-management relations); Employee Polygraph Protection Act of 1988; Worker Adjustment and Retraining Notification Act; Rehabilitation Act of 1973; and Chapter 43 of title 38, U.S. Code (relating to veterans' employment and re-employment). The Act also calls for a study by the Board of provisions of federal law relating to the terms and conditions of employment and access to public services and accommodations. The Board is to recommend to Congress whether provisions that are inapplicable to the legislative branch should be amended to encompass the legislative branch.

The rights under the various laws extended to the legislative branch become effective one year after the date of enactment of the CAA (i.e., January 23, 1996), except the Federal Labor-Management Relations Statute, which becomes effective on October 1, 1996, and the Occupational Safety and Health Act and the public services and accommodations provisions of the Americans with Disabilities Act, which become effective on January 1, 1997. Some of the laws applied by the CAA were previously extended to the House and Senate, and transition provisions of the CAA govern the procedure for some claims that may arise prior to the date that certain laws are applied pursuant to the terms of the CAA.

For additional information regarding the Congressional Accountability Act contact the Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, D.C. 20540.

SENATE ANTI-DISCRIMINATION RULE

Senate Rule 42, captioned Employment Practices, states:

> No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof—
>
> (a) fail or refuse to hire an individual;
>
> (b) discharge an individual; or
>
> (c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap.

The first anti-discrimination Rule, S. Res. 534, was adopted by the Senate in 1976, and it prohibited any Member, officer, or employee of the Senate from discrimination in hiring and terminating employees on the basis of ''race, color, religion, sex, national origin, or state of handicap.'' In 1977, the Senate adopted S. Res. 110 which contained rules to govern the conduct of Members, officers, and employees, and included the provisions of S. Res. 534. The report on S. Res. 110 specifically stated that the Civil Rights Act of 1964 and related statutes did not apply to the Congress.[559] The new anti-discrimination rule, which today is Rule 42, was adopted in 1977, but did not go into effect until January 3, 1979.

Until 1991, alleged acts of discrimination in the Senate were within the exclusive jurisdiction of the Ethics Committee pursuant to Rule 42.[560] Before 1991, in the context of Rule 42's provisions barring discrimination, there was considerable uncertainty as to whether, or to what extent, the Ethics Committee had authority to prescribe or recommend remedial relief in a case where an individual suffered harm due to prohibited discrimination.

Title III of the Civil Rights Act of 1991 (The Government Employee Rights Act of 1991)[561] established a Senate Office of Fair Employment Practices and created a procedure for providing

[559] S. Rep. No. 95–49 at 14.

[560] S. Res. 338, 88th Cong., 2d. Sess. (1964), as amended by S. Res. 110 (1977).

[561] The Civil Rights Act of 1991 was created by P.L. 102–166, 105 Stat. 1008. The procedures for the Office of Senate Fair Employment Practices (OSFEP) created by Title III of the Civil Rights Act of 1991 were modified five

remedial relief for individuals subjected to discriminatory practices. Title III enumerated a four-step internal enforcement procedure; defined a 180-day limitation on bringing a claim before the Senate Office of Fair Employment Practices; and authorized judicial review by the U.S. Court of Appeals for the Federal Circuit. Additionally, the Government Employee Rights Act reaffirmed the commitment of the Senate to Senate Rule 42, and specified that the Senate Ethics Committee retained its authority under S. Res. 338 to take or recommend disciplinary action against a Member, officer, or employee of the Senate for a violation of that rule.

In January 1995, President Clinton signed into law the Congressional Accountability Act of 1995 (CAA). As noted above, this bill applies eleven civil rights, labor, and other workplace laws (some of which had been previously extended to certain legislative branch employees) to employees of the legislative branch, and establishes remedies and procedures for prosecution of violations of those laws.

The Ethics Committee's authority to recommend discipline of a Member, officer, or employee of the Senate is not affected by passage or implementation of the Congressional Accountability Act. Thus, it is possible that a complaint under Rule 42 could be filed with the Committee before, simultaneously with, or during a proceeding under the Congressional Accountability Act. Proceedings of the Committee on a complaint alleging a violation of Rule 42 would be governed by the Committee's Rules of Procedure.

NEPOTISM STATUTE

The anti-nepotism law, 5 U.S.C. 3110, provides a general prohibition against all Federal officials, including Members, officers, and employees of the Senate, from appointing, employing, promoting, or advancing, or recommending for appointment, employment, promotion or advancement any ''relative'' of the official to any agency or department over which the official exercises authority or control. The full text of the statute is set out in Appendix D of this Manual which provides the text of certain Federal Ethics Laws. Noting that it is without express authority over the anti-nepotism statute, the Committee has nonetheless provided advice to Senate Members, officers, and employees about the statute. Thus, anyone with a question about application of the statute in the Senate should feel free to contact the Committee for advice.

The definition of ''relative'' in this statute is very specific, and it is generally understood that only an individual named in the statute will be deemed a ''relative.'' See, Lee v. Blount, 345 F. Supp. 585 (1972). Thus, for example, the term ''nephew'' as used in the statute would not include the son or daughter of the brother or sister of the official's spouse. While the Committee has acknowledged this result as a matter of law (see Interpretative Ruling 343), it has also cautioned that hiring such an individual could create appearance concerns and advised the hiring official that such appearances should be considered in making any such hiring decision. See also Interpretative Ruling 215 regarding hiring the son of a cousin of the official's spouse.

In Interpretative Ruling 107, the Committee concluded that the entire Senate should be treated as a single ''agency or department'' for purposes of the statute. Thus, for example, a Member who advocated the hiring of his or her relative any place within the Senate would cause the relative to come within the prohibition of the statute.

An employee who becomes related to his or her employing official may remain employed by the related official. The employing official would be prohibited from providing any raise, promotion, or advancement for the related employee, however, except for across-the-board adjustments such as cost-of-living.

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times by the Senate. The Family and Medical Leave Act of 1993 (FMLA) augmented OSFEP responsibilities by providing that violations of FMLA could also be raised in the Title III process.

On a number of occasions, the Committee has advised that it is permissible for a Senator to hire the spouse or other relative of one of his staff members, provided the staff member has no input on the decision to appoint, employ, promote or advance his or her spouse or relative.

PERSONAL ACTIVITIES WITH APPROPRIATED FUNDS

Under federal law, appropriated funds may only be used for the purposes for which they were appropriated (31 U.S.C. 1301(a)). Funds are appropriated to compensate Senate employees for the performance of Senate duties. That is, Senate staff are compensated for the purpose of assisting Senators in their official legislative and representational duties, and not for the purpose of performing personal or other non-official activities for themselves or on behalf of others.

On at least one occasion, a Congressman has been convicted of fraud under 18 U.S.C. 1001 for having an individual on the Congressional payroll when the individual did not regularly perform official congressional duties, but rather performed personal activities on behalf of the Congressman (the employee provided services to the Congressman's private business). See United States v. Diggs, 613 F.2d 988 (D.C. Cir. 1979). Unlike Senators, House Members must certify each pay period that the employees receiving pay actually performed assigned official duties. Although 18 U.S.C. 1001 was subsequently held not to apply to the legislative branch, the 104th Congress passed the False Statements Penalty Restoration Act, which makes it clear that Title 18 United States Code Section 1001 applies to all three branches of the government, including Congress. Several Congressmen and congressional staffers have also been prosecuted in salary kickback schemes under 18 U.S.C. 1001.

More recently, Congressman Rostenkowski was indicted on charges that he, among other things, converted government funds to personal use (18 U.S.C. 641) in connection with the provision of personal services by individuals on the congressional payroll. See, D.D.C., Crim. #94–0226, Count 8 of 17. The bulk of this count of the indictment was upheld on appeal (United States v. Rostenkowski, 59 F.3d 1291 (D.C.Cir. 1995)); however, this and other counts were ultimately dismissed as part of a plea agreement wherein Congressman Rostenkowski pled guilty to two counts of mail fraud. Finally, federal government employees have also been convicted under 18 U.S.C. 641 for converting Government property to their own personal use. See, for example, United States v. Collins, 56 F.3d 1416 (D. C. Cir. 1995), affirming an employee's conviction of conversion for the use of office copier paper for personal purposes.

APPENDIX A

Interpretative Rulings of the Select Committee on Ethics

INTERPRETATIVE RULING NO. 3

Date Issued: May 5, 1977

Applicable Rule: 41

QUESTION CONSIDERED:

May Senate staff, while on leave, attend and participate as host, in a fundraising event to be held on behalf of a Senator in his state?

RULING:

No provision of the Code of Official Conduct prohibits staff from attending a campaign fundraising event outside office hours or while on vacation leave. Under Rule 41, paragraph 1, however, a Senate staff member may not receive, solicit, be the custodian of or distribute campaign funds unless he or she is one of the two assistants specifically designated for those purposes. In order to stay well within the spirit and letter of the Rule, staff who are not so designated and who attend such an event should not collect funds or sell tickets or otherwise participate in the fundraising aspects of the event.

Since 18 U.S.C. 602 prohibits staff from making a monetary campaign contribution to a Member of Congress, the participating staff should not attend as paying guests.

Regarding guidelines as to campaign participation by staff after hours or while on annual leave, this Committee has stated that Senators should encourage staff to remove themselves from the payroll for periods during which they expect to be heavily involved in campaign activities. Routine participation after hours or on annual leave time is not now prohibited by the Code of Conduct.

[Note: As amended in 1979, the law (now 18 U.S.C. 603) prohibits contributions only to the contributor's ''employer or employing authority.'' See Interpretative Ruling 301, February 21, 1980.]

INTERPRETATIVE RULING NO. 5

Date Issued: May 11, 1977

Applicable Rule: 41

QUESTION CONSIDERED:

To what extent may Senate employees volunteer time after office hours or while on annual leave to assist in political fundraising events for Members and candidates for election to the Senate?

RULING:

While as a general rule, the Committee has advised Members to remove from the Senate payroll staff who participate for any extended period in such activities, the code of Official Conduct was not intended to prohibit routine matter performed outside of working hours such as making follow-up telephone calls on behalf of the sponsoring organization to determine projected attendance at the event; helping the sponsoring organization make arrangements for flowers, food, and entertainment; and serving on a committee of hosts or hostesses at the time of the event, not as a sponsor, but simply to mingle with the guests on behalf of the sponsoring group.

Unless the employee is one of the two assistants specifically so designated, he or she may not receive, solicit, be the custodian of, or distribute any campaign funds. Accordingly, care must be taken to avoid involvement in those functions.

[NOTE: Senate Rule 41.1 has been amended to permit a Member to appoint up to three assistants as political fund designees, at least one of whom is in the Washington, D.C. office. The Rule was also amended to permit the Majority Leader and the Minority Leader to each designate an employee of their respective leadership office staff as one the three designees. Such designation shall be made available for public inspection by the Secretary

of the Senate].

INTERPRETATIVE RULING NO. 17

Date Issued: May 23, 1977

Applicable Rule: 35

QUESTION PRESENTED:

Does any arrangement between a Senator and various artists, under the aegis of the Department of Cultural Resources of his state, for the loan, use of, and exhibition of their products in his Senate office violate the Code of Conduct?

RULING:

The Committee report on S. Res. 110, (#95–49, 95th Congress, lst Session, p. 35) states that:

The Committee took notice of this historical practice followed in some offices of making home state products, of minimal value, available to constituents and others who visited the office. Such products are most often in the form of food and beverages, such as apples, peanuts, coffee and orange juice. Obviously, these products are provided by businesses back in the Senator's home state, and some of the individuals or organizations involved in providing them may fall within the definition of those with a ''direct interest in legislation.'' Nevertheless, the Committee felt that this time-honored tradition did not involve any conflict of interest and provision of home state products, for this type of distribution, should not be regarded as a gift to the Senator or the office since it is passed on to those visiting the office.

The use of the loaned artwork would fall within the time-honored tradition of the Senate referred to above. The value to the Senator is de minimus, and, consequently, the arrangement is not a ''gift''.

[NOTE: The new Senate Gifts Rule, effective January 1, 1996, excludes from the gift rule restrictions ''donations of products from the State that the Member represents that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any individual recipient.'' See Rule 35, 1(c)(12). The gifts rule and Committee Rulings 386 and 442 thus would permit Senators to take home state products (office furnishings and artwork) on loan from a home state producer or distributor of that product where the product is loaned to the Senator for display in his Senate office and returned to the lender upon his leaving the Senate if not before. Under Committee rules, a Member should write the Committee describing the loan situation. A copy of the Member's letter and the Committee's response is retained in the Committee's files and made available to the public as set forth in I.R. 386]

INTERPRETATIVE RULING NO. 22

Date Issued: May 26, 1977

Applicable Rule: 41

QUESTION CONSIDERED:

May Senate staff solicit, receive, or distribute funds for a campaign organization, and during off hours, participate in party activities which may include fundraising efforts?

RULING:

Rule 41 provides that two staff assistants may be designated by a Senator to solicit, to be the custodians of, or to distribute funds in connection with a campaign, but no other employee of Senator or Senate committee may solicit funds, (or solicit others to solicit funds on behalf of a Senator) while on the Senate payroll. Staff may be removed from the payroll to engage in such campaign activities.

It is not intended that Senate employees be barred completely from participation in all political activity. Outside of Senate office hours staff may assist in planning and making arrangements for fundraisers so long as they do not become involved with solicitation of funds.

[Note: Senate Rule 41.1 has been amended to permit a Member to appoint up to three assistants as political fund designees, at least one of whom is in the Washington, D.C. office. The Rule was also amended to permit the Majority Leader and the Minority Leader to each designate an employee of their respective leadership office staff as one of the three designees. Such designation shall be made available for public inspection by the Secretary of the Senate].

INTERPRETATIVE RULING NO. 23

Date Issued: May 26, 1977

Applicable Rule: 37

QUESTION CONSIDERED:

May the staff director of a Senate Committee accept appointment to the advisory board of a college interested in establishing a center which may be eligible for partial federal funding, pursuant to legislation now under consideration by the committee of which he is staff director?

RULING:

The appointment in question would create the appearance of conflict with the subject's responsibilities as staff director of the Committee. While Rule 37 permits Members, officers, and employees to serve in such capacities for a 501(c) entity if they do not receive compensation therefor, the Committee recommended that, under these particular circumstances, the staff director not accept the appointment.

INTERPRETATIVE RULING NO. 24

Date Issued: May 26, 1977

Applicable Area: Miscellaneous

QUESTION CONSIDERED:

May a Senator store political documents, such as records and financial statements of past campaigns, in his Washington office and in federal space provided in his state?

RULING:

The Committee is not aware of any Senate rule or law on these points. Counsel for GSA advises that he knows of no law or regulation with respect to what may be stored in space under its jurisdiction.

Storage of substantial quantities of such personal and political materials, i.e., bulk storage of materials unrelated to one's official duties, would be an improper use of public property. Members are, however, entitled to some latitude with respect to documents needed for reference purposes or public disclosure. Campaign materials used by Members for gifts and all such materials that are incidental to the normal business of a Senate office and require no substantial storage space may be maintained in a Senator's offices.

INTERPRETATIVE RULING NO. 27

Date Issued: June 7, 1977

Applicable Rule: 37

QUESTION CONSIDERED:

Would a Senate employee's service in a U.S. Army Reserve Unit as a Chief Warrant Officer (CW2) be inconsistent with the Senate Code of Official Conduct?

Service normally entails one weekend each month and two weeks active duty each year, with compensation for each year being approximately $1,710. The employee is a legislative aide to a Senator, although his official duties do not involve him in the activities of the Armed Services Committee or in any aspect of military reserve affairs legislation or casework. The employee's supervising Senator is of the opinion there is no potential conflict.

RULING:

The outside employment, as described above, would not constitute a conflict of interest under Rule 37 or violate any other provision of the Code. Paragraph 3 of Rule 37 requires an employee to report in writing such outside employment to his supervisor when it commences and on May 15 of each year that it continues.

INTERPRETATIVE RULING NO. 30

Date Issued: June 13, 1977

Applicable Rule: 37

QUESTION CONSIDERED:

Must a member of an advisory council to an executive agency, appointed by the President, resign his position on the council when he becomes a Senate employee? If not, may he accept the $100 per diem paid by the agency for time spent serving on the council?

RULING:

Paragraph 2 of Rule 37 on Conflicts of Interest prohibits an employee from engaging in outside professional employment for compensation which conflicts with the performance of official duties. Without knowing either what the prospective employee's duties would be, or whether the outside activity would present a conflict, the Committee cannot advise as to whether a conflict of interest would be presented by the outside employment. Under Paragraph 3 of Rule 37 the supervisor of an employee who engages in outside professional activity for compensation is required to ''take such action as he considers necessary for the avoidance of a conflict of interest or interference with duties to the Senate.''

The Committee finds nothing in the Rules which would prohibit a Senate employee from serving on such a council. The Committee points out, however, that the Dual Compensation Act, 4 U.S.C. 5533(c), would appear to prohibit anyone who is paid a salary by the Secretary of the Senate from being paid for another U.S. Government position, even if part-time. The Committee does not have responsibility for the enforcement of this Act; it would be advisable therefore, to refer to the statute and consult with the Disbursing Office on the question.

INTERPRETATIVE RULING NO. 31

Date Issued: June 16, 1977

Applicable Rules: 34 and 35

QUESTION CONSIDERED:

What is the value of a season pass for sporting events for purposes of Rule 35, prohibiting acceptance of gifts from persons with a direct interest in legislation aggregating more than $100 in a calendar year, and Rule 34, regarding financial disclosure?

RULING:

The value of a season pass is the full market value at the time it is accepted and is undiminished by failure to use it or a portion of it. The ticket itself is a gift, if accepted, whether or not it is later exchanged for goods, service, entertainment or cash.

Thus, if the actual cost of a season ticket is $175 at the time it is given as a gift, then its value for the purpose of applying the gift and disclosure rules is $175 and may not be calculated on the basis of events actually attended.

[NOTE: Rule 35, as amended effective January 1, 1996, prohibits a Member, officer or employee of the Senate from receiving any gift of a value of $50 or more, or gifts from one source (of $10 or more) that aggregate $100 or more during a calendar year]

INTERPRETATIVE RULING NO. 33

Date Issued: June 28, 1977

Applicable Rule: 37

QUESTION CONSIDERED:

What provisions of the Code of Official Conduct must a full-time aide to a Senator with a salary less than $25,000 consider in determining whether or not outside employment is proper?

RULING:

The propriety of outside employment is governed by Rule 37. No employee, regardless of salary level, may receive compensation by virtue of influence improperly exerted. Nor may any employee engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the

conscientious performance of official duties. Any outside employment for compensation must be reported in writing to the supervising Senator when the employment commences, and thereafter on May 15 of each year. That report must describe the nature of the employment. The supervising Senator must then take whatever action is appropriate for the avoidance of conflict of interest or interference with duties to the Senate. That action could, of course, be a denial of permission to undertake or continue the outside employment.

Employees compensated at more than $25,000 per year are also subject to restrictions on providing professional services for compensation and on serving as officers or on boards of publicly-held or regulated corporations, financial institutions or business entities.

INTERPRETATIVE RULING NO. 36

Date Issued: June 28, 1977

Applicable Rule: 37

QUESTION CONSIDERED:

Is it a violation of the Code of Official Conduct for a Senate employee, compensated at more than $25,000 per annum and who serves as a legislative assistant for agricultural affairs, to be involved in an agriculture related business? The employee owns a company bearing his name which operates a dairy business and which the employee is the major shareholder and serves (without compensation) as Chairman and President. The employee's sons receive salaries for running the company and the corporation, and the employee receives rental income in connection with the lease of land to the corporation and may receive dividend income as the principal shareholder of the corporation.

RULING:

There is no provision of the Code of Official Conduct which would prohibit the employee from remaining on the Senate payroll. Paragraph 4 of Rule 37 prohibits an employee from aiding the passage of legislation which would further his pecuniary interest, that of his family or of a limited class of persons or enterprises. The report accompanying S. Res. 110 (S. Rept. 95–49) states at page 42:

. . . Legislation may have a significant financial effect on a Senator because his holdings are involved, but if the legislation also has a broad, general impact on his ctate or the nation, the prohibitions (of paragraph 4) would not apply.

The Report cites the example of a dairy farmer representing a dairy farming state who introduces, works for, and votes for legislation raising or maintaining dairy price supports. Because there would be a strong presumption that the Member was working on behalf of the public interest and the needs of his constituents and that his own financial interest was incidental, the Member would be part of a class affected by the legislation but would not be a member of a ''limited class'' for the purposes of paragraph 4 and thus would not fall under the strictures of the Rule.

With respect to paragraph 6 of Rule 37, which deals with affiliation with a firm, partnership or corporation and the use of an employee's name by such an entity, the Report further states that paragraph 6 ''reaches the major professions in addition to law, such as medicine, engineering, architecture and similar type of activities.'' These professions, unlike farming, involve a fiduciary relationship between the practitioner and clients which often would create a conflict with Senate duties. Accordingly, the Committee finds no violation of Rule 37.

[NOTE: Senate Rule 37.7 states that an employee on the staff of a committee who is compensated at a rate in excess of $25,000 per annum and employed for more that ninety days in a calendar year shall divest himself of any substantial holdings which may be directly affected by the actions of the committee for which he works, unless the Ethics Committee, after consultation with the employee's supervisor, grants permission in writing to retain such holdings or the employee makes other arrangements acceptable to the Ethics Committee and the employee's supervisor to avoid participation in committee actions where there is a conflict of interest or the appearance thereof. See IR 147 regarding ''substantial holdings'']

INTERPRETATIVE RULING NO. 40

Date Issued: July 1, 1977

Applicable Area: Franking

QUESTION CONSIDERED:

Does the regulation prohibiting use of the mailing frank for the mass mailing of a newsletter in which personally phrased references to a Senator appear more than an average of 8 times per page also apply to reprints of speeches and other material from the Congressional Record?

RULING:

Title 39 U.S.C.A 3212 states that reprints from the Congressional Record may be mailed under the frank provided such material would otherwise be frankable under section 3210. Section 3210 prohibits use of the frank to mail ''personal and political'' matters. Paragraphs 13 and 14 of the regulations define the personal and political matters which are not frankable, but do not mention overuse of personal references to a Senator.

Paragraph 4 of the franked mail regulations refers to newsletter and news releases. The number of personal references which occur on a page has no bearing on the use of the frank for the mailing of frankable material reprinted from the Congressional Record, when the Record reprint consists of an unedited statement or article. If, however material from the Record is to be reprinted in a newsletter or other mass mailing and consists of edited text taken from a statement or article, the ''personal reference'' restriction would apply.

[NOTE: Under current Committee regulations governing the use of the mailing frank, paragraphs 16 and 17 of chapter 2 define personal and political matters, respectively]

INTERPRETATIVE RULING NO. 42

Date Issued: July 18, 1977

Applicable Area: Franking

QUESTION CONSIDERED:

May a Senator use the frank to mail a booklet containing matter relating to his or her background and personal and professional achievements and accomplishments for the state he or she represents and its people?

RULING:

Such a booklet constitutes biographical matter within the meaning of the ''Regulations Governing the Use of the Mailing Frank.'' The frank may be used to mail the booklet in response to specific requests for a copy, requests for biographical material about the Senator, and requests for information about Federal projects and other benefits obtained by the Senator on behalf of the state and his constituents. The frank may not be used for a mass mailing of the booklet for any potential political use or during a campaign.

INTERPRETATIVE RULING NO. 44

Date Issued: July 18, 1977

Applicable Rules: 38 and 40

QUESTION CONSIDERED:

May a Senator incorporate computerized address records of voters secured from county election boards in the Senate's computerized mailing system for use in producing franked mass mail?

RULING:

Under Regulations of the Committee on Rules and Administration and Rule 40, paragraph 5, the incorporation of computerized voter address records in the Senate's computer-maintained mailing lists is permissible, but only if such lists bear no identification of individuals as campaign workers, contributors, or as members of a political party, and the lists do not contain any other partisan political information.

The Select Committee on Ethics concludes such records may not be acquired selectively or sorted with the intent of targeting mailings to likely election supporters. The acquisition and incorporation only of lists selected on the basis of high incidence of partisan behavior, for example, is not acceptable.

The use of a Senator's official consolidated allowance to purchase or prepare such records is a matter under the responsibility of the Committee on Rules and Administration.

INTERPRETATIVE RULING NO. 48

Date Issued: August 5, 1977

Applicable Rule: 37

QUESTION CONSIDERED:

May a Senate Subcommittee employ as a consultant and later as its chief counsel, an attorney who plans to leave the Senate payroll later in the year, temporarily to return to association with his former law firm to argue a case pending before an appellate court on a subject which is a direct and principal concern of the Subcommittee, and then upon returning to the Senate payroll, sever his ties with the firm following the appeal proceedings?

RULING:

The employee's continuing association with the firm for purposes of preparing the appeal while also acting as a consultant to the Subcommittee (even though he would terminate that association when he becomes chief counsel), and his continuing obligations to the firm's client in connection with the appeal, create both the appearance of a conflict of interest and too great a potential for an actual conflict.

Accordingly, the Subcommittee should not employ the person in question in either capacity until his association with the firm is terminated and his obligations to the firm's client have been discharged.

INTERPRETATIVE RULING NO. 49

Date Issued: August 5, 1977

Applicable Rule: 41

QUESTION CONSIDERED:

In what fund-raising activities may Senate employees who are not designated for political activity under Rule 41 participate?

RULING:

An employee who is not a designee under Rule 41 must exercise care to perform only routine political activities in which he does not directly receive, solicit, as a custodian of, or distribute campaign funds, and to perform these only in off-duty hours.

The Rule 41 prohibition of political fund activity by other than designated staff applies to duty hours, off-duty hours and vacation leave.

INTERPRETATIVE RULING NO. 54

Date Issued: August 30, l977

Applicable: Rule 37

QUESTION CONSIDERED:

May a professional staff member accept a position as a Consumer Representative on a local government council which has an interest in legislation under the jurisdiction of the Committee on which he serves?

RULING:

In the present case the local government council had an active interest in legislation pending before the Committee that employed the staff member. The council was also active in attempting to have its views on pending legislation considered.

Rule 37 states, that no Member, officer, or employee may engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of Senate duties. Although the service here is without compensation and thus not explicitly prohibited by the Rule, the Committee is of the opinion that service on the council by this Committee staff member would create the appearance of a conflict with his Committee staff responsibilities. Consequently, the Committee advised that the staff member not serve on the council.

INTERPRETATIVE RULING NO. 55

Date Issued: September 7, l977

Applicable Rule: 37

QUESTION CONSIDERED:

May a full-time Senate employee who is employed in a Member's State office, also serve as a City Council member at a salary of less than $200 per month?

RULING:

Under Rule 37, no Member, officer, or employee of the Senate may engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties. Paragraph 3 of Rule 37, places the burden of ensuring that no conflict arises on the employee's supervisor. Under the facts of this case, the Committee found the supervisor had properly evaluated the situation. The Committee noted that city council service by this employee was unlikely to present any conflicts with his full-time position as a Senator's press relations coordinator.

[NOTE: The Committee has ruled that holding local or state elected office does not violate Senate Rule 37.6 (b), which prohibits a Member, officer, and employee compensated at a rate above $25,000 and employed for more than 90 days, from affiliating with an outside business organization for the purpose of providing compensated professional services to others.]

INTERPRETATIVE RULING NO. 56

Date Issued: September 7, l977

Applicable Rules: 34 and 37

QUESTION CONSIDERED:

May a Member and a staff person receive compensation for collaboration on a book which concerns the subject matter of hearings held before the Member's Committee and was jointly written after regular Senate office hours?

RULING:

Rule 37 prohibits Members and employees from engaging in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with performance of official duties. The Committee found the proposed activity permissible because it was conducted in off-duty hours and the book draws largely on Committee hearings and reports all of which are readily available to the public.

Income received would be reported pursuant to the financial disclosure requirements of the Ethics in Government Act.

[NOTE: The Committee has determined that payments of royalties and advances on royalties for writings to be published or republished as books or chapters or parts of books are not honoraria banned by Senate Rule 36.]

INTERPRETATIVE RULING NO. 59

Date issued: September 13, 1977

Applicable Rule: 41

QUESTIONS CONSIDERED:

May a Senate employee or staff member engage in substantial campaign activity, including receiving, soliciting, maintaining custody of, or distributing campaign funds while the staff member is off the Senate payroll, even though it is contemplated the employee will be re-hired in his old position when the campaign terminates?

RULING:

Members can and should remove staff from the Senate payroll when they are to participate for an extended period in substantial campaign activities. If an employee is removed from the Senate payroll, the restrictions found in Rule 41 with respect to political fund-raising activities would not be applicable, even though there might be an understanding between the former employee and his or her Senator that the employee would return to the Senate payroll at a future date.

INTERPRETATIVE RULING NO. 61

Date Issued: September 14, l977

Applicable Rules: 34, 35, 37

QUESTION CONSIDERED:

What provisions of the Senate code of Official Conduct are applicable to a consultant hired by a Senate committee?

RULING:

For purposes of the Code of Conduct, an employee of the Senate is defined to include ''any employee whose salary is disbursed by the Secretary of the Senate.'' This definition encompasses consultants and other part-time employees; hence they must adhere to the Code.

If the consultant's initial salary is equal to or in excess of the rate in effect for the GS-l6 level of the General Schedule, he or she will be required to submit a public financial disclosure report within 30 days of commencing employment, and on May l5 of each year thereafter.

Two other provisions of the Code apply to a consultant, regardless of the salary level and period of employment. The first is Rule 35 which restricts the acceptance of certain gifts by Senate employees. The second rule applicable to all Senate employees is the conflict of interest provisions of Rule 37, which among other things, requires an employee to report in writing to his supervising Senator before engaging in any outside employment. The Senator is then responsible for taking any necessary action to avoid conflict of interest or interference with Senate duties.

Because the Code places the responsibility for avoidance of conflict of interest on the supervising Senator, this Committee does not ordinarily accept that responsibility in the first instance. For this reason, it is reluctant to review the resume of a consultant and declare that there is or is not a real or apparent conflict of interest. Such judgments require continuing attention to the individual's Senate work assignments and outside activities which the Committee cannot offer.

INTERPRETATIVE RULING NO. 63

Date Issued: September 15, 1977

Applicable Rule: 37

QUESTION CONSIDERED:

Are Senators, who are retired Military Reservists, in violation of paragraph 4 of Senate Rule 37 (which prohibits one from aiding the progress of legislation intended to benefit a limited class of persons—-including a Senator or his immediate family) when they vote for a bill which would affect their pensions by eliminating the limit upon the amount of the pension they could receive while they are Members of the Senate?

RULING:

The bill referred to affects all present and future retired officers who hold or seek Federal employment. Paragraph 4 of Senate Rule 37 provides that a Member shall not aid the passage of legislation, a principal purpose of which is to further his pecuniary interest or that of a limited class of persons.

The legislative history of paragraph 4 states at page 42 of Senate Report No. 95–49 that:

Legislation may have a significant financial effect on a Senator because his holdings are involved, but if the legislation also has a broad impact on his state or the nation, the prohibitions of the paragraph would not apply.

The report adds that dairy farmers, shoemakers and disabled veterans are examples of groups that do not constitute a limited class. A limited class would resemble the class of persons affected by a private bill. Thus the Senators did not violate this provision by voting for the bill in question since all present and future retired military officers who hold or seek Federal employment would not constitute a ''limited class'' as that term is used in Rule 37.4.

INTERPRETATIVE RULING NO. 66

Date Issued: September 26, l977

Applicable Area: Franking

QUESTION CONSIDERED:

A non-Senate organization offered its membership mailing list to a Senator to use in an otherwise frankable mass mailing. The non-Senate group refuses to give its list to the Senator but has agreed to place mailing labels derived from the list on pre-sealed envelopes to be supplied by the Senator. Does the statute regulating the use of the mailing frank authorize the Senator to utilize the mailing list under these conditions?

RULING:

The U.S. Code, Title 39, paragraph 32l5 states that a ''person entitled to use a frank may not lend it or permit its use by any committee, organization, or association, or permit its use by any person for the benefit or use of any committee, organization, or association . . .'' In the view of the Committee, a transfer of franked envelopes, though previously stuffed and sealed by the Service Department, would be precluded by the statute. In this instance, the opportunity for alteration of the material, identification of the organization on the Senate envelopes, delivery to unintended addresses and diversion of the franked envelopes to unintended purposes is so great that the practice would be tantamount to a loan of the frank.

However, there are ways in which an outside organization's mailing list may be used by a Senator. For example, the organization could supply the list to the Senator for preparation and mailing within the Senate. Another method would involve providing blank mailing labels and return them to the Senator for mailing.

In both these cases, care must be taken so that the mailing in no way identifies the non-Senate organization as the sponsor, in whole or in part, of the mailing. Similarly, if the organization normally charges a fee for its mailing list, the customary fee must be paid since the Committee has construed Rule 38 as prohibiting in-kind contributions to defray an expense of holding office. If, on the other hand, the organization does not ordinarily charge a fee, a Senator may accept the list, provided that reimbursement is made to the organization for any costs it incurs in preparing the list to be turned over to the Senator.

INTERPRETATIVE RULING NO. 70

Date Issued: September 29, l977

Applicable Rule: 37

QUESTION CONSIDERED:

May a Senate staff member engage in the private practice of law in a minor transaction and receive compensation therefor?

RULING:

Paragraph 5 of Rule 37 on conflicts of interest was intended to severely restrict the practice of any profession (for compensation) by Senate employees. That paragraph states in pertinent part that no Member or (full-time) employee compensated at a rate in excess of $25,000 per annum shall (a) affiliate with a firm or partnership, (b) permit his or her name to be used by such, or (c) ''practice a profession for compensation to any extent during regular office hours of the Senate office in which employed.'' This provision restricts, but also contemplates, some practice outside office hours or on annual leave time. Whether the limited practice proposed in this instance is permissible depends on the facts of each case. They include the nature of one's Senate duties and the amount of time required by such outside activities. Consequently the Code, under paragraph 3 of Rule 37, places the initial responsibility upon an employee's supervisor to determine whether there is a potential for conflict of interest or its appearance and to take such action as is necessary to avoid same.

[NOTE: Paragraph 5(b) of Rule 37 states that a Member or an officer or employee whose rate of basic pay is equal to or greater than 120% of the annual rate of basic pay in effect for grade GS–15 of the general schedule shall not, among other restrictions, receive compensation for practicing a profession which involves a fiduciary relationship]

INTERPRETATIVE RULING NO. 74

Date issued: October 3, 1977

Applicable Rules: 38, 40, and 41

QUESTION CONSIDERED:

A Senator plans to telephone homes and businesses on a random basis to ask whether the individual or firm is aware of, or has need for, any of the traditional casework or informational services available through a Senate office. A franked form letter is then to be sent to follow up with the person called. Does this proposed activity conform to the Code of Official Conduct and other applicable laws or regulations?

RULING:

The proposed telephone survey is not prohibited. However, the proposed follow-up form letter would constitute a mass mailing subject to the restrictions on such mailings, including the requirement of Rule 40(2) that only official funds may be used to prepare the mass mailing. In our opinion, this follow-up form letter is not in ''response to a direct inquiry'' as that term is used in the exception to a mass mailing. On the other hand, any letter sent to respond to a specific question with information would fall within the response to a direct inquiry exception to the definition of a mass mailing and thus would be frankable. There is no objection to including a reference to a ''hot-line.'' If a questionnaire is used rather than a telephone survey, it may be franked; however, since presumably more than 500 pieces would be involved, this would constitute a mass mailing. Volunteer workers may be used in this endeavor. While the Committee has construed Rule 38 as prohibiting in-kind contributions of goods and services to defray official expenses, the Committee has determined that this prohibition does not extend to the services of individual volunteers, such as students, Congressional and science fellows, homemakers, senior citizens, and the like, who traditionally have worked in Senate offices both in Washington and in the home state. The Committee noted that paragraph 6 of Rule 41 recognizes that such volunteers are utilized in performing Senate business by subjecting them to the Code of Official Conduct if they perform services full time for more than 90 days in a calendar year.

[NOTE: I.R. 442, issued in April, 1992, requires that before a Senator utilizes the services of a volunteer (or intern or fellow), the Senator must make a determination that the service is primarily for the educational benefit of the volunteer (or intern or fellow.]

INTERPRETATIVE RULING NO. 75

Date Issued: October 3, l977

Applicable Rules and Area: 34, 35, Federal Election Campaign Act

QUESTION CONSIDERED:

May a staff member accompanying a Senator to an appearance accept the necessary expenses of travel, offered by the sponsor of the appearance, where the aides attendance has been requested by the sponsor? The aide will assist the Senator with his preparation for the appearance. Are the expenses of the staff assistant considered part of the honorarium to the Senator for purposes of either the limitation on receipt of honoraria or disclosure requirements?

RULING:

The financial disclosure statute requires all Members and certain staff to disclose the receipt of all travel- related reimbursement or in-kind provision of travel if its value equals or exceeds $250.

The Federal Election Campaign Act, at section 441(i) of Title 5, USC, applies a per appearance limitation only to net honoraria, thus excluding the necessary expenses of travel, etc., of an aide who might accompany the Senator in an official capacity.

Rule 35, on Gifts, excepts from the definition of a ''gift'' the providing of or reimbursement for necessary expenses of travel incident to an appearance before the sponsoring group. This exception applies not only to Members but also to an officer or employee who may accompany the Senator in an official capacity.

[NOTE: The new Senate Gifts Rule, effective January 1, 1996, provides in section 2 that Members and staffers may be reimbursed by an individual other than a registered lobbyist or foreign agent for the necessary expenses of travel to a meeting, speaking engagement, factfinding trip or similar event in connection with the duties of the Member, officer, or employee as an officeholder. Necessary expenses related to travel only for an accompanying spouse or child (not a staffer) who travels with a Member, officer or employee on an officially connected trip may be accepted if the Member or officer (or supervising Member or officer in the case of an employee) signs a written determination that the attendance of the spouse or child is appropriate to assist in the representation of the Senate. Thus, in the case of a Senate staffer, the sponsor must separately invite the staffer to attend the event, since the staffer may not accept necessary expenses for ''accompanying'' the Senator.]

INTERPRETATIVE RULING NO. 76

Date Issued: October 5, 1977

Applicable Rule: 35

QUESTION CONSIDERED:

May a Member, officer, or employee of the Senate accept the invitation of a long-time personal friend, who is an officer of a corporation which is a prohibited source (as defined in paragraph 1(b) of Rule 35), to visit a hunting lodge for a vacation of several days when the value is assumed to be in excess of $100 under any of the following circumstances:

A. If the host leases the lodge from the corporation for this particular hunt?

B. If the Member or employee makes a reasonable reimbursement of the expenses incurred, either to the corporation or the host (if the latter leased the lodge)?

C. In determining whether the aggregate value of the gift exceeds $100, the value of similar entertainment furnished by the Member or employee may be deducted, and

D. The above questions would be answered differently if the host were owner or lessee of the lodge rather than the corporation, and

E. If the gift can be accepted, must the gift be disclosed?

RULING:

Rule 35 prohibits the acceptance of such an invitation if the corporation owns or leases the premises.

The Member or employee cannot accept the invitation if the host leases the facilities from the corporation for this hunt because the legislative history of Rule 35 (Senate Report No., 95–49, page 35) indicates that ''personal hospitality'' consists of food, lodging, and entertainment while a guest in the host's personal residence.

The Member or employee may accept the invitation under (B) if he reimburses the proper party (whoever is paying the expenses) for his share of the expenses. No gift would then be involved.

Under Rule 35 the ''personal hospitality'' reciprocated by a Member or employee may not be deducted by the Member or employee in determining whether gifts exceed $100 or have been received during a calendar year from a prohibited source.

With respect to (D) if the host is the owner, or lessee of the premises under a lease unrelated to his employment, acceptance of such an invitation can qualify as ''personal hospitality.''

With respect to (E) those invitations which would qualify as personal hospitality need not be reported under Rule 34.

[NOTE: The new Senate Gifts Rule, effective January 1, 1996, excludes from the gift rele restrictions a gift of personal hospitality from an individual other than a registered lobbyist or agent of a foreign principal. The new rule, however, does not change the substance of the ruling in IR 76]

INTERPRETATIVE RULING NO. 79

Date Issued: October 11, 1977

Applicable Rules: 34, 35

QUESTION CONSIDERED:

May Senate staff employees accept travel expenses from a potential employer for the purpose of a job interview?

RULING:

Paragraph 2(a) of Rule 35 excludes from the definition of a gift the ''necessary expenses'' of travel, food, and lodging for purposes of the prohibition upon accepting gifts in excess of $100 from prohibited sources. The Select Committee has determined that the necessary expenses for the purpose of a job interview, if paid by the prospective employer, may be accepted under this exception to the definition of a gift. If the staff employees are required to file annual financial disclosure statements, the acceptance of these expenses should be reported as the receipt of a reimbursement if it is worth more than $250.

[NOTE: The new Senate Gifts Rule, effective January 1, 1996, excludes from the gift rule restrictions those necessary expenses resulting from the outside business or employment activities of the Member, officer, or

employee, or the spouse of the Member, officer, or employee if such necessary expenses have not been offered or enhanced because of the official position of the Member, officer, or employee and are customarily proved to other in similar circumstances]

INTERPRETATIVE RULING NO. 86

Date Issued: November 8, 1977

Applicable Rules: 37, 41

QUESTION CONSIDERED:

Can a staff member designated under Senate Rule 41 to solicit contributions be employed as a consultant by a state party organization for the purpose of assisting with developing and implementing its fundraising activities?

RULING:

Under Rule 37, paragraph 3 on Conflict of Interest, the initial responsibility for determining that this proposed outside professional activity does not conflict with the employee's conscientious performance of his Senate duties rests with his supervisor (i.e., his supervising Senator). The Committee suggested that perhaps he could render his consulting services after Senate office hours, over weekends or while on annual leave.

INTERPRETATIVE RULING NO. 88

Date Issued: November 16, 1977

Applicable Rule: 41

QUESTION CONSIDERED:

May a staff member attend (on his own time) a fundraiser to benefit his employing Member's campaign while the staff member is in an official travel status? Extra travel expenses incident to attending the fundraiser will be paid by the Member's political campaign committee.

RULING:

Although the staff member cannot make a direct contribution to a Member of Congress (and thus cannot attend as a paying guest), nothing in the Code of Official Conduct prohibits the staff member from attending the fundraiser on his own time provided he does not engage in the solicitation or handling of campaign funds prohibited by Rule 41 (unless properly designated). The fact that the staff member is in an official travel status has no bearing on this ruling. It is appropriate for a campaign committee to bear the expense of the additional travel expense incident to attending the fundraiser.

[Note: As amended in 1979, the law (now 18 U.S.C. 603) prohibits contributions only to the contributor's ''employer or employing authority.'' See Interpretative Ruling 301, February 21, 1980.]

INTERPRETATIVE RULING NO. 89

Date Issued: November 21, 1977

Applicable Rule: 35

QUESTION CONSIDERED:

A Senator's ''necessary travel expenses'' are to be paid by the organization sponsoring his appearance. May the organization also pay for expenses related to another appearance? When two different sponsoring organizations in the same area offer to pay ''necessary travel expenses'' for the Senator's trip to that area, may the Senator accept both offers so a staff member may accompany him?

RULING:

A Member, officer, or employee may accept necessary travel expenses from the organization sponsoring his or her appearance. These expenses are not considered a gift for purposes of the Rule 34 reporting requirements and the Rule 35 limitations on gifts.

When a second appearance requires additional expense, such as an extra night's lodging, it may not be paid by

the sponsor of the first appearance, since it is not an expense necessary for that appearance. An extra expense of this kind should be paid by the sponsor of the second appearance.

The second question assumes that two different sponsoring organizations offer to pay travel expenses for two separate appearances in the same area. The question is whether the Senator may accept both offers of travel expenses so a Senator's staff member can also attend for official purposes. There is no objection to this under the Code of Official Conduct if it is done with the knowledge and agreement of the sponsors. The Senator may not accept double payment for the same expense, but may accept payment from the two sources for expenses of himself and a staff member as long as the expenses are necessary and the attendance of the staff member at one of the events is for official purposes.

[NOTE: The current Senate Gifts Rule, effective January 1, 1996, prohibits a registered lobbyist or agent of a foreign principal from sponsoring necessary travel expenses. Moreover, a staffer may no longer accompany a Senator (spouse or child only) on a fact-finding trip, unless the staff member has received his or her own invitation from the sponsor. Further, back-to-back events as in the ruling would have a combined 3 day limit under the current Rule, unless each event was independently arranged (in other words, you can't plan back-to-back events to exceed the 3 day rule).]

INTERPRETATIVE RULING NO. 93

Date Issued: January 4, 1978

Applicable Rule: 37

QUESTION CONSIDERED:

May the expert transcribers who are on the staff of the Official Reporters of Debates perform transcribing services for commercial reporters in non-federal cases while the Senate is in recess or after Senate hours?

RULING:

Paragraph 6 of Senate Rule 37 states that no employee compensated at an annual rate in excess of $25,000 shall ''affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation.''

For the purposes of this paragraph, ''professional services'' shall include but not be limited to those which involve fiduciary responsibilities.

While the transcribers in question have expertise in Senate procedure and have exceptional background in grammar, English usage and punctuation, the extent of their fiduciary duty is to transcribe a true and accurate statement. The Committee is of the opinion that the transcribers are not prohibited from offering their professional services for compensation in their off-duty hours, as this rule is primarily designed to limit the practice of law, medicine, architecture, and other traditional professions.

INTERPRETATIVE RULING NO. 94

Date Issued: January 24, 1978

Applicable Rule: 35

QUESTION CONSIDERED:

May a group of Senate staff, which meets weekly to exchange views on legislative matters, accept coffee and doughnuts paid for regularly by an organization engaged in lobbying the Congress?

RULING:

While it is probable that no Senate Rule would be violated, the Committee is concerned that such an arrangement between a committee staff and an interest within its jurisdiction could reflect discredit upon the Senate.

[NOTE: The new Senate Gifts Rule, effective January 1, 1996, excludes food or refreshments of a nominal value offered other than as part of a meal].

INTERPRETATIVE RULING NO. 97

Date Issued: February 8, 1978

Applicable Rule: 37

QUESTION CONSIDERED:

May a staff lawyer assigned to a subcommittee join a local bar association subcommittee which intends to lobby the staff member's subcommittee with respect to pending legislation?

RULING:

The primary responsibility for preventing any conflict of interest or the interference of outside activities with Senate duties rests with the staff member's supervisor pursuant to Rule 37.3. While there is nothing in the Code of Official Conduct which would preclude his membership in the bar association subcommittee, the Ethics Committee believes that such membership could result in an appearance of a conflict of interest and that the more prudent choice would be to refrain from such membership.

INTERPRETATIVE RULING NO. 100

Date Issued: February 23, 1978

Applicable Rule: 40

QUESTION CONSIDERED:

Is the restriction on the use of the frank for mass mailings and use of the Senate Recording Studio for 60 days prior to ''any primary or general election'' applicable to a State party convention which has authority to nominate a candidate for the Senate.

RULING:

The Committee has concluded that the definition of a ''primary or general election (whether regular, special, or runoff)'' does not include a party convention. This decision is in accord with the definition of an ''election'', previously adopted by the Congress in the Federal Election Campaign Act Amendments of 1976 (P.L. 94–283), which defines an election to include ''a convention or caucus of a political party which has authority to nominate a candidate . . .'' (Title 2, Chapter 14, section 431 of the Federal Election Campaign Act). Under the law of the State in question, the convention does have such authority.

As it was originally enacted, the Federal Election Campaign Act of 1971 defined an ''election'' as including ''a convention or caucus of a political party held to nominate a candidate.'' Thus, the Congress, through the FECA amendments of 1976, acted to expand the definition to include not only party conventions and caucuses which act to nominate a candidate, but also conventions and caucuses which have the authority to make such nominations.

Thus, the restrictions of Rule 40, as they apply to mass mailings under the frank and use of the Senate Recording Studio 60 days prior to ''any primary or general election . . .'' are applicable to this situation, including a subsequent primary, if any, and the general election.

INTERPRETATIVE RULING NO. 103

Date Issued: March 6, l978

Applicable Rule: 37

QUESTION CONSIDERED:

May a Senate employee join the board of a tax-exempt corporation which has as its principal purpose the publication of a newsletter summarizing state and federal election campaigns?

RULING:

Paragraph 6(a) of Rule 37 permits board service of this type so long as the service does not conflict or interfere with the conscientious performance of Senate duties. In this case the Committee was informed that the time involved would be minimal (quarterly board meetings). The responsibility to ensure that no conflicts arise in the future rests with the employee's supervising Senator, who must be informed of this outside activity.

In cases where the business of the tax-exempt corporation is similar to that of the employee's committee assignment or area of responsibility, the Ethics Committee has advised against the employee accepting such a position. No such conflict appears to exist in the present case.

INTERPRETATIVE RULING NO. 107

Date Issued: March 21, 1978

Applicable Area: Nepotism

QUESTION CONSIDERED:

May a Senator appoint the son of another Senator to a Senate post at the latter Senator's request?

RULING:

The federal anti-nepotism law (5 U.S.C. 3110) provides that an individual may not be employed in a government agency if his employment has been advocated by a public official serving in that agency who is a relative of the prospective employee. Under the circumstances, the Senator's son thus would be precluded from being appointed to the post in question.

INTERPRETATIVE RULING NO. 109

Date Issued: March 23, 1978

Applicable Rule: 37

QUESTION CONSIDERED:

May a full-time employee on a Member's staff working in a district office serve, if elected, as a compensated member of the state legislature and continue to be a Senate employee?

RULING:

Paragraph 3 of Rule 37 on Conflict of Interest states that no officer or employee shall engage in any outside business or professional activity or employment for compensation unless he has reported to his supervisor, in writing, when such activity commences and on each May 15th thereafter so long as it continues. The supervisor shall take such action as he considers necessary for the avoidance of a conflict of interest or interference with the staff member's duties to the Senate.

The Committee cannot predict whether, in fact, this outside activity will result in actual conflict of interest in connection with a particular issue or will interfere with the performance of Senate duties.

It was stated that in addition to time away from Senate duties while campaigning, the legislature meets on four afternoons each week for four months of the year. The supervisor advised the employee that he would monitor the situation and consider whether a salary adjustment or restrict of Senate duties would be appropriate.

The Committee concluded that this approach to the matter is in conformity with paragraph 3 of Rule 37.

INTERPRETATIVE RULING NO. 111

Date Issued: April 5, l978

Applicable Rule: 4l

QUESTION CONSIDERED:

Does the Senate Code of Official Conduct place any restrictions upon the use of interns?

RULING:

The Code of Conduct was not intended to limit a Senator's ability to utilize interns. The Code of Conduct contains no specific reference either to interns or to internship programs. However, paragraph 4 of Rule 4l does provide that a Senator may not utilize the full-time services of an individual for more than ninety days in a calendar year unless the individual agrees in writing to comply with the Senate Code of Official Conduct in the same manner and to the same extent as employees of the Senate.

Thus, an intern who worked for a Senator or for a Senate committee on a full-time basis for over ninety days would have to agree to abide by the provisions of the Code of Conduct, some of which apply to all Senate staff and others of which apply only to individuals paid in excess of a specified rate.

[NOTE: IR 111 presumes that an intern working in the Senate is unpaid. Interns who are paid by the Senate for

services are treated like other employees of the Senate and, thus, are subject to the Code of Conduct immediately upon employment]

INTERPRETATIVE RULING NO. 112

Date issued: April 7, 1978

Applicable Area: Franking

QUESTION CONSIDERED:

(1) May the frank be used to send an autographed picture of a Senator in his former occupation in response to a request for the picture; and

(2) May the frank be used to send an autographed picture along with a written response on a legislative matter; and

(3) May the frank be used to return an item which was sent to the Senator with a request for an autograph?

RULING:

Title 39 U.S.C. 3210(a)(3)(J) provides that frankable mail includes mail matter ''which contains a picture, sketch or other likeness . . . and which is so mailed as a part of a Federal publication or in response to a specific request therefore . . .'' Thus, the statute specifically allows use of the frank on autographed photographs when in response to a specific request and, by implication the statute allows for the return of items having been autographed as requested. The statute does not appear to allow either autographed items or photographs to be routinely sent along with other franked mail absent a specific request for such an item.

INTERPRETATIVE RULING NO. 117

Date Issued: April l0, l978

Applicable Rule: 40

QUESTION CONSIDERED:

Rule 40, paragraph 4(b), exempts from the restrictions on mass mailings any mailing under the frank which is ''addressed to colleagues in Congress or to government officials (whether Federal, State or local).'' What does the term ''government officials (whether Federal, State or local)'' mean?

RULING:

The Committee has determined that the definition of ''government officials (whether Federal, State or local)'' is as follows:

Government officials (whether Federal, State or local) include any elected or appointed official of the United States and of any state or territory or a political subdivision thereof.

INTERPRETATIVE RULING NO. 124

Date Issued: May 5, l978

Applicable Rules: 34, 35

QUESTION CONSIDERED:

May a Senator who is planning to speak to a foundation accept hotel lodging for himself and his wife when the hotel accommodations have been made available to the foundation by the hotel and the foundation has the discretion to decide who may use the rooms?

RULING:

The ''necessary expenses'' of travel provided by the sponsor of an event would not constitute a gift under the limitations of Rule 35 where the sponsor of the Senator's appearance makes arrangements to have a hotel room made available to the Senator. Therefore, the foundation, a sponsor of the event, may provide a hotel room to the Member and his wife.

Rule 34 (Title I of the Ethics in Government Act) requires that, if the value of the lodging provided was more than $250 or, if within the calendar year, including the value of the hotel room, the foundation had provided more than $250 in reimbursements of the Senator's travel related expenses, then the providing of the hotel room must be reported on the Senator's annual financial disclosure statement.

INTERPRETATIVE RULING NO. 125

Date Issued: May 25, l978

Applicable Rule: 34

QUESTION CONSIDERED:

Under the financial disclosure requirements of Rule 34, how should the following property interests be reported and evaluated?

(l) an undivided interest in several pieces of real property purchased on an installment basis, in part with cash, and the balance financed by a non-recourse loan against the property itself;

(2) a limited partnership in several real estate holdings which are secured solely by the land involved.

RULING:

In the case of co-ownership of the undivided real property interests, the reporting individual's interests would be reported under the real property section, using as a method of valuation: an appraisal; the assessed value for tax purposes; the purchase price of the interest (i.e., the reporting individual's share of the down payment and the note) and date of purchase; or a good faith estimate of the value of the interest on December 3l of the preceding calendar year. Under the liability section, the reporting individual's share of the notes involved would be reported, since he is personally obligated to pay his share of installments on the notes when due in order to avoid foreclosure and loss of the properties.

In the case of the limited partnerships in real estate ventures, these interests should be reported under the property section, and may, by virtue of section l02(c)(2) of the Act, utilize the purchase price and date of purchase as a method of valuation of the reporting individual's interests. The other valuation methods mentioned above may also be utilized. The resulting values should be reported by their appropriate categories of value. A limited partner who is not personally liable on the notes for certain properties would not be required to report any personal liabilities for these interests.

INTERPRETATIVE RULING NO. 126

Date Issued: May 5, 1978

Applicable Rule: 37

QUESTION CONSIDERED:

Is there a conflict of interest presented by a staff member in a Senator's state office serving as an uncompensated member of the board of a local Chamber of Commerce during the time when the Chamber will be administering a federal grant to create an economic development plan for that locality?

FACTS:

The supervising Senator has no committee assignments that would involve him in oversight of or appropriations for the federal agency providing the grant in this case.

RULING:

The facts presented do not seem to indicate a conflict of interest under Rule 37. However, paragraph 3 of Rule 37 requires that the supervising Senator take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate.

INTERPRETATIVE RULING NO. 128

Date Issued: May 12, 1978

Applicable Rule: 37

QUESTION CONSIDERED:

A Senator is writing a book and wishes to utilize the services of a staff member as a consultant to the project. The Senator proposes to retain the aide on the Senate payroll at the minimum figure established by the Secretary of the Senate, which will still entitle the aide to health and life insurance benefits. The aide will perform services, commensurate with his reduced salary, in the Member's office during Senate business hours. Work on the book will be undertaken during non-Senate business hours. Would this arrangement conflict with the Code of Official Conduct?

RULING:

Because the Senate payroll regulations do not provide for a ''leave without pay'' status, and because the Senate's health and life insurance programs are tied to the payroll regulations, a Senate employee must terminate his insurance protection if he leaves the payroll. In this instance, the Committee ruled that this aide could be retained on the payroll at the minimum level which would entitle him to insurance coverage, provided that the aide would continue to perform services, commensurate with his reduced salary, in the Senator's office during regular Senate business hours. The Committee agreed that any activity related to work on the Senator's book would have to be undertaken during non-Senate hours.

The Committee reminded the Senator that while his proposal was not precluded by any specific rule of the Code of Official Conduct, Rule 37, paragraph 3 places the responsibility on a Senator, as supervisor of his employees, to take such action as is considered necessary for the avoidance of conflict of interest or interference with Senate duties.

INTERPRETATIVE RULING NO. 131

Date Issued: May 15, 1978

Applicable Rule: 37

QUESTION CONSIDERED:

May a staff member who terminates his Senate employment be retained on the Senate payroll for a period of time equal to the employee's unused annual leave, while also being employed and compensated by his new employer?

RULING:

While no specific provision of the Code of Official Conduct would preclude this arrangement, paragraph 3 of Rule 37 directs that a Senate employee report any outside employment for compensation to his supervisor and that it then becomes the responsibility of the supervisor to take such action as is necessary to prevent a conflict of interest or the appearance of a conflict. Paragraph 3 of Rule 37 does not prohibit a former employee from accepting compensation from his new employer during the period he remains on the Senate payroll to expend unused annual leave.

[NOTE: The Committee has recommended that a former employee still on the payroll to expend unused annual leave refrain from providing any services for the Senate and also refrain from lobbying the Senate during the pay period. The post employment restrictions of Senate Rule 37.9 and, where applicable, the restrictions of the criminal statute, 18 USC 207,apply when the former employee leaves the payroll]

INTERPRETATIVE RULING NO. 134

Date Issued: May 18, 1978

Applicable Rules: 38 and 40

QUESTION CONSIDERED:

May a Senator use his 10 percent discretionary funds from his Official Office Expense Allowance to purchase a mailing list of registered voters from his state's election board, when the list is uncoded as to political affiliation?

RULING:

Under Rule 38, the Committee has ruled that a Senator may not accept a mailing list free of charge from a

private, non-governmental source since this would constitute a prohibited in-kind contribution to an unofficial office account. However, the l0 percent discretionary allowance, provided to each Senator in the 1978 Legislative Branch Appropriations Act, may be used to purchase such a list, under standards and procedures established by the Rules Committee, when the list is used for the purpose of better communicating with constituents.

Paragraph 5 of Rule 40 does not contain any restriction on the source of a mailing list which is to be processed by the Senate computer facilities.

[NOTE: The general office account is currently the source of official funds for purchase of a non-partisan mailing list]

INTERPRETATIVE RULING NO. 135

Date Issued: May 22, 1978

Applicable Area: Franking

QUESTION CONSIDERED:

May a Senator borrow a mailing list from a private organization, use the list in an otherwise frankable mailing, and return the list to the organization, with address corrections provided by the Postal Service at the Senator's direction, in exchange for the use of the list?

RULING:

The regulations published by the Select Committee governing the use of the mailing frank state that the mailing lists may be corrected under Postal Service Regulation l22.5 by postmasters on request from a Member of Congress, but that ''the frank shall not be used for any other means of correcting the mailing list of a Senator.''

Additionally, the franking statute, 39 U.S.C. 3215 states that ''a person entitled to use franked mail may not loan his frank or permit its use by any committee, organization, or association; or permit its use by any person for the benefit or use of any committee, organization, or association.'' The franking regulations employ similar language.

Based on these two restrictions, the Committee ruled that a Senator may not use the mailing list of a private organization in a franked mailing and subsequently communicate information to that organization to enable it to update its mailing list.

INTERPRETATIVE RULING NO. 140

Date Issued: May 25, 1978

Applicable Areas: Senate Code of Official Conduct

QUESTION CONSIDERED:

Is the Vice President covered by the Senate Code of Official Conduct and is the Senate Select Committee on Ethics the Vice President's ''employing agency'' for purposes of the Foreign Gifts and Decorations Act?

RULING:

Although the Vice President is a constitutional officer with the duty of presiding over the Senate, the Committee is of the opinion that he is not a Member, officer, or employee of the Senate as those terms are used in the Code of Official Conduct. The term ''officer'' refers to those officers elected by the Senate. Thus, the Vice President is not within the class of persons covered by the Code of Official Conduct.

The Committee notes that the Foreign Gifts and Decorations Act (5 U.S.C. 7342) excepts the Vice President from a statutory definition of Members of Congress and has thus removed him from the jurisdiction of this Committee for the purposes of this Act.

INTERPRETATIVE RULING NO. 141

Date Issued: June 6, 1978

Applicable Rule: 40, Franking

QUESTION CONSIDERED:

What is the applicability of Rule 40 concerning the use of the mailing frank to the ''mass mailings'' of a

committee which utilizes the mail frank of the committee's chairman?

RULING:

The Committee has determined that the moratoriums contained in Rule 40 and the franked mail statute do not apply to the mass mailings of a Senate committee which are mailed under the frank of the committee's chairman. However, such mailings must relate only to the committee's business and may not focus on a Member in a manner that could reasonably be deemed to be personal or political.

INTERPRETATIVE RULING NO. 142

Date Issued: June 6, 1978

Applicable Rule: 37

QUESTION CONSIDERED:

A Member who is the chairman of a committee requested the Ethics Committee's interpretation of paragraph 7 of Rule 37 on Divestiture.

RULING:

Paragraph 7 of Rule 37 provides:

An employee of the staff of a committee who is compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year, shall divest himself of any substantial holdings which may be directly affected by the actions of the committee for which he works, unless the Select Committee, after consultation with the employee's supervisor, grants permission in writing, to retain such holdings or the employee makes other arrangements acceptable to the Select Committee and the employee's supervisor to avoid participation in committee actions where there is a conflict of interest.

The Committee does not believe that the issuance of guidelines to be applied uniformly to all committee staff, in all situations, is practical due to the diversity of circumstances and jurisdictions. Committee Chairmen and Ranking Minority Members are expected to monitor possibilities of real or apparent conflicts of interest due to the holdings of committee staff. The Committee does offer the following interpretations for guidance.

The definition of ''employee'' in paragraph 11 of the Rule, includes staff on the payroll of a committee. Employees certified to a committee by a Senator, pursuant to Section 111 of the Legislative Branch Appropriation Act of 1978, are not employees for the purposes of paragraph 7.

''Directly affected by actions of the committee'' is a phrase which must be given application by the Committee Chairman and Ranking Minority Member as to the particular circumstances of each situations.

There is no basis for treating majority and/or minority staff directors or counsels differently from other members of the committee staff.

Committee staff with only administrative duties are also covered by the Rule if they are compensated at a rate in excess of $25,000 and are employed for more than ninety days in a calendar year.

The Rule is not applicable to the property of a spouse or dependent though an employee's interest in jointly or severally held property would be covered by paragraph 7.

The Rule does not apply to an employee acting as trustee for an unrelated person if the employee retains no beneficial interest in the trust corpus. Bare legal title to the corpus of the trust is not sufficient to make paragraph 7 applicable.

If, in a particular instance, divestiture is indicated, a transfer of the assets in question to a spouse or dependent would not be considered divestiture for purposes of the Rule.

The Rule is applicable to all committees, whether or not they have legislative jurisdiction.

Committee inaction or mitigation of proposed regulatory actions is tantamount to ''committee action'' for purposes of the Rule.

Savings accounts, checking accounts, certificates of deposit, federal government bonds, Treasury bills and notes are not, ordinarily, ''holdings which may be directly affected by the actions of a committee'' for purposes of the Rule.

INTERPRETATIVE RULING NO. 143

Date Issued: June 14, 1978

Applicable Area: Foreign Gifts & Decorations Act

QUESTION CONSIDERED:

May employees on the staff of a Member accept an offer made by the ambassador of a foreign government to fly from the United States to that foreign country at the expense of the foreign government in order to attend a treaty ratification ceremony?

RULING:

The Foreign Gifts and Decorations Act (5 U.S.C. 7342) prohibits federal employees from accepting gifts of travel from a foreign nation unless such travel occurs within the specific restrictions established by the Congress. The Congress has given its consent to travel involving an international cultural exchange program as well as travel taking place entirely outside the United States under certain circumstances. The Congress did not consent, in agreeing to the Foreign Gifts and Decorations Act, to the acceptance of foreign travel provided by a foreign government when such travel begins and ends within the United States, as does this proposed trip.

The Committee did not find that the proposed travel fits within these Congressionally recognized exceptions and agreed therefore, that the offer of the ambassador should be declined.

INTERPRETATIVE RULING NO. 145

Date Issued: June 15, 1978

Applicable Rule: 37

QUESTION CONSIDERED:

May an employee of the Senate accept an offer from a law firm to join the firm in an uncompensated ''of counsel'' relationship while remaining as a Senate employee?

RULING:

Paragraph 5 of Rule 37, Conflict of Interest, provides that no Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per year and employed for more than ninety days in a calendar year shall ''permit that individual's name to be used by such a firm, partnership, association, or corporation. . . .''

It is our opinion that the proposed relationship as uncompensated ''of counsel'' would conflict with paragraph 5 of Rule 37.

INTERPRETATIVE RULING NO. 147

Date Issued: June 19, 1978

Applicable Rule: 37

QUESTION CONSIDERED:

The following questions concerning paragraph 7 of Rule 37 were submitted by Chairmen and Ranking Minority Members of Senate Committees.

(1) What is meant by ''substantial holdings'';

(2) Does paragraph 7 apply to S. Res. 4 (former S. Res. 60) staff persons;

(3) Are the holdings of spouses and dependents subject to divestiture;

(4) Are the blind trust provisions of the Ethics in Government Act available in order to avoid divestiture;

(5) What is meant by ''holdings which may be directly affected by actions of the Committee'';

(6) Is Committee inaction tantamount to ''action'' as described in paragraph 7;

(7) What procedures should be followed in order to obtain permission to retain holdings affected by the Rule;

(8) What procedures will be utilized for consultation with an employee's supervisor under the Rule;

(9) Since the staff director, general counsel and minority staff director must participate in all legislation before the Committee, would different guidelines be appropriate for them?

RULING:

The Select Committee does not believe that the issuance of specific guidelines to be applied uniformly to all committee staff is practical due to the diversity of circumstances and jurisdictions of committees. Each chairman should initiate appropriate steps to ascertain the extent, if any, of the possibility of the appearance of a conflict of interest due to the holdings of committee staff persons, and in proper cases, should suggest a course of action he deems to be an acceptable solution. The Committee will assist with doubtful cases upon written request.

As for what constitutes ''substantial holdings'', the Select Committee has concluded that it cannot translate this into dollars in the absence of specific circumstances, as it is relative and what may be considered substantial in one instance may not be in another. However, the value and character of the holding in relation to the Committee's jurisdiction should be considered as well as the value of the individual's other assets. In a few cases, the holding may constitute a substantial percentage of the equity ownership of the business, and therefore may be a factor to be considered.

Regarding the second question, concerning the definition of an employee on the staff of a committee, employees certified to a committee by a Member, pursuant to Section 111 of the Legislative Branch Appropriations Act of 1978, are not employees of the staff of a committee for purposes of paragraph 7 of Rule 37.

In answer to question three, the Select Committee has determined that the holdings of a spouse or dependent are not covered by the Rule, although paragraph 7 would be applicable to a person's interest in jointly-held property or to the entire property in those jurisdictions where property may be held jointly with rights of survivorship or the equivalent. The Committee has held that the term is not applicable to savings accounts in federally regulated banks or savings and loans; nor is the term applicable to real estate within the District of Columbia, nor to property held in a fiduciary capacity for the benefit of others, where the employee retains no beneficial interest.

With respect to question four, a qualified blind trust may be an acceptable method of eliminating questions of conflict of interest. Before a qualified blind trust could become an acceptable alternative to divestiture, all the facts and circumstances surrounding the blind trust proposal would have to be examined by the Committee. The divestiture requirement of Rule 37 would not be met by a transfer of property by a committee staff employee to his or her spouse or dependent.

With respect to the fifth question as to the meaning of the phrase ''directly affected by actions of the Committee'', the phrase must be given application by the committee chairman and ranking minority member as to the particular circumstances of each situation.

In answer to question six, committee inaction or mitigation of the effect of a regulation is tantamount to action.

With regard to questions seven and eight, the Committee suggests that an employee who feels that paragraph 7 of Rule 37 may affect his or her financial situation should bring the specifics of the situation to the attention of his supervisor. After attempting to reach a satisfactory solution, the staff member would then write to the Select Committee seeking permission to retain the holdings or proposing an alternative arrangement which might be acceptable to the Select Committee and the employee's supervisor.

With respect to question 9, the Committee concluded that there is no basis in the rule for treating a staff director and counsel differently. They are in the class to which the provision is specifically intended to apply.

In conclusion, the Select Committee does not believe that the issuance of specific guidelines to be applied uniformly to all committee staff is practical due to the diversity of circumstances and jurisdictions of committees. Each chairman should initiate appropriate steps to ascertain the extent, if any, of the possibility of the appearance of a conflict of interest due to the holdings of committee staff persons, and in proper cases, should suggest a course of action he deems to be an acceptable solution.

INTERPRETATIVE RULING NO. 149

Date Issued: June 19, 1978

Applicable Rule: 40

QUESTION CONSIDERED:

Rule 40 prohibits a Member from sending a ''mass mailing'' under the frank less than 60 days immediately before the date of any election in which the Member is a candidate, but permits a mailing under the frank which is sent ''in direct response to inquiries or requests from persons to whom the matter is mailed.''

How is the 60 days computed, and is a request for additional information from a recipient of a questionnaire an ''inquiry or request?''

RULING:

The 60-day limitation is computed by excluding the actual day of the election, whether it is a primary, general, regular, special, or runoff. For example, the last permissible date for delivering a ''mass mailing'' to a postal

facility before a September 9, 1978 primary is July 11, 1978.

The Committee has previously ruled that the Rule 40 exception for any mailing sent ''in direct response to inquiries or requests from persons to whom the matter is mailed . . .'' would apply to a response sent by a Member to a recipient of a questionnaire, where the recipient of the questionnaire had indicated on a form or on a portion of the questionnaire a desire for additional information on a particular topic.

INTERPRETATIVE RULING NO. 152

Date Issued: June 22, 1978

Applicable Rule: 40

QUESTION CONSIDERED:

Is a Member a ''candidate'' for purposes of the franking and studio restrictions of Rule 40, if his or her name is on the primary ballot, but he or she will have no primary opposition and no write-in votes are allowed under the applicable State law?

RULING:

The restrictions of Rule 40 are intended to reduce the advantage of incumbent Senators over challengers. Under the circumstances described, there can be no possible challengers in the primary election. The Committee therefore believes that the restrictions of Rule 40 are not applicable.

INTERPRETATIVE RULING NO. 153

Date Issued: June 22, 1978

Applicable Rule: 41

QUESTION CONSIDERED:

Is it permissible for an employee of the Senate to volunteer his or her services during a state, county, or municipal election campaign?

RULING:

Senate Rule 41, Political Fund Activity, prohibits officers and employees of the Senate from engaging in any fund-raising activities for any Federal office. This prohibition does not apply to the two staff assistants designated by a Senator to handle his or her campaign contributions, nor does it apply to state or local campaigns.

Although Rule 41 does not address non-financial campaign activities, previous interpretations on the question of staff activities in campaigns for Federal office would be applicable to state or local elections as well. For example, the Committee on Rules and Administration has stated, in Senate Report 95–241 (95th Cong.), that it ''is not aware of any laws which prohibit individuals who are part of a Senator's staff from participating in a Senator's re- election campaign as long as they do not neglect their Senate duties . . .'' In addition, the Committee has stated, in Interpretative Ruling No. 3, dated May 5, 1977, that ''. . . Senators should encourage staff to remove themselves from the payroll for periods during which they expect to be heavily involved in campaign activities.''

The Committee believes that these statements are applicable to employees of individual Senators, staff of Senate committees, and employees working for officers of the Senate.

[NOTE: Senate Rule 41.1 has been amended to permit a Member to appoint up to three assistants as political fund designees, at least one of whom is in the Washington, D.C. office. The Rule was also amended to permit the Majority Leader and the Minority Leader to each designate an employee of their respective leadership office staff as one the three designees. Such designation shall be made available for public inspection by the Secretary of the Senate].

INTERPRETATIVE RULING NO. 154

Date Issued: June 22, 1978

Applicable Rules: 40, 41

QUESTION CONSIDERED:

(1) Is a Senator whose name appears on a primary ballot considered a ''candidate'' for purposes of Rule 40 restrictions when the Senator faces no announced opposition but state law authorizes write-in candidates?

(2) May a part-time staff assistant to a Senator, who also works half-time for the Senator's re-election campaign committee, engage in fund-raising activities for the campaign committee?

(3) Is it possible for a staff assistant, while engaged in Senate duties, to become involved to a minimal degree with a campaign-related activity without violating the Code of Official Conduct?

(4) Is it permissible for a staff assistant on the Senate payroll to engage in campaign-related activities during other than normal Senate office hours?

RULING:

(1) The prohibitions imposed by Rule 40 on the use of the frank in mass mailings and on the use of the Senate Recording Studio were intended to restrict the advantages which incumbent Senators might have during a re-election campaign. The Committee previously ruled (Interpretative Ruling No. 152, dated June 22, 1978) that Senators who do not face a primary election or whose names appear on a primary ballot unopposed, and where no write-in candidates are authorized, are not ''candidates'' for the purposes of Rule 40. However, when a Senator's name is listed on a primary ballot and state law specifically authorizes write-in candidates, there is a possibility for a contested primary election. As such, the Senator would be considered a ''candidate.''

(2) A staff assistant, whether full or part-time, may not engage in any fund-raising activities on behalf of a Senator's campaign committee, unless that staff assistant has been designated by the Senator under Rule 41 as one of the two staff assistants to the Senator who may handle his or her campaign contributions.

(3) As to the possibility of minimal involvement by a staff assistant with campaign-related business, the Select Committee believes that in a Senator's re-election campaign there might be some inadvertent and minimal overlap between the duties of a Senator's staff with respect to the Senator's official duties and his re-election campaign. However, a Senator has the responsibility to ensure that such an overlap is of a deminimus nature and that staff duties do not conflict with campaign responsibilities.

(4) As to the ability of a staff assistant to engage in campaign activities during other than Senate working hours, the Committee on Rules and Administration has said in Senate Report 95–241 (95th Congress), which accompanied Senate Resolution 188, that, except for the prohibitions of Rule 41 with respect to the handling of campaign funds, it ''is not aware of any laws which prohibit individuals who are part of a Senator's staff from participating in a Senator's reelection campaign as long as they do not neglect their Senate duties, and the Committee does not feel there should be such proscriptions. Furthermore, it is neither illegal nor a violation of Senate Rules for a member of a Senator's staff to work full-time in political campaigns while on annual leave or vacation time or while on leave of absence from his or her Senate duties.''

[NOTE: Senate Rule 41.1 has been amended to permit a Member to appoint up to three assistants as political fund designees, at least one of whom is in the Washington, D.C. office. The Rule was also amended to permit the Majority Leader and the Minority Leader to each designate an employee of their respective leadership office staff as one the three designees. Such designation shall be made available for public inspection by the Secretary of the Senate.

With respect to the question of leave time to perform campaign activities, it is the Committee's understanding that the Senate does not recognize a ''leave of absence''. The Committee has ruled that it is proper for a Senator to either reduce the salary or remove the employee from the Senate payroll when the employee intends to spend additional time on campaign activities, over and above accrued leave time or vacation time (see IR 194). However, in order to receive any level of Senate salary, pay should be commensurate with actual duties performed for the Senate. An employee may be terminated from the Senate (without pay) and return at a later date].

INTERPRETATIVE RULING NO. 155

Date Issued: June 28, 1978

Applicable Rule: 37

QUESTION CONSIDERED:

May a Senate employee run for state office while remaining on a Member's staff? No campaigning will be done during the employee's regular working hours.

RULING:

Paragraph 3 of Rule 37 on Conflict of Interest places the responsibility upon the Member as supervisor to take such action as he or she considers necessary for the avoidance of conflict of interest or interference with Senate duties.

The Ethics Committee cannot predict whether in fact the outside activity will conflict with Senate duties or will result in a conflict of interest in connection with a particular issue. The Committee suggests that the Member monitor the situation and consider such reductions in Senate duties and compensation as may be appropriate in the future.

INTERPRETATIVE RULING NO. 157

Date Issued: June 30, 1978

Applicable Rules: 34 and 35

QUESTION CONSIDERED:

Is it permissible for a Senator to accept, in connection with an appearance related to his Senate duties, air transportation to be provided by the Federal Government and other related expenses of travel which are to be provided by a State Government? Would the Senator be required to report the receipt of any of these items?

RULING:

The acceptance by a Senator of air transportation from the Federal Government or a State Government for travel-related to the performance of official duties is not a ''gift'' subject to the restrictions of Senate Rule 35. In addition, the Ethics in Government Act specifically excludes from its disclosure requirements the reporting of travel-related payments made by the United States Government or by State and local governments.

INTERPRETATIVE RULING NO. 160

Date Issued: July 13, 1978

Applicable Rule: 40

QUESTION CONSIDERED:

Is it consistent with Senate Rule for a Senator to arrange to purchase from a non-Senate organization a copy of its membership or mailing list for use by the Senator in a mass mailing under the frank, where the list will be prepared by the non-Senate organization on address labels which will then be affixed to the franked envelopes by the Senate Service Department?

RULING:

Rule 40, paragraph 2, provides that only official funds of the Senate may be used to prepare any mass mailing material to be sent out under the frank. The Committee has previously ruled* that the preparation of a mass mailing includes the preparation and affixing of address labels.

The Committee has agreed that in order to meet the requirement of paragraph 2 of Rule 40, a Senator who desires to use the mailing list of an outside organization must reimburse that organization for the costs associated with his obtaining such a list. The Committee has previously ruled** that the 10 percent discretionary allowance may be used to purchase mailing lists for use in an official mailing.

*See Interpretative Ruling No. 68, dated September 27, 1977.

**See Interpretative Ruling No. 134, dated May 18, 1978.

[NOTE: The current source for the purchase of mailing lists for use in an official mailing is the Senator's general office account].

INTERPRETATIVE RULING NO. 162

Date Issued: August 3, 1978

Applicable Rule: 35

QUESTION CONSIDERED:

May a Member accept a gift of the use of an apartment from a friend if the apartment is owned by the friend's employer, an organization having a direct interest in legislation? In determining the value of the gift, may the Member divide the total value by the number of members of his family who will be using the apartment?

RULING:

Rule 35 prohibits the acceptance of gifts worth over $100 during a calendar year, including gifts of lodging, from organizations having a direct interest in legislation before the Congress. Although the use of an apartment has been offered to the Member by a friend, the apartment is owned by the friend's employer, who maintains a separate, segregated fund for political purposes and is thereby a ''prohibited source'' under Rule 35.

The Committee has determined in prior rulings* that the ''personal hospitality'' exception to the definition of a ''gift'' applies only to food, lodging and entertainment enjoyed while a guest in the host's personal residence or on premises leased by the host which are not owned by the host's employer.

Thus, this Member may not accept the offer to use the apartment unless its use is valued at $100 or less.In determining the value of the use of the apartment, the Member may not divide the amount by the number of his family members who will be using the apartment also.

*See, for example, Interpretative Ruling No. 76, dated October 5, 1977.

[NOTE: The principles set forth in IR 162 concerning personal hospitality have not changed since passage of the new Senate Gifts Rule, effective January 1, 1996, except that the new gift ban prohibits a Member, officer or employee of the Senate from receiving any gift of a value of $50 or more, or gifts from one source (of $10 or more) that aggregate $100 or more during a calendar year. Thus, a Member may not accept the offer to use the apartment in the above example unless its use is valued at less than $50]

INTERPRETATIVE RULING NO. 166

Date Issued: August 10, 1978

Applicable Rule: 37

QUESTION CONSIDERED:

Does Rule 37, paragraph 5, prohibit an employee who is compensated in excess of $25,000 per year from selling real estate on weekends under an arrangement whereby his associate broker's license is held by a real estate company?

RULING:

Rule 45, paragraph 6, prohibits an employee of the Senate who is compensated at a rate in excess of $25,000 per year from affiliating with a ''firm, partnership, association or corporation for the purpose of providing professional services for compensation.'' The legislative history of this provision indicates that the sale of real estate was intended to be included in the prohibition. Thus, the activity in question would not be permissible because the employee was deemed to be affiliated with the real estate company which, under state law, held the employee's license as a real estate broker.

INTERPRETATIVE RULING NO. 167

Date Issued: August 10, 1978

Applicable Rule: 35, Foreign Gifts & Decorations

QUESTION CONSIDERED:

May a staff member attend the inauguration of a foreign president-elect as the guest of a political party in the President's country?

RULING:

Rule 35 of the Senate Code of Conduct prohibits the acceptance of gifts valued in excess of $100 from, among

other sources, foreign political parties. While Congress has given specific consent to travel involving an international cultural exchange and certain travel taking place entirely outside the United States, the Committee did not find that the proposed travel fell within these Congressionally recognized exceptions. Therefore, the Committee ruled that the offer should be declined.

[NOTE: Rule 35, as amended effective January 1, 1996, prohibits a Member, officer or employee of the Senate from receiving any gift of a value of $50 or more, or gifts from one source (of $10 or more) that aggregate $100 or more during a calendar year].

INTERPRETATIVE RULING NO. 169

Date Issued: August 18, 1978

Applicable Area: Advisory Opinion on Use of Letterhead

QUESTION CONSIDERED:

Is the use of the words ''United States Senate'' on a Senator's personal stationery or on a ''Senate-gram'' (a facsimile of a mail-gram), when loaned to a third party for use in a campaign fund-raising effort, consistent with the Committee's Advisory Opinion on use of a Senator's letterhead? Is the use of the words ''Senator John Doe'' on a letterhead, when loaned to a third party for use in a campaign fund-raising effort, consistent with that Advisory Opinion?

RULING:

The Committee agreed that it would be inconsistent with the Advisory Opinion for a Senator to allow a non-Senate group or organization to make use of the Senator's letterhead which included the words ''United States Senate.'' The Committee agreed that it is the use of the words rather than the type style employed which is regulated by the Advisory Opinion. Thus, a Senator's loan of letterhead with the words ''United States Senate'' would be prohibited no matter what type style or lettering was chosen by the organization.

The Committee concluded that a Senator is not prohibited by the Advisory Opinion from allowing a non-Senate organization to use letterhead identifying the Senator as ''Senator John Doe.''

INTERPRETATIVE RULING NO. 171

Date Issued: September 14, 1978

Applicable Rule: 37

QUESTION CONSIDERED:

May a Member aid the passage of certain tax legislation by sending letters that set forth arguments in support of the legislation if the Member's spouse practices a profession which would be benefited by the passage of the legislation in question?

RULING:

Rule 37, paragraph 4, provides that no Member shall knowingly use his official position to introduce or aid the progress or passage of legislation, a principal purpose of which is to further the pecuniary interest of his immediate family. However, the legislative history, S. Report 95–49, makes clear that in the case of legislation which would have a broad, general impact, such as most tax legislation, the prohibitions of paragraph 4 would not apply. Consequently, the Committee believes that the Member's support of the legislation in question is not in violation of Rule 37.

INTERPRETATIVE RULING NO. 175

Date Issued: September 21, 1978

Applicable Area: Miscellaneous

QUESTION CONSIDERED:

May a Senator donate a copy of an art book prepared by the Architect of the Capitol to political party officials for fundraising purposes?

RULING:

A Member's donation of property, given to him in his capacity as a Member of the Senate, to another individual is not prohibited by any specific provision of the Code of Conduct, nor does it appear to violate any regulations of the Joint Committee on Printing or the Senate Rules Committee. The Committee is concerned, nevertheless, that the use of such public property to raise funds for a political party could reflect discredit upon the Senate.

That concern is, in the Committee's judgment, an adequate basis upon which to decline to approve the practice with respect to donations of public property to groups organized for profit and political organizations.

INTERPRETATIVE RULING NO. 177

Date Issued: September 26, 1978

Applicable Rule: 37

QUESTION CONSIDERED:

May an officer or employee of the Senate be retained on the Senate payroll for a period of time equal to his or her accrued annual leave after the officer or employee has terminated his or her Senate duties and has accepted a new position outside the Senate?

RULING:

In some Senate offices, it is customary that when an employee leaves the Senate to accept new employment and that individual has any accrued leave, the individual is retained on the Senate payroll for a period of time equal to the unused leave, despite the fact that the individual has ceased to perform his or her Senate duties and in fact may have already commenced the new employment.

In such a case, paragraph 3 of Rule 37 on outside employment for compensation directs the employee to report to his or her supervisor (defined in paragraph 11 of Rule 37) the nature of such employment. It then becomes the responsibility of the supervisor to take such action as is necessary to avoid any conflict of interest.

When the employee notifies his or her supervisor and the supervisor takes any necessary action to avoid a conflict of interest, Rule 37 would not prohibit retaining an employee on the Senate payroll for a period equal to his or her accrued annual leave.

INTERPRETATIVE RULING NO. 178

Date Issued: September 29, 1978

Applicable Areas: Foreign Gifts & Decorations Act; Mutual Educational and Cultural Exchange Act

QUESTION CONSIDERED:

May a Senate employee accept an invitation to participate in a seminar to be held outside the United States where the sponsor, a foreign government, has offered to provide the necessary expenses of travel, including transportation, food and lodging?

RULING:

Article I, Section 9, Clause 8 of the United States Constitution prohibits employees of the Federal Government, absent the consent of Congress, from accepting any gift, to include the expenses of foreign travel, from any foreign government. Consistent with this prohibition, the Congress has consented to the acceptance of such gifts in two specific instances, the Mutual Educational & Cultural Exchange Act (22 U.S.C. 2458(a)) and the Foreign Gifts & Decorations Act (5 U.S.A. 7342). The permission for a federal employee (including Members, officers, and employees of the Senate) to accept gifts under either of these two statutes is very narrowly drawn so as to apply in only a limited number of factual situations. Given the facts presented in this inquiry, the Committee ruled that the proposed arrangement would not fit within either of these two narrow exceptions and, therefore, the constitutional prohibition would prevent acceptance of the offer.

INTERPRETATIVE RULING NO. 181

Date Issued: Septembeb 29, 1978

Applicable Rule: 37

QUESTION CONSIDERED:

May a full-time staff member conduct academic research for a non-profit foundation at a university? The staff member would receive a grant of approximately $12,000 from the foundation for the research which he intends to conduct during the evenings and on weekends.

RULING:

Rule 37 of the Senate Code of Official Conduct relates to conflict of interest, and paragraph 2 of that Rule prohibits employees from engaging in outside activity for compensation which is inconsistent or in conflict with official duties.

Under Rule 37, paragraph 3, it is the responsibility of the staff member's supervisor to make the initial determination that the outside activity presents no conflict of interest and to take such actions as are necessary for the avoidance of a conflict or interference with Senate duties. Based upon the evidence submitted, the Select Committee was of the opinion that no conflict of interest would be presented by the proposed outside professional activity.

INTERPRETATIVE RULING NO. 182

Date Issued: September 29, 1978

Applicable Rule: 41

QUESTION CONSIDERED:

Does Rule 41 prohibit a Senate employee from handling funds to be raised after the general election by a state party organization for the purpose of paying off the campaign debts incurred by the party's candidates for federal, state and local offices?

RULING:

Rule 41 prohibits an officer or employee of the Senate from receiving, soliciting, being the custodian of, or distributing funds in connection with any campaign for the nomination or election of any individual for any federal office. This prohibition does not apply to a Senate employee who is one of the two persons designated by his supervising Senator to perform any of those functions on the Senator's behalf.*

The prohibitions in Rule 41 are not applicable, however, to participation by Senate employees in state and local election activities. If those activities, and a Senate employee's participation in the activities, were to be clearly divisible from any of the organization's activities performed in connection with any federal election, the employee would be permitted to participate in fundraising activities related to state and local elections. However, if the proposed activities would involve the raising of a common fund to discharge the party's political debts on behalf of all of its candidates, whether federal, state, or local, the Committee believes that, even if the proceeds of the fundraising activities were to be apportioned between federal candidates and state or local candidates, a Senate employee's participation in the fundraising activities would be prohibited under Rule 41.

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* See also Interpretative Ruling No. 32 (dated June l7, l977) and No. 45 (dated July 20, 1977).

INTERPRETATIVE RULING NO. 192

Date Issued: October 16, 1978

Applicable Rule: 35

QUESTION CONSIDERED:

Would Rule 35 on Gifts, which is applicable to all Members, officers, employees, their spouses and dependents, prohibit the acceptance of certain travel arrangements offered by the employer of a spouse of a Senate employee when the employer is a ''prohibited source'' within the meaning of paragraph 1(b) of Rule 35?

FACTS:

In this situation, the spouse of a Senate employee will be temporarily assigned by her employer to a project in

another location some distance from Washington, D.C. The project is scheduled to last for several months and will require some weekend work. As a result, the employer, registered under the Federal Regulation of Lobbying Act of 1946 and thus a ''prohibited source'' for purposes of Rule 35, would implement an existing company policy which provides the spouse with weekend round-trip airfare to and from Washington. On those occasions when the spouse will be engaged in weekend work, the employer has offered to fly the Senate employee to his spouse's location.

RULING:

Paragraph 2(a)(7) of Rule 35 excepts from the definition of ''gift'' anything of value given to the spouse of a reporting individual by the employer of the spouse in recognition of the services performed by the spouse. In this factual situation, the Committee ruled that this exception would be applicable to the offer of round-trip airfare, whether the actual user of the ticket was the Senate employee or the spouse.

[NOTE: Under the current gifts rule, spouses and dependents are not separately subject to the gift limitations. Rather, under the current Rule, a gift to a family member (or any other individual) is considered a gift to the Member, officer, or employee only if it is given with the knowledge and acquiescence of the Member, officer, or employee and the Member, officer, or employee has reason to believe the gift was given because of the official position of the Member, officer, or employee]

INTERPRETATIVE RULING NO. 194

Date Issued: October 18, 1978

Applicable Rule: 41

QUESTION CONSIDERED:

May Senate employees engage in campaign activities on their own time and away from federal facilities? Is it permissible for a Senate employee, following adjournment of the Congress, to utilize unused vacation time to work full-time in a campaign? Would there be any restriction which would prevent a full-time Senate employee from having his Senate salary reduced while continuing to work for the Senate on a part-time basis in order that the remainder of his time could be devoted to campaign activities?

RULING:

The Committee on Rules and Administration has stated in Senate Report 95–14l (95th Congress), accompanying Senate Resolution 188, that it ''is not aware of any laws which prohibit individuals who are part of a Senator's staff from participating in a Senator's reelection campaign as long as they do not neglect their Senate duties . . . it is neither illegal nor a violation of Senate Rules for a member of a Senator's staff to work full-time in political campaigns while on annual leave or vacation time or while on leave of absence from his or her Senate duties . . .'' The Select Committee on Ethics believes that this statement is applicable to employees of a Senate committee and those persons employed by an officer of the Senate as well.

Additionally, the Ethics Committee has said in prior rulings* that it is proper for a Senator to either reduce the salary or remove an employee from the Senate payroll when the employee intends to spend additional time on campaign activities, over and above leave or vacation time. The Committee recognizes that staff members ought to be able to use bona fide vacation time for political campaign activity. As long as an office has an established and reasonable annual leave policy, and as long as an employee takes no more than the amount of time normally allowed for such leave, the Committee believes that an employee may engage in campaign activities during that time. It should also be noted that the Committee has ruled that the restrictions of Rule 41, on the handling of campaign funds, are applicable to all persons who are on the Senate payroll, even though they might be paid at a reduced rate.

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*See, for example, Interpretative Ruling No. 3, dated May 5, 1977; NO. 5, dated May 11, 1977; and NO. 22, dated May 26, 1977.

INTERPRETATIVE RULING NO. 195

Date Issued: October 18, 1978

Applicable Rules: 38, 40

QUESTION CONSIDERED:

May a Member borrow from another Senator computerized mailing lists for the purpose of communicating with constituents?

RULING:

The loan of a mailing list to a Member gives rise to a question under Rule 38 of the Senate Code of Official Conduct. Although the Code does not contain any specific restrictions on the source of a mailing list, the Committee has interpreted Rule 38 to mean that a Member may not accept goods and services in connection with the carrying out of official Senate duties unless they are paid for with funds from one of the four sources listed in the Rule. This would normally mean that the provision of a mailing list free-of-charge would constitute an impermissible in-kind contribution to an office account.

However, the Committee has ruled that in-kind services provided by agencies of the Federal Government are not subject to the Rule 38 restrictions, and goods and services provided by other Members of Congress would appear to be similarly excepted. Therefore, the use of a Member's computerized mailing lists would not be in violation of Rule 38.

Should the borrowing Member intend to incorporate the mailing list in the Senate's computer facilities, he or she should be aware that Rule 40, paragraph 5, allows the use of those facilities only if the lists bear no identification of individuals as campaign workers or contributors, as members of a political party, or by any other partisan political designation.

INTERPRETATIVE RULING NO. 196

Date Issued: October 26, 1978

Applicable Rule: 40 and Franking

QUESTION CONSIDERED:

May an agency of the Federal Government, with whom a Senator is co-sponsoring a conference, print and affix labels to franked envelopes to be used in mailing the invitations to the conference? The envelopes would be returned to the Senate Service Department for stuffing and mailing.

RULING:

Paragraph 2 of Senate Rule 40 states that only official funds of the Senate shall be used to purchase paper, print or prepare mass mailing material to be sent out under the frank. The Committee has determined, however, that under the circumstances described, it would not be a violation of Rule 40(2) for an agency of the Federal Government to print and affix address labels to franked envelopes to be used for the conference, provided such printing and labeling services are generally available to all Members of the Senate.

Chapter 4, paragraph 2, of the ''Regulations Governing the Use of the Mailing Frank'' states ''it is a privilege which Senators and others must view as a personal responsibility and which must be vigilantly safeguarded against abuse.'' One such abuse would be an improper loan of the frank in violation of Section 3215 of Title 39 of the United States Code. This Committee has previously ruled (Interpretative Ruling No. 66, September 26, 1977) that the processing of franked mail by an outside organization would constitute an improper loan of the frank because of the opportunity for abuse, such as the alteration of material or the diversion of franked envelopes that would be presented. However, the Committee has determined that it would be permissible for a Member to delegate to his or her staff the responsibility for ensuring that the process of affixing address labels to the franked envelopes to be used in the conference is carried out by the agency in such a manner as to avoid any misuse which could constitute an improper loan of the frank.

INTERPRETATIVE RULING NO. 197

Date Issued: October 31, 1978

Applicable Rule: 41, Code Of Official Conduct

QUESTION CONSIDERED:

Is it proper for Senate staff members to utilize annual leave time to carry out campaign-related activities?

RULING:

Except for Senate Rule 41, which prohibits anyone other than two designated employees on the staff of a Senator from handling campaign funds, no rule expressly forbids campaign activity by staff members.

The Select Committee has previously ruled* that a Senator should either reduce the salary or remove an employee from the Senate payroll when the employee intends to spend a substantial amount of time on campaign activities, over and above leave time.

The Committee recognizes that Senate staff members ought to be able to use bona fide vacation time in whatever way they wish, including participation in a political campaign. So long as staff takes no more than established and reasonable annual leave, the Committee is of the opinion that staff may engage in campaign activities while on annual leave.

Rule 41's restrictions on the handling of campaign funds by only two designees would, of course, remain applicable.

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*See, for example, Interpretative Rulings No. 3, dated May 5, 1977; and No. 5, dated May 11, 1977;

INTERPRETATIVE RULING NO. 198

Date Issued: November 6, 1978

Applicable Rules: 38, 40

QUESTION CONSIDERED:

Would it be permissible under paragraph 1 of Rule 38 for a Senator to accept, at no cost to him, a computerized mailing list of the names of members of a national labor union in the Senator's home state from another Member of Congress from that state, in order to communicate with the Senator's constituents?

RULING:

While the Senate Code of Official Conduct does not contain any specific restriction on the source of mailing lists acquired and used by Senators, the Select Committee has previously interpreted* Rule 38 to prohibit a Senator from accepting any goods or services from private donors in connection with carrying out official Senate duties, including communicating with constituents, unless those goods or services are paid for with funds available to the Senator from one of the four designated sources listed in paragraph 1 of Rule 38.

However, the Committee has also ruled that in-kind services, when provided by agencies of the Federal Government, are not subject to this restriction. This ruling was based, in part, on a prior determination of the Federal Election Commission which stated that the Federal Government was not considered a ''contributor'' for purposes of the Federal Election Campaign Act.

Based on this ruling, the Committee held in this case that goods and services provided to a Senator by other Members of Congress are excepted from the limitations of Rule 38 and therefore that the acceptance of this computerized mailing list at no cost from another Member of Congress would not violate Rule 38.

However, the Committee reminded the Senator that should he incorporate the mailing list in the Senate computer facility, Rule 40, paragraph 5 would require that the list bear no identification of individuals as campaign workers or contributors, as members of a political party, or by any other partisan political designation.

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*See, Interpretative Ruling No. 44, dated July 18, 1977.

INTERPRETATIVE RULING NO. 199

Date issued: November 6, 1978

Applicable Rule and Area: 38 and Franking

QUESTION CONSIDERED:

Would it be proper for a Senator to conduct from his home state office a telephone survey of his constituents to find out what issues are of concern to them in order to develop legislative priorities? In so doing may a Senator:

(1) use members of his staff and volunteers to conduct the survey?

(2) use the Senator's frank to mail the surveys in bulk to his home office?

(3) accept the offer of a private group to use their telephone facilities free of charge?

(4) use telephone facilities provided by a Federal agency in the home state?

(5) use Senate allowances to (a) rent a telephone bank and (b) pay for use of computers of a non-government organization to compile the survey results?

RULING:

(1) Telephone surveys of a Member's constituents, when undertaken to better inform the Senator of the views and concerns of his constituents, have been held by the Committee to be permissible under the Code of Official Conduct. The Committee has previously ruled that Rule 38 does not prohibit the use of volunteers who perform services for a Senator either in his Washington or home state office.[562]

(2) The use of the mailing frank to send copies of the survey to a Senator's district office is also proper.

(3) The Committee has consistently ruled that Rule 38 does prohibit a Senator from accepting in-kind contributions of goods and services from private donors to defray office expenses. Therefore, it would be improper for a Senator to accept non-governmental telephone facilities which might be offered at no cost.

(4) In contrast, the Committee has previously ruled that the Rule 38 restriction on in-kind contributions of goods and services does not apply when the donor is an agency of the Federal Government or another Member of Congress. (Interpretative Ruling No. 72, dated September 29, 1977.) Therefore, telephone facilities provided to a Senator by a Federal agency may be used to conduct a telephone survey of constituents.

(5) The question as to whether Senate allowances might be used to pay for non-governmental telephone facilities and/or computer time comes under the primary jurisdiction of the Committee on Rules and Administration which approves vouchers drawn against Senate allowances.

INTERPRETATIVE RULING NO. 201

Date Issued: November 27, 1978

Applicable Rule: 34

QUESTION CONSIDERED:

For purposes of disclosing gifts of $100 or more, is a gift to a Member from several employees of a local high school valued at its total cost, or is the value of the gift divided by the number of individual donors?

RULING:

Section 102(a)(2)(B) of the Ethics in Government Act requires reporting of ''the identity of the source of all gifts . . . aggregating $100 or more in value received from any source . . . during the preceding calendar year.'' The facts of this inquiry regarding the evaluation of a gift raise the question of the meaning of the phrase ''any source'', i.e., is the donor of the gift the school, the school employees as a group, or several separate individuals?

If on the one hand, the gift is from the school or from the employees as a group, then it would be a gift from one source, and the value would be its total cost. If the individuals who contributed toward its cost were solicited, along with other school employees, with the intent to make a gift from the school or from the employees as a group, or if the individuals when presented the gift asserted their common association with the school, the presentation would appear to be a gift from one source.

If, on the other hand, the gift is from several persons acting as individuals, the transaction would be treated as five separate gifts from five individuals, for reporting purposes, and the value of each gift would be the amount that each individual contributed toward its cost. Thus, if the five school employees decided among themselves to make a gift to the Senator and did so without soliciting contributions toward the cost of the gift from school employees as a group, or if the employees presented the gift without asserting their common association, then the facts would indicate that the gift is, in fact, from five persons acting as individuals.

[Note: The disclosure threshold for gifts is now $250.]

INTERPRETATIVE RULING NO. 204

Date Issued: December 5, 1978

Applicable Rule: 41

QUESTION CONSIDERED:

May a Senate employee hold a position as a political party's precinct chairman?

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[562] Interpretative Ruling No. 74, dated October 3, 1977. The Committee's ruling in this instance applies to surveys fitting the above description and does not apply to a survey which would be used in any manner deemed to be partisan or political.

FACTS:

One of the functions of the position is the periodic solicitation of funds for state and local candidates. While none of these funds go directly to candidates for Federal election, there have been instances when some of the funds were used for literature in support of local, state and Federal candidates. In the case of this ''joint campaign'' literature, the Federal candidates contribute their own funds to cover their share of the cost of the literature.

RULING:

The Committee has previously determined* that Rule 41's restrictions on staff campaign activities apply to participation in Federal elections and not to state and local elections. So long as the state and local campaign activities are clearly separate and distinct from any activities performed in connection with a Federal election, and the activities do not interfere with Senate duties, a Senate employee would be permitted to participate in them.

The activities proposed in this case do not appear to involve the raising or use of funds for the purpose of supporting Federal candidates. Therefore, the Committee believes Rule 41 would not prohibit those activities.

*See Interpretative Ruling No. 182, dated September 29, 1978.

INTERPRETATIVE RULING NO. 206

Date Issued: December 11, 1978

Applicable Rule: 38

QUESTION CONSIDERED:

Would Rule 38 prohibit a retiring Senator from directing his campaign committee to donate excess campaign contributions to a tax-exempt, charitable organization which would use the funds to create a scholarship fund for graduate students in the Senator's name?

RULING:

Paragraph 2 of Rule 38 prohibits the conversion of campaign contributions to the personal use of any current or former Senator. While ''personal use'' is not specifically defined, the Committee does not believe that donation of excess campaign funds to or for the use of a tax-exempt state university to create a scholarship fund for worthy graduate students from the Senator's home state is the type of conversion to personal use prohibited by Rule 38. Similarly, while there may be a nominal or constructive conversion of the funds by the Senator for purposes of inclusion in his gross income for Federal income tax purposes, it may result in a ''wash transaction'' if an offsetting charitable contribution deduction is available under section 170 of the Internal Revenue Code.

While the Committee ruled that the proposal would not be prohibited by Rule 38, it cautioned that it could express no view as to the consequences of the proposal under the Internal Revenue Code or any other law.

INTERPRETATIVE RULING NO. 207

Date Issued: December 11, 1978

Applicable Area: Legislative Branch Appropriations

QUESTION CONSIDERED:

May an employee of one Senate office seek and receive compensation for part-time employment in another Senate office?

RULING:

The Legislative Branch Appropriations Act of 1978 (Public Law 96–94) section 114, as amended by the Legislative Branch Supplemental Appropriations Act of 1978, section 207, authorized the Senate Disbursing Office to compensate an employee for work done in more than one office of a Senator, Senate officer or standing committee, provided that the employee is paid on a yearly rather than an hourly basis.

No provision of the Code of Official Conduct would prohibit an employee of one Senate office from obtaining a part-time position with another Senate office.

The Select Committee suggested that an employee seeking such an arrangement should notify the supervisor of each position of the employment arrangement.

INTERPRETATIVE RULING NO. 213

Date Issued: December 22, 1978

Applicable Rule: 37

QUESTION CONSIDERED:

Would there be a conflict of interest or the appearance of a conflict if a private company were to continue paying part of the salary of one of its employees while the employee worked full-time for a one-year period on the staff of a Senate committee with primary legislative jurisdiction over the activities of the company? Alternatively, would there be a possible conflict of interest if the employee retained his employment relationship with his private company and was also retained, and compensated, by the Senate committee as a part-time consultant?

RULING:

In the situation presented, a private profit-making organization would pay part of the salary of one of its employees for the individual's services as either a staff member or consultant to a Senate committee with legislative jurisdiction over the activities of the private organization. It is the opinion of the Committee that this arrangement might create the possibility of an actual conflict of interest or the appearance of such a conflict due to the jurisdiction of the Senate committee over matters of interest to the private company.

If the committee wished to hire the individual as a part-time consultant and pay him out of committee funds for his services to the committee, an appearance of a conflict of interest might arise since the individual would continue to retain his employment relationship with his private employer. The Committee recognizes that, in certain circumstances, an appearance of a conflict of interest arising from a consultant arrangement might be offset by a Senate committee's need to obtain specific expertise in a given area. The Committee will offer its guidance as to the propriety of such an arrangement where the specialized skills of a particular individual appear necessary.

INTERPRETATIVE RULING NO. 214

Date Issued: December 22, 1978

Applicable Rule: 35

QUESTION CONSIDERED:

May a Member of the Senate accept payment from an entity with a direct interest in legislation before the Congress for expenses he and his spouse incur during a two-day period following the Member's scheduled appearance before the entity? What limitations exist with respect to acceptance of such expenses?

RULING:

An organization with a direct interest in legislation before the Congress as this term is defined in paragraph 1(b) of Rule 35, has invited a Senator to speak to the organization's annual convention and subsequently remain at the convention site for an additional number of days to attend various convention activities. The organization has offered to provide the necessary expenses of transportation, food, lodging and entertainment for the Senator and his spouse during the entire time that the Senator is at the convention. In addition, the Senator has scheduled a briefing by a department of the executive branch in the same city for the day following the conclusion of his appearance at the convention.

Under Senate Rule 35 a Member, officer, or employee of the Senate may accept necessary travel expenses from the organization sponsoring his appearance. The Committee has ruled (Interpretative Ruling No. 89, dated November 21, 1977), however, that necessary travel expenses would not include any expenses which are associated with unrelated appearances or activities. Thus, if a second, unrelated appearance requires additional expenses, such as an extra night's lodging, the additional expenses would be subject to the prohibition in Rule 35 on gifts from such organizations aggregating in excess of $100 in a calendar year.

The Committee stated that, if the Senator had remained at the convention for the purpose of participating in convention activities, it would be permissible for the sponsor to cover the necessary expenses incurred in connection with his participation in these activities. If, on the other hand, the Senator had remained at the convention solely for the purpose of attending the briefing, or any other unrelated activity, the additional expenses would be deemed to have been incurred in connection with the second activity and, if paid by the sponsor of the first appearance, would be subject to the provisions of Rule 35, as noted above.

[Note: Rule 35 now prohibits reimbursement of necessary expenses of travel by a lobbyist. In addition, a Member whose spouse accompanies her or him on officially connected travel that is reimbursed by a third party must make a written determination that the spouse's attendance is appropriate to assist in the representation of the Senate. Finally, reimbursement for additional expenses would be limited to $49.99]

INTERPRETATIVE RULING NO. 215

Date Issued: December 23, 1978

Applicable Area: Nepotism

QUESTION CONSIDERED:

An individual who is considering employment in a Member's office asked if it would be permissible to accept such a position where the spouse of the Member is a cousin of one of the individual's parents.

RULING:

While the Committee is not charged with the responsibility of enforcing Section 3110 of Title 5 of the United States Code, which prohibits a public official (including Members of Congress) from employing or advocating the employment of a relative in the agency in which he is serving, (an office, agency or other establishment in the legislative branch is included with the definition of an agency), the Committee noted that, for the purposes of Section 3110, a ''relative'' is defined as:

. . . an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, brother-in-law, sister-in-law, step-father, step-mother, step-son, step-daughter, step-brother, step-sister, half-brother, or half-sister.

Thus, the stated relationship to the Member would not fall within the prohibitions of Section 3110.

Moreover, based on the facts described, the Committee concluded that employment in the Member's office would not constitute improper conduct which may reflect upon the Senate, nor would it present the appearance of a conflict of interest.

INTERPRETATIVE RULING NO. 216

Date Issued: January 5, 1979

Applicable Area: Foreign Gifts & Decorations Act

QUESTION CONSIDERED:

When a Senator is visiting a foreign country on official business, may he accept transportation, lodging and hospitality from the host country in order to visit areas within that country when no commercial transportation service is available or in circumstances when it would be an affront to the host government to refuse the hospitality?

RULING:

The Foreign Gifts and Decorations Act (5 U.S.C. section 7342), permits the acceptance from foreign governments of gifts of travel or expenses for travel taking place entirely outside the United States if such acceptance is appropriate, consistent with the interests of the United States and is permitted by the Senate Select Committee on Ethics (as the employing agency for Members, officers, and employees of the Senate).

The Committee has determined that the acceptance of such gifts of travel or expenses for travel (including transportation, food and lodging) under the circumstances described above, would be appropriate and consistent with the interests of the United States. Such a determination is made by the Committee on a case-by-case basis, after a review of the facts of each instance.

Within 30 days after any Member, officer, or employee of the Senate (or his or her spouse or dependents) has accepted travel or travel expenses for travel taking place entirely outside the United States, such Member, officer, or employee must file a statement of information with the Select Committee.

INTERPRETATIVE RULING NO. 218

Date Issued: January 15, 1979

Applicable Rule: 37

QUESTION CONSIDERED:

What are the restrictions on a former Senate employee's communicating with the Members and staff of a committee for which he used to work? The employee plans to begin the practice of law, and his responsibilities might include occasional discussions with Senators on behalf of a client regarding proposals of interest to the

client.

RULING:

A Senate committee staffer who leaves a committee position and becomes a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or is retained by such a registered lobbyist for the purpose of influencing legislation is prohibited by paragraph 9 of Rule 37 from lobbying Members and staff of the committee for which he or she worked for one year after leaving the committee position. ''Lobbying'' is defined in paragraph 10(c) of Rule 37 as any oral or written communication to influence the content or disposition of any issue before Congress.

The Federal Regulation of Lobbying Act of 1946 applies to ''any person . . . who . . . receives money or any other thing of value to be used principally to aid, or the principal purpose of which person . . .'' is to aid or influence the passage or defeat of any legislation by the Congress of the United States (2 U.S.C. 266) and is not applicable to those persons having only an incidental purpose of influencing legislation. (United States v. Harriss, 347 U.S. 612, 622 (1954)). One who does not meet the ''principal purpose'' test of the Lobbying Act (i.e., who has only an incidental purpose of influencing legislation) is not required by the Act to register as a lobbyist; consequently, the restrictions of paragraph 9 would be inapplicable to such persons.

However, failure to register under the Lobbying Act when required to do so would not render inapplicable the restrictions in paragraph 9. The Committee believes that if one is engaged in the types of activities that are regulated by the Lobbying Act, but fails to register under the Act, paragraph 9 of Rule 37 would nevertheless apply to such a person.

The Committee noted that it has previously ruled* that if one or more partners or an associate of a law firm is a lobbyist, then a former Senate employee, if hired in any capacity by that firm, is subject to the one-year lobbying restrictions.

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[Note: The Lobbying Disclosure Act of 1995, the successor statute to the Federal Regulation of Lobbying Act of 1946, requires individual lobbyists, as well as lobbying firms and organizations employing in-house lobbyists, to register and file semi-annual reports.

In addition, Title 18, United States Code, Section 207 places broad restrictions on any contacts with Congress by a former Member, or an officer or employee who was paid at a rate of at least 75% of a Member's salary for a period of at least 60 days during the last year of Senate service. These restrictions last for one year from the date of termination, and carry criminal penalties for their violation.]

INTERPRETATIVE RULING NO. 224

Date Issued: January 30, 1979

Applicable Rule: 41, Ethics in Government Act

QUESTION CONSIDERED:

Are there circumstances under which the Committee would waive the applicability of the Code of Official Conduct, pursuant to paragraph 5 of Rule 41, regarding an individual hired by a Senate committee for a limited period of time on a per diem basis?

RULING:

A Senate committee was in need of technical expertise on a specific problem and agreed to hire, on a per diem basis, several individuals from private industry, who have a specific expertise in the area of concern. These individuals were to be employed by the committee for a very short period of time in the course of their undertaking for the committee.

The Select Committee concluded that, based upon the unique qualifications of the individuals, and the limited time period of their proposed employment, a waiver from the applicability of the Code of Official Conduct was appropriate.

The Committee noted, however, that the Ethics in Government Act of 1978, Public Law 95–521, requires that any individual who is an officer or employee of the legislative branch during any calendar year and performs the duties of his position of office for a period in excess of sixty days in that calendar year and who is compensated at a rate equal to or in excess of the annual rate of basic pay in effect for GS–16 of the General Schedule, must file a financial disclosure statement with the Secretary of the Senate on or before May 15th of the succeeding year. If a reporting individual were to begin his duties on or after January 1, 1979, section 101(c) of the Act would require such an individual to file a ''limited'' financial disclosure statement within 30 days of assuming the new position. While this requirement is apparently ambiguous with respect to the requirement of section 101(c) of the Act that disclosure need only be made by those individuals who perform the duties of their positions for more than 60 days in a calendar year, the Select Committee has interpreted section 101(c) to only require limited

disclosure, within 30 days of assuming their positions by those employees who begin work on or after January 1, 1979 and who have committed themselves to work or who reasonably believe that they will be working for more than 60 days in the calendar year.*

The Committee further held that should circumstances change after these individuals begin their assignments with the Senate committee, and they either make a specific commitment or come to reasonably believe that they will be working for 60 days or more, these individuals would be required to file disclosure statements pursuant to section 101(c) of the Act immediately upon learning of the changes in their employment arrangements. The Act defines an ''officer or employee of the Senate'' as an individual, other than a Senator or the Vice President, whose compensation is disbursed by the Secretary of the Senate. The Act contains no authority by which this Committee could grant a waiver of the reporting requirement.

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*Subsequent to this ruling, the interpretation was enacted as an amendment to the Ethics in Government Act of 1978 by Public Law 96–19.

INTERPRETATIVE RULING NO. 227

Date Issued: January 30, 1979

Applicable Rule: 37

QUESTION CONSIDERED:

May a Senate employee, whose Senate subcommittee responsibilities include work on oversight and authorization legislation concerning the Federal government's school lunch program, undertake outside professional activity in the form of service on an advisory committee of a state government department which promotes the use of agricultural products grown in the state through various school nutrition programs?

FACTS:

The advisory committee has been established to review educational materials and to comment on proposed projects for the department relative to a state-sponsored program which relies, in part, upon Federal assistance. The Federal assistance is authorized by legislation which is handled by the employee's subcommittee. The department has proposed to provide the Senate employee with an ''honorarium'' of $500 and expenses for the employee's attendance at each meeting of the advisory committee.

RULING:

While the remuneration to be provided by the department is characterized by the payor as an ''honorarium'', the Committee concluded that the arrangement was compensation for recurring professional services.

Paragraph 2 of Rule 37 directs that no employee of the Senate shall engage in any outside professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of that employee's official duties. In this factual situation, the Committee ruled that because of the nature of the employee's responsibilities with the employing Senate subcommittee, acceptance of the invitation to serve on the advisory committee could lead to an actual conflict or the appearance of a conflict of interest with the employee's conscientious performance of Senate duties.

INTERPRETATIVE RULING NO. 233

Date Issued: March 9, 1979

Applicable Rule: 37

QUESTION CONSIDERED:

May a lawyer continue to represent several clients in connection with certain cases after that individual has become a Senate employee? The cases in question are either personal injury cases or matters relating to estate planning and administration. The cases do not conflict with the employee's work for the Senator and the work will not be done during regular office hours.

RULING:

Senate Rule 37, paragraph 3, requires that the supervisor of a Senate employee make the initial judgment as to whether a proposed outside business or professional activity would present a conflict of interest because of either the time required by the activity or the nature of the activity itself. Paragraph 3 of Rule 37 further requires that the supervisor take such steps as are considered necessary for the avoidance of conflict or interference with an

employee's duties to the Senate. Senate Rule 37, paragraph 5, provides that no Member or Senate employee compensated at a rate in excess of $25,000 a year and employed in excess of 90 days in a calendar year may:

(a)affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation;

(b)permit the individual s name to be used by such a firm, partnership, association, or corporation;

(c) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed.

The Committee noted in a previous Interpretative Ruling*, that this provision restricts, but also contemplates, some practice outside office hours or an annual leave time.

In this situation, the Committee concluded that it would be proper for the Senate employee to finish work on those cases which have been described so long as the individual does so as a sole practitioner of law, i.e., not in connection with a law firm. Specifically, the employee's name should not be used by a law firm nor should he receive any partnership proceeds from a law firm for work done by him after he has begun Senate employment. In addition, after beginning work as a sole practitioner, it would not be deemed improper for him to distribute to the law firm a portion of any fees earned in connection with those cases begun when he was a partner of the firm, if that portion of the fees distributed to the firm is pursuant to a financial arrangement which existed before he left the firm.

*Interpretative Ruling No. 70, dated September 29, 1977.

INTERPRETATIVE RULING NO. 236

Date Issued: March 19, 1979

Applicable Area: Franking

QUESTION CONSIDERED:

What is the definition of a ''page'' for purposes of the personal reference rule in the Franking Regulations, which limits personally phrased references to a Senator in a franked mailing to no more than five per page.

RULING:

The Committee has determined that a ''page'' for purposes of the limitation on the number of personally phrased references to a Senator in a franked mailing, is each side of an 8 1/2″ x 11″ or 8 1/2″ x 14″ sheet of paper, irrespective of the number of folds utilized in the design of the matter mailed. Thus, if a newsletter is on a legal-size sheet of paper and has print on both sides, it would be a two-page newsletter for purposes of the Franking Regulations, even if the paper were folded to resemble a four-page ''pamphlet.'' The Committee noted that this interpretation is in accord with the definition of a sheet of paper used by the Committee on Rules and Administration for purposes of Members' paper allowances.

INTERPRETATIVE RULING NO. 237

Date Issued: March 21, 1979

Applicable Rule: 37

QUESTION CONSIDERED:

Is it proper for a Senator to write a Federal Bankruptcy Judge for the purpose of a motion submitted to the Judge by a group of constituents?

FACTS:

A corporation doing business in the Senator's State is undergoing reorganization proceedings under the Bankruptcy Act. An Association of employees and users of the Corporation's services in the State has filed a motion to intervene in the Bankruptcy Court proceedings and the Senator states that the Association has asked him to contact the Bankruptcy Judge to express his support for the motion. The Member also states that while he supports the intervention by the Association on its merits, he is concerned that direct involvement might be an improper use of Senatorial influence.

RULING:

The Member does not indicate that he intends to become a party in the matter or that he intends to submit an amicus curiae brief in conformity with the Court's rules of procedure. Accordingly, the Committee determined that it would be improper for the Member to contact the Bankruptcy Judge in the manner outlined because the manner in which the Senator chose to make his views known to the court was outside the formal procedure established by the court.

INTERPRETATIVE RULING NO. 238

Date Issued: March 26, 1979

Applicable Rule: 37, Ethics in Government Act

QUESTION CONSIDERED:

Would there be an actual or apparent conflict of interest if a committee were to hire, on a per diem basis for a maximum of 60 days, an attorney from a law firm to work exclusively on a single piece of legislation? The attorney would have no other duties or responsibilities as regards any other legislation which might come before the committee. If neither an actual nor an apparent conflict were found, would a waiver from the applicability of paragraph 9 of Rule 37, the Post-Employment Lobbying Restriction, be appropriate?

FACTS:

The Select Committee was informed of the following facts: (l) that in the past, certain individuals in the attorney's law firm had been registered under the Regulation of Lobbying Act of 1946; the Select Committee determined that neither the attorney nor any other person associated with his firm were currently registered; (2) that the attorney currently serves as outside counsel to a tax-exempt organization which is engaged in a number of public policy research studies, including one in the area of products liability; the Select Committee determined that while legislation affecting products liability laws has been introduced in the past and may be re-introduced in the current Congress, any legislation would not be referred to the attorney's committee, the tax-exempt organization would have no financial interest in such legislation, the organization is restricted by the Internal Revenue Code with respect to its lobbying activities, and the attorney's duties with the committee would not involve any work on products liability legislation; (3) that the attorney represents several beneficiaries of a trust which has an interest in a Federal condemnation proceeding now underway in a state; the Select Committee determined that while the bulk of funds necessary to effect the condemnation had already been appropriated, an additional appropriation might be sought during the current year and that if this were the case, the attorney's committee would have no responsibility for such an appropriation; (4) that the attorney's law firm is representing a client who is pursuing a claim against the United States for the death of the spouse and the firm may seek the introduction of a private bill of relief in the Senate; the Select Committee determined that if such a private relief bill were introduced, although it would be referred to the attorney's committee, the firm agreed that any recovery from such a private bill would be handled on a ''pro bono'' rather than contingent fee basis and the attorney would not involve himself in any way with the committee's review of the matter.

RULING:

Based upon these factual determinations, the Select Committee ruled that it did not appear that the attorney's duties to his law firm would present either an actual conflict or the appearance of a conflict of interest with his responsibilities to the committee which proposes to hire him. However, the Select Committee reminded the inquiring Senator, who would supervise the attorney, that paragraph 3 of Rule 37 on Conflict of Interest prohibits a Senate employee from engaging in any outside business or professional activity or employment for compensation unless he has described such activity in writing to his supervisor. The rule also places a continuing responsibility on the supervisor to take such action as is necessary for the avoidance of conflict of interest. Thus, any change in the attorney's activities, or those of his law firm and its clients, would be a critical consideration during the time the attorney is employed by the committee.

The Select Committee also addressed the request for a waiver of the post-employment lobbying restriction found in paragraph 9 of Rule 37, which is applicable to all Senate employees, including those who are hired as consultants on a per diem basis. Paragraph 5 of Rule 41 authorizes the Select Committee, in its discretion, to grant waivers from the applicability of any provision of the Code of Official Conduct to an employee hired on a per diem basis, ''in exceptional circumstances for good cause shown.'' Should circumstances arise during the period of the prohibition of paragraph 9 of Rule 37, the Committee stated it would consider the appropriateness of a waiver. The Committee said it did not believe a waiver was intended to be used as an inducement to employment against the possibility that an exceptional circumstance might arise at some future time.

The Select Committee also reminded the inquiring Senator that Section 101(c) of the Ethics in Government Act of 1978, Public Law 95–521, requires that a reporting individual who begins his duties with the legislative branch on or after January 1, 1979, must file a ''limited'' financial disclosure statement within thirty days of assuming the new position. However, the Select Committee has interpreted this provision to apply to employees who have committed themselves to work or who reasonably believe that they will be working for more than sixty days in

the calendar year.* The Select Committee stated that should circumstances change and the attorney in question becomes aware that he would be working for more than 60 days, he would become obligated to file the required financial disclosure statement immediately upon learning of the changes in his employment arrangement.

In response to his specific request that any additional Federal laws or regulations pertaining to the hiring of the attorney be cited, the Senator was informed that 18 U.S.C. 203(a)(2), a criminal statute under the jurisdiction of the Department of Justice, would appear to restrict officers and employees of the United States (including the legislative branch) from involvement in proceedings in which the United States is a party. However, the Select Committee noted that the statute provides an exception for certain individuals who are defined as ''special government employees'', and that the Senator might wish to consider whether the attorney would fall within that status and thus not be subject to the limitation.

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*Subsequent to this ruling, the interpretation was enacted as an amendment to the Ethics in Government Act of 1978 by Public Law 96–19.

INTERPRETATIVE RULING NO. 241

Date Issued: March 29, 1979

Applicable Rules: 38, 40

QUESTION CONSIDERED:

Is it permissible for a non-profit, non-partisan educational and business organization to print and affix mailing labels to envelopes bearing a Senator's frank to be used in a mass mailing to members of that organization in that Senator's state?

RULING:

Senate Rule 40.2 requires that only official Senate funds be used ''to purchase paper, to print, or to prepare any mass mailing which is to be sent out under the frank.'' Additionally, Senate Rule 38 prohibits the use of funds or in-kind contributions of goods or services from sources other than those enumerated in the Rule to defray expenses incurred by the Member in connection with his official duties.

The Committee has ruled that in-kind services provided by Federal agencies are not subject to the prohibitions of Rule 38 discussed above or of Rule 40.2, if such services are generally available to all Members of the Senate.* However, these exceptions to Senate Rule 38 and Rule 40 would not be applicable in this case. Accordingly, a Senator must reimburse an outside organization, out of official Senate allowances, for the reasonable cost of the labels and of the printing and labeling services provided by that organization in connection with a franked mass mailing.

The Committee further noted that, in Interpretative Ruling No. 66, dated September 26, 1977, it ruled that the affixing of mailing labels, by an outside organization, on franked envelopes which previously had been stuffed and sealed in the Senate, would constitute a transfer of franked envelopes in violation of Section 3215 of Title 39 of the United States Code. That provision states that ''a person entitled to use a frank may not lend it or permit its use by any committee, organization, or association,'' not itself entitled to use the frank. In the Committee's view, the opportunity for misuse or diversion of franked envelopes, even though previously stuffed and sealed by the Senate Service Department, is so great as to be tantamount to a loan of the frank.

The Committee has also ruled in Interpretative Ruling No. 196, however, that it would be permissible for labels to be affixed by an outside organization to unstuffed and unsealed franked envelopes if the labeling process is carried out under the supervision of a member of a Senator's staff and in such a manner as to avoid any misuse which could constitute an improper loan of the frank. The franked envelopes should then be returned to the Senate under the supervision of a Senate staff member for stuffing and mailing.

The Committee also points out that in preparing any mail matter to be sent out under the frank, care must be taken to avoid giving the impression that the outside organization is in any way sponsoring the mailing, since to do so would constitute an improper loan of the frank.

[NOTE: Offices planning to send a mass mailing by having labels affixed to unstuffed and unsealed franked envelopes as outlined above should also contact the Rules Committee, which has jurisdiction over several provisions relating to the preparation of mass mailings.]

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*Interpretative Ruling No. 196, dated October 26, 1978.

INTERPRETATIVE RULING NO. 243

Date Issued: March 29, 1979

Applicable Rules: 34, 37, Ethics in Government

QUESTION CONSIDERED:

May a Senator participate, without compensation, on the Advisory Board of a tax-exempt educational institution?

RULING:

Senate Rule 37 prohibits Members, officers, and employees of the Senate from engaging in any outside business or professional activity which is inconsistent or in conflict with the conscientious performance of official duties. It is the Committee's understanding that the particular institution is an independent organization, is not affiliated with any other organization or group and does not seek Federal funds for any of its activities. Based on these circumstances, the Committee held that a Senator's participation on the board of such an institution would not be in violation of any specific provisions of the Senate Rules, nor would it, in and of itself, present any actual or apparent conflict of interest.

The Committee noted that a Senator's membership on such a board would be reportable under Senate Rule 34 (Title I of the Ethics in Government Act).

INTERPRETATIVE RULING NO. 249

Date Issued: April 27, 1979

Applicable Area: Franking

QUESTION CONSIDERED:

May a Senator make use of the mailing frank for sending ''express mail'' from his/her office?

RULING:

While nothing in the statute authorizing the use of the mailing frank, 39 U.S.C. 3210, et seq., would prohibit the use of the frank for ''express mail'', the Senate Postmaster has indicated that, because of practical considerations, such use could not be authorized at this time. He has further stated that in order for the mailing frank to be utilized in this manner, the Postal Service would first have to establish a special unit to monitor the use of the frank for this and other ''special services'', including registered, certified, insured, and special delivery mail.

INTERPRETATIVE RULING NO. 251

Date Issued: April 27, 1979

Applicable Rules: 34, 35, 38, Ethics in Government

QUESTION CONSIDERED:

May a Senator accept an unsolicited gift of certain newspapers which have been provided to him on a daily basis, via air courier, by a company engaged in the air courier and air freight business?

RULING:

Senate Rule 38 prohibits the acceptance of funds (other than personal and campaign funds) to defray expenses incurred by a Senator in connection with his official Senate duties. The Committee has consistently ruled* that in-kind contributions of goods and services by outside sources for official expenses are subject to the prohibitions of Rule 38. In response to the present question, the Committee ruled that if unsolicited donations of newspapers (including postage or air freight charges, if any) were not contributions to ''expenses incurred by a Member in connection with the performance of his official duties'', they would not be subject to the prohibitions of Rule 38. Acceptance of such gifts of goods and services would be permissible, as long as the donor is not a prohibited source within the meaning of Paragraph 1(b) of Rule 35, or the aggregate value of the gifts received from a donor who is a prohibited source does not exceed $100 in a calendar year.

In determining the value of such donations for the purposes both of Rule 35 and of Rule 38, where applicable, the Committee ruled that the value of goods and services received would be the retail or fair market value of the goods or services, rather than the cost to the donor of providing such goods or services. The Committee noted that such gifts may be reportable under Senate Rule 34 (Title I of the Ethics in Government Act of 1978).

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*See Interpretative Ruling No. 199, dated November 6, 1978; and No. 44, dated July 18, 1977.

[Note: Under the current Gifts Rule, a Member may accept a gift of ''informational materials'' that are sent to the Member's office without being subject to the dollar limit of less than $50 per gift, or a yearly aggregate of less than $100 from the same source, if the informational material is sent to the Member by the author, publisher, or producer. Otherwise, such a gift is subject to the dollar restrictions of the Gifts Rule.

Thus, in this circumstance, as the company is not the author, publisher, or producer of the newspapers, a Member may accept a gift of the newspapers only if the retail cost is less than $50; a Member may accept multiple gifts of newspapers, valued at less than $50, from the same source, as long as the aggregate value of such gifts is less than $100 for a calendar year.

If the retail value of the gift of newspapers is less than $10, the gift would not count toward the yearly aggregate limit for acceptance of gifts from one source. However, a Member may not accept repeated gifts valued at less than $10 from the same source, thereby circumventing the yearly aggregate limit on gifts.]

INTERPRETATIVE RULING NO. 255

Date Issued: May 10, 1979

Applicable Rules: 38, 40

QUESTION CONSIDERED:

May a Senator accept without charge from a White House Conference on Small Business a computer list of 6,000 names and addresses of his or her business constituents for inclusion in the Senator's Senate computer file? The Conference's computer list is non-partisan in character and would be available to any Member of the Senate who desired to obtain it.

RULING:

Senate Rule 38 prohibits the acceptance of goods and services by Senators in connection with official duties unless they are paid for with funds from one of the four sources listed in the Rule. However, the Committee has previously ruled* that in-kind services provided by agencies of the Federal government are not subject to the Rule 38 restrictions. The computerized mailing list provided by the White House Conference falls under this exception.

The Committee noted that under Rule 40, paragraph 5, the mailing list may only be incorporated into the Senate's computer facilities if the lists bear no identification of individuals as campaign workers or contributors, as members of a political party, or by any other political designation.

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*See Interpretative Rulings No. 196, dated October 26, 1978; No. 195, dated October 18, 1978; and No. 74, dated October 3, 1977.

INTERPRETATIVE RULING NO. 257

Date Issued: May 14, 1979

Applicable Rule: 37

QUESTION CONSIDERED:

May a former employee of a Senate committee resume employment with the same committee if he is in the process of putting together a business venture in the same field in which his committee work will be concerned? The individual is considered an expert in this particular field.

RULING:

The Committee believes that if this individual were to be retained by his former committee, questions might be raised under Senate Rule 37, Conflict of Interest. Paragraph 5 of Rule 37 prohibits a Senate employee, compensated at a rate in excess of $25,000 per year and employed in excess of 90 days per year, from (a) affiliating with a firm, partnership, or association for the purpose of providing professional services for compensation; (b) permitting the use of the individual's name by such an entity; or (c) practicing a profession for compensation to any extent during regular Senate hours of the office in which the individual is employed. The legislative history of this provision makes clear that the prohibition was meant to include services performed as a consultant.

The Committee believes, however, that because the business venture is in the initial stages, paragraph 5 of Rule 37 would not bar such activities. At some later date, depending on the nature of the individual's activities in

connection with the venture, application of this provision may operate to bar such activities.

Paragraphs 2 and 3 of Rule 37 are also pertinent. Paragraph 2 prohibits outside business activities which create a conflict of interest or the appearance of such a conflict; paragraph 3 requires an employee's supervising Senator to take such action as is necessary to avoid conflicts of interest.

The Committee believes that the proposed situation might raise the possibility of a conflict of interest because the individual's outside business activities and Senate duties appear to overlap in subject matter. However, the Committee has recognized in prior rulings that the Code places the initial responsibility for avoidance of conflict of interest on an employee's supervising Senator. A judgment as to whether a situation may create a conflict, or the appearance thereof, requires continuing attention to both the individual's Senate work assignments and outside activities, which this Committee is not in a position to provide.

INTERPRETATIVE RULING NO. 261

Date Issued: May 22, 1979

Applicable Rules: 34, 35, Foreign Gifts and Decorations Act, Mutual Educational and Cultural Exchange Act

QUESTION CONSIDERED:

May an employee of the Senate travel to a foreign nation at its expense for the purpose of participating in discussions with government officials of that nation concerning legislative matters of mutual interest?

RULING:

Article I, Section 9, Clause 8, of the U.S. Constitution prohibits employees of the Federal Government, absent the consent of Congress, from accepting any gift, to include the expenses of foreign travel, from any foreign government. The Congress has consented to the acceptance of such gifts in two specific instances: the Mutual Educational and Cultural Exchange Act (22 U.S.C. 245l et seq.) with respect to activities arranged by the State Department, and the Foreign Gifts and Decorations Act (5 U.S.C. 7342) which permits the acceptance of travel or the expenses thereof taking place entirely outside of the United States.

The Committee has been informed that this invitation is made under the aegis of a program which has been approved by the Department of State under section 108(A) of the Mutual Educational and Cultural Exchange Act.

The Committee has determined that participation in the program is in the interest of the Senate and the United States, and that its principal objective is educational, pursuant to paragraph 4(a) of Rule 35. Funds provided in connection with this program may not be accepted if not used for necessary food, lodging, transportation and related expenses (Rule 35(4)(c)).

Reimbursement of transportation, lodging, and food or entertainment aggregating $250 or more is reportable under the Ethics in Government Act of 1978.

INTERPRETATIVE RULING NO. 263

Date Issued: June 12, 1979

Applicable Rule: 41

QUESTION CONSIDERED:

May the press secretary of a Senator: (1) accompany the Senator on trips which are partly or wholly campaign-related (with such campaign expenses being defrayed by the Senator's principal campaign committee); (2) respond to press inquiries of a campaign-related nature; or (3) advise the Senator and the campaign staff of press-related political activities? The Committee was told that such activities would not result in a neglect of the press secretary's Senate duties.

RULING:

This Committee has previously noted, in response to requests concerning the propriety of involving Senate staff in election campaigns, that the Committee on Rules and Administration was directed by the Senate to study this question and report proposals to prevent the misuse of official staff by holders of public office in Federal election campaigns. (S. Res. 110, 95th Cong., lst Sess., section 308(1977)). Pending completion of this study, this Committee has offered the following guidance.

Other than the restrictions on political fund activity in Senate Rule 41, no rule expressly prohibits campaign activity by staff during off-duty hours or during established and reasonable annual leave time. In addition, the Committee stated that Senate employees may engage in limited campaign-related activities during regular Senate

hours, provided that the time involved is de minimus and such activity does not interfere with the employee's official Senate duties. However, if an employee intends to spend a substantial amount of time on campaign activities, the Committee has ruled that a Senator should use his or her best judgment in determining whether to remove the staff member from the Senate payroll or reduce his or her Senate salary commensurately.*

With respect to the specific questions posed, the Committee stated that the Senator must use his or her best judgment in determining whether it would be appropriate to remove the staff member from the Senate payroll or reduce his or her Senate salary.

The Committee recognized that the distinction between political activities which are official and those which are campaign-related is at times difficult to draw. The Committee was aware of no specific prohibitions which would bar a Senator's press secretary from responding to news media questions concerning the Senator's activities, including those of a political nature.

*See Interpretative Ruling No. 59, dated September 13, 1977.

INTERPRETATIVE RULING NO. 266

Date Issued: June 13, 1979

Applicable Rule and Area: 34, Ethics in Government Act of 1978

QUESTION CONSIDERED:

Does the existence of an exploratory committee, established on behalf of an individual to determine the plausibility of his candidacy for the Senate, make him a ''candidate'' for the purpose of Rule 34 (Title I of the Ethics in Government Act of 1978)?

RULING:

Provided that an individual has not taken the action necessary under law of the state in which he is running for nomination for election, or election, and the exploratory committee continues to receive contributions and make expenditures for the sole purpose of determining whether the individual should become a candidate for the Senate, it is not required that a Public Financial Disclosure Report be filed with the Secretary of the Senate. However, should the individual at a later date (1) decide to become a candidate for the Senate, (2) take any action necessary under the state law for nomination for election, or election to the Senate, or (3) the individual or the exploratory committee receives contributions or makes expenditures for purposes other than determining whether the person should become a candidate for the Senate, the individual would then be deemed to have been a ''candidate'', for the purposes of Senate Rule 34 (Title I of the Ethics in Government Act of 1978), as of the date his exploratory committee first received any contributions or made expenditures to ''test the waters.''

[NOTE: Since the Ethics Reform Act of 1989 added a $200 filing fee for reports filed more than 30 days after the due date, Committee practice has established that for purposes of the fee the due date is the date an individual becomes a candidate, not the date the individual began to ''test the waters''.

INTERPRETATIVE RULING NO. 269

Date Issued: June 26, 1979

Applicable Rules: 37, 41*

QUESTION CONSIDERED:

What conflict of interest considerations pursuant to Senate Rule 37 may arise in the following situation?

A member of a Senator's staff will soon be removed from the Senate payroll in order to accept a position with the Senator's campaign staff. This individual has accrued vacation time in excess of 30 days. Office policy would allow a staff member to be carried on the payroll, after actual employment has ended, until the amount of unused vacation time is reached, but would not allow the individual to carry forward any such vacation time if she were re-employed by the Senator's office in the future. Therefore, the Senator has proposed that the individual be retained on the Senate payroll until her accrued vacation time has been exhausted and thereafter be entered on the Senator's campaign staff payroll. During this ''vacation period'', the individual will begin working on campaign related matters.

RULING:

Paragraph 3 of Rule 37 on Conflict of Interest provides with respect to outside employment for compensation that a Senator upon learning of a staff member's proposed outside activities, take such action necessary to avoid any

apparent or actual conflict of interest with a staff member's Senate duties. In addition, Senate Report 95–241 of the Committee on Rules and Administration states that it is not a violation of law nor any Senate rule for a member of a Senator's staff to work full-time in a political campaign while on annual leave or vacation time.

The Committee finds no difficulty under the Code of Official Conduct for the staff member to accept employment with the Senator's campaign committee under the terms outlined.

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*See Interpretative Rulings No. 3, dated May 5, 1977, No. 6, dated May 11, 1977, No. 22, dated May 26, 1977, No. 32, dated June 27, l977, No. 49, dated August 5, 1977, No. 59, dated September 13, l977 and No. 88, dated November 16, 1977.

INTERPRETATIVE RULING NO. 270

Date Issued: June 26, 1979

Applicable Area: Advisory Opinion on Use of Senate Letterhead, Franking

QUESTION CONSIDERED:

Does the Ethics Committee's August 24, 1978 Advisory Opinion on Use of Senate Letterhead prohibit a Senator from mass mailing a number of letters, using letterhead with his name followed by the words ''United States Senator'', on behalf of another person, organization or cause?

RULING:

The Advisory Opinion prohibits a Senator from authorizing any non-Senate group to use the words ''United States Senate'', whether or not such words are followed by the designation ''official business.'' The limitation on the use of the name of the institution by non-Senate groups was intended to preclude a mistaken impression by the recipient of the fund-raising letter, that the letter was an official communication from the Senate.

The Advisory Opinion does not preclude a Senator from authorizing a non-Senate group to use letterhead which recites the Senator's name, followed by the words ''United States Senator.''

While the final sentence of the Advisory Opinion was intended to allow a Senator to use his letterhead, including the words ''United States Senate'', for his own personal purposes, that sentence would not authorize a Senator to sign a single copy of a fund-solicitation appeal on his ''United States Senate'' letterhead for subsequent duplication and mailing by a non-Senate group.

If the Senator were personally writing any number of individuals seeking funds on behalf of a particular cause or group, the Advisory Opinion would not preclude the use of his letterhead with the words ''United States Senate.''

In conclusion, 39 U.S.C. 3215, the Franking Statute, bars the use of a Senator's frank for any of these mailings, no matter who prepared and mailed the letters. That section states that a person who is entitled to use the frank may not lend it or permit its use by any committee or organization. In addition, 2 U.S.C. 439b prohibits the use of the frank in any mailing which solicits funds.

INTERPRETATIVE RULING NO. 271

Date Issued: June 28, 1979

Applicable Area: Advisory Opinion on the Use of Senate Letterhead, Miscellaneous

QUESTION CONSIDERED:

May a Senator use stationery which identifies his party affiliation and position on Senate committees in connection with his campaign for re-election to the Senate? The stationery also includes an emblem which appears to represent the great seal of the United States.

RULING:

The Committee concluded that it is not improper for a Senator to include his position and memberships upon committees of the Senate on stationery to be used in connection with an election campaign.

With respect to the emblem on the stationery, however, the Committee notes that 18 U.S.C. 713 prohibits the use of ''any printed or other likeness of the great seal of the United States . . . or any facsimile thereof, . . . on any . . . stationery, for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship or approval by the Government of the United States . . .''

INTERPRETATIVE RULING NO. 273

Date Issued: July 9, 1979

Applicable Rules: 37, 41

QUESTION CONSIDERED:

May a Senator hire an employee who also serves as a member of a state legislature of the State which the Senator represents? The employee would carry out normal staff functions but would not be one of the two staff members authorized by Rule 41 to engage in campaign fundraising activities. The state legislature meets for several months per year and its members are compensated at a rate of $200 a biennium, plus mileage.

RULING:

Rule 37, paragraph 2, prohibits Senate employees from engaging in outside activity for compensation which is inconsistent or in conflict with official duties. Paragraph 3 of Rule 37 places the responsibility upon the employees' supervisor, which in this instance would be the Senator, to take such action considered necessary to avoid a conflict of interest or interference with Senate duties.

While the Committee cannot predict whether in fact this outside activity will conflict with Senate duties, or will result in conflict of interest in connection with a particular issue, the Committee suggests that, if hired, the employee be advised that the Senator will monitor the situation and consider whether a salary adjustment or restriction in Senate duties would be appropriate during those periods when the state legislature is in session. The Committee believes this approach to the matter would be in conformity with paragraph 3 of Rule 37.

INTERPRETATIVE RULING NO. 275

Date Issued: July 17, 1979

Applicable Rules: 34, 37, 41

QUESTION CONSIDERED:

What is the applicability of the Senate Code of Official Conduct to a proposed employment arrangement whereby a Senator would hire a partner from a law firm located in his home State for a nine-month period, during which time the lawyer would be on leave from the firm but would receive a lump sum sabbatical payment? The law firm represents many leading corporations in the State and has clients which employ registered lobbyists or are themselves registered lobbyists. The staff member would be compensated by the Senate at a rate less than $25,000 per year.

RULING:

The ruling request poses four questions for consideration. (l) Does the proposed arrangement create a conflict of interest problem as contemplated by Rule 37(a)? (2) Would the prohibition against affiliation with a firm in Rule 37(5) be applicable in this situation? (3) Would the individual be required to file a financial disclosure statement under Rule 34? (4) Would the post-employment lobbying prohibition of Rule 37(9) restrict the lobbying activities of the law firm?

l. Does the proposed arrangement create a conflict of interest problem under Rule 37(2)?

Rule 37(2) of the Senate Code of Official Conduct provides that: No Member, officer, or employee shall engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties.

The Nelson Committee Report, which accompanied Senate Resolution 110 (Senate Code of Official Conduct), noted that this provision ''should be read to prohibit any outside activities which could represent a conflict of interest or the appearance of a conflict of interest.'' S. Rept. 49, 95th Cong., lst Sess. 41 (l977). As the law firm represents many leading corporations in the Senator's State and in addition has clients who maintain registered lobbyists or are registered lobbyists themselves, the Committee is of the opinion that the proposed employment of a partner in the firm could result in an actual or apparent conflict of interest between the client's interests and the responsibility of the partner as a Senate employee.

The Committee noted that under paragraph 3 of Rule 37, it is the supervisor of a Senate employee who has the initial and continuing responsibility of determining whether a proposed situation creates a possible conflict. The supervisor is further responsible for monitoring the situation in order to determine what action, if any, may be ''necessary for the avoidance of conflict of interest or interference with duties to the Senate.''

2. Would the prohibition against affiliation with a firm provided in Rule 37(5) be applicable to this situation?

Rule 37(5) states, in pertinent part, that: ''No Member, officer, or employee of the Senate compensated at a rate

in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall (a) affiliate with a firm . . . for the purpose of providing professional services for compensation; (b) permit that individual's name to be used by such a firm . . . or (c) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed.''

The question is whether the sabbatical pay should be considered compensation for the performance of Senate services requiring, via Rule 41(4)(c), that the payment be considered ''compensation disbursed by the Secretary of the Senate'', and therefore be aggregated with regular Senate salary for the purposes of the $25,000 threshold amount. The Committee concluded that if the law firm grants a paid leave of absence for work in a Senator's office, the pay would be deemed to be for services rendered to the Senate, and therefore, the sabbatical pay should be aggregated with regular Senate salary for purposes of determining whether the $25,000 threshold amount is met. If the amount is met, as it is apparent it would, then the partner would be required to terminate his association with the firm. If, however, the payment is earned or accrued pay, incident to an established sabbatical leave plan available to other members of the firm, the sabbatical payment without more, should not be regarded as compensation for Senate services and therefore would not be aggregated with regular Senate pay for purposes of meeting the $25,000 threshold amount and triggering the provisions of the Rule.

3. Would the individual be required to file a financial disclosure statement per the provisions of Rule 34?

Under Rule 34 (Title I of the Ethics in Government Act), Senate employees who are compensated at a rate equal to or in excess of basic pay in effect for GS–16 are required to file a financial disclosure report. The issue to be resolved here is identical to the one addressed under question 2. Consistent with the preceding discussion, the Committee concluded that if the sabbatical pay accrues incident to an established leave plan participated in by other members of the firm, sabbatical pay need not be aggregated with regular Senate salary to determine if the total compensation for Senate services meets or exceeds the threshold amount, thereby triggering Rule 37(5) and possibly, the reporting requirement.

4. Would the post-employment lobbying prohibition of Rule 37(9) restrict the lobbying activities of the law firm?

Rule 37(9) provides, in pertinent part, that: ''If an employee on the staff of a Member, upon leaving that position, becomes a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or any successor statute, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, such employee may not lobby the Member for whom he worked or that Member's staff for a period of one year after leaving that position.''

The Committee held that while the above provision would prevent the partner on sabbatical leave from lobbying for a period of one year after termination of Senate services, it would not restrict the lobbying activities* of any other members, associates, or employees of the law firm.

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*A prior interpretation of the lobbying prohibition in the Code can be found in Interpretative Ruling No.218.

INTERPRETATIVE RULING NO. 278

Date Issued: July 23, 1979

Applicable Area: Franking

QUESTION CONSIDERED:

Is it permissible under the franking statute, 39 U.S.C. 3210 et seq., for a Senator to use, in a franked mailing, the designations ''D'' or ''R'' representing Democrat or Republican, after the name of a United States Senator? In addition, is it permissible in a franked mailing to state that a legislative proposal was defeated ''in a straight party-line vote?''

RULING:

While the Committee believes that the designations ''R'' and ''D'', when used for purposes of party identification, and the phrase ''in a straight party-line vote'' may be used in a franked mailing, Section 3210(a)(5)(C) of Title 39 of the United States Code, prohibits the use of the frank for mail matter which specifically solicits political support for the sender or for any political party. The Regulations Governing the Use of the Mailing Frank, dated June 26, 1979, interprets this provision to preclude the inclusion of ''material of a partisan nature'' in newsletters or news releases mailed under the frank (Chapter Two, paragraph 4 of the revised Regulations). In this regard, the Committee noted that while the contemplated use of the phrase ''in a straight party-line vote'' is permissible, it might be prohibited as ''material of a partisan nature'' in different circumstances.

INTERPRETATIVE RULING NO. 280

Date Issued: September 10, 1979

Applicable Rule: 40, Franking and Area

QUESTION CONSIDERED:

May a Senator purchase a mailing list with funds from his or her official ''ten percent'' allowance? The purchase would be for full market value from a private group. After using the mailing list for official mass mailings, the Senator intends to inform the private group of any address changes or deletions from the list which become apparent as a result of returned mail. The Committee also understands that the private group might then offer the mailing list to the Senator's campaign committee as an ''in-kind'' contribution which would be reported as such.

RULING:

The Senate Rules Committee, by letter of December 31, 1977, adopted an opinion by the Comptroller General of the U.S. that the role of the Rules Committee in approving vouchers for expenditures from the ten percent category is to ensure only that the vouchers are regular in form, have been certified by the Senator as being for official expenses not otherwise provided for in 2 U.S.C. 58(a), and are not for meals or entertainment. However, by letter of June 22, 1978, in resolving the question of whether non-Senate employee transportation expenses could be reimbursed from the ten percent allowance, the Rules Committee distinguished specific restrictive statutory provisions from the general application of the Comptroller General's advisory opinion.

The Rules Committee is the proper authority to be consulted concerning the propriety of use of the ten percent allowance in the absence of a Code of Conduct question. However, when specifically requested to rule on the permissibility of expenditures from the ten percent category with regard to the Senate's Code of Conduct, the Ethics Committee has undertaken to do so. In Interpretative Ruling No. 134, dated May 18, 1978, the Ethics Committee held that the ten percent discretionary fund could be used to purchase a mailing list of registered voters from a State election board when the list is uncoded as to political affiliation. The Ruling also noted that Senate Rule 40(5) imposed no restriction on the source of a mailing list which is to be processed by the Senate computer facilities.

The Committee's Interpretative Ruling No. 135, dated May 22, 1978, held that ''a Senator may not use the mailing list of a private organization in a franked mailing and subsequently communicate information to that organization to enable it to update its mailing list.'' Reference was made to the franking statute, 39 U.S.C. 3215, wherein it is said a person entitled to use of the frank may not permit its use ''for the benefit or use of any committee, organization or association.''

Although in this specific situation the full market value would be paid initially for the list, the value of the list, as corrected, would be enhanced as a result of the use of Federal funds (the cost of the frank) and this value would be donated to a private entity, whether the private group or the Senator's campaign committee. This proposed arrangement would be improper as a misuse of the frank and a misuse of Federal funds for political purposes. The authorization of the purchase of the list from the ten percent fund, absent the arrangement intended thereafter with the private group and the Senator's campaign committee, would be a matter for decision by the Rules Committee.

[Note: Appropriations for Members now come from one fund, with a designated amount (currently $50,000) per year for mass mailings.]

INTERPRETATIVE RULING NO. 286

Date Issued: October 2, 1979

Applicable Rule: 37

QUESTION CONSIDERED:

May a committee legislative counsel accept a position on the editorial board of a state university publication which receives funds from an agency over which that committee has jurisdiction? The Senate employee would receive no compensation, except for reimbursement of travel and related expenses in connection with attendance at board meetings.

RULING:

Rule 37(3), of the Senate Code of Official Conduct, Conflict of Interest, notes that it is the supervisor of a Senate employee who has the initial and continuing responsibility for determining whether a proposed situation creates a conflict of interest. Paragraph 2 of Rule 37 states that no Member or employee of the Senate shall engage in any outside business or professional activity for compensation which is inconsistent or in conflict with the conscientious performance of official duties. The legislative history of this provision states that it ''should be read to prohibit any outside activities which could represent a conflict of interest or the appearance of a conflict of interest.'' S. Rept. 49, 95th Cong., lst Sess., page 41 (1977).

In addition, prior to the commencement of any outside business or professional activity, an employee is required to report in writing the nature of such activity to his or her supervising Senator, who is then required to ''take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate.'' Rule 37, paragraph 3. While the requirement for written notice to the employee's supervisor strictly speaking applies only to outside activities for which compensation is received, the Committee believes it is desirable that Senators be informed of all proposed outside business activities and positions contemplated by their staff.

The Committee, while recognizing the difficulty of substituting its judgment for that of the supervising Senator, believes that if the position were accepted on the editorial board an appearance of a conflict of interest might result due to the jurisdiction of the particular committee over legislation and appropriations affecting the publisher.

INTERPRETATIVE RULING NO. 288

Date Issued: October 16, 1979

Applicable Rules: 37, 41

QUESTION CONSIDERED:

May a member of a Senator's staff take two days of ''personal leave'' from the Senate in order to consult with a state political party in the development of on-going programs for the state political party? The consulting work will not pertain to any official business or any past, present or future work assignment in the office, nor will the work be carried out on the Senator's behalf, on behalf of any other elected official, or any candidate for public office. The consulting will not exceed two days in duration and payment will not exceed $200 plus expenses.

RULING:

Paragraph 3 of Rule 37 on Conflict of Interest provides, with respect to outside employment for compensation, that the supervisor, upon learning of the proposed outside activities, is to take such action as may be necessary to avoid any apparent or actual conflict of interest with Senate duties. In addition, Senate Report 95–241 of the Committee on Rules and Administration states that it is not a violation of law or any Senate rule for a member of a Senator's staff to work full-time in a political campaign while on annual leave.

Senate Rule 41 prohibits Senate employees generally from receiving, soliciting, being the custodian of, or distributing funds in connection with any campaign for nomination or election to the Senate for any other Federal office, unless such an individual has been designated by the Senator, pursuant to that Rule, to engage in political fund activity on behalf of the Senator. The Select Committee has previously ruled that the Rule 41 prohibition of political fund activity by other than designated staff applies to duty hours, off-duty hours and vacation leave.

The Committee concluded that on the basis of the facts given, this employment is not prohibited by the Code of Official Conduct.

INTERPRETATIVE RULING NO. 291

Date Issued: November 26, 1979

Applicable Rule: 41

QUESTION CONSIDERED:

May a person on a Senator's staff act as the chief executive officer of a State political committee of a national political party? The individual would not receive compensation and would perform his or her responsibilities during off-duty hours.

While the State political committee's principal purpose is not the raising of campaign funds, the committee is ultimately responsible under the by-laws for all the affairs of the party in the State, including the support of Federal candidates, and does raise funds to support its own activities.

RULING:

No provision in the Senate Code of Official Conduct completely bars Senate employees from engaging in general campaign activities but Rule 41 strictly limits political fund activity. The Rule prohibits an officer or employee of the Senate from receiving, soliciting, being the custodian of, or distributing funds in connection with any campaign for the nomination or election of any individual for any Federal office. The Rule provides an exception, however, which allows each Senator to designate as many as two employees who may, with the permission of the employing Senator, receive, solicit, be a custodian of, or distribute funds in connection with any campaign for nomination for election, or election, of any individual to any Federal office.

While the principal purpose of the State party committee is not raising campaign funds for Federal candidates, the Committee concluded an individual acting as chief executive officer of a State party committee would necessarily be responsible, as part of the party committee's normal course of business, for the acceptance, solicitation, retention, or expenditures of funds in connection with campaigns for Federal office. As a result, only an individual who is properly designated under Rule 41 should undertake the proposed political activity.

[Note: In those cases which do not involve raising funds for a state or local party committee of a national political party, see IR 387 which lists the limited campaign committees with respect to which a Rule 41 designee may raise funds. Also see the discussion in Chapter 6 relating to Political Fund Activity.]

INTERPRETATIVE RULING NO. 292

Date Issued: November 27, 1979

Applicable Rules: 34, 41

QUESTION CONSIDERED:

May the requirement to file a Public Financial Disclosure Statement be waived for a political fund designee whose appointment period will cover a period of only six weeks?

RULING:

Rule 41, paragraph one, states, in relevant part, that an assistant may be designated to handle political funds only ''if such assistant files a financial disclosure statement in the form provided under Rule 34 for each year during which he is designated under this rule.'' There is no period of time which one must be so designated before the obligation to file a disclosure statement, pursuant to Rule 41, arises. Further, the Committee has no authority to waive the disclosure requirement.

INTERPRETATIVE RULING NO. 296

Date Issued: December 18, 1979

Applicable Area: Franking

QUESTION CONSIDERED:

May the frank be used by a Senator to send letters of congratulations to soldiers from his or her home State who enlist or re-enlist in the U.S. Army. The Army would provide the names and addresses of soldiers and the Senator's staff would prepare the letters and would use official stationery and franked envelopes for the mailings.

RULING:

Section 3210(1)(3)(F) of Title 2 of the United States Code authorizes franking of ''mail matter expressing . . . congratulations to a person who has achieved some . . . public distinction.''

The Committee has concluded that enlisting or re-enlisting in the Armed Forces of the United States is an act which constitutes a ''public distinction'' contemplated by the authorization for franked mail matter in section 3210(a)(3)(F) of Title 2. The Committee, therefore concludes that letters expressing congratulations to individuals who enlist or re-enlist in the Armed Forces are frankable.

INTERPRETATIVE RULING NO. 297

Date Issued: December 18, 1979

Applicable Rule: 37

QUESTION CONSIDERED:

May a member of a Senator's personal staff serve as an officer or board member of a 50l(c)(4) educational foundation, and in addition, be paid a fee by the foundation for consultant services? No work for the foundation would be performed by the employee during working hours of the Senate. Expertise involved in consulting would be unrelated to the employee's professional responsibilities to the Senate, and any consulting time devoted to the foundation would not conflict with the performance of Senate duties.

RULING:

Rule 37(6) prohibits service by a Senator or employee as an officer or member of the board of a publicly held or regulated organization, excluding, however, organizations exempt from taxation under 501(c) of the Internal Revenue Code of 1954 if the service is performed without compensation. A prior ruling of the Committee held that service of this nature for a 50l(c) organization is permissible unless it conflicts or interferes with the conscientious performance of Senate duties.

The 50l(c) exclusion in Rule 37(6) extends to employees on the personal staff of a Senator as well as those on a Committee staff. Inasmuch as the exclusion applies only if one receives no compensation for service as an officer or director of a 50l(c) organization, a determination of whether it would be permissible for an uncompensated officer or director to serve at the same time as a paid consultant for the same 50l(c) organization would turn on whether the consulting duties are related to the responsibilities of the position of officer or director. Since neither the rule nor its legislative history give any indication that service as a paid consultant for a 50l(c) organization is impermissible, the Committee held that if the duties as a consultant are unrelated to the responsibilities of officer or director, and if the consulting duties are not violative of paragraphs 1, 2, 3 and 6 of Rule 37, service as a paid consultant while also serving as an officer or director would not be prohibited. If the consulting duties are not clearly distinguishable from the responsibilities of the position of officer or director, approval of dual service in two such capacities could encourage by indirection the accomplishment of that which is directly prohibited.

The Committee recognizes that where consulting duties have an uncertain relationship to responsibilities as an officer or director, it would be more difficult to determine whether the arrangement violates the spirit of the Rule 37 paragraph 6(a) exclusion in the case of an officer charged with day to day responsibility for conducting the business of the organization than in the case of a director whose responsibilities are necessarily confined to policy matters.

Under paragraph 3 of Rule 37, it is the continuing responsibility of an employee's supervisor to monitor situations such as this to avoid any conflict of interest or interference with Senate duties. The Committee noted that it could not monitor the manifold aspects of the relationships which might arise in the future in a consulting role, and could only offer guidance.

INTERPRETATIVE RULING NO. 301

Date Issued: February 21, 1980

Applicable Rule and Area: 41, Federal Election Campaign Act Amendments of 1979

QUESTION CONSIDERED:

May a Senate employee who is not designated under Senate Rule 41, contribute money to incumbent and non-incumbent presidential and congressional candidates, to National, State, and local political party committees, or to State and local candidates or their campaign committees? In addition, which of the above actions would not be permissible for the political fund designee under Rule 41?

RULING:

These questions involve application of a Federal statute, amended by the Federal Election Campaign Act Amendments of 1979, which prohibits the making of certain political contributions by Federal employees. The amended provision, now found in Section 603 of Title 18 of the United States Code, reads as follows:

''Section 603. Making Political Contributions.

(a) It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, in, or Delegate or Resident Commissioner to, the Congress if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(B) For purposes of this section, a contribution to an authorized committee as defined in section 302(e)(1) of the Federal Election Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee.

The interpretation of the new provision, and the enforcement of its prohibition, are within the jurisdiction of the United States Department of Justice. The Committee noted, however, that during Senate consideration of H.R. 5010, a bill to amend the Federal Election Campaign Act of 1971 (which became Pub. L. 96–187), Senator Hatfield, a member of the Senate Rules Committee, referred to the proposed changes in the criminal code, stating: ''Current provisions of the Criminal Code reflect a longstanding concern that no Federal employee be subject to any form of 'political assessment'. Consistent with this underlying concern, the revised language permits a Federal employee to make a voluntary contribution to another Federal employee who is not his or her employer or employing authority.'' 125 Cong. Rec. S19099 (December 18, 1979).*

The Senate has previously recognized that questions might be raised under existing statutory prohibitions in the Federal criminal code on the solicitation, receipt, and making of political contributions (formerly found in 18 U.S.C. sections 602, 603, and 607). When the Senate adopted its Code of Official Conduct for Members and employees of the Senate on April 1, 1977, it instructed the Senate Rules and Administration Committee to ''study laws relating to contributions solicited from or made by officers or employees of the Senate and report the results of their review, together with their recommendations, to the Senate within one hundred and eighty days . . .'' Section 307, S. Res. 110, 95th Cong., lst Sess. (1977). Pursuant to this mandate, the Rules Committee issued a report on October 17, 1977 (S. Rept. No. 95–500, 95th Cong., lst Sess), which contained the first phase of their study, a compilation of existing laws relating to this issue.

In addition to the statutory provision discussed above, Rule 41 of the Senate Code of Official Conduct contains restrictions on one aspect of campaign activity - the handling of campaign funds by Senate staff. The Rule states that no employee of the Senate may receive, solicit, be the custodian of, or distribute any funds in connection with any campaign for Federal office, unless the employee is one of two individuals specifically designated by his or her Senator to engage in limited political fund activity on the Senator's behalf.**

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*The Committee also noted that the prohibition in the criminal code on receipt of contributions in a Federal building (formerly l8 USC section 603) was also amended by the Federal Election Campaign Act Amendments of 1979 to allow unsolicited contributions to be received in a Federal building, provided they are not directed to be sent there, and further provided that they are transferred to a political committee within 7 days of receipt. l8 U.S.C. section 607, as amended.

**See, Interpretative Rulings Nos. 3, 5, 22, 49, 153, 182.

INTERPRETATIVE RULING NO. 302

Date Issued: February 21, 1980

Applicable Rule: 41

QUESTION CONSIDERED:

May an employee on the personal staff of a Senator, with the approval and monitoring of the Senator, engage in substantial political activity for a limited period of time on behalf of a presidential candidate? The staff member will devote at least fifteen percent of his time to his Senate duties; however, he will receive a proportional salary reduction and will not engage in political activity from other than the Senator's Washington or state office.

RULING:

It is a Member's prerogative in staffing his or her office to prescribe an employee's duties and hours, and to consent to certain outside activities.

Other than the restrictions on political fund activity in Senate Rule 41, no rule expressly prohibits political activity by staff during off-duty hours or during established and reasonable annual leave time. However, if an employee intends to spend a substantial amount of time on campaign activities, the Committee has ruled that a Senator should use his or her best judgment in determining whether to remove the staff member from the Senate payroll or reduce his or her Senate salary commensurately.*

With respect to the proportional salary reduction, the Committee concluded that the proposal is reasonable. In addition, the Committee noted that the employing Member will monitor operation of the plan to ensure that it is carried out as represented. Finally, the Committee noted that the staff member will continue to be subject to the Senate Code of Official Conduct during this period of outside employment for compensation.

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*See, Interpretative Ruling No. 59.

INTERPRETATIVE RULING NO. 304

Date Issued: February 21, 1980

Applicable Rule: 37*

QUESTION CONSIDERED:

May an attorney employed by a Senate Committee at a salary rate in excess of $25,000 argue a cause before the appellate court while on leave from the Committee? The attorney tried the case, which is a suit for money damages, before the United States District Court prior to his employment with the Senate. Any subsequent work has been performed in his spare time.

RULING:

Rule 37 of the Senate Code of Official Conduct places the initial responsibility upon a Senate employee and his or her supervising Senator to determine whether any proposed outside business or professional activity would create a conflict of interest, or the appearance thereof. See Rule 37, paragraph 2. Under paragraph 3 of Rule 37, an employee must, before commencing any outside business or professional activity for compensation, report in writing the nature of such activity to his supervisor who is then required to ''take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate.'' The employee must continue to file such reports on May 15th of each year thereafter so long as the outside employment continues.

In addition, paragraph 5 of Rule 37 prohibits a Senate employee who is compensated at a rate in excess of $25,000 per year and employed for more than 90 days in a calendar year from (a) affiliating with a firm or partnership, (b) permitting his name to be used by such firm or partnership, or (c) practicing a profession ''to any extent during regular office hours of the Senate office in which employed.'' This Committee has previously ruled that this last provision restricts, but also contemplates, some limited practice of a profession outside office hours or on annual leave time, as a sole practitioner.

Thus, it would appear that the proposed handling of the matter, if approved by the supervisor, would be permissible.

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*See Interpretative Rulings No. 70 and No. 233.

INTERPRETATIVE RULING NO. 306

Date Issued: March 3, 1980

Applicable Area: Franking

QUESTION CONSIDERED:

May a Senator's office use the frank to respond to a constituent's request for information concerning campaigns for the presidential nominations? The proposed response would inform the constituent that the request has been forwarded to the appropriate campaign committee for a reply.

RULING:

While it is the prerogative of a Senator to respond or not to respond to the inquiries of his or her constituents, the franked mail statute, 39 U.S.C. 3210(a)(5)(c) prohibits the use of the frank for ''mail matter which specifically solicits political support for the sender or any other person or any political party, or a vote or financial assistance for any candidate for any public office.'' The committee ruled that it did not believe that the proposed response would be prohibited by this section of the statute because there is no solicitation of political support and because the proposed letter merely informs the constituent that the request has been forwarded for a reply from a particular campaign committee.

INTERPRETATIVE RULING NO. 308

Date Issued: March 3, 1980

Applicable Rule: 37

QUESTION CONSIDERED:

May a Senator's Field Representative serve on the boards of two non-profit organizations? The Senator is a member of two Committees which have oversight of Federal agencies providing funds to these organizations. The staffer will not participate in deliberations during board meetings regarding these funds and has no financial interest in their disposition, but the organizations' applications for such funds are handled through the Senator's office, which he supervises.

RULING:

Rule 37 of the Senate Code of Official Conduct, Conflict of Interest, places upon Senate employees and their supervising Senators the initial, and continuing, responsibility for avoiding situations which create conflicts of interest, or the appearance of such conflicts. Paragraph 2 of Rule 37 states that no Member or employee of the Senate shall engage in any outside business or professional activity for compensation which is inconsistent or in conflict with the conscientious performance of official duties. The legislative history of this provision states that it ''should be read to prohibit any outside activities which could represent a conflict of interest or the appearance of a conflict of interest.*

In addition, prior to the commencement of any outside business or professional activity, an employee is required to report in writing the nature of such activity to his or her supervising Senator, who is then required to ''take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate.'' Rule 37, paragraph 3. While the requirement for written notice to the employee's supervisor literally applies only to outside activities for which compensation is received, the Committee believes it is desirable that Senators be informed of all proposed outside activities and positions contemplated by their staff.

In this specific case, since the organizations' applications for federal funds from agencies subject to oversight jurisdiction by two Senate committees on which the Senator serves are handled through the office which the Field Representative supervises, the Committee concluded there may be an appearance of a conflict of interest between the Field Representative's official responsibilities and his fiduciary duties to the boards of the two organizations. Further, if the Field Representative were involved directly or indirectly in assisting or handling any application for funds, an actual conflict of interest might be presented.

The Committee has recognized, in prior rulings involving a conflict of interest question, the difficulty of substituting its judgment for that of the supervising Senator. The Committee can call attention to relevant considerations, but absent facts which would indicate an actual conflict, the Committee concluded that the supervising Senator must be the primary monitor of the propriety of outside activities of his staff.

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*S. Rept. 49, 95th Cong., lst Sess. 41 (1977).

INTERPRETATIVE RULING NO. 311

Date Issued: March 17, 1980

Applicable Rule and Area: 34, Ethics in Government Act of 1978

QUESTION CONSIDERED:

What are the public disclosure obligations of a reporting individual concerning an estate of which his spouse is a beneficiary? The executor has informed the spouse that a substantial and unspecified amount of the estate's non-cash assets will have to be sold prior to distribution of the estate in order to pay specific bequests, taxes, and other expenses, and that the executor expects that the estate will remain under administration for some months before distribution.

RULING:

The Committee concluded that a reporting individual is not obligated under Title I of the Ethics in Government Act of 1978 (2 U.S.C. 70l et seq.) to itemize and value property held by an estate or its liabilities, or transactions by the administrator, and prior to a distribution of estate assets. The Committee held, however, that where a reporting individual is aware that he or she, or a spouse or dependent child, is the beneficiary of an estate from which reportable property may be received in the future, a very brief and general statement of interest should be provided. From the facts provided, a notation such as the following would be sufficient on the disclosure report: ''Residuary legatee of the estate of (name); deceased (month and year); in period of administration; details of assets to be disclosed upon distribution (or when available, if there is a residuary trust).''

The Committee notes, however, that if reportable property is distributed or if a residuary trust is created, the holding of such property would have to be disclosed in the public financial disclosure report for the year in which the trust is created.

INTERPRETATIVE RULING NO. 312

Date Issued: March 20, 1980

Applicable Rule: 37

QUESTION CONSIDERED:

May a staff member accept an uncompensated position on a State Commission? His supervising Senator is a Member of a Subcommittee whose jurisdiction includes providing funding for an Agency related to the work of the particular Commission. The staff member, however, has no duties or responsibilities with respect to the Subcommittee and he will not discuss or vote on any Commission proposal which might involve action by the Senate Subcommittee.

RULING:

The Committee noted that questions may arise whenever an employee of the Senate is invited to accept an appointment to a State Commission or is approached to serve on the board of directors of a private group and

the Commission or the private group receives some or all of its funding from the Federal government. While there is no specific prohibition in Senate rules which would preclude the acceptance of such an appointment, paragraph 3 of Rule 37, Conflict of Interest, does direct that a Senate employee notify his or her supervisor at such time as he or she engages in an outside professional activity, on each May 15 thereafter and that upon notification it becomes the responsibility of the supervisor to make the initial judgment that an outside activity presents no actual or apparent conflict of interest either with respect to the time required to engage in the activity or due to the nature of the activity itself. In addition, the supervisor has an ongoing responsibility to monitor the outside activity and to take such action as he may consider necessary to avoid an actual or apparent conflict in the future. Based upon the facts presented, the Committee held that the proposed activity did not present an actual conflict of interest.

INTERPRETATIVE RULING NO. 313

Date Issued: March 20, 1980

Applicable Rule: 40

QUESTION CONSIDERED:

Is Rule 40, paragraph 1, which provides a 60-day moratorium upon the use of the frank for any mass mailings prior to any primary or general election (whether regular, special or runoff), triggered by a Senator's participation in presidential primaries in States other than the Senator's home State?

RULING:

The Committee held that Rule 40 was intended to be applicable to primary and general elections for the Senate in a Member's home State, as well as to a presidential primary or general election, in a Senator's home State where the Senator is a candidate in such a presidential primary or general election, but that the moratorium upon mass mailings to home State constituents is not triggered by participation in a presidential primary or the equivalent in another State. However, the Committee noted that the 60-day moratorium would also apply to any ''mass mailing'' mailed under a Senator's franking privilege to a State in which the Senator participated in a presidential primary or general election.

INTERPRETATIVE RULING NO. 318

Date Issued: May 9, 1980

Applicable Rule: 40

QUESTION CONSIDERED:

May a Senator provide a national political committee with a copy of his mailing list of senior citizens in order for the committee to add the names and addresses to a list of individuals to whom the committee already sends a newsletter?

RULING:

Senate Rule 40 states, at paragraph 5(c) that ''the Senate computer facilities shall not be used . . . to produce mailing labels for mass mailings, or computer tapes and discs, for use other than in service facilities maintained, and operated by the Senator or under contract to the Senate . . .'' The Report of the Special Committee on Official Conduct, Senate Report 95–49, in explaining Rule 40.5(c) states that ''under this paragraph, mailing labels and computer tapes cannot be produced by the Senate facilities for use in any other facility, such as for campaign mailings.'' The author of this provision stated on March 23, 1977, at S4755 of the Congressional Record, it was his intention that the provision ''. . . just restates that in no case are Members of the Senate or Senate Committees authorized to use Senate computer facilities for political or personal purposes.''

The Committee concluded that the furnishing by a Member of a list of names and addresses, currently stored in the Senate computer facility, to a political committee for use by them in a mailing would be prohibited by paragraph 5(c) of Senate Rule 40, since the labels or tapes to be furnished would be used by the political committee at a facility which is not maintained or operated by the Senate.

INTERPRETATIVE RULING NO. 321

Date Issued: May 13, 1980

Applicable Rule: 37

QUESTION CONSIDERED:

May a subcommittee special counsel, who intends to be a full-time Senate employee for six months but who may then rejoin the law firm where he has been a partner, retain during his Senate employment a limited relationship with the law firm?

For the period of his Senate employment, the counsel plans not to be affiliated with the law firm for the purpose of providing professional services for compensation, and the firm will not use his name. The counsel will withdraw from litigation in which he was involved at the firm, will have no interest in fees for services rendered by the firm during the period in which he is not affiliated with it, and the firm will remove his name from its letterhead. The counsel has the option to resume affiliation with the firm after termination of his employment with the Senate, and during his Senate employment will retain, at his expense, pre-existing group insurance and his interest in the firm's pension plan.

RULING:

Paragraph 5 of Senate Rule 37 provides that: ''No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall (a) affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; (b) permit that individual's name to be used by such a firm, partnership, association or corporation; or (c) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed. For the purposes of this paragraph, ''professional services'' shall include but not be limited to those which involve a fiduciary relationship.''

Based upon the facts presented, it appeared that Special Counsel and the law firm took all reasonable steps to comply with paragraph 5 of Rule 37. Accordingly, the Committee held that retention of the firm's group insurance benefits and pension benefits, at his expense, did not constitute a prohibited affiliation within the meaning of paragraph 5(a) of Rule 37.

The Committee reminded the supervising Senator that paragraph 3 of Rule 37 prohibits a Senate employee from engaging in any outside business or professional activity or employment for compensation unless he had described such activity in writing to his supervisor and the Rule places a continuing responsibility on the supervisor to take such action as is necessary for the avoidance of conflict of interest. Thus, the Senator should review any change in the Counsel's relationship with the firm during the time that he is employed by the subcommittee.

The Committee noted that Senate Rule 34 (Title I of the Ethics in Government Act of 1978), as amended, requires that any individual who becomes an officer or employee of the Senate on or after January 1 of the calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year and who is compensated at a rate equal to or in excess of the annual rate of basic pay in effect for GS–16 of the General Schedule, must file a Public Financial Disclosure Report within thirty days of becoming such an employee. The Select Committee has previously interpreted this provision to apply to employees who have committed themselves to work or who reasonably believe that they will be working for more than sixty days in the calendar year.

INTERPRETATIVE RULING NO. 325

Date Issued: June 27, 1980

Applicable Area: Franking

QUESTION CONSIDERED:

May a Member of the Senate frank a letter of congratulations to recently naturalized citizens in his home State, and enclose with that letter an enclosure which provides information as to the Member's State offices and who to contact if a problem arises in a particular area of citizen concern?

RULING:

The franking statute at 39 U.S.C. 3210(a)(1) states:

It is the policy of the Congress that the privilege of sending mail as franked mail shall be established under this section in order to assist and expedite the conduct of official business, activities, and duties of the Congress of the United States.

The intent of the Congress in furnishing the franking privilege to Members is provided at 39 U.S.C. 3210(a)(2) which states:

It is the intent of the Congress that such official business, activities, and duties cover all matters which directly or indirectly pertain to the legislative process or to any congressional representative functions generally, or to the functioning, working, or operating of the Congress and the performance of official duties in connection therewith, and shall include, but not be limited to, the information of other authority of government, as a guide or a means of assistance in the performance of those functions.*''

Of particular note is 39 U.S.C. 3210(a)(3)(F) which specifically sets forth a statutory authorization for the franking of ''mail matter expressing . . . congratulations to a person who has achieved some public distinction.''*

The Committee held that becoming a citizen of the United States is a ''public distinction'' within the meaning of the statute, and that letters expressing congratulations for achieving citizenship are frankable as such. Further, the Committee concluded that the enclosure of information regarding services available at the Member's State offices was frankable as it conveyed information to the public as a means of assistance in the performance of the legislative and representative functions consistent with the Congressional ''intent'' provision of the franking statute.

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*On October 26, 1981 Section 32l0(a)(3)(F) was amended to delete the authority to send under the frank letters of congratulations to a person who had achieved a ''personal distinction.''

INTERPRETATIVE RULING NO. 326

Date Issued: July 1, 1980

Applicable Rule: 41**

QUESTION CONSIDERED:

May an employee on the personal staff of a Senator, in his home state office, also serve during off-duty hours and without compensation as the National Committee Chairwoman of a political party from that state?

RULING:

There is no provision of the Code of Official Conduct which prohibits such service by a member of the personal staff of a Senator. As S. Rept. 95–241 (95th Cong.) indicated, except for prohibitions on Rule 41* with respect to the handling of campaign funds, ''it is neither illegal nor a violation of Senate Rules for a member of a Senator's staff to work full-time in a political campaigns while on annual leave or vacation time while on leave of absence from his or her Senate duties . . .''***

The prohibitions on political activity within the Code of Official Conduct are found in Rule 41. The legislative history of Rule 41 makes it clear that the Code was not intended to proscribe or restrict legitimate, voluntary political activity such as that in question.

In furtherance of legislative intent, this Committee has approved a Senate employee holding a position as a political party's precinct chairman as long as the state and local campaign activities were clearly separate and distinct from any fund-raising activities performed in connection with a Federal election, and the activities did not interfere with the employee's Senate duties. Interpretative Ruling No. 204 (Dec. 5, 1978).

Hence an employee on the personal staff of a Senator could, during off-hours and without compensation, serve as a political party's National Committee Chairwoman from her state. Such an employee, however, unless one of the Senator's two political fund designees, could not ''receive, solicit, be the custodian of, or distribute any campaign funds,'' Interpretative Ruling No. 5 (May 11, 1977), nor could said employee solicit others to solicit funds or otherwise become involved to any substantial degree in political fund activity.

If the employee were a political fund designee, then she could handle political funds as set forth in Rule 41. The prohibitions on political fund activity found in Rule 41 do not, however, apply to state or local campaigns. Interpretative Ruling No. 153 (June 22, 1978); Interpretative Ruling No. 182 (September 29, 1978). If involvement in any campaign activity becomes extensive, however, the supervising Member may find it wise to remove the employee from the payroll for the period of extensive campaign involvement. See, for example, Interpretative Ruling No. 3 (May 5, 1977); Interpretative Ruling No. 309 (February 21, 1980). This is important for the supervising Senator to recognize, because the position of National Committeeman or Committeewoman for a political party is an important position which could conceivably require a great deal of time on the part of the Senate employee.

It should be clear from the foregoing that even if not a political fund designee, an employee would not be prohibited from handling funds for a state party organization for the purpose of paying off campaign debts incurred by a party's candidates for state and local office. But those activities must be clearly divisible from any of the organization's activities performed in connection with any federal election. That is to say if the proposed activities would involve the raising of a common fund to, for example, discharge the party's political debts on behalf of all its candidates, whether federal, state or local, the employee's participation in the common fund activities would be prohibited under Rule 41, even if the proceeds of the activities could be clearly apportioned between federal candidates and state or local candidates. Interpretative Ruling No. 182 (September 29, 1978).

Because the language of Rule 41 prohibits an employee from receiving, soliciting, being the custodian of, or distributing funds in connection with any federal election campaign, it would be necessary for the employee, as National Committee Chairwoman, to abstain from voting on any issue before the party's National Committee which would involve fund-raising activities for federal elections, or for any common-fund activities which funds would be used for, among others, federal elections, unless, of course, the employee is a political fund designee. The same interpretation would apply to the Force, or other unit of the party's National Committee, which would be involved in fund-raising activities for federal election campaigns, or the disbursement or distribution of political campaign funds in federal elections.

We distinguish the case of a party National Committee Chairman or Chairwoman, in this case, from that of the Chief executive officer of a state political committee, in Interpretative Ruling No. 291. There we ruled that the latter's duties necessarily entailed, in the normal course of business, the acceptance, solicitation, retention or expenditures of funds in connection with federal election campaigns, the effective discharge of which duties would run afoul of the prohibitions of paragraph 1 of Rule 41. Such would not appear to be the case regarding the duties of a party National Committee Chairman or Chairwoman.

Finally, the Committee notes that in addition to restrictions on campaign activity imposed by Senate rules, there are also statutory prohibitions against certain types of political activity by Senate employees. See 18 U.S.C. sections 602, 603 (solicitation of political contributions), 606 (intimidation to secure political contributions), and 607 (making political contributions).

In sum, an employee on the personal staff of a Senator, in his home state office, may serve as a political party's National Committee Chairwoman from that state, if done voluntarily during official hours, and without compensation; if it does not interfere with the performance of her Senate staff duties; and if it does not entail the handling of political campaign funds in federal elections, unless said employee is one of the Senator's political fund designees, in which case the employee may handle federal election campaign funds within the limits of Rule 41.

** S. Rept. 95–241 (95th Cong.) quoted in Interpretative Ruling No. 154, June 22, 1978; p.2. S. Rept. 95–241 accompanied S. Res. 188, which amended then Rule 44 (now Rule 41) relative to political fund activity by Senate officers or employees.

INTERPRETATIVE RULING NO. 327

Date Issued: July 1, 1980

Applicable Rule: 34

QUESTION CONSIDERED:

For reporting purposes, how is a gift of a season pass to a theater or sporting event or a membership in a club to be valued?

RULING:

Section 107(3) of the Ethics in Government Act of 1978 (2 U.S.C. 707(3), which has been adopted as Rule 34 of the Standing Rules of the Senate (Public Financial Disclosure) defines gift as ''a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include:

(a) bequest and other forms of inheritance;

(b) suitable mementos of a function honoring the reporting individual;

(c) food, lodging, transportation, and entertainment provided by State and local governments, or political subdivisions thereof, by a foreign government within a foreign country, or by the United States government within a foreign country, or by the United States Government;

(d) food and beverages consumed at banquets, receptions, or similar events;

(e) consumable products provided by home State businesses to a Member s office for distribution; or

(f) communications to the offices of a reporting individual including subscriptions to newspapers and periodicals;

As to the value assigned for reporting purposes to the gift of a season's pass to the theater or sporting events, or a gift of membership in a club, the Committee believes that the value for reporting expenses is the cost paid by the donor, regardless of the extent, if any, of the use of the pass or membership by the donee.

The Committee has also concluded that the value of a gift of a season pass is the value at the time of acceptance.

INTERPRETATIVE RULING NO. 330

Date Issued: August 26, 1980

Applicable Rule: 38, and the Federal Election and Area Campaign Act

QUESTION CONSIDERED:

May a Member use excess campaign funds from his principal campaign committee to defray the cost of entertaining his staff?

RULING:

The use of excess campaign funds is governed by the Federal Election Campaign Act and Senate Rules. The Act, as amended by Pub. L. No. 96–187, provides at section 439(a) of Title 2, United States Code, that excess campaign funds may be used by a holder of Federal office ''to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office.'' Senate Rule 38 allows a Member to defray ''expenses incurred by a Member in connection with his official duties'' from either personal funds or, ''funds derived from a political committee.''

The Committee concluded that a Member's use of excess campaign funds from his principal campaign committee to defray the cost of entertaining his staff would not violate the requirement of Rule 38 that ''expenses incurred by a Member in connection with his official duties shall be defrayed only from . . . (c) funds derived from a political committee . . .'' In addition, the Committee further concluded that such a use of funds from a Member's principal campaign committee would not violate the prohibition in paragraph 2 of Rule 38 on the conversion of contributions to the personal use of a Member.

The Committee noted that this interpretation of Rule 38 has no bearing on the question of what kinds of expenses are ''official expenses'' as that term may be interpreted by the Committee on Rules and Administration or the Senate Disbursing Office for the purpose of making reimbursements to Members from Government funds. In addition, the Committee expresses no view on the tax consequences to a Member or to his principal campaign committee on the use of campaign funds to defray the cost of entertainment of staff. Further information on these issues can be found in a report of the Committee on Finance, ''Tax Status of Funds Expended by a Political Committee'', S. Rept. 95–779 (1978), and in Revenue Ruling 78–373 on Deductibility of Expenses Paid by Members of Congress.

INTERPRETATIVE RULING NO. 336

Date Issued: September 5, 1980

Applicable Rules: 34, 35, 37

QUESTION CONSIDERED:

What is the applicability of the Code of Official Conduct to the spouse of a Member, officer, or employee of the Senate who has been offered a position on the board of directors of an American corporation?

RULING:

In this situation, the spouse is an attorney who has established an independent professional reputation over a period of years which appears to qualify this individual for any number of possible offers to serve on a corporate board of directors.

While paragraph 6 of Rule 37 prohibits a Member, officer, or employee of the Senate, who is compensated at a rate in excess of $25,000 per year and is employed for more than ninety days in a calendar year, from serving as an officer or director of any publicly held or publicly regulated corporation, financial institution or business entity, this prohibition is not applicable to the spouse of a Member, officer, or employee. However, the Select Committee recognized that while the activities of a member of a board of directors are generally confined to establishing matters of corporate policy, rather than directing the course of day-to-day corporate business, should a spouse's duties as a director include ''lobbying'' other Members, officers, or employees of the Senate, a question could arise about such activities which might reflect upon the Senate as an institution.

Additionally, the Committee pointed out that Rule 34, ''Public Financial Disclosure'', requires a reporting individual to disclose the source of any director's fees or other earned income in excess of $1,000 received by a spouse and that the prohibitions of Rule 35, ''Gifts'', are applicable not only to Members, officers, and employees but also to spouses and dependents as well.

[Note: The prohibitions of the current Gifts Rule apply only to Members, officers, and employees, but not to spouses and dependents. However, a gift to a family member or any other individual based on that individual's relationship with the Member, officer, or employee, will be considered to be a gift to the Member, officer, or employee if the gift is given with the knowledge and acquiescence of the Member, officer, or employee, and the

Member, officer, or employee has reason to believe the gift was given because of the official position of the Member, officer, or employee.]

INTERPRETATIVE RULING NO. 338

Date Issued: September 23, 1980

Applicable Rule: 37

QUESTION CONSIDERED:

Is a Senate employee who works part-time in a Member's office in violation of the prohibition in paragraph 5 of Senate Rule 37 on affiliating with a ''firm, partnership, association, or corporation for the purposes of providing professional services for compensation'' because of his continuing, full-time employment as a writer for an organization which lobbies the Congress?

RULING:

In defining the scope of the prohibition, the paragraph states, ''[f]or purposes of this paragraph, ''professional services'' shall include, but not be limited to, those which involve a fiduciary relationship.'' In the normal course of business, the Committee does not believe that performing work as a writer constitutes the kind of ''professional services'' contemplated by the definition provided in Rule 37, and believes that the individual's work for the non-Senate organization is not prohibited by paragraph 5. The Committee reminded the employing Senator that paragraph 3 of Rule 37 requires the supervising Senator of any Senate employee who engages in non-Senate employment ''to take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate.'' The Committee further noted that because of the employment relationship which will continue to exist between the part-time employee and that employee's other employer, a business lobbying organization, the supervising Senator will of course need to be especially vigilant and particularly sensitive to guard against a conflict of interest arising.

INTERPRETATIVE RULING NO. 339

Date Issued: September 25, 1980

Applicable Rules: 35 and 37

QUESTION CONSIDERED:

May a Senate employee accompany her husband who is a lobbyist on business trips, the expenses of which are paid for by the husband's employer, a corporation which is a prohibited source within the meaning of paragraph 1(b) of Rule 35 on gifts?

FACTS:

While a part of the husband's corporate duties includes lobbying other Senate committees, the Senate committee which employs the wife has no jurisdiction over matters of interest to the corporate employer, and the Senate employee's duties are in no way related to the business interests of her husband's employer.

Additionally, the husband's corporate duties include travel for the purpose of attending certain corporate, business, and trade meetings on behalf of his employer. It is the corporation's practice both to encourage employee spouses to attend selected meetings and to pay the expenses of those spouses who attend.

DISCUSSION:

While paragraph 1(a) of Rule 35 prohibits Members, officers, employees, their spouses and dependents from accepting gifts (as defined by paragraph 2(a) of Rule 35) aggregating over $100 during a calendar year from a prohibited source (as defined in paragraph 1(b) of Rule 35), unless a waiver is granted, the Committee found that under the facts presented here, no gift was received by the Senate employee.

A search of the legislative history of Rule 35 contains no debate or conclusions on this particular situation. The Committee concluded, however, that the provisions of the Rule, and its legislative history, suggest that, under certain circumstances, the payment by a spouse's employer of necessary travel expenses of wives or husbands incurred by them while accompanying their spouses on trips relating to the spouse's business duties is not a gift within the meaning of Rule 35.

The Committee noted that Rule 35 contains an exception to the definition of a gift for the necessary expenses of official travel. During debate on the ''necessary expenses'' provision of the Rule, it was stated that the necessary expenses incurred by the spouse of a Senator in accompanying the Senator to an appearance before the sponsoring

organization paid by the sponsoring organization was not to be considered a gift under the Gift Rule. While the terms of the ''necessary expenses'' exception do not encompass travel for other than Senate related purposes, the thrust of the legislative policy articulated in that exception militated against a determination that the payment of necessary travel expenses in this case was a gift to the Senate employee-spouse.

Here the corporation defraying the expenses had a policy of encouraging the involvement of its employees' spouses in corporate sponsored or related activities. Thus, the company would not consider the payment of the Senate employee-spouse's travel expenses a gift, but rather, an ordinary and necessary expense of conducting its business. The company would have provided the same food, beverages, lodgings, entertainment and transportation to their employee's spouse whomever the spouse was—Senate employee or not—and there was no indication that she was treated any differently than other spouses. Finally, it was stated that no effort was made in this case to influence the employee in the present or future performance of her Senate duties.

The Committee therefore found that on these facts, the payment of such expenses should not be characterized as a gift to an employee for Rule 35 purposes, hence the practice and conduct in question were not impermissible.

A second question presented is whether the activities of the employee may raise a conflict of interest issue. Rule 37 (Conflict of Interest,) paragraph 2 states: ''No Member, officer, or employee shall engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties.''

The Committee has read the prohibition against outside business or professional activity or employment for compensation to include activities for which reimbursements for incurred expenses are received.

Pursuant to this Rule, Senate employees should be aware of the potential for the exertion of improper influence by those with whom they come in contact because of their spouse's employment. Additionally, in situations which raise the question of whether a particular activity might give rise to a conflict of interest, the Committee invokes paragraph 3 of Rule 37 which requires the employee to notify his or her supervisor of the proposed activity and which places on the employee's supervisor the initial responsibility to take appropriate steps to guard against the arising of a conflict of interest.

RULING:

In the circumstances discussed, the payment of travel expenses is not prohibited by either the Rule on Gifts or Conflicts of Interest.

INTERPRETATIVE RULING NO. 342

Date Issued: December 10, 1980

Applicable Rule: 37

QUESTION CONSIDERED:

May a Senator serve on the board of directors of a statewide community action agency which administers programs funded by subcommittees and committees on which the Senator serves?

The community action agency, a non-profit corporation in the Senator's home State, receives from 60 to 70 percent of its funds from the federal government, either directly or indirectly through the State. The Senator's position would be uncompensated and the Senator would be expected to attend board meetings in the State several times a year.

RULING:

Paragraph 6 of Rule 37 on Conflicts of Interest prohibits service by a Senator or Senate employee as an officer or member of the board of a publicly held or regulated organization, excluding, however, organizations exempt from taxation under section 501(c) of the Internal Revenue Code of 1954 if the service is performed without compensation. Since the community action agency is a 501(c) organization and the Senator would serve without compensation, the Senator may serve on the board without violating paragraph 6. The Nelson Committee Report, which accompanied Senate Resolution 110 (Senate Code of Official Conduct), makes it clear, however, that such service is still ''subject to the general admonitions of paragraphs 1 and 2 of the Rule and all Members . . . should exercise great care in avoiding all conflicts of interest or the appearance of a conflict of interest.'' S. Rept. 49, 95th Cong., lst Sess. 44 (1977).

Paragraph 2 of Rule 37 states that ''no Member, officer, or employee shall engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties.'' The Committee has previously found conflicts of interest where Senate employees have taken uncompensated positions on boards, commissions, or advisory councils of organizations that receive or seek federal funding from agencies with respect to a committee on which the supervising Senator sits has appropriation or oversight functions, or otherwise involves matters with which the committee is concerned.''*

The Committee stated that, based on the facts presented, the Senator's acceptance of the invitation to serve on the board of directors of the community action agency could lead to a conflict of interest because subcommittees and committees on which the Senator serves have legislative and oversight functions relating to programs that are administered by the agency and substantially funded by the federal government. The Committee therefore recommended that the invitation not be accepted.

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*See Interpretative Rulings Nos. 23, 227, 286, and 308.

INTERPRETATIVE RULING NO. 343

Date Issued: February 4, 1981

Applicable Area: Anti-Nepotism Statute

QUESTION CONSIDERED:

Does the term ''relative'' as used in the Federal Anti-Nepotism Statute, 5 U.S.C. 3110(a)(3) include the niece or nephew of a spouse of a Senator?

RULING:

This question has been addressed by the American Law Division of the Library of Congress in a memorandum dated April 28, 1978. In that memorandum, the American Law Division pointed out that the term ''relative'' is specifically defined in the statute, that the definition does not include the nephew or niece of a public official's spouse and that nothing in the legislative history of the statute provides any indication that the Congress intended the term ''nephew'', as used in the statute, to have any meaning other than that found in common legal usage, i.e., that the term encompasses only the son of one's brother or sister. In addition, the memorandum points out that this interpretation is consistent with the position taken by the Office of Personnel Management, which, in the Federal Personnel Manual, at Chapter 310, subchapter 1, section l–2(c), defines ''nephew'' as ''the son of a public official's brother or sister.''

The Select Committee agrees with this interpretation and has ruled that the son or daughter of a brother or sister of a Senator's spouse would not be a ''nephew'' or ''niece'' for purposes of the anti-nepotism statute.

INTERPRETATIVE RULING NO. 344

Date Issued: February 16, 1981

Applicable Rules: 34, 37

QUESTION CONSIDERED:

A newly-elected Senator who had withdrawn as a partner in a law firm prior to his swearing-in as a Member of the Senate, but who, despite his best efforts, has been unable to wind up his practice before taking office, asked whether, under Senate Rules, he could continue to serve as attorney for two clients involved in litigation begun before his election, and whether, as a sole practitioner, he could continue to represent his brother and that brother's wholly-owned corporation.

RULING:

Paragraphs 2 and 5 of Rule 37 of the Code provide respectively:

''No Member, officer, or employee shall engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties.

No Member, officer, or employee . . . shall (a) affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; (b) permit that individual's name to be used by such a firm, partnership, association or corporation; . . . For the purpose of this paragraph, professional services shall include, but not be limited to, those which involve a fiduciary relationship.

The Senator was advised that while paragraphs 2 and 5 limit the performance of professional services by Members, the Rule's legislative history did not indicate that the Senate had contemplated the problems confronted by a newly-elected Member in winding up his business affairs. The Committee noted that an attorney has rather clearly defined obligations, as an officer of the court, to his clients and to his former firm, which limit the exercise of his discretion to withdraw from a pending court case. With these facts in mind, the Committee advised the Senator to conclude his responsibilities expeditiously and in conformity with the spirit and purpose of paragraphs 2 and 5 of Rule 37.

Since one of the cases in litigation involved an instrumentality of the federal government, and since the activities of that entity could be affected by the actions of a committee to which the Senator was assigned, the Senator was advised to consider whether this situation might lead to or give the appearance of a conflict of interest. With an understanding that if a conflict of interest should appear the Senator would take appropriate action, the Committee found that his continued participation would not necessarily raise any other question as to conflict of interest under Rule 37.

With respect to the continuing representation of his brother, the Committee concluded that since this would involve new matters arising after the commencement of Senate duties, paragraphs 2 and 5 of Rule 37 are applicable but would not preclude the Senator's providing legal services as a sole practitioner, provided the matters of concern to his brother and his brother's business did not raise questions of conflicts of interest with the public trust of his office or the conscientious performance of the Senator's official duties.

Finally, the Senator was reminded that Title I of the Ethics in Government Act of 1978 (Rule 34) requires Members to disclose the source and amount of all income received during the preceding calendar year aggregating $100 or more. Consequently, the Committee concluded that income earned from his law practice in 1980 may be disclosed by identifying the Senator's former law firm as the source along with the amount of income earned. Additionally, 1981 income aggregating $100 or more, earned after joining the Senate, but derived from clients he had represented prior to his joining the Senate and whom he continued to represent, may be disclosed by exact amount stating that the source of income is ''law practice''. New clients who provided $100 or more in income must be disclosed by exact amount and by name.

[NOTE: The income disclosure threshold is currently $200, rather than the $100 figure in the ruling. Also, under other amendments to the Ethics in Government Act since the date of the ruling, an individual who must file a new employee report must also disclose clients of his or her employing firm who paid the firm more than $5,000 during the reporting period due to services rendered by the reporting individual.]

INTERPRETATIVE RULING NO. 345

Date Issued: February 23, 1981

Applicable Rules : 34, 35

QUESTION CONSIDERED:

May a Senator-elect accept a wristwatch from a business group in his home State, presented to him in the course of his appearance before the group in December, prior to swearing-in in January?

RULING:

Rule 35 of the Standing Rules of the Senate provides that Members, officers, and employees, and their spouses and dependents, may not accept any gift or gifts having an aggregate value exceeding $100 during a calendar year from any person, organization, or corporation having a direct interest in legislation before the Congress, or from any foreign national, as those sources are defined in the Rule.

Since the Senator-elect was not a Member at the time of the presentation, he was outside of the coverage of the Rule and its prohibition. In addition, section 102(g) of the Ethics in Government Act of 1978, as amended, provides that reporting individuals are not obligated to disclose the receipt of gifts which are received at a time prior to Senate service.

[NOTE: Although a Senator-elect is not subject to Senate Gifts Rule 35 prior to his or her swearing-in, a Senator-elect is subject to statutory provisions (e.g., illegal gratuity, bribery, etc.).]

INTERPRETATIVE RULING NO. 346

Date Issued: March 6, 1981

Applicable Rule: 40

QUESTION CONSIDERED:

May a Member use names and addresses from his mailing list maintained by the Senate Computer Center to invite individuals to a charitable fund-raising event? The Member had received a number of letters in response to press accounts of a trip he had made to a foreign country, and the names of those who had written concerning the trip were entered on the Member's mailing list maintained by the Senate Computer Center. Photographs taken during the trip were to be offered for sale at a home state art gallery, and all money received from photograph sales was to be contributed to a charitable organization. The names and addresses from the Member's mailing list were not to be given to the art gallery or the charitable organization, all addressing work was to be done outside Senate offices by volunteers, and neither government stationery nor the mailing frank were to be used.

RULING:

Paragraph 5 of Senate Rule 40 provides, ''(t)he Senate computer facilities shall not be used . . . (c) to produce mailing labels for mass mailings, or computer tapes and discs, for use other than in service facilities maintained and operated by the Senate or under contract to the Senate.'' The author of this provision stated during debate on the Rule that it was his intention that the provision '' . . . just restates that in no case are Members of the Senate or Senate Committees authorized to use Senate computer facilities for political or personal purposes.'' 123 Cong. Rec. S4755 (1977) (emphasis added.)

The Committee concluded that the proposed use of a Member's mailing list for the benefit of the charitable organization would be for ''personal purposes'' and should therefore be avoided.

INTERPRETATIVE RULING NO. 349

Date Issued: October 5, 1981

Applicable Rules: 37, 41

QUESTION CONSIDERED:

A Member has established his principal campaign committee as a non-profit corporation under the laws of his home State. May the Member's Administrative Assistant, who has been designated to handle political funds under Senate Rule 41, serve as president of the corporation?

RULING:

The Committee has ruled* that other than the restrictions on political fund-raising activity in Senate Rule 41, no rule expressly prohibits political activity by staff during off-duty hours or during established and reasonable annual leave time. If an employee intends to spend a substantial amount of time on campaign activities, however, the Committee has ruled that a Senator should use his or her best judgment in determining whether to remove the staff member from the Senate payroll or reduce his or her Senate salary commensurately. The Committee concluded that if the staff member's political activities conform to those guidelines, his political activity would not be prohibited.

Concerning the staff member's service as president of the incorporated entity, paragraph 6 of Senate Rule 37 provides:

No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall serve as an officer or member of the board of any publicly held or publicly regulated corporation, financial institution, or business entity. The preceding sentence shall not apply to service of a Member, officer, or employee as

(a) an officer or member of the board of an organization which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, if such service is performed without compensation.

As the committee is an incorporated political committee whose activities are regulated in some areas by the Federal Election Commission pursuant to the Federal Election Campaign Act of 1971, the question arises whether the staff person's services as president of the corporation is prohibited by paragraph 6 of Rule 37. While that paragraph provides, at subparagraph (a), that a Senate employee may serve as an officer of an organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, a political committee is exempt from tax under section 527 of the IRC, not 501(c).

The Report of the Special Committee, which recommended the Code of Official Conduct, stated, with respect to the limitations provided by paragraph 6, that service on corporate boards or in corporate offices ''may entail an unavoidable conflict of interest or the appearance thereof.'' (S. Rept. 95–49 at 43). The Report cited a study by the Association of the Bar of the City of New York for the proposition that a director or officer ''actually becomes a fiduciary for the corporation and for its stockholders charged with the duty to further their interest. He obviously will find it difficult to do this at times because he is also charged with the duty of furthering the public interest, and the two interests may well be in conflict.'' (Id., at 43–44).

The Committee went on to observe that service on the board or as an officer of a tax-exempt organization would not present the same kind of troubling issues, and that non-profit organizations have traditionally had less direct interest in the legislative process and the possibilities of conflict of interest are less marked.

In view of the absence of any indication that paragraph 6 was intended to apply to activity with a political committee, whether or not the committee is incorporated, and in view of the more specific limitations provided by Rule 41 (on political fund-raising) and by Committee Interpretative Rulings (concerning non-fundraising political activity), we do not believe that paragraph 6 of the Conflict of Interest Rule was intended to prohibit activity by Senate employees with a Member's principal campaign committee. Members should be aware, however, that paragraphs 2 and 3 of the Conflict of Interest Rule provide a general prohibition on non-Senate activity which is inconsistent or in conflict with the conscientious performance of official duties.

*See Interpretative Ruling No. 302, dated February 21, 1980.

[Note: Subsequent to this ruling, Senate Rule 37, paragraph 6 was amended to specifically prohibit Members and employees paid at a rate in excess of 120% of GS–15 from being compensated for service as an officer or member of the board of any outside entity. Thus, properly designated employees may continue to serve in such capacities for a campaign committee without compensation.]

INTERPRETATIVE RULING NO. 351

Date Issued: May 7, 1982

Applicable Area: Miscellaneous

QUESTION CONSIDERED:

Under what circumstances may a Member, in response to a specific request, donate an item for auction? Specifically: (1) May a Member donate an item purchased and charged against the official stationery account of the Senate? (2) May a Member donate publications (such as the Agriculture Yearbook) which have been allotted to Members for distribution? And (3) Is a distinction to be made in answering questions (1) and (2) based on the nature of the organization and the use to which the proceeds of the auction are to be put?

DISCUSSION:

The Committee has previously ruled (Interpretative Ruling No. 175) that the donation of property in a Member's possession as a function of his being a Member of the Senate is not prohibited by any provision of the Code of Official Conduct, nor does it appear to violate any regulation of the Joint Committee on Printing or the Senate Rules Committee.

In specific response to the questions posed:

(1) Subject to the limitations in numbered paragraph (3) below, a Senator may donate to an outside group for auction an item of nominal value which happens to have been purchased and charged against the official stationery account of that Member. While there is no Senate rule or regulation governing this question, the Committee believes that the intentional procuring of such items with Senate funds for the purpose of donating them to outside groups for auction would at a minimum give the appearance of, and, perhaps constitute, a misuse of government funds in that the items purchased would be for non-government use. The Committee takes this position irrespective of the nature of the outside group, and recommends that if an article is to be purchased for presentation to a group as an item for auction, the personal funds of a Member, or excess political funds of the Member's principle campaign committee, would be preferable sources for defraying the cost of such an item.

(2) Subject to the limitations in numbered paragraph (3) below, a Senator may donate to an outside group for auction a publication printed at government expense which has been allotted to him for distribution, such as Art in the Capitol, the Capitol, or Agriculture Yearbooks.

(3) A distinction can be made with regard to these questions based on the nature of the organization and the use to which the auction proceeds are to be put. The Committee finds no problem with the donation of items to an outside group for auction where such items are of nominal value and are not intentionally procured with Senate funds for such purpose, if the donee group is a non-profit, non-political organization. The Committee is concerned that use of public property to raise funds for a for-profit enterprise or a political party could reflect discredit on the Senate. In addition, the Committee would likewise be concerned if the particular use to which the fund-raising proceeds were put were at variance with the stated purposes of the donee groups, i.e., if a tax-exempt non-profit charitable or educational institution were to use the proceeds of such an auction for political purposes.

These concerns lead the Committee to conclude that, upon request, a Member may donate property in his possession to an outside group for auction if such property is of nominal value and was not intentionally procured with Senate funds for such purpose; if the donee group is either a non-profit or a non-political organization; and if the uses to which the auction proceeds are to be put are neither for-profit nor political in nature. In addition, subject to the stated limitations regarding the nature of the donee and the use of the auction proceeds, a Member may donate to non-Senate groups publications printed at government expense such as Art in the Capitol, The Capitol, or Agriculture Yearbook.

RULING:

(1) Upon request, a Member may donate for auction an item purchased and charged against the official stationery account of that member if the item is of nominal value; was not intentionally procured for the purpose of donation; and the donee group is either non-profit or a non-political organization.

(2) Upon request, a Member may donate for auction a publication printed at government expense, such as the Agriculture Yearbook, if the item is of nominal value; was not intentionally procured for the purpose of auction; and the donee group is either non-profit or a non-political organization.

(3) A distinction can be made with regard to these questions based on the nature of the organization and the use to which the auction proceeds are to be put.

INTERPRETATIVE RULING NO. 352

Date Issued: August 2, 1982

Applicable Rule: 37

QUESTION CONSIDERED:

A Senate employee asked whether his activities as a professional racing car driver are in violation of Rule 37(5) (Conflict of Interest) of the Code of Official Conduct.

FACTS:

The Senate employee had an oral agreement with an automotive accessories company which owns and maintains a race car. Under the agreement, the firm reimburses him for race-related expenses, pays him 45 percent of any prize money won, and provides him with driving equipment. Second, he has a similar agreement with another firm, which rebuilds engines, imports car parts, rents race cars to professional drivers, and contracts with automobile companies to race cars for them. Both firms may, at some future time, advertise their racing success with the employee identified as the driver. Third, he occasionally provides auto racing-related services to various automotive businesses. As an example, he states that he has written a story on a racing car for publication in an automotive magazine, with the race car's manufacturer paying for test expenses and the magazine paying for the article.

DISCUSSION:

Paragraph 5 of Senate Rule 37 provides: ''No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall (a) affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; (b) permit that individual's name to be used by such a firm, partnership, association or corporation; or (c) practice a profession for compensation to any extent during regular hours of the Senate office in which employed. For the purposes of this paragraph, ''professional services'' shall include but not be limited to those which involve a fiduciary relationship.''

The Committee concluded that the employee's relationship to the automotive firms was that of an independent contractor, and therefore is not an affiliation within the meaning of Rule 37(5)(a). The Committee also noted that the professional service addressed in paragraph 5 are typically those involving a fiduciary duty, including law, medicine, engineering, architecture and similar types of activities. It did not believe that race car driving is a profession within the meaning of Rule 37(5)(c), and accordingly, did not believe that paragraph 5 of Rule 37 prohibited the activity.

The Committee noted, however, that under Rule 37 an employee's supervisor has a continuing responsibility to evaluate and approve of an employee's outside activities so long as those activities continue.

RULING:

The Committee ruled that the employee's relationship with auto racing firms did not violate paragraph 5 of Senate Rule 37. The Committee also noted that the employee had reported to his supervisor on his outside business activities as required by Paragraph 3 of Rule 37 and that the supervisor had concluded that race car driving would not result in any conflict of interest with his Senate Committee duties which are unrelated to auto racing.

INTERPRETATIVE RULING NO. 354

Date Issued: October 12, 1982

Applicable Rule: 40

QUESTION CONSIDERED:

A series of mailings, comprised of several groups of letters, has been sent by a Senator. Each group within the series contains letters dealing with a different subject matter from each other group, and no one group exceeds 500 pieces in number. Does such a series constitute a ''mass mailing'' as defined by Committee Regulations if each mailing within the series contains a common insert and the aggregate number for all mailings exceeds 500 within a 30-day period?

DISCUSSION:

The Regulations Governing the Use of the Mailing Frank (Chapter three, paragraph (2)(b)) define ''mass mailing'' as ''Any mailing within any 30-day period of more than 500 pieces of substantially identical content . . .'' Previous Committee interpretations have involved factual situations in which a single mailing was at issue. The policy considerations which form the basis for requiring the registration of mass mailings and imposing a moratorium on their use by candidates for re-election, however, are directed at large quantities of mailings with substantially identical content. Thus, the Committee believes that a series of mailings, comprised of several groups of letters, each of which contains a letter dealing with different subject matter from the other groups, and no one group of which exceeds 500 in number, would nonetheless constitute a ''mass mailing'' if all mailings—regardless of the differing content of the letters—contain at least one common insert and the aggregate number for all mailings exceeds 500 within a 30-day period. A contrary conclusion would permit Members seeking reelection to avoid the mass mailing moratorium altogether by varying the content of letters sent in quantity to which identical inserts had been attached.

RULING:

Such a series of mailings would constitute a ''mass mailing.''

INTERPRETATIVE RULING NO. 357

Date issued: December 16, 1982

Applicable Rules: 34 and 41

QUESTION CONSIDERED:

A Senate staff member, while on vacation leave, worked on the re-election campaign of his supervising Senator, as is permitted under Senate rules. Is it permissible under the Senate Code of Official Conduct for that staff member to be reimbursed by the Senator's principal campaign committee for expenses incurred by the staff member on behalf of the Senator's campaign?

DISCUSSION:

The Committee has previously ruled[563] that campaign involvement by a Senate staff member while on vacation leave is permissible under Senate rules. Reimbursement to such a staff member for expenses incurred by him on behalf of the supervising Senator's re-election campaign effort would be permissible under the Senate Code of Official Conduct and applicable regulations and Interpretative Rulings issued thereunder.

Senate Rule 34 (Title I of the Ethics in Government Act of 1978, as amended) requires any reporting individual (as defined therein) to make annual disclosure of the receipt of reimbursements to cover expenses aggregating $250 or more from any one source during a calendar year.

We do not address the question of whether such a reimbursement would constitute an ''expenditure'' for purposes of the Federal Election Campaign laws, as that is a matter outside the jurisdiction of the Committee.

[Note: The Federal Election Commission has now issued regulations which, unless certain conditions are met, include the payment of a volunteer's travel expenses by the volunteer within the definition of an ''advance,'' so that payment of such expenses will be deemed a ''contribution'' to the campaign and, therefore, potentially run afoul of the criminal provision at 18 U.S.C. 603 which prohibits contributions to one's employer. Under those regulations, expenditures for other than travel expenses would appear to be a contribution, without exception. (See, 11 CFR 116.5)]

RULING:

Such reimbursement would be permissible under the Senate Code of Official Conduct and applicable regulations and Interpretative Rulings issued thereunder.

INTERPRETATIVE RULING NO. 358

[563] See, e.g., Interpretative Rulings Nos. 3, 5, 22, 86, 88.

Date issued: December 17, 1982

Applicable Rule: 37

QUESTION CONSIDERED:

A successful candidate for election to the Senate is the chairman of the board and chief executive officer of a publicly-traded company which he helped found and which has employed him in various executive positions for two decades. Having been elected to the Senate, the Senator-elect intends to resign as chairman and chief executive officer of the corporation. Regarding his proposed retirement from, transition service to, and agreement not to compete with, his former employer, are the following courses of action consistent with Senate rules?

A. Retirement Bonus

In consideration of his past service to the company, may the company award the Senator-elect a retirement bonus consisting of retirement benefits commencing in the year in which the Senator-elect will reach the normal retirement age of sixty-five? The retirement benefits would continue for the lifetime of the Senator-elect, except that should the period of his lifetime be less than ten years from the date such payments commence, the payments remaining during such ten-year period would pass to his heirs.

B. Covenant Not-to-Compete

May the Senator-elect enter into an agreement not to compete with his company for a period of five years following his departure from the Senate in exchange for which the company will compensate the Senator-elect in two equal installments, one at the time of execution, and the second one year therefrom?

C. Service as ''Transition Advisor''

For the purpose of winding down and terminating the Senator-elect's involvement with the company in an orderly manner, may the Senator-elect serve the company as a ''transition advisor'' without compensation, for a period of seven months after taking his Senate oath so as to be available for the purpose of responding to inquires from the company's new chairman about matters that occurred during the Senator-elect's tenure with the company that may be within his, the Senator-elect's, sole knowledge?

D. Exercise of Stock Options

During the proposed period of the Senator-elect's service as transition advisor, may he exercise stock options previously granted him by the company but which, absent such service as a transition advisor, would otherwise be lost to him?

DISCUSSION:

A. Retirement Bonus

The Commission believes that a corporation's awarding of a retirement bonus to a former executive would be permissible under the facts as presented if the following conditions were met:

1. The retirement bonus must be awarded strictly and exclusively in consideration of the candidate's past service rendered to the corporation.

There could exist the appearance of impropriety occasioned by the Senator-elect's knowledge that his continued receipt of retirement plan payments would be dependent, as a practical matter, upon the economic health and well-being of the corporation. The Committee therefore believes that the retirement bonus should not predicated or in any way dependent upon, or related to, the future performance of the corporation, its publicly-traded stock or debentures, or its future earnings.

2. Such a retirement plan could be provided in compliance with all reporting requirements of the Securities and Exchange Commission and the Employee Retirement Income Security Act of 1974.

While there are no other conditions which must be met, certain situations which are dealt with by the Senate Code of Conduct, such as ''buy out arrangements'' are analogous. In this case, the Senator-elect is not bound by these guidelines, but may wish to consider them as applied, by way of analogy, to a retirement bonus factual situation similar to the instant matter:

1. Such past services rendered should be sufficiently substantial as to justly entitle the candidate to the receipt of such a bonus.

2. Such a retirement bonus should be a bona fide award of compensation in a manner not inconsistent with the usual and customary practices of the corporation.

3. The retirement bonus should consist of a sum certain, determined at the time of severance from the corporation.

4. The sum certain should be paid either as a lump-sum, at severance, or an annual payment of a certain percent of the sum certain, payable within a reasonable period of time, and which sum certain should be funded in advance. Advance funding avoids any appearance or impropriety occasioned by the Member's knowledge that his

continued receipt of retirement bonus payments would be dependent, as a practical matter, upon the economic health and well-being of the corporation.

B. Covenant Not-to-Compete

The Committee understands that the board wants to assure that the Senator-elect does not in the future enter into a business which would be in competition with the former company. The Senator-elect has therefore agreed to enter into a covenant not to compete with his company for a period of five years following his departure from the United States Senate, in exchange for which the company will compensate the Senator-elect by payments of January 1, 1983, and on January 1, 1984.

The Committee believes that such an arrangement, if consistent with the applicable statues and case law of the governing jurisdiction, is permissible under the Standing Rules of the Senate and poses no problems regarding the propriety of the Senator-elect's conduct while in office.

C. Service as ''Transition Advisor''

The Committee understands that the company has requested that the Senator-elect remain as a transition advisor for a period of seven months to provide intermittent guidance to the new chairman; that the Senator-elect would be available for the purpose of responding to inquires from the new chairman about matters that occurred during the Senator-elect's tenure with the company that may be within the Senator-elect's sole knowledge; that such a role would be confined to infrequent telephone conversations; that under no circumstances would the Senator-elect, upon taking the oath of office, be involved in giving any strategic or planning advice to the company, participating in any operating decision, or exercising any fiduciary relationship with the company; and that this arrangement is necessary for the purpose of winding down and terminating in an orderly manner the Senator-elect's involvement with the company.

The Committee believes that the proposed arrangement constitutes no substantive conflict of interest with the duties and obligations imposed by the Senator-elect's service as a Member of the United States Senate. The Committee makes this statement, however, with the express understanding that the Senator-elect will serve for the limited period stated; that any information he may provide to the new chairman of the corporation will be limited exclusively to a discussion of matters which occurred in the past but which may be within the sole knowledge of the Senator-elect; and that such service be uncompensated.

D. Exercise of Stock Options

The Committee believes that during the period of the Senator-elect's service as a transition advisor he could exercise stock options previously granted him by the company but which, absent such service as a transition advisor, would otherwise be lost to him, if such service as a transition advisor is consistent with the conditions set for in (C) above, and if no stock options are exercised by the Senator-elect which were not already granted prior to his announcement and filing as a candidate for the United States Senate.

While it is the understanding of the Committee that the company will disclose all of these transactions to the extent required by various federal and state laws, the Senator-elect has numerous reporting requirements under the Standing Rules of the Senate and Title I of the Ethics in Government Act of 1978 with which he must comply.

In addition, the Committee notes that it is important not only that substantive conflicts of interest be avoided, but also that there be no appearance of a conflict of interest. In this regard, paragraphs 1 and 4 or Rule 37, dealing with conflicts of interest, require that a Member in no way improperly use his official position or exercise influence in a manner which would result in personal financial gain. In addition, paragraph 2 of Rule 37 requires that no Member engage in any outside business or professional activity which is inconsistent or in conflict with the conscientious performance of his official duties. We believe that the avoidance of the appearance of impropriety is especially important with regard to the legislative and oversight responsibilities of the Committees on which the Senator-elect serves after taking the oath of office.

RULING:

A. Retirement Bonus

A corporation's awarding of a retirement bonus to a former executive upon his election to the Senate would be permissible if done in compliance with the express conditions discussed below.

B. Covenant Not-to-Compete

A Senator-elect could enter into a covenant not-to-compete with his former employer, for which he could be compencated.

C. Sebvice as a ''Transition Advisor''

Service by the Senator-elect as transition advisory to his former employer would be permissible if done in compliance with the express conditions discussed below.

D. Exercise of Stock Options

The Senator-elect could exercise all stock options granted him prior to his announcement and filing as a candidate

for the United States Senate.

INTERPRETATIVE RULING NO. 359

Date issued: January 3, 1983

Applicable Rules: 34 and 37

QUESTION CONSIDERED:

Does the Senate Code of Official Conduct prohibit a Senator from serving as the compensated General Chairman of a national political party committee?

FACTS:

A Senator has been requested to serve as a General Party Chairman, a position which would include the following duties: to formulate and articulate the goals and policies of the party; to provide advice and guidance to the party's National Committee and to its other officers and staff; and to coordinate the acdivities of the party's National Committee with those of the party's Senatorial Committee, the Congressional Committee, and any committee or committees organized to secure the election of the party's candidates for the Presidency or Vice Presidency of the United States.

DISCUSSION:

While the Committee found that no provision of the Code of Conduct specifically addressed the questions raised by the ruling request, it concluded that two provisions must be considered.

Paragraph 2 of Rule 37 (Conflict of Interest) provides a general admonition against engaging in non-Senate activities which interfere with the conscientious performance of Senate duties. While the Committee will customarily offer its comments when asked, it has been the Committee's policy to place upon the Member primary responsibility for determining whether the activity he intends to engage in presents a conflict of interest and to caution him that he has an on-going responsibility to avoid conflicts of interest and the appearance thereof. Thus, while the Committee found that no inherent conflicts of interest appeared to be raised by the Senator's service as General Chairman, the Senator would nonetheless want to remain sensitive to the possibility that some conflict might arise and, if that should occur, to take appropriate action.

As to the acceptance of compensation for services rendered as General Chairman, paragraph 5 of Rule 37 provides: ''No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall (a) affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; (b) permit that individual's name to be used by such a firm, partnership, association, corporation; or (c) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed. For the purposes of this paragraph, ''professional services'' shall include, but not be limited to, those which involve a fiduciary relationship.''

The type of services that the drafters of the Code of Conduct intended to prohibit were those of a professional nature, involving a fiduciary duty to outside commercial or business organizations, which on their face were likely to present conflicts between Senate duties and outside responsibilities. The Committee therefore concluded that this provision was not intended to be applicable to services provided as General Chairman of a political party.

RULING:

The Committee held that the Code of Official Conduct does not prohibit a Senator from serving as General Chairman or receiving reasonable compensation commensurate with the services rendered to the party. Additionally, the Committee concluded that Senate Rule 34 (Title I of the Ethics in Government Act of 1978, as amended) requires the Senator to make an annual disclosure of the receipt of outside income aggregating $100 or more from any one source during a calendar year, and reimbursements to cover travel and related expenses and aggregating $250 or more from any one source during a calendar year.

[NOTE: The Committee, in a subsequent ruling, determined that a Senator serving as a General Chairman of a national political party committee may not be compensated for services rendered. Compensation for such service would also be prohibited by Rule 37(6)(b).]

INTERPRETATIVE RULING NO. 365

Date issued: March 21, 1983

Applicable Rule and Areas: 37, Franking, Code of Official Conduct

(40 USC 193d)

QUESTION CONSIDERED:

Are there any Senate Rules or Federal statues which would limit the ability of a Senator to chair and actively participate in a fund-raising effort, within the Senate using Senate facilities and employees, on behalf of a national, non-profit, tax-exempt charitable organization?

FACTS:

A Senator was asked by a national, non-profit, charitable organization to lead a fund-raising drive for the organization within the Senate. As proposed, the Senator would solicit Members, officers, and employees of the Senate, host luncheons in Senate facilities to solicit contributions and use his Senate letterhead and the ''Inside Mail'' system to notify the Senate of the fund-raising effort and invite participation and contributions. The Senator proposed that he would also make use of the volunteer services of his staff, or other Senate employees, during normal Senate working hours.

DISCUSSION:

Charitable solicitations of Federal employees in the work place are generally regulated by Executive Orders of the President. In an effort to combine all of the various charitable solicitations which Federal employees had been exposed to in the work place, President Kennedy issued an Executive Order in 1962 which established the Combined Federal Campaign as the sole charitable solicitation of Federal employees. The purpose and intent behind the recognition of a single charitable solicitation each year been adopted by each successive President. The Office of Personnel Management, which has been directed by the President to administer the CFC, has published regulations which direct that the charitable organizations which in the CFC limit their solicitation of Federal employees at the work place to a single, yearly solicitation thought the auspices of the CFC. In this instance, the charitable organization, which was the subject of the Senator's inquiry, had been a participant in the CFC for the preceding year.

The Congress has recognized the merit of a single, annual combined charitable solicitation of Members and employees of the Congress in the work place, by inviting the CFC to solicit the Congress and to utilize Congressional staff and pay mechanisms for that purpose (H. Res. 12, adopted by the Senate on September 14, 1977.) While the Congress is not bound by the regulations promulgated by OPM with respect to the CFC, the Select Committee concluded that the underlying principles set forth in such regulations should be followed with respect to the charitable solicitation of Members and employees of the Senate. In addition, the Committee was apprised that Federal law, 40 USC 193(d) seeks to restrict charitable solicitations on the grounds of the Capitol.

For these reasons, and because the Committee agreed with the underlying principle that there should only be a single, annual charitable solicitation within Congress, the Committee made clear that its recommendation did not extend to the Senator's participation in a charitable solicitation outside the Senate. The Committee believes that a Senator could sponsor fund-raising events at other than Senate facilities and conceivably could, under policies adopted by the Committee on Rules and Administration, utilize Capitol rooms or Senate office building rooms under the Committee's jurisdiction, to sponsor luncheons and announce that a charitable organization was soliciting funds, etc., while making sure that no actual solicitation took place at the Senate facility. Similarly, a Senator could make use of the volunteer services of Senate employees, acting on their own leave or evening or weekend time, to assist in fund-raising events which might be held off of Capitol Hill. Such staff participation would not violate any rule of the Code of Official Conduct, provided that, pursuant to Rule 37.3, the employee's supervisor was notified and approved of the employee's participation.

The Committee also stated that under the Committee's Advisory Opinion of August 14, 1978, on the use of Senate letterhead, a Senator could use Senate letterhead to notify the Senator's colleagues of the fact that a particular charitable solicitation was in progress or to invite them to fund-raising events which the Senator might host off of Capitol Hill. These informational letters or invitations to events could be sent through the ''Inside Mail'' system of the Senate Post Office, should the Senator deem the mailings to be within the scope of the official, representational duties of the Senator.

RULING:

For reasons involving the policy behind the Federal government's Combined Federal Campaign and because of the restrictions imposed by 40 USC 193(d), the Committee recommends that a Senator not become involved in a charitable solicitation within the Senate. Such a recommendation would not apply to a Senator's participation in such a solicitation which was undertaken outside of Capitol Hill.

INTERPRETATIVE RULING NO. 366

Date Issued: March 16, 1983

Applicable Rule: 40, and Franking and Area

QUESTION CONSIDERED:

Is the 60-day moratorium on the use of the frank violated when a Senator sends a mass mailing under the frank within 60 days of his State party's nomination convention, if the convention may ''designate'' a candidate for the party's nomination although the nomination may still be contested in a subsequent primary?

FACTS:

Ethics Committee regulations provide that an election to which the 60-day moratorium on the use of the frank for mass mailings is applicable includes a party convention or caucus which has authority to nominate a candidate for the Senate.

A Senator's home State's election law provides that the party's State convention could ''designate'' an individual for the party's Senatorial nomination. The individual so ''designated'' could nonetheless be challenged in the primary following the State convention. In the case presented for the Committee's consideration, another candidate gained access to the primary ballot and challenged the incumbent who had been ''designated'' for nomination by the State convention.

During the 60-day period before the convention, but not during the 60 days before the primary, the Senator used the frank to send through the mail several newsletters which were mass mailings as defined at Title 39, United States Code, section 3210(a)(5)(D). The Senator's primary challenger complained to the Ethics Committee that the use of the frank for mass mailings during the 60 days before the party's convention was improper.

RULING:

The Committee held that the use of the frank for mass mailings within 60 days of the party's convention was not a violation of the moratorium requirements because under the State's law the convention did not have the ''authority to nominate'' the party's candidate for the Senate, but merely the authority to name a candidate as the ''party's designated candidate for nomination.''

INTERPRETATIVE RULING NO. 367

Date Issued: April 11, 1983

Applicable Rule and Area: 37, Dual Compensation Act

QUESTION CONSIDERED:

May a Senate employee enter into a research contract with the Library of Congress to write a report for which he will receive a $10,000 fee?

FACTS:

A Committee Chairman asked whether an employee on the Senator's Committee staff could write a report for the Library of Congress and receive a fee for the project. The Committee was advised that the proposed research project would not present a substantive conflict of interest with the employee's performance of official duties because the project would be done on non-Senate time and with non-Senate resources; and that the Chairman had approved the employee's proposed activity.

RULING:

The Committee held that neither the Senate Code of Conduct nor the Dual Compensation Act (5 U.S.C. S333) prohibited the proposed activity. It noted, however, that certain ''appearance'' questions could be presented. It noted that it is the policy of the Federal Government generally, as expressed in an opinion of the Comptroller General (B–148091, 41 C.G. 569), to approve the practice of permitting Federal employees to contract with the Federal Government ''only in those exceptional cases where the needs of the Government cannot reasonably be otherwise supplied.'' The basis for this public policy is the desire to avoid ''favoritism and preferential treatment.'' Likewise, the regulations of the Library of Congress (LOC Reg. 1514–3) permit contracting with a Federal employee as a consultant or expert only if such employee is ''uniquely qualified'' and is the ''sole source'' of such expertise. The Committee noted it had been advised that the Library of Congress had concluded that the Senate employee did possess ''sole source'' expertise for purposes of the proposed study.

INTERPRETATIVE RULING NO. 370

Date issued: May 13, 1983

Applicable Rule: 37

QUESTION CONSIDERED:

May a Member establish and operate a charitable, tax-exempt public foundation?

FACTS:

A Member proposes to establish and operate a tax-exempt public foundation in accordance with the Internal Revenue Code of 1954. The purpose of the foundation is to aid in the education, job training, and job placement of handicapped citizens; to sponsor public policy forums; and to benefit other charitable organizations.

Funds for the foundation would be obtained by one or more of the following means: One or more fund-raising receptions or events to be held annually; direct mail solicitations; the donation by the Member of honoraria received for personal speaking engagements; and fund-raising reception to be held immediately before or after personal speaking engagements by the Member. No Senate personnel, stationery, and the like would be used in such fund-raising events.

DISCUSSION:

With the caveats expressed below, there is nothing in Senate Rules which would prohibit the establishment and operation of the foundation as outlined. Paragraph 6 of Rule 37 (Conflict of Interest) expressly permits a Member to serve as an officer or director of a tax-exempt organization or foundation, provided, however, that such service is uncompensated. Receipt of reimbursements for necessary travel expenses would also be permitted, although such reimbursements must be disclosed as required by Title I of the Ethics in Government Act of 1978.

The establishment of the foundation is consistent with Senate Rules provided there is no substantive conflict of interest between the activities of the foundation and the official duties of a Member of the Senate. There could be, however, appearance problems were the public policy forums sponsored by the Foundation not confined to issues affecting or of concern to handicapped individuals, or should the public policy forums be viewed in any way as related to the promotion or advancement of other legislative concerns of interest to the Member.

A Member will want to exercise care so that no appearance of a conflict of interest arises with regard to any Foundation fund-raising activities which would be held in conjunction with (either preceding or following) personal speaking engagements. Given the position of a Member of the Senate, it is possible that certain individuals would suggest that a Member might require, as some quid pro quo for an appearance (whether related to official duties or not,) a donation to the Foundation. The Committee recommends that the Member take such precautions as are necessary to prevent that inference from being drawn.

While it is the stated intention that no Senate personnel, stationery, or the like would be used in any fund-raising efforts for the foundation, the Committee believes that in as much as the activities of the Foundation would constitute non-Senate business, no Senate personnel, stationery, or the like could be used in connection with any activities of the Foundation, fund-raising or otherwise. Senate staff, of course, would not be prohibited from work on behalf of the Foundation undertaken on non-Senate time.

RULING:

Within certain limitations, a Member may establish and operate such a foundation.

INTERPRETATIVE RULING NO. 377

Date Issued: October 31, 1983

Applicable Area: Franking

QUESTION CONSIDERED:

Pursuant to the franked mail privilege, may the surviving spouse of a deceased Senator utilize a facsimile of the spouse's signature on envelopes which will be used to disseminate franked mailings from the surviving spouse? What types of mail matter may the surviving spouse of a deceased Senator send under the spouse's franked mail privilege?

DISCUSSION:

The franked mail statute, 39 U.S.C. section 3210 et seq., at section 3218, authorizes a surviving spouse or other designated relative of a deceased Senator to utilize the franked mail privilege to send certain mail matter for a period of 180 days after the death of the Senator.

RULING:

In response to the first question, the Committee ruled that it would be a correct interpretation of section 3218 for the surviving spouse to use franked envelopes or mailing labels bearing the spouse's own signature.

Second, the Committee ruled that it also was a correct interpretation of this section that the surviving spouse may send, under his or her own frank, correspondence responding to condolences received concerning the Senator's death; matter including files and books being sent for ultimate deposit in a repository library; matters relating to the closing of the Senator's Senate offices; and other such matter pertaining to the official business of the Senate as may be necessary and proper.

INTERPRETATIVE RULING NO. 380

Date Issued: March 1, 1984

Applicable Rule: 37

QUESTION CONSIDERED:

Is it consistent with the Code of Official Conduct for a Member, officer, or employee of the Senate to enter into negotiations with prospective employers and sign a contract committing that individual to future employment, while the Member, officer, or employee remains on the Senate payroll?

FACTS:

When a member, officer, or employee of the Senate reaches the conclusion and announces a decision to leave the Senate, the possibility of future employment upon termination of his or her Senate employment becomes a matter for consideration. Where future employment is an option, questions arise as to the propriety of negotiating with prospective employers and entering into a contract for future employment, prior to the conclusion of Senate service.

DISCUSSION:

Defining the appropriate level of activity which a Senator or Senate employee may engage in regarding a search for future employment is a difficult undertaking. On the one hand, Members and employees, like all individuals in society, have a right to search the marketplace in order to secure employment after terminating their current position. On the other hand, because of the unique nature of their responsibilities to the Senate, including the influence which they exercise over the legislative process, and because their every action is open to public scrutiny, Members and employees seeking future employment are under a substantial obligation to avoid not only an actual conflict of interest, but also the appearance of a conflict between their duties to the Senate and the interests of the prospective employers with whom they are negotiating.

With the understanding that they would be diligent in fulfilling this responsibility, the Committee has recognized, in Interpretative Ruling No. 79, October 11, 1977, that members and employees may carry out negotiations regarding terms and conditions of employment with prospective employers. While this Committee has never previously addressed the issue of the signing of a contract for future employment, we are aware that the Senate, in adopting the disclosure provision of the Ethics in Government Act, has anticipated such activity and has directed that those Senators and Senate employees who file an annual public financial disclosure statement must disclose the existence of any ''agreement for future employment''.

RULING:

Neither the negotiating of terms of employment with a prospective employer nor the signing of a contract for future employment is precluded by the Code of Official Conduct and may be undertaken before a Member, officer, or employee terminates his or her Senate service.

INTERPRETATIVE RULING NO. 381

Date Issued: May 4, 1984

Applicable Area: Franking

QUESTION CONSIDERED:

The franking statute (39 U.S.C. 3210 et seq.) authorizes the franking of letters of congratulations to individuals who have achieved some ''public distinction.''

Is the appointment of a constituent to be the Director of a State's Museum of Natural History a ''public

distinction'' for purposes of the Act?

RULING:

The appointment is a ''public distinction'' for which the franking statute authorizes the use of the frank to convey congratulations to the designee.

INTERPRETATIVE RULING NO. 382

Date Issued: May 4, 1984

Applicable Area: Franking

QUESTION CONSIDERED:

The franking statute (39 U.S.C. 3210 et seq.) authorizes the franking of letters of congratulations to individuals who have achieved some ''public distinction.''

Have students who have been awarded a Harry S. Truman Scholarship achieved a ''public distinction'' for purposes of the Act?

FACTS:

The Harry S. Truman Scholarship Foundation, which has presented the scholarships, was established by Congress as the official federal memorial to honor the thirty-third President of the United States. It is a continuing educational scholarship program available to students throughout the nation and designed to provide opportunities for outstanding students to prepare for careers in public service. The purpose of the Foundation is to recognize President Truman's high regard for the public trust, his lively exercise of political talents, his broad knowledge and understanding of the American political system, and his desire to enhance educational opportunities for young people.

RULING:

The receipt of a Harry S. Truman scholarship is a ''public distinction'' for which the franking statute authorizes the use of the frank to convey congratulations to the recipient.

INTERPRETATIVE RULING NO. 385

Date Issued: July 31, 1984

Applicable Rule: 37

QUESTION CONSIDERED:

Under what circumstances may a Senator utilize the services of an individual who is currently employed by an American corporation and who would continue such employment during the period of time that he was acting as a volunteer, uncompensated consultant to the Senator?

FACTS:

The Select Committee was asked for its opinion regarding a proposal under which a Senator would utilize the services of a former Senate employee as a part-time consultant in the Senator's office. Under the proposal, the individual would spend approximately one day per week in the Senator's office and would provide the Senator with advice and counsel regarding the administrative operation of the office, future hiring requirements, and his views as to those legislative issues and initiatives which the Senator might wish to evaluate for development by staff. The proposed arrangement between the Senator and the individual would be: that the individual would continue his full-time, compensated duties as head of the Legislative Office of an American Corporation; that the Senator would not compensate him for his efforts on the Senator's behalf; that the Senator would reimburse the individual for any out-of-pocket expenses incurred on the Senator's behalf from Senate allowances; and that, although the individual would continue as an employee of the Corporation during the time in which the Senator would be utilizing the individual's expertise, he would engage in no campaign-related activities and he would conduct himself in such a manner so as to avoid both an actual conflict of interest and the appearance of a conflict between his responsibilities to the Senator and his duties with the corporate employer.

DISCUSSION:

On several occasions, the Committee has ruled upon the propriety of various proposals which involved a Senator's interest in utilizing the services of an individual who would, at the same time, retain some degree of affiliation with another non-Senate employer. In Interpretative Ruling No. 283 (dated September 25, 1979), the Committee approved the hiring, as part-time Senate employees, of two attorneys, one of whom was a partner in a law firm and the other was a member of a State legislature. In Interpretative Ruling No. 314, (dated March 25, 1980), the Committee approved the proposal of a Senator to hire, as a part-time staff assistant, an individual who would continue on as a full-time writer for a group which was a registered lobbyist. Lastly, in a letter dated August 6, 1982, the Committee approved a Senator's request to hire, as a full-time Senate employee, an individual who was then an employee of a major industrial corporation and who proposed to take a ''leave of absence'' from the corporation while working for the Senate, do return to the corporation when he completed his Senate service, and, while a Senate employee, to retain his health/retirement/life insurance benefits with the corporation, a portion of which would continue to be provided by the corporation.

While several of these rulings turned on the question of the application of paragraph 5 of Rule 37 (''Conflict of Interest'') and the issue of what constitutes an ''affiliation'' as that term is used in Rule 37.5, the Committee noted that because this particular individual would not be compensated by the Senate, the threshold test for application of Rule 37.5 would not be met in this case. On the other hand, all of these rulings had, as a common concern, the general issue of what constitutes either an actual conflict of interest or the appearance of a conflict of interest between the prospective employee's duties to the Senate and his or her responsibilities to the non-Senate employer with whom the employee would have a continuing employment relationship. Such a concern also applies in this particular case, despite the fact that this individual would not be a compensated Senate employee. Because of the nature of the individual's employment with the employing corporation, the Committee was of the opinion that the Senator would be under a substantial obligation to ensure himself that the individual would make clear to those with whom he has contact on the Senator's behalf, both within the Senate and among the public, that he is acting in his capacity as the Senator's assistant and not as an employee of his employing corporation. In that regard, the Committee noted that the Senator's letter of inquiry made clear that the individual would notify those individuals with whom he has contact on the Senator's behalf.

While the Committee was of the opinion that the potential for confusion as to the individual's role does exist, the Committee also believed that such confusion can be successfully minimized by the Senator's active monitoring of the activities undertaken on his behalf by the individual. Although the Committee could not assure the Senator that his acceptance of the services offered by the individual would not result in some measure of public interest, the Committee was confident that the Senator would be able to structure the individual's efforts so as to address, before the fact, the potential for confusion or the appearance of a conflict regarding his responsibilities to the Senate. In that regard, the Committee advised that it would be necessary for this individual to recuse himself from any activity on the Senator's behalf which might impact on the interests of the employing corporation specifically and its industry generally.

Lastly, the Committee noted that Rule 41, paragraph 6(a) would require the Senator to disclose the source of the compensation which the individual would be receiving while performing services for the Senator, unless, as set forth in paragraph 6(c) of Rule 41, the individual would be performing those services for less than eight hours per week.

RULING:

No rule of the Senate would preclude the proposal outlined above. While the opportunity for some confusion does exist with respect to the individual's role as an uncompensated advisor to the Senator and, simultaneously, a compensated employee of a major corporation, the Senator will be under a substantial obligation to make every effort to minimize the potential for such confusion. With the Senator's assurance that such efforts will be undertaken and assuming the Senator's active role in assuring that there is no actual or apparent conflict of interest between the individual's duties to the Senator and his responsibilities to his employer, the Select Committee advised the Senator that the proposal could be undertaken.

[Note: Under subsequent rulings of the Committee (IR–442), the individual in this ruling would not be permitted to provide volunteer services to a Senator unless the Senator first determined that the services were being provided primarily for the educational benefit of the volunteer, rather than to aid the Senator in the performance of his or her official duties.]

INTERPRETATIVE RULING NO. 386

Date Issued: August 8, 1984

Applicable Rule and Area: 35; Ethics in Government Act of 1978

QUESTION CONSIDERED:

Are there any circumstances when a loan of an item might constitute a ''gift'', to which the restrictions of Senate Rule 35, on Gifts, and the financial disclosure requirements of the Ethics in Government Act, might apply?

FACTS:

The Ethics Committee has routinely ruled that no provision of the Code of Conduct prohibits Members from accepting the use of loaned furniture, furnishings, and office equipment for use in their offices. The rulings have also advised that use of the items is subject to approval by the Committee on Rules and Administration. Senators now ask whether they should disclose their use of those items.

DISCUSSION:

The definitions of the term ''gift'', both in Senate Rule 35, at paragraph 2, and in the Act at section 107(3), include the term ''forbearance,'' which means the refraining of enforcement of something that is due, such as a debt, right, or obligation. Under this standard, the use of borrowed furniture or equipment could arguably qualify as a gift. At the same time, however, there are compelling reasons why these items should not be treated as gifts. First, the items are not meant for the personal use or permanent possession of Members or staff. Ownership is retained by the lender. Second, the items are frequently the products of home state businesses and organizations which Members of Congress have a traditional role in promoting. Finally, in the case of business equipment, its use provides the Senate with an evaluation of its desirability for purchase by the Senate. For these reasons, the Committee decided that the restrictions of the Senate Gifts Rule and the financial disclosure provisions of the Ethics in Government Act of 1978 are inapplicable.

Notwithstanding this determination, the Committee agreed that there is a public interest in providing a formal means for sanctioning and disclosing the use of private property for official use. To accomplish this objective, the Committee determined that all Members who either now possess or plan to use loaned furniture, furnishings, and equipment should submit a written request to the Ethics Committee for a determination that the arrangement is within the standards of the Code of Official Conduct. In turn, the Ethics Committee will make available for public inspection at the office of the Committee all responses which sanction the use of loaned furniture, furnishings, and equipment.

RULING:

Items such as office furniture, furnishings, and business equipment lent by owners to Members for use in Senate offices do not constitute gifts for purposes of the Gifts Rule or the Financial Disclosure Act. They are, however, subject to the disclosure procedures set forth in this ruling.

[Note: The Senate Gifts Rule definition of ''gift'' is now in section 1.(b) of Rule 35 and generally includes anything of monetary value. For disclosure purposes gifts are defined in section 109(5) of the amended Act. More importantly, IR–442, issued in May 1992 now prohibits the loan of equipment (except for testing programs approved by the Committee on Rules and Administration). The procedure described in this IR (i.e. 386) continues in-place for loans of furniture and furnishings. Under IR–442, such loans are permissible only when the loan comes from a home state producer or distributor of the product.]

INTERPRETATIVE RULING NO. 387

Date Issued: September 17, 1984

Applicable Rule: 41

QUESTION CONSIDERED:

Does Rule 41 restrict designated staff to political fund-raising only on behalf of the employing Senator?

RULING:

The scope of the Rule's permission is set forth in the second sentence of the Rule, where it provides that the prohibition ''does not apply to two assistants to a Senator . . . who have been designated by that Senator to perform any of the functions described in the first sentence of this paragraph . . .'' (Emphasis added). This underscored ''any of the functions'' language refers to the language in the first sentence, which in sweeping terms covers handling money ''in connection with any campaign of the nomination for election, or the election, of any individual to be a Member of the Senate or to any Federal office.'' (Emphasis added).

Upon review, the Committee agreed unanimously that the text allows properly designated staff, with the employing Senator's permission, to receive, solicit, be a custodian of, or distribute funds on behalf of any campaign committee that is established, organized, and controlled by any Senator or group of Senators. This permission extends, for example, to fund-raising on behalf of (a) any Senator's principal campaign committee, whether for reelection to the Senate or election to any other office; (b) any multi-candidate committee established and controlled by any Senator; and (c) any multi-candidate committee established and controlled by any group of Senators. The permission would not extend, however, to a committee not established and controlled by a Senator, such as committees established by trade associations, interest groups, corporations, labor unions, or groups advocating particular public policy or ideological causes.

INTERPRETATIVE RULING NO. 389

Date issued: July 2, 1984

Applicable Rule: 38

QUESTION CONSIDERED:

How must a Member disclose his use of campaign funds to defray the otherwise unreimbursed expenses he incurs in connection with his official duties?

dISCUSSION:

Rule 38 allows funds derived from ''political committees'' to be used to defray expenses incurred by a Member in connection with his official duties. The Rule's legislative history indicates that the limitations contained in the Federal Election Campaign Act on both the sources and amounts which could be contributed to political committees and the Act's public disclosure requirements were major factors in leading the Senate to authorize the use of such funds to defray official expenses.

The Committee believes that the Senate Code of Official Conduct in general, and Senate Rule 38 in particular, reflect a Senate policy which requires timely public disclosure of Members' financial transactions. With that policy in mind, the Committee believes Members who use campaign funds to defray otherwise unreimbursed expenses incurred in connection with official duties should see to it that an itemization of expenditures is publicly disclosed. When a campaign committee defrays a Senator's official expenses, the committee should report each itemized expenditure in its reports filed under the Federal Election Campaign Act. If a Member chooses to transfer funds to an office account for subsequent disbursement, full disclosure of the use to which those funds have been put may be reported in the ''reimbursement'' section of the Senator's financial disclosure report under the Ethics in Government Act of 1978.

RULING:

Members who use campaign funds to defray otherwise unreimbursed expenses incurred in connection with official duties should see to it that an itemization of expenditures is publicly disclosed. When a campaign committee defrays a Member's official expenses, the campaign committee should report each itemized expenditure in its reports filed under the Federal Election Campaign Act. If a Member chooses to transfer funds to an office account for subsequent disbursement, full disclosure of the use to which those funds have been put may be reported in the ''reimbursement'' section of the Senator s financial disclosure report under the Ethics in Government Act of 1978.

INTERPRETATIVE RULING NO. 393

Date Issued: July 31, 1984

Applicable Area: Franking

QUESTION CONSIDERED:

May a Member use his franking privilege to communicate with State and local officials on matters of State and local concern, and with constituents who have contacted the Member on State and local matters?

FACTS:

A Member asked whether the provision ''matters of purely State and local concern are not frankable'' found in the Regulations Governing the Use of the Mailing Frank prohibits him from corresponding with constituents and State and local officials on State and local issues.DISCUSSION:

The provision in the Regulations which prohibits franked mailings on State and local issues is too restrictive when read in isolation from other provisions of the statute. On the specific question presented, we believe the franking privilege may properly be used to communicate with State and local officials on matters of State and local concern, and with constituents who have contacted a Member on State and local matters. This conclusion is based on the permission found in section 3210(a)(2) of Title 39, U.S. Code, which authorizes the franking privilege for matters which pertain to ''any congressional representative function generally.'' Notwithstanding this determination, the statement in the Regulations, ''matters of purely State and local concern are not frankable'' is valid as applied to mass mailings which are sent at a Member's initiative and which should relate principally to federal matters and the impact of federal policies on States, communities, and individual citizens.

RULING:

A Member may use his franking privilege for correspondence on State and local matters under the circumstances

described.

INTERPRETATIVE RULING NO. 394

Date Issued: January 18, 1985

Applicable Rules: 34, 35

QUESTION CONSIDERED:

Are there any circumstances under which a Member, officer, or employee of the Senate could accept a ticket to an inaugural event which would be provided by an individual representing a company with a political action committee?

FACTS:

An employee on the personal staff of a Member of the Senate has been offered two tickets to attend an inaugural event by an individual who is an official of a company which maintains a political action committee registered with the Federal Election Commission.

DISCUSSION:

While Rule 35 (Gifts) provides that Members, officers, and employees of the Senate may not accept a gift, as that term is defined in paragraph 2 of the Rule, from what is deemed to be a ''prohibited source'' which would include an individual who represents a corporation which maintains a political action committee registered with the Federal Election Commission, an exception to this prohibition is provided for in paragraph 2(a)(6) of the Rule. Under this exception, ''meals, beverages and entertainment'' may be accepted from an individual who might otherwise be deemed a ''prohibited source'' for other purposes of the Rule, provided that the ''meals, beverages, and entertainment'' are not accepted in connection with a gift of overnight lodging. In reviewing this exception to the definition of a ''gift'', the Committee concluded that the intent of the framer of this provision was to allow Members, officers, and employees of the Senate the ability to accept meals, beverages and entertainment in the Washington Metropolitan Area and that such acceptance would not be contrary to the provisions of paragraph 1 of the Gift Rule, so long as the acceptance was not in connection with a gift of overnight lodging. Relying on this exception and the legislative history, the Committee ruled that a ticket or tickets to an inaugural event could be accepted from a ''prohibited source.''

If the recipient of the ticket or tickets is required to file a public financial disclosure statement, pursuant to Rule 34 of the Standing Rules of the Senate, and if the value* of the food, beverages, and entertainment received was in excess of $250, the receipt of the ticket or tickets would be disclosed as a ''gift of transportation, lodging, food, or entertainment.''

RULING:

The gift of a ticket or tickets to an inaugural event may be accepted under Rule 35 of the Standing Rules of the Senate (Gifts), pursuant to the exception set forth in paragraph 2(a)(6) of the Rule, and depending upon the value of the ticket or tickets, their receipt should be disclosed on the annual public financial disclosure statement as required by Rule 34 of the Standing Rules of the Senate.

[Note: The Gifts Rule exception discussed in this ruling has been deleted from the Senate Gifts Rule. For guidance on accepting tickets to inaugural events see the Committee's January 14, 1993 Dear Colleague letter. In that letter, the Committee granted a waiver permitting Senate Members, officers, and employees to accept tickets to inaugural events, in recognition of the uncertainty surrounding the value of these tickets and because of the unique public character of such events. Consult that letter for details.]

INTERPRETATIVE RULING NO. 395

Date Issued: April 23, 1985

Applicable Area: Franking

QUESTION CONSIDERED:

The franking statute (39 U.S.C. 3210 et seq.) authorizes the franking of letters of congratulations to individuals who have achieved some ''public distinction.'' Are the following ''public distinctions'' for purposes of the Act?

l) a Sr. High School student who is graduating as valedictorian;

2) a Sr. High School student who is graduating as salutatorian; and;

3) Sr. High School students who are graduating within the top ten academic ranking of their class.

RULING:

While being named valedictorian or salutatorian of your high school, or graduating within the top ten academically, is certainly a significant personal achievement, such an accomplishment does not constitute a ''public distinction'' for purposes of the franking statute.

INTERPRETATIVE RULING NO. 396

Date Issued: May 13, 1985

Applicable Rule: 37

QUESTION CONSIDERED:

How do the post-employment lobbying restrictions on Rule 37, paragraph 9 (''Conflict of Interest'') apply to a former Senate employee who held positions with several Senators during his career, including two different Chairmen during the last six months of Senate employment?

Standing Rule 37, paragraph 9 provides that ''[i]f an employee on the staff of a committee upon leaving his position becomes . . . a registered lobbyist or is employed or retained by a . . . registered lobbyist for the purpose of influencing legislation, such employee may not lobby Members of the committee for which he worked or the staff of that committee for a period of one year after leaving his position.'' Rule 37, paragraph 10(c) provides the definition for the term ''lobbying.''

FACTS:

The long-time staff director of a Senate Committee retired on January 3, 1985 to begin a new career as a consultant to a political organization. During his employment with the committee, he was supervised by several Chairmen. A few weeks after his retirement, the new committee Chairman asked the staff director to return to the Senate payroll as a consultant to the committee for about six weeks so as to provide a transition period for the new staff director. The former staff director, who had been contemplating registering as a lobbyist under the 1946 Federal Regulation of Lobbying Act, was unsure about whether the restrictions of Rule 37, paragraph 9, was applicable to his committee associations as of January 3, the date of his initial retirement, or as of the conclusion of his subsequent six weeks consultancy to the committee.

RULING:

Where an employee leaves the Senate payroll and registers as a lobbyist under the 1946 Federal Regulation of Lobbying Act, the post-employment lobbying restrictions of Rule 37, paragraph 9, would prohibit such an individual from ''lobbying'' the Senators and staff who held positions with that individual's former committee on the final day of his employment with the committee. Under the facts presented, such date was deemed to be the termination of the employee's six week consultancy with the committee rather than the earlier date on which he had ''retired.''

An individual who is uncertain as to whether he is required to register pursuant to the Lobbying Act should confer with the Clerk of the House of Representatives.

[Note: The Lobbying Disclosure Act of 1995 repealed and replaced the Federal Regulation of Lobbying Act of 1946. Those with questions about the requirements for registration as a lobbyist should consult with the Secretary of the Senate, Office of Public Records. Moreover, section 207 of Title 18 of the U. S. Criminal Code now also prohibits lobbying and other post-employment activities by certain Senate staffers and should be consulted.]

INTERPRETATIVE RULING NO. 397

Date Issued: May 24, 1985

Applicable Rules: 34, 37

QUESTION CONSIDERED:

What Senate Rules or ethical considerations are relevant with regard to a Senator's spouse accepting a compensated position with a tax-exempt, educational organization whose purpose is educating the public on a policy issue before the Congress?

FACTS:

A Washington, D.C., based tax-exempt, educational organization has offered the spouse of a Senator a compensated position as its Director of Public Education. The organization, which receives no funding from the Federal government, has as its purpose the education of the public on a narrowly focused policy issue which is the subject of on- going hearings and legislative initiatives in Congress. As the Director of Public Education, it will be the responsibility of the spouse to promote the programs and interests of the organization and to increase the public's awareness of the policy issue which is the focus of the organization's efforts.

DISCUSSION:

Only two provisions of the Code of Official Conduct specifically deal with the spouse of a Member: Standing Rule 34 (Public Financial Disclosure) which requires a Senator to disclose the source of any earned income in excess of $1,000 received by a spouse, and Standing Rule 35 (Gifts) which is applicable not only to Members, officers, and employees, but also to spouses and dependents as well. The Committee has also recognized that the compensated employment of spouses is a matter of interest to the public. Thus, in Interpretative Ruling No. 336, dated September 5, 1980, the Committee stated its view that a Senator's spouse's lobbying on behalf of a corporation on whose board the spouse served, might, under certain circumstances, reflect adversely upon the Senate as an institution.

Reviewing the facts presented in this case, the Committee noted that the organization which would employ the spouse had a tax exemption from the Internal Revenue Service and therefore, under regulations promulgated by the Service, had agreed to the substantial limitations imposed by the Internal Revenue Code on the lobbying of Members of Congress. The Committee concluded, therefore, that the specific concerns outlined in Interpretative Ruling No. 336 would not be directly applicable to this proposed employment. The Committee further noted that the spouse's employment with the organization would be disclosed on the Senator's public financial disclosure statement. Given heightened public interest in the professional activities of spouses of Members, the Committee expressed its hope that spouses, as well as Members, would conduct their professional and business activities so as not to reflect adversely upon the Senate as an institution.

RULING:

No Rule of the Senate prohibits the spouse of a Senator from accepting compensated employment with a tax-exempt educational organization where the spouse's responsibilities will be focused on educational activities for the public rather than lobbying the Congress. Such employment must be disclosed by the Senator on the annual public financial disclosure statement as mandated by Rule 34 of the Standing Rules of the Senate.

INTERPRETATIVE RULING NO. 400

Date issued: August 2, 1985

Applicable Rule and Area: 38, FECA

QUESTION CONSIDERED:

May a Senator direct that his principal campaign committee open a separate bank account and disburse funds from that account for the purpose of offsetting unreimbursed but official expenses incurred by the Senator in the operation of his Senate office?

FACTS:

The principal campaign committee of a Senator would raise contributions and segregate certain of those funds in a bank account which would be opened by the committee and administered separately from other committee accounts, the exclusive purpose of which would be to offset unreimbursed but official expenses incurred in the operation of the Senator's office. The Senator's reelection campaign committee is concerned about the possible application of certain provisions of the Internal Revenue Code to funds contributed to and then expended by the committee for the purpose of offsetting unreimbursed but official expenses of operating the Senator's office. Contributors to the account would be apprised of its purpose and the possible tax implications of such contributions. The Committee .has agreed that the contribution limitations and disclosure provisions of the Federal Election Campaign Act would be fully applicable to this account.

APPLICABLE RULE:

Rule 38 of the Standing Rules of the Senate provides that:

''1. No Member may maintain or have maintained for his use an unofficial office account. The terms 'unofficial office account' means an account or repository into which funds are received for the purpose, at least in part, of defraying otherwise unreimbursed expenses allowable in connection with the operation of a Member's office. An

unofficial office account does not include, and expenses incurred by a Member in connection with his official duties shall be defrayed only from-

''(a) personal funds of the Member;

''(b) official funds specifically appropriated for that purpose;

''(c) funds derived from a political committee as defined in section 301;

''(d) of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431); and

''(e) funds received as reasonable reimbursements for expenses incurred by a Member to the organization making the reimbursement.

''2. No contribution (as defined in section 301(e) of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431)) shall be converted to the personal use of any Member or any former Member. For the purposes of this Rule ''personal use'' does not include reimbursement of expenses incurred by a Member in connection with his official duties.''

The Committee would like to open a separate bank account to be administered solely by the Committee whose purpose would be to offset such office expenses.

RULING:

A separate bank account to be established by a Senator's reelection committee would be consistent with the provisions of Standing Rule 38 (Unofficial Office Accounts) provided that contributions to the account would be limited to the contribution levels established in the Federal Election Campaign Act, and that contributions received and disbursed by the account would be disclosed as is provided for in the Act. We are of the opinion that contributions received by this separate account could be utilized by the Senator, pursuant to section l(c) of Standing Rule 38, to defray official, but unreimbursed, expenses of holding public office.

INTERPRETATIVE RULING NO. 402

Date Issued: October l8, l985

Applicable Rules: 37, 41

QUESTION CONSIDERED:

May a Senator's personal secretary receive compensation from her employing Senator's principal and multi-candidate campaign committees for the political services she is performing for these committees?

FACTS:

A Senator's personal secretary devotes some time in the evenings and on weekends consulting with her employing Senator's campaign committee and multi-candidate committee. The employing Senator emphasizes that the services she performs take place during her off-duty hours and during the established and reasonable periods of vacation time provided to his staff. Her campaign committee responsibilities include matters relating to the Senator's political schedule, identification of prior and potential contributors, and preparation of the reports required by the Federal Election Campaign Act. She is designated as one of the Senator's staff who are allowed by Senate Rule 41 to receive, solicit, and disburse campaign funds.

DISCUSSION:

Senate Rule 41 sets forth the general rule that Senate staff are not allowed to solicit, receive or disburse campaign funds. The Rule provides, however, that each Senator may designate as many as two individuals on his personal staff who are allowed to receive, solicit and disburse campaign funds for a committee or committees established by a Senator. In light of the Senator's designation of his secretary to perform these functions, she is allowed to do so under Senate Rules.

The Committee has ruled on a number of occasions that a Senate employee may engage in political activity not involving the solicitation, receipt, custodianship or distribution of campaign funds outside of regular office hours, on weekends and during regular and reasonable periods of vacation time.

Finally, the Senate Conflict of Interest Rule (Rule 37) allows Senate staff to receive compensation for non- Senate employment so long as the employment is not inconsistent or in conflict with the conscientious performance of official duties. Paragraph 3 of Rule 37 requires that an employee's supervising Senator make the initial determination that no conflict exists. In light of the Senator's apparent determination that his secretary's services for his campaign committees do not conflict with her Senate duties, her receipt of compensation is not prohibited by Senate Rules. However, the Senator must continue to monitor the employee's outside activities so that they will not give rise to a conflict of interest.

RULING:

The staffer may receive compensation from the employing Senator's principal or multi-candidate campaign committee for the services she is providing.

INTERPRETATIVE RULING NO. 405

Date Issued: December 18, 1985

Applicable Rule: 38

QUESTION CONSIDERED:

May a Member borrow money from his principal campaign committee?

FACTS:

A Member asked whether he may borrow money from his principal campaign committee, with the loan to be secured by a promissory note which establishes an interest rate comparable to prevailing commercial interest rates.

DISCUSSION:

The Senate in 1968 established a Rule which provided that Senators may only use campaign funds for political or official purposes, and that Senators ''shall not use directly or indirectly any part of any contribution for any other purpose.'' The text of Rule 38 as it exists today ''essentially restates'' this 1968 Rule, according to the 1977 committee report which accompanied the current Senate Code of Official Conduct.

In addition, the influential position a Member holds in deciding upon the disposition of funds held by his campaign committee could have the effect of making the Member both the lender and the borrower. Fulfilling these two roles may present the appearance of, or an actual, conflict of interest.

Finally, the Ethics Committee cannot assume the role of judging the adequacy of the security, interest rate, and repayment terms of routine borrowing by Members. That role is better fulfilled by Members making their financial transactions with independent lenders, and having their financial arrangements scrutinized through their public financial disclosure reports.

RULING:

The historical background of Senate Rule 38, and other considerations, indicate that the Rule does not allow a Member to borrow from his principal campaign committee.

[Note: In 1995, the Federal Election Commission issued regulations defining ''personal'' use under the Campaign Act (see, 11 CFR).]

INTERPRETATIVE RULING NO. 406

Date Issued: December 18, 1985

Applicable Area: Foreign Gifts & Decorations Act

QUESTION CONSIDERED:

May Members keep gifts which have a value of more than $100 if those gifts are given by foreign governments?

RULING:

The Foreign Gifts and Decorations Act provides that any Federal official, including any Member, officer, or employee of the Senate, who receives from a foreign government a gift of more than ''minimal value'' is required to deposit the gift with the Secretary of the Senate for disposal. The Act also provides that the Select Committee on Ethics may allow such gifts to be retained and used by the Member, officer, or employee during his Senate tenure.

Pursuant to its authority under the Foreign Gifts and Decorations Act, the Select Committee has determined that any gift having a value of over $100 given to Members, officers, and employees of the Senate by a foreign government shall be deemed to be of more than ''minimal value'' for purposes of the Act and shall therefore be deemed to have been accepted on behalf of the United States Government. If a Senator who receives from a foreign government a gift of more than ''minimal value'' would like the Committee to authorize the display or

use of the gift in his Senate office, he should contact the Committee.

INTERPRETATIVE RULING NO. 407

Date Issued: January 28, 1986

Applicable Area: Use of Senate Letterhead

QUESTION CONSIDERED:

May a Senator use letterhead including the words ''United States Senate'' for letters to be sent from his office to individuals who have achieved a ''personal distinction''?

DISCUSSION:

In 1978, the Select Committee issued an advisory opinion on the use of ''United States Senate'' letterhead which held that Members could not use such letterhead for letters sent out over their signatures by a non-Senate organization but could use such letterhead for other correspondence from their offices.

In 1981, the Congress repealed that portion of the franking statute (39 U.S.C. section 3210 et seq.) authorizing the use of the frank for letters of congratulations to individuals who had achieved some ''personal distinction'', but retained authority for sending under the frank letters congratulating those who had achieved a ''public distinction.''

The Committee concluded that the recision of the authority to use the frank for congratulatory letters to individuals who had achieved a ''personal distinction'' had not limited the right of Members to use ''United States Senate'' letterhead for such mailings.

RULING:

Yes.

INTERPRETATIVE RULING NO.408

Date Issued: March 12, 1986

Applicable Area: Advisory Opinion on Use of Letterhead

QUESTION CONSIDERED:

Is the Advisory Opinion of the Select Committee, issued on August 14, 1978, regarding the use of letterhead and/or envelopes which utilize the words ''United States Senate'' and ''Official Business'' or any combination thereof, applicable to a Senator's personal use of such letterhead which contains a solicitation of funds or support for a campaign for election or reelection to any Federal, State or local office?

ADVISORY OPINION:

''It is the opinion of the Select Committee that it is improper conduct which reflects upon the Senate for a Senator to authorize or allow a non-Senate individual, group or organization to use the words ''United States Senate'' and ''Official Business'' or any combination thereof, on any letterhead or envelope. The use of a Senator's name followed by the words, ''United States Senate'', is not hereby deemed improper.''

FACTS:

In an invitation which was written on official Senate letterhead which includes the words ''United States Senate, Washington, D.C. 20510'', a Senator invited individuals to a dinner which was directly connected to the raising of funds for his campaign for reelection. The letter of invitation was prepared by the Senator himself and was sent from his office.

DISCUSSION:

The Select Committee's Advisory Opinion of August 14, 1978 on the use of the words ''United States Senate'' on letterhead and envelopes was prompted by the receipt of a substantial amount of correspondence from the public concerning the use by non-Senate groups and organizations of facsimiles of United States Senate letterhead in their fundraising appeals. Typically, prior to August 14, 1978, a Senator would agree to write a fundraising letter on behalf of a non-Senate group or organization and allow that organization to include the Senator's letter in a fundraising appeal to be sent by that group or organization. In most instances, the Senator's letter was

written on a facsimile of official United States Senate letterhead and in many instances was mailed in envelopes which bore the return address of the United States Senate. The concern expressed by the public was that they were misled into believing that the mailing was from the Senator whose letterhead was used when, in fact, it was really from a private group. As a result, the Committee developed an Advisory Opinion, pursuant to its authority under S. Res. 110 and S. Res. 338, to issue Advisory Opinions on actions which might tend to reflect discredit upon the Senate. The Advisory Opinion concluded that it was improper for a Member of the Senate to allow a non-Senate organization or group to use letterhead or envelopes which contained the words ''United States Senate'' and/or ''Official Business''. During the development of the Advisory Opinion concern was expressed by some Members of the Committee that while the Advisory Opinion should restrict the use of Senate letterhead by non-Senate groups or organizations, such as campaign committees, the Advisory Opinion should not preclude a Senator's personal use of his letterhead for whatever correspondence the Senator thought appropriate. As a result, the Advisory Opinion included, as a last sentence, a proviso that ''the use by a Senator of his or her own name followed by the words 'United States Senate' is not hereby deemed improper.''

Since the adoption of this Advisory Opinion, the Committee has been asked by Senators on several occasions about the application of the Advisory Opinion to various types of mailings in which the Senator was interested. In these Interpretative Rulings, the Committee has taken the position that while it is improper and a violation of the Advisory Opinion for a Senator to allow a campaign committee or any other non-Senate organization to prepare a mailing which uses letterhead that contains the words ''United States Senate'' on the masthead of the letter (see Interpretative Ruling No. 169), the Advisory Opinion would not preclude a Member from writing a personal letter on Senate letterhead from his own office (see Interpretative Ruling Nos. 270 and 365).

Because of a concern that the last sentence of the Advisory Opinion was being interpreted too broadly by Members and staff, the Committee reviewed the previous interpretations of the application of the Advisory Opinion and concluded that the Advisory Opinion does preclude a Senator from using letterhead and/or envelopes containing the words ''United States Senate'' and/or ''Official Business'' or any combination thereof, for any correspondence, even that prepared personally by the Senator, which solicits a financial contribution or other form of assistance for any campaign for election or reelection to any Federal, State or local office. Where a Senator desires to correspond with members of the public about a campaign-related matter, such correspondence should be prepared on letterhead which has been paid for by the Senator's personal funds or funds derived from his campaign committee and which does not employ the words ''United States Senate'' and/or ''Official Business''.

RULING:

The Select Committee's Advisory Opinion of August 14, 1978 on the use of official letterhead does apply to and therefore restricts a Senator's personal use of letterhead and/or envelopes which utilize the words ''United States Senate'' and/or ''Official Business'' or any combination thereof, where the correspondence involves a request for a financial contribution or other form of assistance for any campaign for election or reelection to any Federal, State or local office. Additionally, this ruling would preclude the use of such official letterhead by a Senator to write ''thank you'' letters to contributors or campaign workers.

Lastly, through previous Interpretative Rulings, the Select Committee has approved the use of letterhead, by a Senator, which uses the Senator's name followed by ''United States Senator''. This latter form of letterhead could be used to address correspondence which involved campaign-related topics including ''thank you'' notes for participation in a campaign.

INTERPRETATIVE RULING NO. 410

Date Issued: April 3, 1986

Applicable Rules: 34 and 35

QUESTION CONSIDERED:

Under what circumstances may a Member, officer or employee of the Senate accept travel expenses for a speech or appearance from an organization or entity which is affiliated in some way with the sponsoring organization?

FACTS:

A major domestic trade association was holding its annual meeting in San Francisco. The association invited a Senator to address the annual meeting and offered to provide the Senator with round-trip air transportation between his home state and San Francisco. In making the travel arrangements for the Senator, the trade association asked one of its members, a company which was headquartered in the Senator's state and which owned its own corporate aircraft, to provide a seat to the Senator on the affiliate's plane since that plane was already taking company executives to the association's annual meeting.

DISCUSSION:

In addressing the application of the ''necessary expense'' exception (Rule 35, paragraph 2) to these particular

facts, the Committee reviewed previous interpretations of the ''necessary expense'' exception, especially the scope of Interpretative Ruling No. 41, dated July 1, 1977. Interpretative Ruling No. 41 directed that Senators, who had been offered travel expenses for an appearance from an entity that is defined in Rule 35 as a ''prohibited source'', could only accept travel reimbursements from the actual sponsor of the appearance. Under the terms of that Ruling, if the travel reimbursement was to be provided by a ''member of the group sponsoring the address'', rather than the sponsor itself, either the sponsor would have to reimburse the affiliated entity which offered to provide the Senator's transportation or the Senator would have to reimburse the affiliated entity directly.

The Committee's review of Interpretative Ruling No. 41 and the legislative history surrounding Rule 35, as it applies to the reimbursement of travel in connection with a Senator's appearance on behalf of a sponsor, led the Committee to the conclusion that Interpretative Ruling No. 41 was too narrowly drawn. In the Committee's view, the Rule 35 exception which allows Senators to accept travel reimbursements from the sponsor of an appearance, even when that sponsor might be a ''prohibited source'' for other applications of Rule 35, extends as well to groups which are formally affiliated with the sponsor of the Senator's appearance and which offer travel arrangements to the Senator on behalf of the sponsor. In that regard, the Committee agreed to several tests for determining whether a group was sufficiently affiliated with the sponsor of a Senator's appearance so as to allow that Senator to accept travel arrangements from that group, within the confines of Rule 35. Where the sponsor of a Senator's appearance asks an affiliated group to provide travel arrangements to the Senator in connection with that appearance, the tests for making such a determination are as follows: either (1) the group is a member in good standing of the sponsoring organization, or (2) the directors, principal officers, or trustees of the group are the directors, principal officers, or trustees of the sponsoring organization, or (3) there is a direct corporate and/or financial relationship between the sponsoring organization and the group.

RULING:

Under Rule 35, a Member, officer, or employee of the Senate may accept necessary travel expenses in connection with an appearance made by that individual, from a group or entity, which although it is itself not the sponsor of the appearance, has been requested by the sponsor to provide the travel arrangements and is sufficiently affiliated with the sponsor so as to allow the Senator or employee to accept the travel expenses within the confines of the ''necessary expense'' exception to Rule 35. A group or entity is sufficiently affiliated with a sponsor if either (1) the group is a member in good standing of the sponsoring organization, or (2) the directors, principal officers, or trustees of the group are the directors, principal officers, or trustees of the sponsoring organization, or (3) there is a direct corporate and/or financial relationship between the sponsoring organization and the group.

INTERPRETATIVE RULING NO. 412

Date issued: August 11, 1986

Applicable Rules: 34, 35, and 38

QUESTION CONSIDERED:

For purposes of Senate Rules, what value is ascribed to the use of a private airplane?.

APPLICABLE SENATE RULES:

Gift Rule (Rule 35), Prohibition of Unofficial Office Accounts (Rule 38), Disclosure (Rule 34, Ethics in Government Act).

DISCUSSION:

In some circumstances, a Member who uses a private airplane is required to reimburse the provider of the aircraft to avoid either a prohibited gift under the Senate Gift Rule or a prohibited in-kind contribution to an unofficial office account. Senate Rule 38 (Prohibition of Unofficial Office Accounts), generally prohibits private sources from providing funds or services to defray a Member's officially related expenses. Thus, if a .friend offers to loan a Member an aircraft to attend town meetings across the Member's home state, the Member must reimburse for the use of the aircraft to comply with Rule 38. Senate Rule 35 (Gifts) prohibits Members from accepting from an individual or organization with a direct interest in legislation, gifts aggregating over $100 in a calendar year. Thus, if a lobbyist offers a Member the use of his airplane to fly the Member on a vacation trip, and if the value of the use of the airplane is over $100, the member must provide reimbursement to comply with Rule 35.

In most circumstances, where reimbursement is not required, the Member will still need to determine the value of the use of the aircraft because, if the value is $250 or more, the use of the aircraft must be disclosed on the Member's annual financial disclosure forms.

In determining the value of an item for both reimbursement and disclosure purposes, the Committee has consistently stated that the applicable standard is the value of the item to the recipient. In the use of private aircraft, the Committee concluded that the value to a Member would be the cost he would have to incur to purchase the same level of service in the open market. The Committee felt that the level of service generally

provided in using private aircraft is most nearly equivalent to first-class service provided by commercial carriers where such commercial service is available. Where no regularly scheduled commercial service is available, to obtain the same service provided by the use of a private aircraft, a Member would be required to charter an airplane.

RULING:

The Committee has agreed on the following method for calculating the value of the use of an aircraft for both reimbursement and disclosure:

1. If the cities between which the Member is flying have regularly scheduled air service, regardless of whether such service is direct, then the value of the use of the aircraft is the cost of a first-class ticket from the point of departure to the destination.

2. If the cities have regularly scheduled air service, but only a standard (coach) rate, then the value of the use of the aircraft is the coach rate.

3. If either the city from which the Member flies or his destination does not have regularly scheduled air service, then the value of the use of the aircraft is the cost of chartering the same or a similar aircraft for that flight.

The Committee notes that its ruling is generally consistent with Federal Election Commission regulations pertaining to the use of private aircraft by candidates for Federal office.

The Committee further notes that the Committee on Rules and Administration has adopted travel regulations pertaining to the level of reimbursement to be provided from official funds to Members who seek such reimbursement for air transportation costs they have paid. Our ruling addresses only the reimbursement which Members must make to the individual or organization whose aircraft he uses, not the level of reimbursement Members may receive from official funds.

[NOTE: The current Senate Gifts Rule (35), lowered the value of a gift which may be accepted to $49.99, with an annual aggregate limit of $99.99 per source.]

INTERPRETATIVE RULING NO. 413

Date Issued: September 22, 1986

Applicable Rule: 34

QUESTION CONSIDERED:

Are there any circumstances under which a candidate for nomination or election to the Senate, who has taken the steps necessary under state law to withdraw his or her candidacy, may be excused from the obligation established by the Ethics in Government Act, amended, to file a Public Financial Disclosure Statement?

DISCUSSION:

The Ethics in Government Act, amended, 2 U.S.C. 701 et seq., generally requires the filing of a Public Financial Disclosure Statement by all candidates for nomination or election to the Senate.

The Act contains the following provisions concerning a candidate's obligation to file Public Financial Disclosure Reports. Under 2 U.S.C. section 707(9), ''candidate'' is defined as:

an individual, other than a Member, who seeks nomination for election, or election, to the Congress whether or not such individual is elected, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, (A) if he has taken the action necessary under the law of a State to qualify himself for nomination for election, or election or (B) if he or his principal campaign committee has taken action to register or file campaign reports required by section 304(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)).

A candidate's disclosure obligations are set forth in 2 U.S.C. section 701(d):

Within thirty days of becoming a candidate in a calendar year for any election to the office of Member, or on or before May 15 of that calendar year, whichever is later, but in no event later then seven days prior to the election, and on or before May 15 of each successive year the individual continues to be a candidate, an individual shall file a report containing the information as described in section 702(b) of this title. Notwithstanding the preceding sentence, in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, such individual need not file a report unless he becomes a candidate for another vacancy in that office or another office during that year.

The next section of the statute which applies to a candidate's filing obligation is 2 U.S.C. section 701(f), which provides that:

[r]easonable extensions of time for filing any report may be granted by the designated committee of the Senate with respect to those filing with the Secretary . . . but in no event may the extension granted to a Member or candidate result in a required report being filed later than seven days prior to an election involving the Member or candidate. If the day on which a report is required to be filed falls on a weekend or holiday, the report may be filed on the next business day.

In addressing the question posed above, the Select Committee sought the views of the Civil Division of the Department of Justice, which is charged, by the Act, with responsibility of enforcing the Act. In the view of the Department of Justice:

. . . an individual who meets the definition of ''candidate'' contained in section 707(9), but who does not comply with the filing requirements of section 701(d), and does not obtain an extension as permitted by section 701(f), has committed a prima facie violation of the Act. If, however, a candidate withdraws before his financial disclosure is due, whether under the original or an extended deadline, that candidate would be excused from compliance.

The Department of Justice has thus drawn a distinction between individuals who have become ''candidates'' under section 707(9) of the Act, but who have not filed the requisite disclosure statement under section 701(d), on the one hand, and those ''candidates'' who have requested and received an extension of time for filing the disclosure report from the Select Committee, pursuant to the authority found at section 701(f) of the Act, on the other hand.

In the view of the Department of Justice:

The Act does not contain any exemption for individuals who have become ''candidates'' within the terms of section 707(9), but taken steps necessary under state law to terminate their candidacy prior to the election.

This conclusion is based upon the fact that:

The legislative history of the Ethics in Government Act provides no basis for exempting candidates who, after their filing deadline passes, withdraw prior to the election in which they intended to participate.

The Department bases its conclusion upon the understanding that it was the principal objective of the Congress, in agreeing to the public financial disclosure requirement for candidates, as found in the Act:

. . . to place candidates ''in the exact same position with respect to financial disclosure as an incumbent holder of that office'' (1978 U.S. Code Cong. & Ad. News 4216, 4238). If an incumbent is exposed to civil penalties for failing to timely file, while a non-incumbent is able to avoid filing by the expedient of withdrawing from the race immediately before the election, the legislative purpose of putting the two individuals on equal footing is thwarted. The non-incumbent candidate will have both avoided providing the required information, and been able to remain a candidate throughout the campaign period while not revealing his financial status to the electorate.

RULING:

There are two, and only two, circumstances under which a candidate for nomination or election to the Senate, who has taken the steps necessary under state law, to withdraw his or her candidacy, will be excused from the obligation to file a Public Financial Disclosure Statement: (1) where the candidate withdraws his candidacy before his financial disclosure statement is due, under the deadline set forth at 2 U.S.C. section 701(d); or (2) where the candidate withdraws his candidacy before the deadline established by an extension of time for filing granted by the Select Committee, pursuant to 2 U.S.C. section 701(f).

INTERPRETATIVE RULING NO. 414

Date Issued: November 18, 1986

Applicable Rules: 34, 35

QUESTION CONSIDERED:

What is the application of Rule 34 (''Public Financial Disclosure'') and Rule 35 (''Gifts'') to the acceptance by a Senator of a trophy which was presented because of the Senator's winning an athletic contest?

FACTS:

A Member of the Senate was invited to participate in several different tennis tournaments. On one occasion, the Senator participated in, and won, a tournament sponsored by a Washington, D.C. tennis facility. In the second instance, a Senator participated in, and won, a celebrity tennis tournament sponsored by the Washington, D.C. office of a major American corporation. In the latter instance, the corporate sponsor of the celebrity tennis tournament would be described as a ''prohibited source'' for purposes of Rule 35 because the corporation maintained both a political action committee registered with the Federal Election Commission, and retained lobbyists who were registered under the 1946 Federal Regulation of Lobbying Act. In both instances the fair market value of the trophy presented to the Senator was in excess of $100.

DISCUSSION:

In 1980, the Select Committee considered a somewhat similar question posed by a Senator who asked about his wife's acceptance of an airplane ticket which had been awarded to her as a result of a ''door-prize'' drawing at a charitable fund-raising event. In that instance, the Committee ruled that the prize was not covered by any rule of the Senate Code of Official conduct, and that as a result, there was no prohibition or restriction on the Senator's spouse regarding the acceptance of the ''door-prize''. Applying this 1980 precedent to the facts presented above, the Select Committee concluded that the Code of Official Conduct should not prohibit a Member, officer, or employee of the Senate from accepting a trophy presented by the sponsor of an athletic event to the winner of the athletic contest.

While the Committee determined that Rule 35 (''Gifts'') would not preclude the acceptance of such a trophy or award, Rule 34 (''Public Financial Disclosure'') would require an individual who filed an annual public financial disclosure statement under Rule 34 to disclose the acceptance of such a trophy where the fair market value of the trophy was determined to be in excess of $100. The Select Committee, drawing upon the treatment of such trophies and awards by the Internal Revenue Service, concluded that such a trophy should be disclosed in the ''income'' section of the individual's public financial disclosure statement.

RULIING:

The acceptance or retention of a trophy or award presented to a Member, officer, or employee of the Senate by the sponsor of an athletic contest in recognition of the Member, officer, or employee winning the competition is outside the scope of Rule 35 (''Gifts''). However, Rule 34 (''Public Financial Disclosure''), would require the disclosure of the acceptance of such a trophy or award in the ''income'' section of a reporting individual's annual public financial disclosure statement where the fair market value of the trophy or award was in excess of $100.

[Note: As of January 1, 1996, the Senate Gifts Rule provides that ''prizes'' (cash, or any other non-commemorative item of value) must be won in contests or drawings ''open to the public'' (see section 1(c)(10)). Thus, the 1980 ruling referred to in this IR no longer applies unless the event in which the ''prize'' is won is open to the public. Acceptance of a ''trophy'' or ''plaque'' won in a tournament, however, continues to be acceptable under section 1(c)(20), which permits the acceptance of commemorative items. If the trophy or plaque is valued at more than $200 (rather than the $100 amount in effect at the time of the IR), it's acceptance must be disclosed in the ''income'' section of the recipient's annual financial disclosure report as required by the IR.]

INTERPRETATIVE RULING NO. 415

Date Issued: March 24, l987

Applicable Area: Franking

QUESTION CONSIDERED:

May a Member use the frank to mail, as a mass mailing, voter registration material printed by the local jurisdictions where voting is to occur.

RULING:

Title 39, Section 32l0(a)(3)(H) of the United States Code specifically authorizes the use of the frank for ''mail matter which consists of voter registration or election information or assistance prepared and mailed in a non-partisan manner.'' Additionally, Section 32l0(f) authorizes the mass mailing of public service material, whether or not prepared or printed with Congressionally appropriated funds, if the material to be mailed ''is purely instructional or informational in nature and . . . in content is frankable under this section.'' However, Senate Rule 40 (Franking Privilege and Radio and Television Studios), Paragraph 2 provides:

''A Senator shall use only official funds of the Senate, including his official Senate allowances, to purchase paper, to print, or to prepare any mass mailing material which is to be sent out under the frank.''

Because of the discontinuity between the Rule and the statute, the Committee has read narrowly the authorization provided by section 32l0(f) for the use of the frank to mass mail public service material. It concluded, however, that, since the franking of voter registration information is specifically authorized by section 32l0(a)(3)(H), such information may be sent as a mass mailing notwithstanding Senate Rule 40.2.

INTERPRETATIVE RULING NO. 416

Date Issued: April 28, 1987

Applicable Area: Franking

QUESTION CONSIDERED:

May a Senator use franked return address cards to correct his or her media mailing list?

DISCUSSION:

Section 3210 of Title 39 of the United States Code authorizes the use of the frank for ''official business'' including ''the conveying of information to the public.''

Additionally, Chapter 1, paragraph 4(c) of the Senate Regulations Governing the Use of the Mailing Frank provides that:

(c) The sending back of a return-addressed and franked piece of mail to a Senator, or an officer of the Senate, by an addressee does not constitute a loan of the frank if the mail matter is frankable and if the return of the frank remains under the Senator's or officer's control and is used solely to expedite the conduct of official Senate business.

RULING:

Correcting a media mailing list in order to avoid delays in the release of information to the public would be within the definition of 'official business' in section 3210. Furthermore, since the cards are pre-addressed so they can only be used to reply to your office, the proposed use of such cards would not be a loan of the frank prohibited by section 3215 of Title 39. Therefore return address cards may be used to correct a media mailing list. However, the mass mailing of franked return address cards to correct a general mailing list would be prohibited by Section 8 of the Committee's Regulations Governing Mass Mail.

INTERPRETATIVE RULING NO. 417

Date Issued: July 30, 1987

Applicable Area: Franking

QUESTION CONSIDERED:

The franking statute (39 U.S.C. 3210 et. seq.) authorizes the franking of letters of congratulations to individuals who have achieved some ''public distinction.''

Have students who have been awarded a Robert C. Byrd Honors Scholarship achieved a ''public distinction'' for purposes of the Act?

FACTS:

The Robert C. Byrd Honors Scholarship Program was established by Public Law 99–498, as a federally-funded state-run program to recognize exceptionally able secondary school students, by providing them with a scholarship toward higher education expenses.

RULING:

The receipt of a Robert C. Byrd Honors Scholarship is a ''public distinction'' for which the franking statute authorizes the use of the frank to convey congratulations to the recipient.

INTERPRETATIVE RULING NO. 420

Date Issued: October 8, 1987

Applicable Area: Franking

QUESTION CONSIDERED:

May a Senator include in town meeting notices or other frankable mailings a solicitation for in-kind donations to local charities if the charities involved all receive Federal support for their programs.

DISCUSSION:

''The Regulations Governing the Use of the Mailing Frank'' provides in paragraph 18 of Chapter 2 that ''[N]o solicitation of funds for purpose may be made under the franked mail privilege.'' The Committee is agreed that this restriction is also applicable to in-kind solicitations. There is no exception to this provision for charities that have a Federal connection.

Although the Committee recognizes that certain charities are particularly important to each Senator's state, the Franking Regulations' prohibition on solicitations contain no exceptions for such charities. Consequently, solicitations on behalf of charities may not be included in a franked mailing.

INTERPRETATIVE RULING NO. 421

Date issued: October 16, 1987

Applicable Rules: 38 and 41

QUESTION CONSIDERED:

This ruling addresses four questions related to a Senator's campaign committee furnishing a computer to a Senator's office for use in conducting official Senate duties.

FACTS:

A Senator's principal campaign committee proposes to purchase a computer and provide it for use in performing official duties. Also, either that committee would purchase a database from his party's Senatorial Campaign Committee and provide it for official use, or the Senatorial Committee would provide the database without charge. The computer would be used to compile and update all of the Senator's positions on legislation, press releases, etc., and the information would be available to any interested party upon request.

DISCUSSION AND RULINGS:

(1) May a Senator's principal campaign committee purchase a computer for use in performing the Senator's official duties?

The Committee has previously ruled that funds from a Senator's principal campaign committee may be used to defray official expenses (See, Interpretative Ruling No. 226) and this would apply to the computer purchase.

(2) May a database be provided by the Senator's principal campaign committee (or either of the party Senatorial Campaign Committees) for use in performing the Senator's official duties, and may information in the database be updated by his Senate staff for official use?

For purposes of applying the Senate Rules, the computer database does not appear to be distinguishable from the computer itself, and Rule 38 would permit either of the listed committees to provide the database to the Senator for his official use.

Once the computer and the database are available for official use, the database may be updated in the same manner as other data files maintained for official use.

(3) May information available through use of the computer and the database be given to the campaign, and if so, in what form and in what manner?

A Senator's principal campaign committee stands on the same footing as any other outside organization, and work-product produced by the computer and database should be treated no differently than any other work-product produced by the Senator's staff in performing official duties.

More particularly, in Interpretative Ruling 154 the Committee observed that:

As to the possibility of minimal involvement by a staff assistant with campaign-related business, the Select Committee believes that in a Senator's re-election campaign there might be some inadvertent and minimal overlap between the duties of a Senator's staff with respect to the Senator's official duties and his re-election campaign. However, a Senator has the responsibility to ensure that such an overlap is of a de minimus nature and that staff duties do not conflict with campaign responsibilities.

We also note that a Senator must make the initial decision as to whether a staff member (or a Senate facility) is becoming so involved in campaign-related activities that the involvement cannot be considered de minimus, and that the Senator must exercise his best judgment on whether to remove such staff member from the Senate payroll or restrict the non-official use of the facility. See, Interpretative Ruling No. 59. Finally, the Committee brings to the reader's attention the fact that the appropriations and false or fraudulent claims statutes do not contain an express de minimus exception; and the Committee can express no opinion as to whether, or how, such a de minimus standard might be applied by the Justice Department in administering those statutes. See, 31 USC 1301,

and 18 U.S.C. 286–7, 1001, and 1341.

(4) May the computer or the updated database be returned to the campaign committee if all the updating was performed by Senate staff on their own time?

The Committee has previously ruled that office furniture and fixtures (which would include a computer) provided for use in a Senator's office by his principal campaign committee should be returned to the campaign committee after its use in the Member's office ended. See, Interpretative Ruling No. 289.

The situation regarding the updated database is to be distinguished, and the Committee concludes that, once updated on equipment dedicated to official use in Federal building space maintained with Federal funds, the enhanced and more valuable database may not be returned to the organization which provided the original diskets, even though the updating was performed by off-duty staff. This would be improper as a misuse of Federal funds for political purposes. (See Interpretative Ruling No. 280.)

INTERPRETATIVE RULING NO. 422

Date Issued: December 10, 1987

Applicable Rules: 34 and 35

QUESTION CONSIDERED

May a sponsor of an event use a plane which had been donated by an organization with a direct interest in legislation to fly a senator to a seminar at which the Senator will speak. The Senator was not involved in obtaining the plane.

DISCUSSION

The Senate Gifts Rule provides that no Member, officer, or employee of the Senate may accept gifts aggregating over $100 in value from persons or organizations with a direct interest in legislation. The rule also provides that ''gifts'' do not include reimbursements for the necessary expenses of travel.

The Committee has previously ruled that a Senator or Senate employee may accept, as ''necessary expenses'', only expenses provided by the sponsor of the event in which the Senator or employee is participating. Expenses provided to a Senator by an individual or organization other than the sponsor of the event do not qualify for the ''necessary expenses'' exception. The Committee has also previously concluded that a Member may accept reimbursement from the sponsor of an event notwithstanding the fact that the sponsor was receiving donations from companies with a direct interest in legislation.

RULING

The Committee believes that where the sponsor of an event independently arranges for a third party to fly a Senator to the event, the use of the plane should be treated as a necessary expense provided by the sponsor to the Senator, rather than as a gift to the Senator from the third party.

Thus the Senator is not required to reimburse either the sponsor or the plane owner since the plane was provided as a ''necessary expense'' from the sponsor as permitted by Rule 35 (Gifts). However, the Senator will need to report that he received the travel expenses from the sponsor on his annual financial disclosure statement.

[NOTE: Rule 35, as amended effective January 1, 1996, prohibits a Member, officer, or employee of the Senate from receiving any gift of a value of $50 or more, or gifts from one source (of $10 or more) that aggregate $100 or more during a calendar year. Also the Gifts Rule states that a Member, officer, or employee may accept necessary travel expenses from the sponsor of the event, as long as the sponsor is not a registered lobbyist or foreign agent. For information on acceptance of travel expenses from an entity (not a lobbyist or a foreign agent)affiliated with the sponsoring organization, see I.R. 410.]

INTERPRETATIVE RULING NO. 427

Date Issued: September 25, 1987

Applicable Area: Campaign Practices

QUESTION CONSIDERED:

May Senators offer membership in policy discussion groups or Senate services in return for campaign contributions?

DISCUSSION:

Senators must, as a matter of course, discuss policy and legislative issues with constituents, political supporters and individuals and organizations with specific concerns and interests in legislation. Frequently such meetings will include campaign contributors. However, offering campaign contributors access to those discussions in direct return for campaign contributions creates the appearance that contributors receive special access to the Members, and thereby exercise undue influence on the legislative process.

RULING:

While solicitations offering access to policy discussion groups may violate no law or Senate rule, they nonetheless affect public confidence in the Senate. Therefore, Senators should not make solicitations which may create the appearance that, because of a campaign contribution, a contributor will receive or is entitled to either special treatment or special access to the Senator.

[NOTE: The Committee, in a Dear Colleague letter of September 25, 1987, emphasized that candidate fundraising efforts that offered campaign contributors flags flown over the Capitol, or Gallery passes, or other special access to Senate services or facilities, or items purchased with appropriated funds, tended to reflect discredit upon the Senate and should be discontinued.]

INTERPRETATIVE RULING NO. 428

Date Issued: February 5, 1988

Applicable Rule: 38

QUESTION CONSIDERED:

How do the funding source limitations of Senate Rule 38 apply to sponsorship of constituent service seminars or events which are carried out as part of a Senator's official duties?

DISCUSSION:

Constituent service programs, such as seminars and conferences, are often sponsored by Senators or cosponsored with other organizations, and the Committee has recognized the beneficial purposes served by such programs.

The following guidelines, pursuant to Senate Rule 38, apply to a Senator's sponsorship of constituent service seminars:

1. Expenses incurred in connection with such a seminar and the expenses of individuals providing services in connection with the seminar may be paid with registration fees from seminar participants;

2. Expenses incurred by the Senator or his staff in connection with the seminar may not be paid or reimbursed with funds contributed by private cosponsors;

3. If registration or participation fees are involved, joint sponsorship of the seminar is required, a cosponsor other than the Senator's office must handle the collection and distribution of funds connected with the seminar, and all funds remaining after expenses have been paid should either be returned pro-rata to participants, or donated to charity;

4. Each seminar is distinct, should not be associated with any other seminar or event, and no continuing fund or account may exist in connection with such seminars;

5. No non-profit organization or foundation may be created by a Member to be funded with private contributions, for the purpose of sponsoring constituent service seminars undertaken as part of a Member's official duties.

INTERPRETATIVE RULING NO. 431

Date Issued: February 29, 1988

Applicable Rule: 37

QUESTION CONSIDERED:

Does Senate Rule 37.5 prohibit a Senate employee who earns over $25,000 from being registered with a real estate broker in order to maintain her license to sell real estate if the employee provides no services to the broker and receives no compensation?

FACTS:

The D.C. Real Estate Commission requires that applicants for a salesman's license must establish an affiliation with a registered broker. An application for a license must be signed by both the applicant and the broker. When granted, the license must be displayed in the broker's office. A Senate employee wishes to have her license held by a broker in order to maintain her license. She will not provide any services for the broker.

RULING:

Senate Rule 37.5 prohibits Senate employees paid at a rate of over $25,000 a year from affiliating with a firm to provide professional services. The Committee has previously ruled that this rule prohibits Senate employees from affiliating with brokers for the purpose of selling real estate.

In Interpretative Rule 321, however, the Committee decided that an individual was not ''affiliating'' with a firm when the person was not receiving monetary benefits from the firm, was not providing services for the firm, and was not listed on the firm's letterhead.

Since the employee in this case provided no services to the broker with whom she is registered and received no benefits from that firm, she has not ''affiliated with that firm to provide professional services.'' Therefore she was not in violation of Senate Rule 37.5. That provision would be violated, however, if the employee were to sell real estate or perform any other professional services for the broker.

INTERPRETATIVE RULING NO. 432

Date Issued: April 20, 1988

Applicable Rule: 37

QUESTION CONSIDERED:

Are the post-employment lobbying restrictions of Rule 37.9 applicable to an individual who performed services for a Senate Committee for more than 90 days if he or she was paid by a source other than the Secretary of the Senate? Would it matter that the person did not sign an agreement to comply with the Senate Code of Conduct?

APPLICABLE RULES:

Rule 37.9 prohibits any individual who has served on the staff of a Member from lobbying that Member or the staff of that Member for one year after leaving that staff. It also prohibits any individual who has served on the staff of a Senate Committee from lobbying the Members or staff of that Committee for one year after leaving that staff.

Rule 37.10 provides that for the purpose of Rule 37 ''employee of the Senate'' incudes an employee or individual described in paragraph 2, 3 and 4(c) of Rule 41.

Rule 41.4(c) provides:

No Member, officer, or employee of the Senate shall utilize the full-time services of an individual for more than ninety days in a calendar year in the conduct of official duties of any committee or office of the Senate (including a Member's office) unless such individual . . . agrees in writing to comply with the Senate Code of Official Conduct in the same manner and to the same extent as an employee of the Senate.

RULING:

Since the definition of ''employee of the Senate'' includes anyone who provides full-time services to a Senate Committee for more than 90 days in a calendar year, even if the person is not paid by the Secretary of the Senate, a non-government employee who performed such services for more than 90 days in a calendar year, would be subject to the post-employment lobbying restrictions of Senate Rule 37.9.

The fact that a person did not sign an agreement to comply with the Senate Code of Conduct as required by Senate Rule 41.4(c) does not mean that the person was not a person described in Rule 41.4(c). Therefore, such a person would still be subject to the post-employment lobbying restrictions in Rule 37.9. While on official trips, such use would not in and of itself convert the membership into an impermissible in-kind contribution to an unofficial office account. Where a gift is given to a Member or employee and may be used at that person's discretion, the fact that the individual later uses it in connection with his or her official duties does not convert a personal gift to a contribution to a Senator's office account. If on the other hand a gift were given for the purpose of meeting official needs, or the nature of the gift or circumstances in which the gift was given made such a purpose obvious, Rule 38 would apply. Neither the nature nor the circumstances of this gift implied that it was for official purposes.

INTERPRETATIVE RULING NO. 435

Date Issued: June 13, 1988

Applicable Rule: 34

QUESTION CONSIDERED:

How are bonuses treated for determining if an employee is required to file a Financial Disclosure Report?

APPLICABLE LAW :

Section 101 (b) of Title I of the Ethics in Government Act provides:

(b)(1) Any individual who is an officer or employee of the legislative branch described in subsection (e) [i.e. paid at a rate equal to or in excess of GS–16] during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file . . . [a financial disclosure report.]

FACTS:

An employee who was paid at a rate of $55,000 a year received a $5,000 bonus. The bonus was distributed to him over a 75 day period so that during that 75 day period his paycheck reflected that he was being paid at a rate of $75,000 a year, which is above the GS–16 rate ($63,135 for 1987). Another employee was paid at a rate of $60,000 a year and received a $5,000 bonus. The bonus was distributed over a 90 day period so that for that 90 day period her paycheck reflected that she was being paid at a rate of $79,000 a year.

RULING:

The rate of pay for employees who receive bonuses for financial disclosure purposes, is determined by adding the bonuses to their base rate of pay. Therefore, the first employee's rate of pay was $60,000. Since the employee's rate of pay was below the GS–16 level he is not required to file a financial disclosure report. The employee's paycheck during the time that the bonus was distributed inaccurately reflected that he was being paid at above the GS–16 level.

The second employee's pay rate was $65,000 ($60,000 plus a $5,000 bonus). Since that employee's rate of pay exceeded the GS–16 level she must file. Although her paychecks for the period during which the bonus was distributed inaccurately indicated that her rate of pay was $79,000 rather than $65,000, they did not inaccurately reflect that she was being paid at above a GS–16 rate.

This analysis only applies to evaluating bonuses. Employees who receive ordinary pay raises to above the GS–16 level for over 60 days must file financial disclosure reports, regardless of their total pay for the year.

INTERPRETATIVE RULING NO. 437

Date Issued: December 15, 1987

Applicable Rule: 34 and 35

QUESTION CONSIDERED:

Should waivers to Rule 35 of the Standing Rules of the Senate and to Title I of the Ethics in Government Act be provided for gifts received on the occasion of the birth of a child?

DISCUSSION:

The legislative history of the waiver provision of the Ethics in Government Act indicates that the waiver authority was intended to be used ''sparingly and infrequently'' where there was clearly a personal relationship between the donor and the recipient that would make disclosing the gift embarrassing. For example, in the legislative history of Senate Rule 35 (Gifts), the sole example given of ''an unusual case'' for which a waiver would be appropriate was one in which a Senate staffer received an ''intimate gift'' of an engagement ring from her fiance who had a direct interest in legislation. Based on this legislative history, the Committee has generally limited the granting of waivers of the Gifts Rule and the Ethics in Government Act to gifts given in connection with engagements and weddings.

The Committee noted that granting waivers of both the Gifts and Disclosure Rules, thereby allowing individuals with a direct interest in legislation to give Senators very expensive gifts without requiring those gifts to be disclosed was inherently subject to abuse and one which should be avoided to the fullest extent possible. The Committee decided not to expand the limited circumstances under which waivers of both Rules are granted beyond

those specifically contemplated in the legislative history.

RULING:

Although gifts to dependents do not usually need to be disclosed, the Committee concluded that gifts received upon the birth of a child are in fact gifts to the parents and therefore subject to the disclosure requirements. However, the Committee considers it appropriate to waive these requirements for gifts received from individuals who do not have a direct interest in legislation or who are not foreign nationals representing a foreign government or foreign organization.

Because the restrictions of the Gifts Rule remain applicable, gifts of over $100 in value, or gifts which would, when aggregated with other gifts given by that source, exceed $100 in value during the calendar year, may not be accepted from individuals with a direct interest in legislation, or foreign nationals representing a foreign government or foreign organization.

[Note: The current Gifts Rule does not distinguish between individuals with a direct interest in legislation and other individuals. However, under the old Gifts Rule lobbyists were deemed to be individuals with a direct interest in legislation. Thus, it appears that, at least for any gift from a lobbyist where the parent (Member, officer, or employee) has reason to believe that the gift is given because of the official position of the parent, the limitations of the current Gifts Rule would apply. Therefore, in the absence of a Committee waiver, any such gift from a lobbyist worth $50 or more would be prohibited unless the gift qualified as a gift from a personal friend, in which case the value of the gift could be up to $250 without a waiver. Also, the Committee's past policy, noted in the IR, of granting a waiver for disclosure for wedding Gifts is no longer in effect. The Committee continues to routinely grant a waiver of the Gifts Rule to permit the acceptance of wedding gifts, but now requires that such wedding gifts be disclosed where the value exceeds $250, although the exact amount of such gifts need not be stated in the disclosure.]

INTERPRETATIVE RULING NO. 438

Date Issued: July 16, 1990

Applicable Rule: 35

QUESTION PRESENTED:

Does the Ethics Reform Act of 1989 restrict Members, officers, or employees of the Senate from soliciting campaign contributions and charitable contributions from individuals or organizations with a direct interest in legislation?

The Ethics Reform Act of 1989 added Section 7353 to Title 5 of the United States Code. That Section provides that ''[e]xcept as permitted by subsection (b), no Member of Congress or officer or employee of the executive, legislative, or judicial branches shall solicit or accept anything of value from a person—(1) seeking official action from, doing business with, or . . . conducting activities regulated by the individual's employing agency; or (2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.''

Subsection (b) provides that ''[e]ach supervising ethics office [the Senate Ethics Committee for the Senate] is authorized to issue rules or regulations implementing the provisions of this section and providing for such reasonable exceptions as may be appropriate.''

RULING:

Senate Rule 35 allows for the acceptance of certain gifts from certain individuals; however, no Senate Rule, including the Senate Gifts Rule, specifically provides for or authorizes the solicitation of anything of value from someone who could be affected by the performance of one's official duties. However, the legislative history of the provision indicates that ''[t]he prohibition on solicitation and acceptance of gifts in section 7353 applies only to those gifts solicited by or given to a covered person. It does not apply to donations solicited by a Member of Congress to be given to an entity such as a political campaign committee, whether or not it is the Member's own campaign committee.'' Based on the legislative history, the Committee has concluded that 5 U.S.C. 7353 was never intended to provide a broad new prohibition on solicitations. Notably, Section 7353 is entitled ''Gifts To Federal Employees'' (emphasis added). Thus, the Committee concludes that the range of activity intended to be proscribed by Section 7353 is only the solicitation and acceptance of gifts which were directly or indirectly for the federal employee soliciting the gift. Since charitable contributions and campaign contributions do not come within this general area, they are not covered by Section 7353's prohibition on solicitation or acceptance of gifts. Therefore, Senators and employees* may solicit gifts for charitable organizations and their campaigns without violating Section 7353 or the Senate Gifts Rule.

*Restrictions on solicitations of campaign contributions by Senate employees are described in Senate Rule 41 and rulings interpreting that Rule. Generally, only 3 employees on a Member's personal staff may solicit, receive, act as the custodian of or distribute campaign funds in connection with a Federal election.

INTERPRETATIVE RULING NO. 439

Date Issued: June 18, 1990

Applicable Rule(s): 34 and 35

QUESTION PRESENTED:

Will the Committee grant waivers to the Senate Rules on Disclosure and Gifts for gifts from the person with whom an employee has a significant, personal, dating relationship?

APPLICABLE RULES:

Senate Rule 35 provides:

''(1) No Member, officer, or employee of the Senate, or the spouse or dependent thereof, shall knowingly accept, directly or indirectly, any gift or gifts having an aggregate value exceeding $100 during a calendar year directly or indirectly from any person, organization, or corporation having a direct interest in legislation before the Congress or from any foreign national . . .''

''(2) No Member, officer, or employee of the Senate, or the spouse or dependent thereof, shall knowingly accept, directly or indirectly, any gift or gifts having an aggregate value exceeding $300 during a calendar year from any person, organization, or corporation . . . [other than a relative].''

Section 102 (a)(2) of Senate Rule 34 (The Ethics in Government Act of 1978 (as amended)) provides that an individual who is required to file a financial disclosure report must disclose ''[t]he identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food, or entertainment aggregating $100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year'' and ''[t]he identity of the source and a brief description . . . of any gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year.''

Both the Senate Gifts Rule and the Ethics in Government Act provide that, in an unusual case, the Senate Ethics Committee has the authority to waive their restrictions and requirements.

DISCUSSION:

The legislative histories of the waiver provisions of both the Gifts Rule and the Ethics in Government Act indicate that the waiver authority was intended to be used to allow the acceptance and non-disclosure of gifts of an intimate nature given because of a close, personal relationship where the giving or acceptance of the gift could not create an appearance of impropriety or a conflict of interest and the disclosure of the gift would be embarrassing.

RULING:

The Committee believes that no conflict of interest, or the appearance thereof, is created when gifts are given because of a significant, personal, dating relationship if the person giving the gift is not seeking official action from the person receiving the gift or that person's supervising Senator. Therefore, pursuant to the Committee's waiver authority under Senate Rule 35, the Committee has concluded that gifts in excess of the $100 or $300 limit, given under these circumstances, may be accepted. The Committee has also concluded that if the individual giving the gift has a direct interest in legislation or is a foreign national, as described in Senate Rule 35, a waiver is only appropriate if the acceptance of the gift has been disclosed in writing to the supervising Senator and approved by that Senator.

The Committee also notes that Members, officers, and employees of the Senate may request waivers of the disclosure rules of Senate Rule 34 and the Ethics in Government Act of 1978 (as amended).

The Committee will address any future requests for waivers of the disclosure rules on a case-by-case basis.

[NOTE: Rule 35, as amended, effective Janaury 1, 1996, prohibits a Member, officer, or employee of the Senate from receiving any gift of a value of $50 or more, or gifts from one source (of $10 or more) that aggregate $100 or more during a calendar year.]

INTERPRETATIVE RULING NO. 441

Date Issued: April 4, 1989

Applicable Area: Nepotism

QUESTION CONSIDERED:

May a Senator appoint an employee as staff director of a committee on which the employee's spouse serves as a professional staff member if the staff director recuses himself from any personnel actions affecting his spouse?

DISCUSSION:

The proposed action raises a question under 5 U.S.C. 3110, the anti-nepotism statute. The Select Committee on Ethics is not charged with the responsibility of enforcing Section 3110 of Title 5 of the United States Code. However, the Committee notes that the Act provides that a public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in the agency in which he serves, any individual who is a relative of the public official. The Act says nothing about a public official supervising a relative.

RULING:

5 U.S.C. 3110 does not prohibit a Senate employee from being the supervisor of a relative as long as the employee is not in any way involved in the decision to appoint, employ, or promote the relative and as long as the employee recuses himself from any appointment, employment, promotion, or advancement decisions concerning that relative.

INTERPRETATIVE RULING NO. 442

Date issued: April 15, 1992

Applicable Rule: 38

QUESTION PRESENTED:

How may Senate offices comply with Rule 38 as amended by the Section 311(d) of the Legislative Branch Appropriations Act of 1991?

APPLICABLE RULE:

Section 311(d) of the FY91 Legislative Branch Appropriations Act (now adopted as Section 1(b) of Rule 38) provides that official expenses may not be paid from excess campaign funds or reimbursements provided by non-Senate sources.

2 U.S.C. 439a provides that excess campaign funds may be used ''. . . to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office . . .''

Section 1(a) of Rule 38 provides that expenses in connection with official duties may be paid from one of four sources:

1) a Member's personal funds,

2) appropriated funds,

3) excess campaign funds, or

4) reimbursements from private parties for which some service is performed (examples: fact-finding travel, or expenses in connection with giving a speech).

DISCUSSION:

Prior to its amendment, Rule 38 allowed Members to pay for expenses which were related to their official duties from campaign funds provided by their principal campaign committees. It also allowed Members to accept reimbursements from private parties when they participated in an event sponsored by that party. This system allowed Members to engage in many worthwhile activities without such participation resulting in an expense to the taxpayers. At the same time, the system provided for accountability by requiring that expenditures from campaign funds and reimbursements accepted be publicly disclosed. This system has functioned well since 1977. The Committee urges the Legislative Branch Appropriations Subcommittee to give serious consideration to recommending a repeal of Section 311(d) of the 1991 Legislative Branch Appropriations Act so that the Senate could return to that system.

In the meantime, however, the Legislative Branch Appropriations Act of 1991, which was inserted in conference without being previously proposed by either the House or the Senate, and without consultation from the Rules or Ethics Committees, provides that only appropriated funds and a Member's personal funds may be used to pay ''official'' expenses. This Act eliminates the ability of Members to pay ''official'' expenses from excess campaign funds or with reimbursements from organizations for which a Senate Member, officer or employee performs a service. The question remains, however, whether the Act prohibits the use of these two sources of funds for the payment of ''officially connected'' expenses.

One of the purposes of Section 311(d) was to make the Senate and the House subject to the same rules for the payment of official expenses. Of particular concern was the fact that Senators had been allowed to supplement their franking allowance with campaign funds, something House Members were not allowed to do. Section 311(d) clearly prohibits Senators from supplementing their franking allowance with campaign or third party funds. However, there is no indication that the law was intended to change the current practice of paying ''officially connected'' expenses from sources other than appropriated funds or the personal funds of a Member. For example, both the House and the Senate currently allow third parties to reimburse for expenses (such as travel expenses) in connection with services provided by a Member, officer or employee of the Congress to that third party. The House does not interpret Section 311(d) to prohibit such reimbursements. Neither do we.

The language of 2 U.S.C. 439a and Rule 38, as amended to comply with the Legislative Branch Appropriations Act, strongly supports this conclusion. When it passed the Legislative Branch Appropriations Act of 1991, Congress did not repeal 2 U.S.C. 439a which expressly allows Members to use campaign funds to pay expenses incurred in connection with their duties as officeholders. Moreover, in amending Senate Rule 38, the Senate left intact the authority to pay ''officially connected'' expenses with campaign funds and reimbursements while also providing that ''official'' expenses could not be paid from those sources. If there is no distinction between ''official'' and ''officially connected'' expenses, the Legislative Branch Appropriations Act of 1991 and 2 U.S.C. 439a would be inconsistent, and Rule 38 would be self-contradictory. Thus, in order to read the laws and the rule consistently, we must conclude that official and officially connected expenses are different. We have coordinated this interpretation with the Legislative Branch Appropriations Subcommittee and they agree that it is consistent with their intent.

RULING:

Effective May 1, 1992, ''official'' expenses may only be paid with appropriated funds or the personal funds of a Member. However, Senate offices may continue to pay ''officially connected'' expenses with campaign funds and with reimbursements for expenses necessary to perform some service for the payor (such as giving a speech or conducting fact- finding). Neither official nor officially connected expenses may be paid by private parties where the expenses are not a necessary reimbursement of expenses incurred in performing a service for the party providing the reimbursement.

Official expenses are those expenses which are intimately and directly connected with the routine legislative or representational business of the Senate. These include: Senate staff salaries, office space, envelopes, furniture, letterhead and blank paper for official correspondence, office equipment, and postage and other expenses associated with franked mail.

Officially connected expenses are expenses that are related to the performance of a Senator's official responsibilities, but which might not be intimately or directly connected with the routine legislative or representational business of the Senate. As a general rule, an expense which is connected to the official business of the Senate, but which cannot be reimbursed with official funds, may be considered as ''officially connected.''

Other than for the official expenses specifically mentioned above and limitations imposed by the Rules Committee on the use of appropriated funds, Members have great discretion in determining whether an expense is official or officially connected. However, once the Member makes that determination, he or she is bound by it. For example, if a Member determined that an event was ''official,'' he would generally be allowed to use official funds to pay for the event. Once he made this determination, however, he could not then allow a private party or his campaign committee to pay for his transportation to the event or allow a private party or his campaign committee to pay for the expenses of the event. Similarly, if a Member determined an event to be ''officially connected,'' he could not use official funds to pay for his transportation to the event, or use the frank to advertise it. However, a Senator may determine that it is appropriate to use staff and Senate facilities in support of officially related activities if such a use would not be prohibited by other Senate Rules.

Additionally, the legislative history of the Legislative Branch Appropriations Act of 1991 makes clear that Senators may continue to participate in intern, volunteer, and fellowship programs that are primarily of educational benefit to the intern, volunteers and fellows. Moreover, the prohibition on accepting reimbursements for official expenses would not prohibit the news media from paying the expenses associated with broadcasting an official event.

Guidance on the payment of specific expenses is provided in the Appendix to this Interpretative Ruling.

Guidelines Regarding Specific Expenses

Accounts— An office checking account used to pay official expenses may only contain appropriated funds or a Member's personal funds.

Employees—Senate employees may be compensated only from official Senate funds or the personal funds of a Senator. The payment of employees with personal funds may raise significant complications. For example, if an

employee is compensated in whole or in part from the personal funds of a Senator, such Senator is responsible for complying with all laws, regulations, etc. with respect to such compensation, such as income tax and FICA withholding, unemployment compensation insurance payments, and workman's compensation. Additionally, such employees are subject to Senate Rule 41.4 and the payments they receive must be reported pursuant to Senate Rule 41.6. Further, any payment from the Member's personal funds which compensates an employee for performing Senate duties is deemed to come from the Senate and must be counted in determining the applicability to the employee of those provisions of the Code which apply to employees compensated at or above certain rates of pay (Financial Disclosure (Rule 34) and two provisions of the Conflicts of Interest Rule - 37.5 and 37.6 are examples). Benefits provided by the Senate, such as life insurance, health insurance, and retirement, will be based on the compensation paid by the Senate. Campaign funds may not be used to compensate Senate employees for the performance of their official duties. However, a Senate employee may be paid by a campaign for campaign activity. Such activity must be conducted on the employee's own time and without the use of Senate facilities.

Entities to which Rule 38 (as amended) is Applicable—The restrictions of Senate Rule 38(1)(a) and (b) are applicable to individual Senators, Party Conferences, and caucuses. Thus, individual Senators, Party Conferences, and caucuses may not accept financial or in-kind contributions from third parties, except as allowed in Rule 38(1)(d). Additionally, individual Senators, Party Conferences, and caucuses of Senators may not pay official expenses from reimbursements from third parties or from campaign funds. Officially connected expenses may be paid from such funds. Pursuant to Rules Committee Regulations, Committees may pay official expenses only from appropriated funds.

Equipment—The purchase of office equipment is an official expense. Therefore, Members may not accept office equipment or loans of office equipment from third parties or purchase it with campaign funds. Equipment presently on loan (other than for ''testing purposes'' of not more than six months) from third parties should be returned or purchased before September 1, 1992. Equipment purchased with campaign funds prior to May 1, 1992 may remain in the Senate office. Such equipment shall not be maintained or repaired at Senate expense unless title to such equipment passes to the Senate before September 1, 1992.

Furniture—The purchase of furniture is an official expense. Therefore, a Member may not purchase furniture with campaign funds. However, a Member may accept a loan of non-Senate issued furniture or art, for display in his office, from home state producers or distributors. Furniture presently on loan from a third party (other than a home state product loaned for display) should be returned or purchased before September 1, 1992. Furniture purchased with campaign funds before May 1, 1992 may remain in the Senator's office. Such furniture shall not be maintained or repaired at Senate expense unless title to such property passes to the Senate prior to September 1, 1992.

Governmental entities—Members may accept donations from domestic state and local government entities to defray official or officially connected expenses if such donations are in compliance with the domestic government's laws and regulations.

In-kind Goods and Services—The acceptance of privately provided in-kind goods and services is prohibited to the same extent that acceptance of money from a private source to be used to purchase goods or services is prohibited.

Interns and Fellows Compensated by Private Parties and Voluntary Service— Private volunteer, intern, and fellowship programs designed for the educational benefit of the participants are deemed to be officially connected. The supervising Senator is responsible for determining if such a program is primarily for the educational benefit of the intern, volunteer, or fellow. Interns, fellows, and volunteers may be provided with travel expenses, lodging, or compensation from programs sponsored by private parties, provided that no conflict of interest arises in violation of Senate rules (See Interpretative Ruling 385) and provided that the Senator does not solicit for such programs and does not receive reports on who contributes to any program established by or for him. University grants or stipends provided to academic interns or fellows, such as professors on sabbatical, are not considered to be contributions to defray official expenses.

Where a participant is paid by or accepts expenses which are primarily funded by, a single company, individual or industry, the participant may not work on issues related to the interest of the individual company or industry providing such funding. The hiring of interns primarily for the benefit of, or primarily to provide assistance to, a Senate office, is an official program of the Senate, and all expenses associated with such interns must be paid only from appropriated funds or personal funds of the Member.

Where voluntary (gratuitous) service is provided, an appropriate disclaimer must be on file with the Financial Clerk of the Senate. Voluntary (gratuitous) service is service which is not compensated by anyone.

Legal Expenses, as Amicus Curiae or as a party—Pursuant to the Legal Expense Fund Regulations, a Member may accept pro bono legal services for the purpose of submitting amicus curiae briefs. However, Members may not join as parties in law suits in their official capacity where they do not pay for their pro rata share of the legal expenses.

Legal Expenses, Personal but Officially Connected—Members,officers, or employees may pay legal expenses or accept pro bono legal services for legal expenses incurred in relation to their service in the Senate with contributions to their legal expense funds, if they establish a Legal Expense Trust Fund pursuant to the Legal Expense Trust Fund Regulations. Additionally, Members, officers, or employees may pay legal expenses incurred in connection with their official duties with campaign funds, if such payment is approved by the Ethics Committee.

Mail— Postage and other mail costs associated with non-frankable officially connected mail (such as letters of congratulations to those achieving a ''personal distinction'') may be paid with personal funds or campaign funds. Postage and other mail costs in connection with non-frankable official mail (such as otherwise frankable mail sent as express mail or to foreign countries, except to APO and FPO boxes) must be paid from the official expense account or the personal funds of the Senator. Occasionally, the line between what is frankable and non-frankable but officially connected is unclear. Where it is not clear that the material to be mailed is frankable, campaign or personal funds should be used. Members may ask the Ethics Committee to review a mailing for frankability.

Meetings and Conferences

(a) Co-sponsored events—Official events may be co-sponsored only with entities of Federal, State, or local governments. Senators cosponsoring events with such entities may support the events by: having notices of the events printed in Senate facilities, producing mailing labels, mailing notices of the events under the Senator's frank, or any combination of the foregoing. Official events may not be co-sponsored with non-governmental entities.

A Senator may co-sponsor an event which is ''officially connected'' with a non-governmental entity. Material published in connection with such an event may note that the event is co-sponsored by or is sponsored in cooperation with the Senator. However, use of the Senator's frank, printing of notices in Senate facilities, and officially paid travel are prohibited with respect to such events. Additionally, the expenses of the Senator or employee's participation may not be paid by the co-sponsors of the event. Such expenses could be paid with the Member's personal funds, campaign funds, or registration fees from the conference. Official or officially connected conferences which were planned prior to May 1, 1992 may be co-sponsored by non-governmental sources in compliance with Interpretative Ruling 428, if the conference occurs before September 1, 1992.

A Member or employee may participate in an event sponsored by a third party and have the expense of such participation reimbursed by the third party. The literature promoting such an event may note the Senator's or employee's participation, but may not list the Senator or employee as a co-sponsor of the event.

(b) Meetings—A public meeting may be official or officially connected. A meeting advertised with the frank would be considered as having been declared an official activity by virtue of the use of the frank, and all expenses associated therewith must be paid from the official account.

(c) Meeting Space, Privately Owned—The use of privately owned space to meet with constituents is permitted, provided that the normal practice of the owner is to make such space available to other persons for similar purposes on a similar and non-partisan basis.

(d) Office Retreats—An office retreat may be paid for as either an official expense or an officially connected expense, but expenses of such a retreat may not be paid partly from official funds and partly from campaign funds. Private parties may not pay expenses incurred in connection with an office retreat.

(e) Political events—Official funds may not be used to support political events. Third party contributions to political events are governed by the Federal Election Commission.

(f) Refreshments at official events—Refreshments at official events (for example, a town meeting advertised with a notice mailed under the frank) may be paid for as an officially connected expense. Other than for refreshments of nominal value provided by constituent groups, third parties may not pay for such refreshments.

Motor Vehicles Owned, Leased, or Rented by Campaign Committees—Campaign cars may be used without reimbursement for campaign or officially connected use. Automobiles provided for a Senator's use by a campaign committee may be used for official business [Rule 38.1(b)] or personal use [Rule 38.2] if the Senator personally reimburses the campaign for such use, or if such use is de minimus or incidental to the campaign use such as driving to one official event in the course of a day on which the car is used to drive to three campaign events. Reimbursement should be made on a reasonable basis, but must be made at least once each year by determining the proportion of the vehicle's usage attributable to official and personal use. Alternatively, a Member may deem the entire cost of purchasing or renting a car as an ''officially connected'' expense and then allow it to be used for official or officially connected [or campaign] purposes. Personal use of the car would still require reimbursement.

Photographic Studio—The purchase of photographs from the Photographic Studios may be an official or officially connected expense at the discretion of the Senator, depending on the purpose of the photograph and the nature of the event photographed.

Publications—Books, magazines, newspapers, and other publications, and subscriptions thereto, may be accepted from the publisher, paid for as an officially connected expense with campaign funds, or paid for as official expenses at the discretion of the Senator.

Radio and Television Appearances—The coverage and/or transmission by a radio or TV station or other broadcaster of an official activity, such as a town meeting, is permitted.

Radio and Television Studio—Production and/or transmission charges associated with programs at the Senate Radio and Television Studio may be paid for—

(1) As an official expense, if the event being broadcast is official; (If an event is advertised using the frank, the event will be deemed official.)

(2) By the radio or TV stations or broadcasters producing and transmitting the program, as long as the program is either official or officially connected;

(3) By tax exempt organizations, in the case of public service announcements or other officially connected programs made by Senators at the request of such organizations;

(4) By corporate sponsors of public interest programs or other officially connected programs made by Senators at the request of such organizations;

(5) By a Federal or State agency, in the case of TV or radio productions made by Senators with such agency.

Purchase of tapes of official events produced by the recording studios may be treated as an official or officially connected expense if such a purchase would be consistent with other rules. Tapes of officially connected events may be purchased with campaign funds or by others who wish to use the tape.

Staff purchases—Senate staff may make official or officially connected purchases and pay for travel expenses authorized by the Senate travel regulations and be reimbursed as an official or officially connected expense as appropriate. Except for voluntary de minimus expenditures such as travel expenses in excess of maximum per diem, officially connected travel expenses beyond the time limits in the Gifts Rule, audio or video equipment for personal use in the office, and local travel expenses, staff may not pay official or officially connected expenses without being reimbursed.

Travel—Privately provided travel or reimbursement for such travel, including lodging and other necessary expenses, for officially connected functions may be accepted in accordance with the Senate Gifts Rule. Necessary expenses may not be accepted for participation in an ''official'' activity.

INTERPRETATIVE RULING NO. 443

Date Issued: June 22, 1995

Applicable Rule: 38

QUESTION CONSIDERED:

How does Senate Rule 38 apply to the relationship between a Senate office and a non-Senate organization or individual participating in the legislative process?

RULING:

Senate Rule 38 prohibits unofficial office accounts, that is, private supplementation of expenses incurred in connection with the operation of a Member's office and the activities of a committee as well. Thus, private contributions of money or private, in-kind contributions of goods or services for official purposes are prohibited by Senate Rule 38.

On the other hand, no Senate rule prohibits a Senator from seeking advice on legislative issues from individuals or organizations outside the Senate. Nor does any Senate rule prohibit any individual or organization outside of the Senate from voluntarily providing to a Senator or his or her staff research, memoranda, legislative language, or draft report language for the Senator's or staff's consideration. The nature of the legislative process contemplates and even encourages the free flow and exchange of ideas and information between interested individuals or organizations and Senators and their staffs. Such exchanges are common and acceptable Senate practices.

As stated in Committee Interpretative Ruling 442 interpreting Rule 38, however, neither official nor officially connected expenses, goods, or services used in the operation of a Senator's office may be provided or paid for by private parties. This rule provides a broad prohibition on the use of private resources to do the work of a Senate office. It does not, however, prohibit a Senate office from receiving from the public information, ideas, comments, or proposals about legislative or other matters of public policy or interest being considered by the Senate. In contrast, the rule would prohibit a Senate office from indirectly using the resources of private parties to do Senate work by exercising direction and control over the activities of an outside individual or organization in an effort to supplement office resources.

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APPENDIX B

THE SENATE CODE OF OFFICIAL CONDUCT

SELECT COMMITTEE ON ETHICS

UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

APRIL 1997

SELECT COMMITTEE ON ETHICS

Pat Roberts, Kansas, *Chairman*
Harry Reid, Nevada, *Vice Chairman*

Bob Smith, New Hampshire
George V. Voinovich, Ohio

Kent Conrad, North Dakota
Richard J. Durbin, Illinois

Victor Baird, *Staff Director and Chief Counsel*
Annette Gillis, *Chief Clerk*

THE SENATE CODE OF OFFICIAL CONDUCT

(Rules 34 through 43 of the Standing Rules of the Senate)

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RULE XXXIV

PUBLIC FINANCIAL DISCLOSURE

(Amended as follows pursuant to S. Res. 158, July 28, 1995 and S. Res. 198, December 7, 1995)

1. For purposes of this rule, the provisions of title I of the Ethics in Government Act of 1978 (Public law 95–521) shall be deemed to be a rule of the Senate as it pertains to Members, officers, and employees of the Senate.

2. (a) The Select Committee on Ethics shall transmit a copy of each report filed with it under title I of the Ethics in Government Act of 1978 (other than a report filed by a Member of Congress) to the head of the employing office of the individual filing the report.

(b) For purposes of this rule, the head of the employing office shall be-

(1) in the case of an employee of a Member, the Member by whom that person is employed;

(2) in the case of an employee of a Committee, the chairman and ranking minority member of such Committee;

(3) in the case of an employee on the leadership staff, the Member of the leadership on whose staff such person serves and;

(4) in the case of any other employee of the legislative branch, the head of the office in which such individual serves.

3. In addition to the requirements of paragraph 1, Members, officers, and employees of the Senate shall include in each report filed under paragraph 1 the following additional information:

(a) For purposes of section 102(a)(1)(B) of the Ethics in Government Act of 1978 additional categories of income as follows:

(1) greater than $1,000,000 but not more than $5,000,000, or

(2) greater than $5,000,000.

(b) For purposes of section 102(d)(1) of the Ethics in Government Act of 1978 additional categories of value as follows:

(1) greater than $1,000,000 but not more than $5,000,000;

(2) greater than $5,000,000 but not more than $25,000,000;

(3) greater than $25,000,000 but not more than $50,000,000; and

(4) greater than $50,000,000.

(c) For purposes of this paragraph and section 102 of the Ethics in Government Act of 1978, additional categories with amounts or values greater than $1,000,000 set forth in section 102(a)(1)(B) and 102(d)(1) shall apply to the income, assets, or liabilities of spouses and dependent children only if the income, assets, or liabilities are held jointly with a reporting individual. All other income, assets, or liabilities of the spouse or dependent children required to be reported under section 102 and this paragraph in an amount or value greater than $1,000,000 shall be categorized only as an amount or value greater than $1,000,000.

4.[1] In addition to the requirements of paragraph 1, Members, officers, and employees of the Senate shall include in each report filed under paragraph 1 an additional statement under section 102(a) of the Ethics in Government Act of 1978 listing the category of the total cash value of any interest of the reporting individual in a qualified blind trust as provided in section 102(d)(1) of the Ethics in Government Act of 1978, unless the trust instrument was executed prior to July 24, 1995 and precludes the beneficiary from receiving information on the total cash value of any interest in the qualified blind trust.

Rule 34 is Title 1 of the Ethics in Government Act which can be found at Appendix A of this publication.

[1] This subsection applies with respect to reports filed under title I of the Ethics in Government Act of 1978 for calendar year 1996 and thereafter.

RULE XXXV

GIFTS

(Amended as follows pursuant to S. Res. 158, July 28, 1995 and S. Res. 198, December 7, 1995)

Rule XXXV of the Standing Rules of the Senate is amended to read as follows:

1. (a)(1) No Member, officer, or employee of the Senate shall knowingly accept a gift except as provided in this rule.

(2) A Member, officer, or employee may accept a gift (other than cash or cash equivalent) which the Member, officer, or employee reasonably and in good faith believes to have a value of less than $50, and a cumulative value from one source during a calendar year of less than $100. No gift with a value below $10 shall count toward the $100 annual limit. No formal recordkeeping is required by this paragraph, but a Member, officer, or employee shall make a good faith effort to comply with this paragraph.

(b)(1) For the purpose of this rule, the term ''gift'' means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and means, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(2)(A) A gift to a family member of a Member, officer, or employee, or a gift to any other individual based on that individual's relationship with the Member, officer, or employee, shall be considered a gift to the Member, officer, or employee if it is given with the knowledge and acquiescence of the Member, officer, or employee and the Member, officer, or employee has reason to believe the gift was given because of the official position of the Member, officer, or employee.

(B) If food or refreshment is provided at the same time and place to both a Member, officer, or employee and the spouse or dependent thereof, only the food or refreshment provided to the Member, officer, or employee shall be treated as a gift for purposes of this rule.

(c) The restrictions in subparagraph (a) shall not apply to the following:

1) Anything for which the Member, officer, or employee pays the market value, or does not use and promptly returns to the donor.

(2) A contribution, as defined in the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) that is lawfully made under that Act, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.

(3) A gift from a relative as described in section 109(16) of title I of the Ethics Reform Act of 1989 (5 U.S.C. App. 6).

(4)(A) Anything, including personal hospitality, provided by an individual on the basis of a personal friendship unless the Member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the Member, officer, or employee and not because of the personal friendship.

(B) In determining whether a gift is provided on the basis of personal friendship, the Member, officer, or employee shall consider the circumstances under which the gift was offered, such as:

(i) The history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between such individuals.

(ii) Whether to the actual knowledge of the Member, officer, or employee the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift.

(iii) Whether to the actual knowledge of the Member, officer, or employee the individual who gave the gift also at the same time gave the same or similar gifts to other Members, officers, or employees.

(5) A contribution or other payment to a legal expense fund established for the benefit of a Member, officer, or employee, that is otherwise lawfully made, subject to the disclosure requirements of the Select Committee on Ethics, except as provided in paragraph 3(c).

(6) Any gift from another Member, officer, or employee of the Senate or the House of Representatives.

(7) Food, refreshments, lodging, and other benefits-

(A) resulting from the outside business or employment activities (or other outside activities that are not connected to the duties of the Member, officer, or employee as an officeholder) of the Member, officer, or employee or the spouse of the Member, officer, or employee, if such benefits have not been offered or enhanced because of the official position of the Member, officer, or employee and are customarily provided to others in similar circumstances;

(B) customarily provided by a prospective employer in connection with bona fide employment discussions; or

(C) provided by a political organization described in section 527(e) of the Internal Revenue Code of 1986 in connection with a fundraising or campaign event sponsored by such an organization.

(8) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

(9) Informational materials that are sent to the office of the Member, officer, or employee in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.

(10) Awards or prizes which are given to competitors in contests or events open to the public, including random drawings.

(11) Honorary degrees (and associated travel, food, refreshments, and entertainment) and other bona fide, nonmonetary awards presented in recognition of public service (and associated food, refreshments, and entertainment provided in the presentation of such degrees and awards).

(12) Donations of products from the State that the Member represents that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any individual recipient.

(13) Training (including food and refreshments furnished to all attendees as an integral part of the training) provided to a Member, officer, or employer, if such training is in the interest of the Senate.

(14) Bequests, inheritances, and other transfers at death.

(15) Any item, the receipt of which is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute.

(16) Anything which is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract.

(17) A gift of personal hospitality (as defined in section 109(14) of the Ethics in Government Act) of an individual other than a registered lobbyist or agent of a foreign principal.

(18) Free attendance at a widely attended event permitted pursuant to subparagraph (d).

(19) Opportunities and benefits which are-

(A) available to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographic consideration;

(B) offered to members of a group or class in which membership is unrelated to congressional employment;

(C) offered to members of an organization, such as an employees' association or congressional credit union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size;

(D) offered to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;

(E) in the form of loans from banks and other financial institutions on terms generally available to the public; or

(F) in the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

(20) A plaque, trophy, or other item that is substantially commemorative in nature and which is intended solely for presentation.

(21) Anything for which, in an unusual case, a waiver is granted by the Select Committee on Ethics.

(22) Food or refreshments of a nominal value offered other than as a part of a meal.

(23) An item of little intrinsic value such as a greeting card, baseball cap, or a T-shirt.

(d)(1) A Member, officer, or employee may accept an offer of free attendance at a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, provided by the sponsor of the event, if-

(A) the Member, officer, or employee participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the Member's, officer's, or employee's official position; or

(B) attendance at the event is appropriate to the performance of the official duties or representative function of the Member, officer, or employee.

(2) A Member, officer, or employee who attends an event described in clause (1) may accept a sponsor's unsolicited offer of free attendance at the event for an accompanying individual if others in attendance will generally be similarly accompanied or if such attendance is appropriate to assist in the representation of the Senate.

(3) A Member, officer, or employee, or the spouse or dependent thereof, may accept a sponsor's unsolicited offer of free attendance at a charity event, except that reimbursement for transportation and lodging may not be accepted in connection with an event that does not meet the standards provided in paragraph 2.

(4) For purposes of this paragraph, the term ''free attendance'' may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. The term does not include entertainment collateral to the event, nor does it include food or refreshments taken other than in a group setting with all or substantially all other attendees.

(e) No Member, officer, or employee may accept a gift the value of which exceeds $250 on the basis of the personal friendship exception in subparagraph (c)(4) unless the Select Committee on Ethics issues a written determination that such exception applies. No determination under this subparagraph is required for gifts given on the basis of the family relationship exception.

(f) When it is not practicable to return a tangible item because it is perishable, the item may, at the discretion of the recipient, be given to an appropriate charity or destroyed.

2. (a)(1) A reimbursement (including payment in kind) to a Member, officer, or employee from an individual other than a registered lobbyist or agent of a foreign principal for necessary transportation, lodging and related expenses for travel to a meeting, speaking engagement, fact-finding trip or similar event in connection with the duties of the Member, officer, or employee as an officeholder shall be deemed to be a reimbursement to the Senate and not a gift prohibited by this rule, if the Member, officer, or employee-

(A) in the case of an employee, receives advance authorization, from the Member or officer under whose direct supervision the employee works, to accept reimbursement, and

(B) discloses the expenses reimbursed or to be reimbursed and the authorization to the Secretary of the Senate within 30 days after the travel is completed.

(2) For purposes of clause (1), events, the activities of which are substantially recreational in nature, shall not be considered to be in connection with the duties of a Member, officer, or employee as an officeholder.

(b) Each advance authorization to accept reimbursement shall be signed by the Member or officer under whose direct supervision the employee works and shall include-

(1) the name of the employee;

(2) the name of the person who will make the reimbursement;

(3) the time, place, and purpose of the travel; and

(4) a determination that the travel is in connection with the duties of the employee as an officeholder and would not create the appearance that the employee is using public office for private gain.

(c) Each disclosure made under subparagraph (a)(1) of expenses reimbursed or to be reimbursed shall be signed by the Member or officer (in the case of travel by that Member or officer) or by the Member or officer under whose direct supervision the employee works (in the case of travel by an employee) and shall include-

(1) a good faith estimate of total transportation expenses reimbursed or to be reimbursed;

(2) a good faith estimate of total lodging expenses reimbursed or to be reimbursed;

(3) a good faith estimate of total meal expenses reimbursed or to be reimbursed;

(4) a good faith estimate of the total of other expenses reimbursed or to be reimbursed;

(5) a determination that all such expenses are necessary transportation, lodging, and related expenses as defined in this paragraph; and

(6) in the case of a reimbursement to a Member or officer, a determination that the travel was in connection with the duties of the Member or officer as an officeholder and would not create the appearance that the Member or officer is using public office for private gain.

(d) For the purposes of this paragraph, the term ‘‘necessary transportation, lodging, and related expenses’’-

(1) includes reasonable expenses that are necessary for travel for a period not exceeding 3 days exclusive of travel time within the United States or 7 days exclusive of travel time outside of the United States unless approved in advance by the Select Committee on Ethics;

(2) is limited to reasonable expenditures for transportation, lodging, conference fees and materials, and food and refreshments, including reimbursement for necessary transportation, whether or not such transportation occurs within the periods described in clause (1);

(3) does not include expenditures for recreational activities, nor does it include entertainment other than that provided to all attendees as an integral part of the event, except for activities or entertainment otherwise permissible under this rule; and

(4) may include travel expenses incurred on behalf of either the spouse or a child of the Member, officer, or employee, subject to a determination signed by the Member or officer (or in the case of an employee, the Member or officer under whose direct supervision the employee works) that the attendance of the spouse or child is appropriate to assist in the representation of the Senate.

(e) The Secretary of the Senate shall make available to the public all advance authorizations and disclosures of reimbursement filed pursuant to subparagraph (a) as soon as possible after they are received.

3. A gift prohibited by paragraph 1(a) includes the following:

(a) Anything provided by a registered lobbyist or an agent of a foreign principal to an entity that is maintained or controlled by a Member, officer, or employee.

(b) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal on the basis of a designation, recommendation, or other specification of a Member, officer, or employee (not including a mass mailing or other solicitation directed to a broad category of persons or entities), other than a charitable contribution permitted by paragraph 4.

(c) A contribution or other payment by a registered lobbyist or an agent of a foreign principal to a legal expense fund established for the benefit of a Member, officer, or employee.

(d) A financial contribution or expenditure made by a registered lobbyist or an agent of a foreign principal relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of Members, officers, or employees.

4. (a) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal in lieu of an honorarium to a Member, officer, or employee shall not be considered a gift under this rule if it is reported as provided in subparagraph (b).

(b) A Member, officer, or employee who designates or recommends a contribution to a charitable organization in lieu of honoraria described in subparagraph (a) shall report within 30 days after such designation or recommendation to the Secretary of the Senate-

(1) the name and address of the registered lobbyist who is making the contribution in lieu of honoraria;

(2) the date and amount of the contribution; and

(3) the name and address of the charitable organization designated or recommended by the Member.

The Secretary of the Senate shall make public information received pursuant to this subparagraph as soon as possible after it is received.

5. For purposes of this rule-

(a) the term ''registered lobbyist'' means a lobbyist registered under the Federal Regulation of Lobbying Act or any successor statute; and

(b) the term ''agent of a foreign principal'' means an agent of a foreign principal registered under the Foreign Agents Registration Act.

6. All the provisions of this rule shall be interpreted and enforced solely by the Select Committee on Ethics. The Select Committee on Ethics is authorized to issue guidance on any matter contained in this rule.

RULE XXXVI

OUTSIDE EARNED INCOME

(Pursuant to S. Res. 192, 10/31/91 and P.L. 102–90: Effective date, 8/14/91; as amended by P.L. 102–378)

For purposes of this rule, the provisions of section 501 of the Ethics in Government Act of 1978 (5 U.S.C. App. 7 501) shall be deemed to be a rule of the Senate as it pertains to Members, officers, and employees of the Senate.

(b) Section 501 of the Ethics in Government Act of 1978 provides as follows:

''SEC. 501. OUTSIDE EARNED INCOME LIMITATION

''(a) Outside Earned Income Limitations.—(1) Except as provided by paragraph (2), a Member or an officer or employee who is a noncareer officer or employee and who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the 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, may not in any calendar year have outside earned income attributable to such calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year.

''(2) In the case of any individual who during a calendar year becomes a Member or an officer or employee who is a noncareer officer or employee and who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the 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, such individual may not have outside earned income attributable to the portion of that calendar year which occurs after such individual becomes a Member or such an officer or employee which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year multiplied by a fraction the numerator of which is the number of days such individual is a Member or such officer or employee during such calendar year and the denominator of which is 365.

''(b) Honoraria Prohibition.—An individual may not receive any honorarium while that individual is a Member, officer or employee.

''(c) Treatment of Charitable Contributions.—Any honorarium which, except for subsection (b), might be paid to a Member, officer, or employee, but which is paid instead on behalf of such Member, officer or employee to a charitable organization, shall be deemed not to be received by such Member, officer or employee. No such payment shall exceed $2,000 or be made to a charitableorganization from which such individual or a parent, sibling, spouse, child, or dependent relative of such individual derives any financial benefit.

''[Sec. 505(3) of such Act defines honorarium as follows:

''[(3) The term 'honorarium' means a payment of money or anything of value for an appearance, speech or article [(including a series of appearances, speeches, or articles if the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the Government) parenthetical effective January 1, 1992] by a Member, officer or employee, excluding any actual and necessary travel expenses incurred by such individual (and one relative) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed.]''

RULE XXXVII

CONFLICT OF INTEREST

(As amended by Leg. Appr. Act pursuant to S. Res. 192, 10/31/91: Effective date, 8/14/91)

1. A Member, officer, or employee of the Senate shall not receive any compensation, nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt or accrual of which would occur by virtue of influence improperly exerted from his position as a Member, officer, or employee.

2. No Member, officer, or employee shall engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties.

3. No officer or employee shall engage in any outside business or professional activity or employment for compensation unless he has reported in writing when such activity or employment commences and on May 15 of each year thereafter so long as such activity or employment continues, the nature of such activity or employment to his supervisor. The supervisor shall then, in the discharge of his duties, take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate.

4. No Member, officer, or employee shall knowingly use his official position to introduce or aid the progress or passage of legislation, a principal purpose of which is to further only his pecuniary interest, only the pecuniary interest of his immediate family, or only the pecuniary interest of a limited class of persons or enterprises, when he, or his immediate family, or enterprises controlled by them, are members of the affected class.

5. (a) No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall (1) affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; (2) permit that individual's name to be used by such a firm, partnership, association or corporation; or (3) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed. For the purposes of this paragraph, ''professional services'' shall include but not be limited to those which involve a fiduciary relationship.

(b) A Member or an officer or employee whose rate of basic pay is equal to or greater than 120 percent of the a annual rate of basic pay in effect for grade GS–15 of the General Schedule shall not-

(1) receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity which provides professional service involving a fiduciary relationship;

(2) permit that Member's, officer's, or employee's name to be used by any such firm, partnership, association, corporation, or other entity;

(3) receive compensation for practicing a profession which involves a fiduciary relationship; or

(4) receive compensation for teaching, without the prior notification and approval of the Committee on Ethics.

6. (a) No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall serve as an officer or member of the board of any publicly held or publicly regulated corporation, financial institution, or business entity. The preceding sentence shall not apply to service of a Member, officer, or employee as-

(1) an officer or member of the board of an organization which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, if such service is performed without compensation;

(2) an officer or member of the board of an institution or organization which is principally available to Members, officers, or employees of the Senate, or their families, if such service is performed without compensation; or

(3) a member of the board of a corporation, institution, or other business entity, if (A) the Member, officer, or employee had served continuously as a member of the board thereof for at least two years prior to his election or appointment as a Member, officer, or employee of the Senate, (B) the amount of time required to perform such service is minimal, and (C) the Member, officer, or employee is not a member of, or a member of the staff of any Senate committee which has legislative jurisdiction over any agency of the Government charged with regulating the activities of the corporation, institution, or other business entity.

(b) A Member or an officer or employee whose rate of basic pay is equal to or greater than 120 percent of the annual rate of basic pay in effect for grade GS–15 of the General Schedule shall not serve for compensation as an officer or member of the board of any association, corporation, or other entity.

7. An employee on the staff of a committee who is compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall divest himself of any substantial holdings which may be directly affected by the actions of the committee for which he works, unless the Select Committee, after consultation with the employee's supervisor, grants permission in writing to retain such holdings or the employee makes other arrangements acceptable to the Select Committee and the employee's supervisor to avoid participation in committee actions where there is a conflict of interest, or the appearance thereof.

8. If a Member, upon leaving office, becomes a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or any successor statute, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, he shall not lobby Members, officers, or employees of the Senate for a period of one year after leaving office.

9. If an employee on the staff of a Member, upon leaving that position, becomes a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or any successor statute, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, such employee may not lobby the Member for whom he worked or that Member's staff for a period of one year after leaving that position. If an employee on the staff of a committee, upon leaving his position, becomes such a registered lobbyist or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, such employee may not lobby the members of the committee for which he worked, or the staff of that committee, for a period of one year after leaving his position.

10. (a) Except as provided by subparagraph (b), any employee of the Senate who is required to file a report pursuant to rule XXXIV shall refrain from participating personally and substantially as an employee of the Senate in any contact with any agency of the executive or judicial branch of Government with respect to nonlegislative matters affecting any non-governmental person in which the employee has a significant financial interest.

(b) Subparagraph (a) shall not apply if an employee first advises his supervising authority of his significant financial interest and obtains from his employing authority a written waiver stating that the participation of the employee is necessary. A copy of each such waiver shall be filed with the Select Committee.

11. For purposes of this rule-

(a) ''employee of the Senate'' includes an employee or individual described in paragraphs 2, 3, and 4(c) of rule XLI;

(b) an individual who is an employee on the staff of a subcommittee of a committee shall be treated as an employee on the staff of such committee; and

(c) the term ''lobbying'' means any oral or written communication to influence the content or disposition of any issue before Congress, including any pending or future bill, resolution, treaty, nomination, hearing report, or investigation; but does not include-

(1) a communication (i) made in the form of testimony given before a committee or office of the Congress, or (ii) submitted for inclusion in the public record, public docket, or public file of a hearing; or

(2) a communication by an individual, acting solely on his own behalf, for redress of personal grievances, or to express his personal opinion.

12. For purposes of this rule-

(a) a Senator or the Vice President is the supervisor of his administrative, clerical, or other assistants;

(b) a Senator who is the chairman of a committee is the supervisor of the professional, clerical, or other assistants to the committee except that minority staff members shall be under the supervision of the ranking minority Senator on the committee;

(c) a Senator who is a chairman of a subcommittee which has its own staff and financial authorization is the supervisor of the professional, clerical, or other assistants to the subcommittee except that minority staff members shall be under the supervision of the ranking minority Senator on the subcommittee;

(d) the President pro tempore is the supervisor of the Secretary of the Senate, Sergeant at Arms and Doorkeeper, the Chaplain, the Legislative Counsel, and the employees of the Office of the Legislative Counsel;

(e) the Secretary of the Senate is the supervisor of the employees of his office;

(f) the Sergeant at Arms and Doorkeeper is the supervisor of the employees of his office;

(g) the Majority and Minority Leaders and the Majority and Minority Whips are the supervisors of the research, clerical, or other assistants assigned to their respective offices;

(h) the Majority Leader is the supervisor of the Secretary for the Majority and the Secretary for the Majority is the supervisor of the employees of his office; and

(i) the Minority Leader is the supervisor of the Secretary for the Minority and the Secretary for the Minority is the supervisor of the employees of his office.

RULE XXXVIII

PROHIBITION OF UNOFFICIAL OFFICE ACCOUNTS

(As amended by Leg. Appr. Act, P.L. 101–520 pursuant to S. Res. 192 10/31/91: Effective date, 1/1/92)

1. (a) No Member may maintain or have maintained for his use an unofficial office account. The term ''unofficial office account'' means an account or repository into which funds are received for the purpose, at least in part, of defraying otherwise unreimbursed expenses allowable in connection with the operation of a Member's office. An unofficial office account does not include, and expenses incurred by a Member in connection with his official duties shall be defrayed only from-

(1) personal funds of the Member; '

(2) official funds specifically appropriated for that purpose;

(3) funds derived from a political committee (as defined in section 301(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)); and

(4) funds received as reasonable reimbursements for expenses incurred by a Member in connection with personal services provided by the Member to the organization making the reimbursement.

(b) Notwithstanding subparagraph (a), official expenses may be defrayed only as provided by subsections (d) and (i) of section 311 of the Legislative Appropriations Act, 1991 (P.L. 101–520).*

2. No contribution (as defined in section 301(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) shall be converted to the personal use of any Member or any former Member. For the purposes of this rule ''personal use'' does not include reimbursement of expenses incurred by a Member in connection with his official duties.

** No Senator or Member of the House of Representatives may maintain or use, directly or indirectly, an official office account or otherwise defray official expenses from (1) funds received from a political committee or derived from a contribution or expenditures (as such terms are defined in section 301 of the FEC Act of 1971); (2) funds received as reimbursement for expenses incurred by the Senator or Member in connection with personal services provided by the Senator or Member to the person making the reimbursement; or (3) any other funds that are not specifically appropriate for official expenses. (Sec. 311(d), PL 101–520), [Rules Committee to issue regulations]. Effective date of this provision has been extended to May 1, 1992.*

RULE XXXIX

FOREIGN TRAVEL

1. (a) Unless authorized by the Senate (or by the President of the United States after an adjournment sine die), no funds from the United States Government (including foreign currencies made available under section 502(b) of the Mutual Security Act of 1954 (22 U.S.C. 175(b)) shall be received for the purpose of travel outside the United States by any Member of the Senate whose term will expire at the end of a Congress after-

(1) the date of the general election in which his successor is elected; or

(2) in the case of a Member who is not a candidate in such general election, the earlier of the date of such general election or the adjournment sine die of the second regular session of that Congress.

(b) The travel restrictions provided by subparagraph (a) with respect to a Member of the Senate whose term will expire at the end of a Congress shall apply to travel by-

(1) any employee of the Member;

(2) any elected officer of the Senate whose employment will terminate at the end of a Congress; and

(3) any employee of a committee whose employment will terminate at the end of a Congress.*

2. No Member, officer, or employee engaged in foreign travel may claim payment or accept funds from the United States Government (including foreign currencies made available under section 502(b) of the Mutual Security Act of 1954 (22 U.S.C. 1754(b)) for any expense for which the individual has received reimbursement from any other source; nor may such Member, officer, or employee receive reimbursement for the same expense more than once from the United States Government. No Member, officer, or employee shall use any funds furnished to him to defray ordinary and necessary expenses of foreign travel for any purpose other than the purpose or purposes for which such funds were furnished.

3. A per diem allowance provided a Member, officer, or employee in connection with foreign travel shall be used solely for lodging, food, and related expenses and it is the responsibility of the Member, officer, or employee receiving such an allowance to return to the United States Government that portion of the allowance received which is not actually used for necessary lodging, food, and related expenses.

RULE XL

FRANKING PRIVILEGE AND RADIO AND TELEVISION STUDIOS

1. A Senator or an individual who is a candidate for nomination for election, or election, to the Senate may not use the frank for any mass mailing (as defined in section 3210(a)(6)(E) of title 39, United States Code) [1] if such mass mailing is mailed at or delivered to any postal facility less than sixty days immediately before the date of any primary or general election (whether regular, special, or runoff) in which the Senator is a candidate for public office or the individual is a candidate for Senator, unless the candidacy of the Senator in such election is uncontested..

2. A Senator shall use only official funds of the Senate, including his official Senate allowances, to purchase paper, to print, or to prepare any mass mailing material which is to be sent out under the frank.

3. (a) When a Senator disseminates information under the frank by a mass mailing (as defined in section 3210(a)(6)(E) of title 39, United States Code), the Senator shall register quarterly [2] with the Secretary of the Senate such mass mailings. Such registration shall be made by filing with the Secretary a copy of the matter mailed and providing, on a form supplied by the Secretary, a description of the group or groups of persons to whom the mass mailing was mailed.

(b) The Secretary of the Senate shall promptly make available for public inspection and copying a copy of the mail matter registered, and a description of the group or groups of persons to whom the mass mailing was mailed.

4. Nothing in this rule shall apply to any mailing under the frank which is (a) in direct response to inquiries or requests from persons to whom the matter is mailed; (b) addressed to colleagues in Congress or to government officials (whether Federal, State, or local); or (c) consists entirely of news releases to the communications media.

5. The Senate computer facilities shall not be used (a) to store, maintain, or otherwise process any lists or categories of lists of names and addresses identifying the individuals included in such lists as campaign workers or contributors, as members of a political party, or by any other partisan political designation, (b) to produce computer printouts except as authorized by the Committee on Rules and Administration, or (c) to produce mailing labels for mass mailings, or computer tapes and discs, for use other than in service facilities maintained and operated by the Senate or under contract to the Senate. The Committee on Rules and Administration shall prescribe such regulations not inconsistent with the purposes of this paragraph as it determines necessary to carry out such purposes.

6. (a) The radio and television studios provided by the Senate or by the House of Representatives may not be used by a Senator or an individual who is a candidate for nomination for election, or election, to the Senate less than sixty days immediately before the date of any primary or general election (whether regular, special, or runoff) in which that Senator is a candidate for public office or that individual is a candidate for Senator, unless the candidacy of the Senator in such election is uncontested. [3]

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[1] *See* new definition pursuant to PL 103–283, effective Oct. 1, 1994: The term ''mass mailing'' means, with respect to a session of Congress, any mailing of newsletters or other pieces of mail with substantially identical content (whether such mail is deposited singly or in bulk or at the same time or different times), totaling more than 500 pieces in that session, except that such term does not include any mailing: (i) of matter in direct response to a communication from a person to whom the matter is mailed; (ii) to other Members of Congress, or to Federal, State or local government officials;(iii) of a news release to the communications media; (iv) of a town meeting notice, but no such mailing may be made fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) for any Federal, State, or local office in which a Member of the Senate is a candidate for election; or (v) of a Federal publication or other item that is provided by the Senate to all Senators or made available by the Senate for purchase by all Senators from official funds specifically for distribution.

[2] Sec. 320, PL 101–520 (changed ''annually'' to ''quarterly'').

[3] As amended, S. Res. 224, 103–2, June 21, 1994.

(b) This paragraph shall not apply if the facilities are to be used at the request of, and at the expense of, a licensed broadcast organization or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

RULE XLI

POLITICAL FUND ACTIVITY; DEFINITIONS

(Pursuant to S. Res. 192: Effective date, 10/31/91)

1. No officer or employee of the Senate may receive, solicit, be a custodian of, or distribute any funds in connection with any campaign for the nomination for election, or the election, of any individual to be a Member of the Senate or to any other Federal office. This prohibition does not apply to three assistants to a Senator, at least one of whom is in Washington, District of Columbia, who have been designated by that Senator to perform any of the functions described in the first sentence of this paragraph and who are compensated at an annual rate in excess of $10,000 if such designation has been made in writing and filed with the Secretary of the Senate and if each such assistant files a financial statement in the form provided under rule XXXIV for each year during which he is designated under this rule. The Majority Leader and the Minority Leader may each designate an employee of their respective leadership office staff as one of the 3 designees referred to in the second sentence. The Secretary of the Senate shall make the designation available for public inspection.

2. For purposes of the Senate Code of Official Conduct-

(a) an employee of the Senate includes any employee whose salary is disbursed by the Secretary of the Senate; and

(b) the compensation of an officer or employee of the Senate who is a reemployed annuitant shall include amounts received by such officer or employee as an annuity, and such amounts shall be treated as disbursed by the Secretary of the Senate.

3. Before approving the utilization by any committee of the Senate of the services of an officer or employee of the Government in accordance with paragraph 4 of rule XXVII or with an authorization provided by Senate resolution, the Committee on Rules and Administration shall require such officer or employee to agree in writing to comply with the Senate Code of Official Conduct in the same manner and to the same extent as an employee of the Senate. Any such officer or employee shall, for purposes of such Code, be treated as an employee of the Senate receiving compensation disbursed by the Secretary of the Senate in an amount equal to the amount of compensation he is receiving as an officer or employee of the Government. [1]

4. No Member, officer, or employee of the Senate shall utilize the full-time services of an individual for more than ninety days in a calendar year in the conduct of official duties of any committee or office of the Senate (including a Member's office) unless such individual-

(a) is an officer or employee of the Senate,

(b) is an officer or employee of the Government (other than the Senate), or

(c) agrees in writing to comply with the Senate Code of Official Conduct in the same manner and to the same extent as an employee of the Senate.

Any individual to whom subparagraph (c) applies shall, for purposes of such Code, be treated as an employee of the Senate receiving compensation disbursed by the Secretary of the Senate in an amount equal to the amount of compensation which such individual is receiving from any source for performing such services.

5. In exceptional circumstances for good cause shown, the Select Committee on Ethics may waive the applicability of any provision of the Senate Code of Official Conduct to an employee hired on a per diem basis.

6. (a) The supervisor of an individual who performs services for any Member, committee, or office of the Senate for a period in excess of four weeks and who receives compensation there-

[1] Paragraph 3 was amended by changing ''paragraph 2(d)'' to ''Paragraph 4''. (S. Res. 192, 10/31/91).

fore from any source other than the United States Government shall report to the Select Committee on Ethics with respect to the utilization of the services of such individual.

(b) A report under subparagraph (a) shall be made with respect to an individual-

(1) when such individual begins performing services described in such subparagraph;

(2) at the close of each calendar quarter while such individual is performing such services; and

(3) when such individual ceases to perform such services.

Each such report shall include the identity of the source of the compensation received by such individual and the amount or rate of compensation paid by such source.

(c) No report shall be required under subparagraph (a) with respect to an individual who normally performs services for a Member, committee, or office for less than eight hours a week.

(d) For purposes of this paragraph, the supervisor of an individual shall be determined under paragraph 11 of rule XXXVII.

RULE XLII

EMPLOYMENT PRACTICES

(As amended by Americans With Disabilities Act pursuant to S. Res. 192, 10/31/91: Effective date, 7/26/90)

1. No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof-

(a) fail or refuse to hire an individual;

(b) discharge an individual; or

(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment

-on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap.

SEC 509. COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) Coverage of the Senate—

(1) Commitment to Rule XLII.—The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate which provides as follows:
''No member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof—
''(a) fail or refuse to hire an individual;
''(b) discharge an individual; or
''(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment on the basis of such individual's race, color, relegion, sex, national orgin, age, or state of physical handicap.''

(2) Application to Senate Employment.—The rights and protections provided pursuant to this Act, the Civil Rights Act of 1990 (S. 2104, 101st Congress), the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973 shall apply with respect to employement by the United States Senate.

(3) Investigation and Adjudication of Claims.—All claims raised by any individual with respect to Senate employment, pursuant to the Acts referred to in paragraph (2), shall be investigated and adjudicated by the Select Committee on Ethics, pursuant to S. Res. 338, 88th Congress, as amended, or such other entity as the Senate may designate.

(4) Rights of Employees.—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the Acts referred to in paragraph (2).

(5) Applicable Remedies.—When assigning remedies to individuals found to have a valid claim under the Acts referred to in paragraph (2), the Select Committee on Ethics, or such other entity as the Senate may designate, should to the extent practicable apply the same remedies applicable to all other employees covered by the Acts referred to in paragraph (2). Such remedies shall apply exclusively.

(6) Matters Other Than Employment.—
(A) In General.—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to the conduct of the Senate regarding matters other than employment.
(B) Remedies.—The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).
(C) Proposed Remedies and Procedures.—For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed remedies and procedures to the Senate Committee on Rules and Administration. The remedies and procedures shall be effective upon the approvel of the Committee on Rules and Administration.

(7) Exrecise of Rulemaking Power.—Notwithstanding any other provision of law, enforcement and adjudicitation of the rights and protections referred to in paragraph (2) and (6)(A) shall be within the exclusive jurisdiction of the United States Senate. The provisions of paragraph (1), (3), (4), (5), (6)(B) and (6)(C) are enacted by the Senate an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

[Title II, sec. 203 of S. 1745, P.L. 102–166, Nov. 1991. Civil Rights Act of 1964. Establishes Office of Senate Fair Employment Practices which places the responsibility to investigate and adjudicate claims arising under 1) The Americans with Disabilities Act of 1990; 2) the Civil Rights Act of 1964; 3) the Age Discrimination in Employment Act of 1967; and 4) the Rehabilitation Act of 1973, where such claims are raised by individuals with respect to Senate employment. Title II, sec. 208 provides that the Select Committee on Ethics may, if requested, review that Office's decisions. This legislation supersedes prior legislation which placed this responsibility with the Select Committee on Ethics (see sec. 509(a) of Americans with Disabilities Act of 1990, eff. 7/26/90)]

RULE XLIII

CONSTITUENT SERVICE

(Pursuant to S. Res. 273, 7/2/92: Effective date, 7/2/92)

''1. In responding to petitions for assistance, a Member of the Senate, acting directly or through employees, has the right to assist petitioners before executive and independent government officials and agencies.

''2. At the request of a petitioner, a Member of the Senate, or a Senate employee, may communicate with an executive or independent government official or agency on any matter to-

''(a) request information or a status report;

''(b) urge prompt consideration;

''(c) arrange for interviews or appointments;

''(d) express judgments;

''(e) call for reconsideration of an administrative response which the Member believes is not reasonably supported by statutes, regulations or considerations of equity or public policy; or

''(f) perform any other service of a similar nature consistent with the provisions of this rule.

''3. The decision to provide assistance to petitioners may not be made on the basis of contributions or services, or promises of contributions or services, to the Member's political campaigns or to other organizations in which the Member has a political, personal, or financial interest.

''4. A Member shall make a reasonable effort to assure that representations made in the Member's name by any Senate employee are accurate and conform to the Member's instructions and to this rule.

''5. Nothing in this rule shall be construed to limit the authority of Members, and Senate employees, to perform legislation, including committee, responsibilities.

''Sec. 2. Senate rule XLIII shall be deemed to be part of the Senate Code of Official Conduct for purposes of Senate Resolution 110, Ninety-fifth Congress, and all other resolutions pertaining to the jurisdiction of the Select Committee on Ethics.''

APPENDIX A

ETHICS IN GOVERNMENT ACT

TITLE I—FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL

5 U.S.C. app. Sec. 101. Persons required to file

(a) Within thirty days of assuming the position of an officer or employee described in subsection (f), an individual shall file a report containing the information described in section 102(b) [5 U.S.C. app. Sec. 102(b)] unless the individual has left another position described in subsection (f) within thirty days prior to assuming such new position or has already filed a report under this title [5 U.S.C. app. Sec. 101 et seq.] with respect to nomination for the new position or as a candidate for the position.

(b)(1) Within five days of the transmittal by the President to the Senate of the nomination of an individual (other than an individual nominated for appointment to a position as a Foreign Service Officer or a grade or rank in the uniformed services for which the pay grade prescribed by section 201 of title 37, United States Code, is 0–6 or below) to a position, appointment to which requires the advice and consent of the Senate, such individual shall file a report containing the information described in section 102(b) [5 U.S.C. app. Sec. 102(b)]. Such individual shall, not later than the date of the first hearing to consider the nomination of such individual, make current the report filed pursuant to this paragraph by filing the information required by section 102(a)(1)(A) [5 U.S.C. app. Sec. 102(a)(1)(A)] with respect to income and honoraria received as of the date which occurs five days before the date of such hearing. Nothing in this Act shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

(2) An individual whom the President or the President-elect has publicly announced he intends to nominate to a position may file the report required by paragraph (1) at any time after that public announcement, but not later than is required under the first sentence of such paragraph.

(c) Within thirty days of becoming a candidate as defined in section 301 of the Federal Campaign Act of 1971 [2 U.S.C. Sec. 431], in a calendar year for nomination or election to the office of President, Vice President, or Member of Congress, or on or before May 15 of that calendar year, whichever is later, but in no event later than 30 days before the election, and on or before May 15 of each successive year an individual continues to be a candidate, an individual other than an incumbent President, Vice President, or Member of Congress shall file a report containing the information described in section 102(b) [5 U.S.C. app. Sec. 102(b)]. Notwithstanding the preceding sentence, in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, such individual need not file a report unless he becomes a candidate for another vacancy in that office or another office during that year.

(d) Any individual who is an officer or employee described in subsection (f) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 102(a) [5 U.S.C. app. Sec. 102(a)].

(e) Any individual who occupies a position described in subsection (f) shall, on or before the thirtieth day after termination of employment in such position, file a report containing the information described in section 102(a) [5 U.S.C. app. Sec. 102(a)] covering the preceding calendar year if the report required by subsection (d) has not been filed and covering the portion of the calendar

year in which such termination occurs up to the date the individual left such office or position, unless such individual has accepted employment in another position described in subsection (f).

(f) The officers and employees referred to in subsections (a), (d), and (e) are-

(1) the President;

(2) the Vice President;

(3) each officer or employee in the executive branch, including a special Government employee as defined in section 202 of title 18, United States Code, who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the 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; each member of a uniformed service whose pay grade is at or in excess of 0–7 under section 201 of title 37 United States Code; and each office or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

(4) each employee appointed pursuant to section 3105 of title 5, United States Code;

(5) any employee not described in paragraph (3) who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policy-making character, except that the Director of the Office of Government Ethics may, by regulation, exclude from the application of this paragraph any individual, or group of individuals, who are in such positions, but only in cases in which the Director determines such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government;

(6) the Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Rate Commission who occupies a position for which the 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;

(7) the Director of the Office of Government Ethics and each designated agency ethics official;

(8) any civilian employee not described in paragraph (3), employed in the Executive Office of the President (other than a special government employee) who holds a commission of appointment from the President;

(9) a Member of Congress as defined under section 109(12) [5 U.S.C. app. Sec. 109(12)];

(10) an officer or employee of the Congress as defined under section 109(13) [5 U.S.C. app. Sec. 109(13)];

(11) a judicial officer as defined under section 109(10) [5 U.S.C. app. Sec. 109(10)]; and

(12) a judicial employee as defined under section 109(8) [5 U.S.C. app. Sec. 109(8)].

(g)(1) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the supervising ethics office for each branch, but the total of such extensions shall not exceed ninety days.

(2)(A) In the case of an individual who is serving in the Armed Forces, or serving in support of the Armed Forces, in an area while that area is designated by the President by Executive order as a combat zone for purposes of section 112 of the Internal Revenue Code of 1986 [26 U.S.C. Sec. 112], the date for the filing of any report shall be extended so that the date is 180 days after the later of-

(i) the last day of the individual's service in such area during such designated period; or

(ii) the last day of the individual's hospitalization as a result of injury received or disease contracted while serving in such area.

(B) The Office of Government Ethics, in consultation with the Secretary of Defense, may prescribe procedures under this paragraph.

(h) The provisions of subsections (a), (b), and (e) shall not apply to an individual who, as determined by the designated agency ethics official or Secretary concerned (or in the case of a Presidential appointee under subsection (b), the Director of the Office of Government Ethics), the congressional ethics committees, or the Judicial Conference, is not reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year, except that if such individual performs the duties of his office or position for more than sixty days in a calendar year-

(1) the report required by subsections (a) and (b) shall be filed within fifteen days of the sixtieth day, and

(2) the report required by subsection (e) shall be filed as provided in such subsection.

(i) The supervising ethics office for each branch may grant a publicly available request for a waiver of any reporting requirement under this section for an individual who is expected to perform or has performed the duties of his office or position less than one hundred and thirty days in a calendar year, but only if the supervising ethics office determines that-

(1) such individual is not a full-time employee of the Government,

(2) such individual is able to provide services specially needed by the Government,

(3) it is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(4) public financial disclosure by such individual is not necessary in the circumstances.

5 U.S.C. app. Sec. 102. Contents of reports

(a) Each report filed pursuant to section 101(d) and (e) [5 U.S.C. app. Sec. 101(d), (e)] shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating $200 or more in value and, effective January 1, 1991, the source, date, and amount of payments made to charitable organizations in lieu of honoraria, and the reporting individual shall simultaneously file with the applicable supervising ethics office, on a confidential basis, a corresponding list of recipients of such payments, together with the dates and amounts of such payments.

(B) The source and type of income which consists of dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds $200 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within:

(i) not more than $1,000,

(ii) greater than $1,000 but not more than $2,500,

(iii) greater than $2,500 but not more than $5,000,

(iv) greater than $5,000 but not more than $15,000,

(v) greater than $15,000 but not more than $50,000,

(vi) greater than $50,000 but not more than $100,000,

(vii) greater than $100,000 but not more than $1,000,000, or

(viii) greater than $1,000,000.

(2)(A) The identity of the source, a brief description, and the value of all gifts aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater, received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of an individual need not be reported, and any gift with a fair market value of $100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted, need not be aggregated for purposes of this subparagraph.

(B) The identity of the source and a brief description (including a travel itinerary, dates, and nature of expenses provided) of reimbursements received from any source aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater and received during the preceding calendar year.

(C) In an unusual case, a gift need not be aggregated under subparagraph (A) if a publicly available request for a waiver is granted.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a spouse, or by a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse, or any deposits aggregating $5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a spouse, or a parent, brother, sister or child of the reporting individual or of the reporting individual's spouse which exceed $10,000 at any time during the preceding calendar year, excluding-

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $10,000 as of the close of the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds $1,000-

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

(6)(A) The identity of all positions held on or before the date of filing during the current calendar year (and, for the first report filed by an individual, during the 2-year period preceding such calendar year) as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This subparagraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely for an honorary nature

(B) If any person, other than the United States Government, paid a nonelected reporting individual compensation in excess of $5,000 in any of the two calendar years prior to the calendar

year during which the individual files his first report under this title [5 U.S.C. app. Sec. 101 et seq.], the individual shall include in the report-

(i) the identity of each source of such compensation; and

(ii) a brief description of the nature of the duties performed or services rendered by the reporting individual for each such source.

The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(7) A description of the date, parties to, and terms of any agreement of arrangement with respect to (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(b)(1) Each report filed pursuant to subsections (a), (b), and (c) of section 101 [5 U.S.C. app. Sec. 101(a)-(c)] shall include a full and complete statement with respect to the information required by-

(A) paragraph (1) of subsection (a) for the year of filing and the preceding calendar year,

(B) paragraphs (3) and (4) of subsection (a) as of the date specified in the report but which is less than thirty-one days before the filing date, and

(C) paragraphs (6) and (7) of subsection (a) of the filing date but for periods described in such paragraphs.

(2)(A) In lieu of filling out one or more schedules of a financial disclosure form, an individual may supply the required information in an alternative format, pursuant to either rules adopted by the supervising ethics office for the branch in which such individual serves or pursuant to a specific written determination by such office for a reporting individual.

(B) In lieu of indicating the category of amount or value of any item contained in any report filed under this title [5 U.S.C. app. Sec. 101 et seq.], a reporting individual may indicate the exact dollar amount of such item.

(c) In the case of any individual described in section 101(e) [5 U.S.C. app. Sec. 101(e)], any reference to the preceding calendar year shall be considered also to include that part of the calendar year of filing up to the date of the termination of employment.

(d)(1) The categories for reporting the amount of value of the items covered in paragraphs (3), (4) and (5) of subsection (a) are as follows:

(A) not more than $15,000;

(B) greater than $15,000 but not more than $50,000;

(C) greater than $50,000 but not more than $100,000;

(D) greater than $100,000 but not more than $250,000;

(E) greater than $250,000 but not more than $500,000;

(F) greater than $500,000 but not more than $1,000,000; and

(G) greater than $1,000,000.

(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real

property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(e)(1) Except as provided in the last sentence of this paragraph, each report required by section 101 [5 U.S.C. app. Sec. 101] shall also contain information listed in paragraphs (1) through (5) of subsection (a) of this section respecting the spouse or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed $1,000 and the source and amount of any honoraria received by a spouse, except that, with respect to earned income (other than honoraria), if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) All information required to be reported in subsection (a)(1)(B) with respect to income derived by a spouse or dependent child from any asset held by the spouse or dependent child and reported pursuant to subsection (a)(3).

(C) In the case of any gifts received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment and a brief description and the value of other gifts.

(D) In the case of any reimbursements received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of each such reimbursement.

(E) In the case of items described in paragraphs (3) through (5) of subsection (a), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse's or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of, (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

Reports required by subsections (a), (b), and (c) of section 101 [5 U.S.C. app. Sec. 101(a)-(c)] shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(f)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a), (b), and (c) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of-

(A) any qualified blind trust (as defined in paragraph (3));

(B) a trust-

(i) which was not created directly by such individual, his spouse, or any dependent child, and

(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of; or

(C) an entity described under the provisions of paragraph (8), but such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the trust or other entity under subsection (a)(1)(B) of this section.

(3) For purposes of this subsection, the term ''qualified blind trust'' includes any trust in which a reporting individual, his spouse, or any minor or dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

(A)(i) The trustee of the trust and any other entity designated in the trust instrument to perform fiduciary duties is a financial institution, an attorney, a certified public accountant, a broker, or an investment advisor who-

(I) is independent of and not associated with any interested party so that the trustee or other person cannot be controlled or influenced in the administration of the trust by any interested party; and

(II) is not and has not been an employee of or affiliated with any interested party and is not a partner, of, or involved in any joint venture or other investment with, any interested party; and

(III) is not a relative of any interested party.

(ii) Any officer or employee of a trustee or other entity who is involved in the management or control of the trust-

(I) is independent of and not associated with any interested party so that such officer or employee cannot be controlled or influenced in the administration of the trust by any interested party;

(II) is not a partner of, or involved in any joint venture or other investment with, any interested party; and

(III) is not a relative of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that-

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1) of this section, but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communications is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumptions of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office.

(E) For purposes of this subsection, ''interested party'' means a reporting individual, his spouse, and any minor or dependent child; ''broker'' has the meaning set forth in section 3(a)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. Sec. 78c(a)(4)); and ''investment adviser'' includes any investment adviser who, as determined under regulations prescribed by the supervising ethics office, is generally involved in his role as such an adviser in the management of control of trusts.

(F) Any trust qualified by a supervising ethics office before the effective date of title II of the Ethics Reform Act of 1989 shall continue to be governed by the law and regulations in effect immediately before such effective date.

(4)(A) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual for the purposes of any applicable conflict of interest statutes, regulations, or rules of the Federal Government (including section 208 of title 18, United States Code), until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

(B)(i) The provisions of subparagraph (A) shall not apply with respect to a trust created for the benefit of a reporting individual, or the spouse, dependent child, or minor child of such a person, if the supervising ethics office for such reporting individual finds that-

(I) the assets placed in the trust consist of a well-diversified portfolio of readily marketable securities;

(II) none of the assets consist of securities of entities having substantial activities in the area of the reporting individual's primary area of responsibility;

(III) the trust instrument prohibits the trustee, notwithstanding the provisions of paragraphs (3)(C) (iii) and (iv) of this subsection, from making public or informing any interested party of the sale of any securities;

(IV) the trustee is given power of attorney, notwithstanding the provisions of paragraph (3)(C)(v) of this subsection, to prepare on behalf of any interested party the personal income tax returns and similar returns which may contain information relating to the trust; and

(V) except as otherwise provided in this paragraph, the trust instrument provides (or in the case of a trust established prior to the effective date of this Act which by its terms does not permit amendment, the trustee, the reporting individual, and any other interested party agree in writing) that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A).

(ii) In any instance covered by subparagraph (B) in which the reporting individual is an individual whose nomination is being considered by a congressional committee, the reporting individual shall inform the congressional committee considering his nomination before or during the period of such individual's confirmation hearing of his intention to comply with this paragraph.

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of-

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d) of this section.

This subparagraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7) of this subsection.

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (d) of this section.

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall-

(i) notify his supervising ethics office of such dissolution, and

(ii) file with such office a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (d) of this section of each such asset.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 105 [5 U.S.C. app. Sec. 105] and the provisions of that section shall apply with respect to such documents and lists.

(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6)(A) A trustee of a qualified blind trust shall not knowingly and willfully, or negligently,

(i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection;

(ii) acquire any holding the ownership of which is prohibited by the trust instrument;

(iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) of this subsection or the trust agreement; or

(iv) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly and willfully, or negligently, (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C) of this subsection or (ii) fail to file any document required by this subsection.

(C)(i) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $10,000.

(ii) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(7) Any trust may be considered to be a qualified blind trust if-

(A) the trust instrument is amended to comply with the requirements of paragraph (3) or, in the case of a trust instrument which does not by its terms permit amendment, the trustee, the reporting individual, and any other interested party agree in writing that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); except that in the case of any interested party who is a dependent child, a parent or guardian of such child may execute the agreement referred to in this subparagraph;

(B) a copy of the trust instrument (except testamentary provisions) and a copy of the agreement referred to in subparagraph (A), and a list of the assets held by the trust at the time of approval by the supervising ethics office, including the category of value of each asset as determined under subsection (d) of this section, are filed with such office and made available to the public as provided under paragraph (5)(D) of this subsection; and

(C) the supervising ethics office determines that approval of the trust arrangement as a qualified blind trust is in the particular case appropriate to assure compliance with applicable laws and regulations.

(8) A reporting individual shall not be required to report the financial interests held by a widely held investment fund (whether such fund is a mutual fund, regulated investment company, pension or deferred compensation plan, or other investment fund), if-

(A)(i) the fund is publicly traded; or

(ii) the assets of the fund are widely diversified; and

(B) the reporting individual neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(g) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title [5 U.S.C. app. Sec. 101 et seq.].

(h) A report filed pursuant to subsection (a), (d), or (e) of section 101 [5 U.S.C. app. Sec. 101(a), (d), or (e)] need not contain the information described in subparagraphs (A), (B), and (C) of subsection (a)(2) with respect to gifts and reimbursements received in a period when the reporting individual was not an officer or employee of the Federal Government.

(i) A reporting individual shall not be required under this title [5 U.S.C. app. Sec. 101 et seq.] to report-

(1) financial interests in or income derived from-

(A) any retirement system under title 5, United States Code (including the Thrift Savings Plan under subchapter III of chapter 84 of such title [5 U.S.C. Sec. 8431 et seq.]); or

(B) any other retirement system maintained by the United States for officers or employees of the United States, including the President, or for members of the uniformed services; or

(2) benefits received under the Social Security Act [42 U.S.C. Sec. 301 et seq.].

5 U.S.C. app. Sec. 103. Filing of reports

(a) Except as otherwise provided in this section, the reports required under this title [5 U.S.C. app. Sec. 101 et seq.] shall be filed by the reporting individual with the designated agency ethics official at the agency by which he is employed (or in the case of an individual described in section 101(e) [5 U.S.C. app. Sec. 101(e)], was employed) or in which he will serve. The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such official.

(b) The President, the Vice President, and independent counsel and persons appointed by independent counsel under chapter 40 of title 28, United States Code [28 U.S.C. Sec. 591 et seq.], shall file reports required under this title with the Director of the Office of Government Ethics.

(c) Copies of the reports required to be filed under this title [5 U.S.C. app. Sec. 101 et seq.] by the Postmaster General, the Deputy Postmaster General, the Governors of the Board of Governors of the United States Postal Service, designated agency ethics officials, employees described in section 105(a)(2)(A) or (B), 106(a)(1)(A) or (B) or 107(a)(1)(A) or (b)(1)(A)(i), of title 3, United States Code, candidates for the office of President or Vice President and officers and employees in (and nominees to) offices or positions which require confirmation by the Senate or by both Houses of Congress other than individuals nominated to be judicial officers and those referred to in subsection (f) shall be transmitted to the Director of the Office of Government Ethics. The Director shall forward a copy of the report of each nominee to the congressional committee considering the nomination.

(d) Reports required to be filed under this title [5 U.S.C. app Sec. 101 et seq.] by the Director of the Office of Government Ethics shall be filed in the Office of Government Ethics and, immediately after being filed, shall be made available to the public in accordance with this title [5 U.S.C. app. Sec. 101 et seq.].

(e) Each individual identified in section 101(c) [5 U.S.C. app. Sec. 101(c)] who is a candidate for nomination or election to the Office of President or Vice President shall file the reports required by this title [5 U.S.C. app. Sec. 101 et seq.] with the Federal Election Commission.

(f) Reports required of members of the uniformed services shall be filed with the Secretary concerned.

(g) Each supervising ethics office shall develop and make available forms for reporting the information required by this title [5 U.S.C. app. Sec. 101 et seq.].

(h)(1) The reports required under this title [5 U.S.C. app. Sec. 101 et seq.] shall be filed by a reporting individual with-

(A)(i)(I) the Clerk of the House of Representatives, in the case of a Representative in Congress, a Delegate to Congress, the Resident Commissioner from Puerto Rico, an officer or employee of the Congress whose compensation is disbursed by the Clerk of the House of Representatives, an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the Congressional Budget Office, the Government Printing Office, the Library of Congress, or the

Copyright Royalty Tribunal (including any individual terminating service, under section 101(e) [5 U.S.C. app. Sec. 101(e)], in any office or position referred to in this subclause), or an individual described in section 101(c) [5 U.S.C. app. Sec. 101(c)] who is a candidate for nomination or election as a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico; and

(II) the Secretary of the Senate, in the case of a Senator, an officer or employee of the Congress whose compensation is disbursed by the Secretary of the Senate, an officer or employee of the General Accounting Office, the Office of Technology Assessment, or the Office of the Attending Physician (including any individual terminating service, under section 101(e) [5 U.S.C. app. Sec. 101(e)], in any office or position referred to in this subclause), or an individual described in section 101(c) [5 U.S.C. app. Sec. 101(c)] who is a candidate for nomination or election as a Senator; and

(ii) in the case of an officer or employee of the Congress as described under section 101(f)(10) [5 U.S.C. app. Sec. 101(f)(10)] who is employed by an agency or commission established in the legislative branch after the date of the enactment of the Ethics Reform Act of 1989 [enacted Nov. 30, 1989]-

(I) the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, as designated in the statute establishing such agency or commission; or

(II) if such statute does not designate such committee, the Secretary of the Senate for agencies and commissions established in even numbered calendar years, and the Clerk of the House of Representatives for agencies and commissions established in odd numbered calendar years; and

(B) the Judicial Conference with regard to a judicial officer or employee described under paragraphs (11) and (12) of section 101(f) [5 U.S.C. app. Sec. 101(f)(11), (12)] (including individuals terminating service in such office or position under section 101(e) [5 U.S.C. app. Sec. 101(e)] or immediately preceding service in such office or position).

(2) The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such committee.

(i) A copy of each report filed under this title [5 U.S.C. app. Sec. 101 et seq.] by a Member or an individual who is a candidate for the office of Member shall be sent by the Clerk of the House of Representatives or Secretary of the Senate, as the case may be, to the appropriate State officer designated under section 316(a) of the Federal Election Campaign Act of 1971 [2 U.S.C. Sec. 439(a)] of the State represented by the Member or in which the individual is a candidate, as the case may be, within the 30-day period beginning on the day the report is filed with the Clerk or Secretary.

(j)(1) A copy of each report filed under this title [5 U.S.C. app. Sec. 101 et seq.] with the Clerk of the House of Representatives shall be sent by the Clerk to the Committee on Standards of Official Conduct of the House of Representatives within the 7-day period beginning on the day the report is filed.

(2) A copy of each report filed under this title [5 U.S.C. app. Sec. 101 et seq.] with the Secretary of the Senate shall be sent by the Secretary to the Select Committee on Ethics of the Senate within the 7-day period beginning on the day the report is filed.

(k) In carrying out their responsibilities under this title [5 U.S.C. app. Sec. 101 et seq.] with respect to candidates for office, the Clerk of the House of Representatives and the Secretary of the Senate shall avail themselves of the assistance of the Federal Election Commission. The Commission shall make available to the Clerk and the Secretary on a regular basis a complete list of names and addresses of all candidates registered with the Commission, and shall cooperate and

coordinate its candidate information and notification program with the Clerk and the Secretary to the greatest extent possible.

5 U.S.C. app. Sec. 104. Failure to file or filing false reports

(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 102 [5 U.S.C. app. Sec. 102]. The court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed $10,000.

(b) The head of each agency, each Secretary concerned, the Director of the Office of Government Ethics, each congressional ethics committee, or the Judicial Conference, as the case may be, shall refer to the Attorney General the name of any individual which such official or committee has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported. Whenever the Judicial Conference refers a name to the Attorney General under this subsection, the Judicial Conference also shall notify the judicial council of the circuit in which the named individual serves of the referral.

(c) The President, the Vice President, the Secretary concerned, the head of each agency, the Office of Personnel Management, a congressional ethics committee, and the Judicial Conference, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported.

(d)(1) Any individual who files a report required to be filed under this title [5 U.S.C. app. Sec. 101 et seq.] more than 30 days after the later of-

(A) the date such report is required to be filed pursuant to the provisions of this title [5 U.S.C. app. Sec. 101 et seq.] and the rules and regulations promulgated thereunder; or

(B) if a filing extension is granted to such individual under section 101(g) [5 U.S.C. app. Sec. 101(g)], the last day of the filing extension period,

shall, at the direction of and pursuant to regulations issued by the supervising ethics office, pay a filing fee of $200. All such fees shall be deposited in the miscellaneous receipts of the Treasury. The authority under this paragraph to direct the payment of a filing fee may be delegated by the supervising ethics office in the executive branch to other agencies in the executive branch.

(2) The supervising ethics office may waive the filing fee under this subsection in extraordinary circumstances.

5 U.S.C. app. Sec. 105. Custody of and public access to reports

(a) Each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall make available to the public, in accordance with subsection (b), each report filed under this title [5 U.S.C. app. Sec. 101 et seq.] with such agency or office or with the Clerk or the Secretary of the Senate, except that-

(1) this section does not require public availability of a report filed by any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds or has found that, due to the nature of the office or position occupied by such individual, public disclosure of such report would, be [by] revealing the identity of the individual or other sensitive information, compromise the national interest of the United States; and such individuals may be authorized, notwithstanding section 104(a) [5 U.S.C. app. Sec. 104(a)], to file such additional reports as are necessary to protect their identity from public disclosure if the President first finds or has found that such filing is necessary in the national interest; and

(2) any report filed by an independent counsel whose identity has not been disclosed by the division of the court under chapter 40 of title 28, United States Code, and any report filed by any person appointed by that independent counsel under such chapter, shall not be made available to the public under this title [5 U.S.C. app. Sec. 101 et seq.]

(b)(1) Except as provided in the second sentence of this subsection, each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall, within thirty days after any report is received under this title [5 U.S.C. app. Sec. 101 et seq.] by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be, permit inspection of such report by or furnish a copy of such report to any person requesting such inspection or copy. With respect to any report required to be filed by May 15 of any year, such report shall be made available for public inspection within 30 calendar days after May 15 of such year or within 30 days of the date of filing of such a report for which an extension is granted pursuant to section 101(g). The agency, office, Clerk, or Secretary of the Senate, as the case may be may require a reasonable fee to be paid in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

(2) Notwithstanding paragraph (1), a report may not be made available under this section to any person nor may any copy thereof be provided under this section to any person except upon a written application by such person stating-

(A) that person's name, occupation and address;

(B) the name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(C) that such person is aware of the prohibitions on the obtaining or use of the report.

Any such application shall be made available to the public throughout the period during which the report is made available to the public.

(c)(1) It shall be unlawful for any person to obtain or use a report-

(A) for any unlawful purpose;

(B) for any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1) of this subsection. The court in which such action is brought may assess against such person a penalty in any amount not to exceed $10,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

(d) Any report filed with or transmitted to an agency or supervising ethics office or to the Clerk of the House of Representatives or the Secretary of the Senate pursuant to this title [5 U.S.C. app. Sec. 101 et seq.] shall be retained by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be. Such report shall be made available to the public for a period of six years after receipt of the report. After such 6-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 101(b) [5 U.S.C. app. Sec. 101(b)] and was not subsequently confirmed by the Senate, or who filed the report pursuant to section 101(c) [5 U.S.C. app. Sec. 101(c)] and was not subsequently elected, such reports shall be destroyed one year after the individual either

is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President, Vice President, or as a Member of Congress, unless needed in an ongoing investigation.

5 U.S.C. app. Sec. 106. Review of reports

(a)(1) Each designated agency ethics official or Secretary concerned shall make provisions to ensure that each report filed with him under this title [5 U.S.C. app. Sec. 101 et seq.] is reviewed within sixty days after the date of such filing, except that the Director of the Office of Government Ethics shall review only those reports required to be transmitted to him under this title [5 U.S.C. app. Sec. 101 et seq.] within sixty days after the date of transmittal.

(2) Each congressional ethics committee and the Judicial Conference shall make provisions to ensure that each report filed under this title [5 U.S.C. app. Sec. 101 et seq.] is reviewed within sixty days after the date of such filing.

(b)(1) If after reviewing any report under subsection (a), the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by the congressional ethics committee, or a person designated by the Judicial Conference, as the case may be, is of the opinion that on the basis of information contained in such report the individual submitting such report is in compliance with applicable laws and regulations, he shall state such opinion on the report, and shall sign such report.

(2) If the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by the congressional ethics committee, or a person designated by the Judicial Conference, after reviewing any report under subsection (a)-

(A) believes additional information is required to be submitted, he shall notify the individual submitting such report what additional information is required and the time by which it must be submitted, or

(B) is of the opinion, on the basis of information submitted, that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, afford a reasonable opportunity for a written or oral response, and after consideration of such response, reach an opinion as to whether or not, on the basis of information submitted, the individual is in compliance with such laws and regulations. (3) If the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by a congressional ethics committee, or a person designated by the Judicial Conference, reaches an opinion under paragraph (2)(B) that an individual is not in compliance with applicable laws and regulations, the official or committee shall notify the individual of that opinion and, after an opportunity for personal consultation (if practicable), determine and notify the individual of which steps, if any, would in the opinion of such official or committee be appropriate for assuring compliance with such laws and regulations and the date by which such steps should be taken. Such steps may include, as appropriate-

(A) divestiture,

(B) restitution,

(C) the establishment of a blind trust,

(D) request for an exemption under section 208(b) of title 18, United States Code, or

(E) voluntary request for transfer, reassignment, limitation of duties, or resignation.

The use of any such steps shall be in accordance with such rules or regulations as the supervising ethics office may prescribe.

(4) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by an individual in a position in the executive branch (other than

in the Foreign Service or the uniformed services), appointment to which requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate action.

(5) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by a member of the Foreign Service or the uniformed services, the Secretary concerned shall take appropriate action.

(6) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by any other officer or employee, the matter shall be referred to the head of the appropriate agency, the congressional ethics committee, or the Judicial Conference, for appropriate action; except that in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken.

(7) Each supervising ethics office may render advisory opinions interpreting this title [5 U.S.C. app. Sec. 101 et seq.] within its respective jurisdiction. Notwithstanding any other provision of law, the individual to whom a public advisory opinion is rendered in accordance with this paragraph, and any other individual covered by this title [5 U.S.C. app. Sec. 101 et seq.] who is involved in a fact situation which is indistinguishable in all material aspects, and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of such act, be subject to any penalty or sanction provided by this title [5 U.S.C. app. Sec. 101 et seq.]

5 U.S.C. app. Sec. 107. Confidential reports and other additional requirements

(a)(1) Each supervising ethics office may require officers and employees under its jurisdiction (including special Government employees as defined in section 202 of title 18, United States Code) to file confidential financial disclosure reports, in such form as the supervising ethics office may prescribe. The information required to be reported under this subsection by the officers and employees of any department or agency shall be set forth in rules or regulations prescribed by the supervising ethics office, and may be less extensive than otherwise required by this title [5 U.S.C. app. Sec. 101 et seq.], or more extensive when determined by the supervising ethics office to be necessary and appropriate in light of sections 202 through 209 of title 18, United States Code, regulations promulgated thereunder, or the authorized activities of such officers or employees. Any individual required to file a report pursuant to section 101 [5 U.S.C. app. Sec. 101] shall not be required to file a confidential report pursuant to this subsection, except with respect to information which is more extensive than information otherwise required by this title [5 U.S.C. app. Sec. 101 et seq.] Subsections (a), (b), and (d) of section 105 [5 U.S.C. app. Sec. 105(a), (b), (d)] shall not apply with respect to any such report.

(2) Any information required to be provided by an individual under this subsection shall be confidential and shall not be disclosed to the public.

(3) Nothing in this subsection exempts any individual otherwise covered by the requirement to file a public financial disclosure report under this title [5 U.S.C. app. Sec. 101 et seq.] from such requirement.

(b) The provisions of this title [5 U.S.C. app. Sec. 101 et seq.] requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title [5 U.S.C. app. Sec. 101 et seq.] shall not supersede the requirements of section 7342 of title 5, United States Code.

(c) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law, Executive order, rule, or regulation.

5 U.S.C. app. Sec. 108. Authority of Comptroller General

(a) The Comptroller General shall have access to financial disclosure reports filed under this title [5 U.S.C. app. Sec. 101 et seq.] for the purposes of carrying out his statutory responsibilities.

(b) No later than December 31, 1992, and regularly thereafter, the Comptroller General shall conduct a study to determine whether the provisions of this title are being carried out effectively.

5 U.S.C. app. Sec. 109. Definitions

For the purposes of this title [5 U.S.C. app. Sec. 101 et seq.], the term-

(1) ''congressional ethics committees'' means the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives;

(2) ''dependent child'' means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who-

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986 [26 U.S.C. Sec. 152];

(3) ''designated agency ethics official'' means an officer or employee who is designated to administer the provisions of this title within an agency;

(4) ''executive branch'' includes each Executive agency (as defined in section 105 of title 5, United States Code), other than the General Accounting Office, and any other entity or administrative unit in the executive branch;

(5) ''gift'' means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include-

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(D) food and beverages which are not consumed in connection with a gift of overnight lodging;

(E) communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; or

(F) consumable products provided by home-State businesses to the offices of a reporting individual who is an elected official, if those products are intended for consumption by persons other than such reporting individual;

(6) ''honoraria'' has the meaning given such term in section 505 of this Act [5 U.S.C. app. Sec. 505];

(7) ''income'' means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

(8) ''judicial employee'' means any employee of the judicial branch of the Government, of the United States Sentencing Commission, of the Tax Court, of the Claims Court, of the Court of Veterans Appeals, or of the United States Court of Military Appeals, who is not a judicial officer and who is authorized to perform adjudicatory functions with respect to proceedings in the judicial branch, or who occupies a position for which the 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;

(9) ''Judicial Conference'' means the Judicial Conference of the United States;

(10) ''judicial officer'' means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals, United States district courts, including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Claims Court, Court of Veterans Appeals, United States Court of Military Appeals, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior;

(11) ''legislative branch'' includes-

(A) the Architect of the Capitol;

(B) the Botanical Gardens;

(C) the Congressional Budget Office;

(D) the General Accounting Office;

(E) the Government Printing Office;

(F) the Library of Congress;

(G) the United States Capitol Police;

(H) the Office of Technology Assessment; and

(I) any other agency, entity, office or commission established in the legislative branch;

(12) ''Member of Congress'' means a United States Senator, a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;

(13) ''officer or employee of the Congress'' means-

(A) any individual described under subparagraph (B), other than a Member of Congress or the Vice President, whose compensation is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives;

(B)(i) each officer or employee of the legislative branch who, for at least 60 days, occupies a position for which the 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; and

(ii) at least one principal assistant designated for purposes of this paragraph by each Member who does not have an employee who occupies a position for which the 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;

(14) ''personal hospitality of any individual'' means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(15) ''reimbursement'' means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are-

(A) provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. Sec. 434);

(16) ''relative'' means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual;

(17) ''Secretary concerned'' has the meaning set forth in section 101(8) of title 10, United States Code, and, in addition, means-

(A) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration;

(B) the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(C) the Secretary of State, with respect to matters concerning the Foreign Service;

(18) ''supervising ethics office'' means-

(A) the Select Committee on Ethics of the Senate, for Senators, officers and employees of the Senate, and other officers or employees of the legislative branch required to file financial disclosure reports with the Secretary of the Senate pursuant to section 103(h) of this title [5 U.S.C. app. Sec. 103(h)];

(B) the Committee on Standards of Official Conduct of the House of Representatives, for Members, officers and employees of the House of Representatives and other officers or employees of the legislative branch required to file financial disclosure reports with the Clerk of the House of Representatives pursuant to section 103(h) of this title [5 U.S.C. app. Sec. 103(h)];

(C) the Judicial Conference for judicial officers and judicial employees; and

(D) the Office of Government Ethics for all executive branch officers and employees; and

(19) ''value'' means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual.

5 U.S.C. app. Sec. 110. Notice of actions taken to comply with ethics agreements

(a) In any case in which an individual agrees with that individual's designated agency ethics official, the Office of Government Ethics, a Senate confirmation committee, a congressional ethics committee, or the Judicial Conference, to take any action to comply with this Act or any other law or regulation governing conflicts of interest of, or establishing standards of conduct applicable with respect to, officers or employees of the Government, that individual shall notify in writing the designated agency ethics official, the Office of Government Ethics, the appropriate committee of the Senate, the congressional ethics committee, or the Judicial Conference, as the case may be, of any action taken by the individual pursuant to that agreement. Such notification shall be made not later than the date specified in the agreement by which action by the individual must be taken, or not later than three months after the date of the agreement, if no date for action is so specified.

(b) If an agreement described in subsection (a) requires that the individual recuse himself or herself from particular categories of agency or other official action, the individual shall reduce

to writing those subjects regarding which the recusal agreement will apply and the process by which it will be determined whether the individual must recuse himself or herself in a specific instance. An individual shall be considered to have complied with the requirements of subsection (a) with respect to such recusal agreement if such individual files a copy of the document setting forth the information described in the preceding sentence with such individual's designated agency ethics official or the appropriate supervising ethics office within the time prescribed in the last sentence of subsection (a).

5 U.S.C. app. Sec. 111. Administration of provisions

The provisions of this title [5 U.S.C. app. Sec. 101 et seq.] shall be administered by-

(1) the Director of the Office of Government Ethics, the designated agency ethics official, or the Secretary concerned, as appropriate, with regard to officers and employees described in paragraphs (1) through (8) of section 101(f) [5 U.S.C. app. Sec. 101(f)(1)-(8)];

(2) the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives, as appropriate, with regard to officers and employees described in paragraphs (9) and (10) of section 101(f) [5 U.S.C. app Sec. 101(f)(9), (10)]; and

(3) the Judicial Conference in the case of an officer or employee described in paragraphs (11) and (12) of section 101(f) [5 U.S.C. app. Sec. 101(f)(11), (12)].

The Judicial Conference may delegate any authority it has under this title [5 U.S.C. app. Sec. 101 et seq.] to an ethics committee established by the Judicial Conference.

5 U.S.C. app. Sec. 112

[Sec. 112 was repealed by P.L. 101–280, Sec. 3(10)(A), May 4, 1990, 104 Stat. 157.]

[Titles II and III were repealed by P.L. 101–194, Sec. 201, Nov. 30, 1989, 103 Stat. 1724.]

APPENDIX C

RULES OF PROCEDURE

SELECT COMMITTEE ON ETHICS

ADOPTED FEBRUARY 23, 1978

Revised November 1999

(S. Prt. 105–19)

SELECT COMMITTEE ON ETHICS

Pat Roberts, Kansas, *Chairman*
Harry Reid, Nevada, *Vice Chairman*

Bob Smith, New Hampshire
George Voinovich, Ohio

Kent Conrad, North Dakota
Richard Durbin, Illinois

Victor Baird, *Staff Director and Chief Counsel*
Annette Gillis, *Chief Clerk*

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RULES OF THE SELECT COMMITTEE ON ETHICS

PART I: ORGANIC AUTHORITY

SUBPART A—S. RES. 338 AS AMENDED

S. Res. 338, 88th Cong., 2d Sess. (1964) [1]

Resolved, That (a) there is hereby established a permanent select committee of the Senate to be known as the Select Committee on Ethics (referred to hereinafter as the ''Select Committee'') consisting of six Members of the Senate, of whom three shall be selected from members of the majority party and three shall be selected from members of the minority party. Members thereof shall be appointed by the Senate in accordance with the provisions of Paragraph 1 of Rule XXIV of the Standing Rules of the Senate at the beginning of each Congress. For purposes of paragraph 4 of Rule XXV of the Standing Rules of the Senate, service of a Senator as a member or chairman of the Select Committee shall not be taken into account.

(b) Vacancies in the membership of the Select Committee shall not affect the authority of the remaining members to execute the functions of the committee, and shall be filled in the same manner as original appointments thereto are made.

(c)(1) A majority of the members of the Select Committee shall constitute a quorum for the transaction of business involving complaints or allegations of, or information about, misconduct, including resulting preliminary inquiries, adjudicatory reviews, recommendations or reports, and matters relating to Senate Resolution 400, agreed to May 19, 1976.[2]

(2) Three members shall constitute a quorum for the transaction of routine business of the Select Committee not covered by the first paragraph of this subparagraph, including requests for opinions and interpretations concerning the Code of Official Conduct or any other statute or regulation under the jurisdiction of the Select Committee, if one member of the quorum is a member of the majority Party and one member of the quorum is a member of the minority Party. During the transaction of routine business any member of the Select Committee constituting the quorum shall have the right to postpone further discussion of a pending matter until such time as a majority of the members of the Select Committee are present.

(3) The Select Committee may fix a lesser number as a quorum for the purpose of taking sworn testimony.[3]

(d)(1) A member of the Select Committee shall be ineligible to participate in—

(A) any preliminary inquiry or adjudicatory review relating to—

(i) the conduct of—

(I) such member;

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[1] As amended by S. Res. 4, 95th Cong., 1st Sess. (1977), S. Res. 110, 95th Cong., 1st Sess. (1977), S. Res. 204, 95th Cong., 1st Sess. (1977), S. Res. 230, 95th Cong., 1st Sess. (1977), S. Res. 312, 95th Cong., 1st Sess. (1977), S. Res. 271, 96th Cong., 1st Sess. (1979), S. Res. 78, 97th Cong., 1st Sess. (1981). Brackets reflect renumbering of paragraphs in Senate Rule XXXVII effected by S. Res. 236, 101st Cong., 2d Sess. (1990). Amended by S. Res. 222, 106th Cong., 1st Sess. (1999). The amendments made by S. Res. 222, Senate Ethics Procedure Reform Resolution of 1999, shall take effect on November 5, 1999, except that the amendments shall not apply with respect to further proceedings in any preliminary inquiry, initial review, or investigation commenced before November 5, 1999, under Senate Resolution 338, agreed to July 24, 1964.

[2] Subsection (c) was amended by S. Res. 222, 106th Cong., 1st Sess. (1999).

[3] Subsection 3 was amended by S. Res. 78, 97th Cong., 1st Sess. (1981).

(II) any officer or employee the member supervises; or

(III) any employee of any officer the member supervises; or

(ii) any complaint filed by the member; and

(B) the determinations and recommendations of the Select Committee with respect to any preliminary inquiry or adjudicatory review described in subparagraph (A).

For purposes of this paragraph, a member of the Select Committee and an officer of the Senate shall be deemed to supervise any officer or employee consistent with the provision of paragraph 12 of Rule XXXVII of the Standing Rules of the Senate.

(2) A member of the Select Committee may, at the discretion of the member, disqualify himself or herself from participating in any preliminary inquiry or adjudicatory review pending before the Select Committee and the determinations and recommendations of the Select Committee with respect to any such preliminary inquiry or adjudicatory review. Notice of such disqualification shall be given in writing to the President of the Senate.

(3) Whenever any member of the Select Committee is ineligible under paragraph (1) to participate in any preliminary inquiry or adjudicatory review or disqualifies himself or herself under paragraph (2) from participating in any preliminary inquiry or adjudicatory review, another Senator shall, subject to the provisions of subsection (d), be appointed to serve as a member of the Select Committee solely for purposes of such preliminary inquiry or adjudicatory review and the determinations and recommendations of the Select Committee with respect to such preliminary inquiry or adjudicatory review. Any Member of the Senate appointed for such purposes shall be of the same party as the Member who is ineligible or disqualifies himself or herself.[4]

Sec. 2. (a) It shall be the duty of the Select Committee to—

(1) receive complaints and investigate allegations of improper conduct which may reflect upon the Senate, violations of law, violations of the Senate Code of Official Conduct[5] and violations of rules and regulations of the Senate, relating to the conduct of individuals in the performance of their duties as Members of the Senate, or as officers or employees of the Senate, and to make appropriate findings of fact and conclusions with respect thereto;

(2)(A) recommend to the Senate by report or resolution by a majority vote of the full committee disciplinary action to be taken with respect to such violations which the Select Committee shall determine, after according to the individual concerned due notice and opportunity for a hearing, to have occurred;

(B) pursuant to subparagraph (A) recommend discipline, including—

(i) in the case of a Member, a recommendation to the Senate for expulsion, censure, payment of restitution, recommendation to a Member's party conference regarding the Member's seniority or positions of responsibility, or a combination of these; and

(ii) in the case of an officer or employee, dismissal, suspension, payment of restitution, or a combination of these;

(3) subject to the provisions of subsection (e), by a unanimous vote of 6 members, order that a Member, officer, or employee be reprimanded or pay restitution, or both, if the Select Committee determines, after according to the Member, officer, or employee due notice and opportunity for a hearing, that misconduct occurred warranting discipline less serious than discipline by the full Senate;

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[4] Subsection d (1)–(3) was added by S. Res. 110, § 203, 95th Cong., 1st Sess. (1977) and amended by S. Res. 222, 106th Cong., 1st Sess. (1999).

[5] Reference to Senate Code of Official Conduct was added by S. Res. 110, § 201, 95th Cong., 1st Sess. (1977).

(4) in the circumstances described in subsection (d)(3), issue a public or private letter of admonition to a Member, officer, or employee, which shall not be subject to appeal to the Senate;

(5) recommend to the Senate, by report or resolution, such additional rules or regulations as the Select Committee shall determine to be necessary or desirable to insure proper standards of conduct by Members of the Senate, and by officers or employees of the Senate, in the performance of their duties and the discharge of their responsibilities;

(6) by a majority vote of the full committee, report violations of any law, including the provision of false information to the Select Committee, to the proper Federal and State authorities; and

(7) develop and implement programs and materials designed to educate Members, officers, and employees about the laws, rules, regulations, and standards of conduct applicable to such individuals in the performance of their duties.

(b) For the purposes of this resolution—

(1) the term ''sworn complaint'' means a written statement of facts, submitted under penalty of perjury, within the personal knowledge of the complainant alleging a violation of law, the Senate Code of Official Conduct, or any other rule or regulation of the Senate relating to the conduct of individuals in the performance of their duties as Members, officers, or employees of the Senate;

(2) the term ''preliminary inquiry'' means a proceeding undertaken by the Select Committee following the receipt of a complaint or allegation of, or information about, misconduct by a Member, officer, or employee of the Senate to determine whether there is substantial credible evidence which provides substantial cause for the Select Committee to conclude that a violation within the jurisdiction of the Select Committee has occurred; and

(3) the term ''adjudicatory review'' means a proceeding undertaken by the Select Committee after a finding, on the basis of a preliminary inquiry, that there is substantial credible evidence which provides substantial cause for the Select Committee to conclude that a violation within the jurisdiction of the Select Committee has occurred.

(c)(1) No—

(A) adjudicatory review of conduct of a Member or officer of the Senate may be conducted;

(B) report, resolution, or recommendation relating to such an adjudicatory review of conduct may be made; and

(C) letter of admonition pursuant to subsection (d)(3) may be issued, unless approved by the affirmative recorded vote of no fewer than 4 members of the Select Committee.

(2) No other resolution, report, recommendation, interpretative ruling, or advisory opinion may be made without an affirmative vote of a majority of the Members of the Select Committee voting.

(d)(1) When the Select Committee receives a sworn complaint or other allegation or information about a Member, officer, or employee of the Senate, it shall promptly conduct a preliminary inquiry into matters raised by that complaint, allegation, or information. The preliminary inquiry shall be of duration and scope necessary to determine whether there is substantial credible evidence which provides substantial cause for the Select Committee to conclude that a violation within the jurisdiction of the Select Committee has occurred. The Select Committee may delegate to the chairman and vice chairman the discretion to determine the appropriate duration, scope, and conduct of a preliminary inquiry.

(2) If, as a result of a preliminary inquiry under paragraph (1), the Select Committee determines by a recorded vote that there is not such substantial credible evidence, the Select Committee shall dismiss the matter. The Select Committee may delegate to the chairman and vice chairman

the authority, on behalf of the Select Committee, to dismiss any matter that they determine, after a preliminary inquiry, lacks substantial merit. The Select Committee shall inform the individual who provided to the Select Committee the complaint, allegation, or information, and the individual who is the subject of the complaint, allegation, or information, of the dismissal, together with an explanation of the basis for the dismissal.

(3) If, as a result of a preliminary inquiry under paragraph (1), the Select Committee determines that a violation is inadvertent, technical, or otherwise of a de minimis nature, the Select Committee may dispose of the matter by issuing a public or private letter of admonition, which shall not be considered discipline. The Select Committee may issue a public letter of admonition upon a similar determination at the conclusion of an adjudicatory review.

(4) If, as a result of a preliminary inquiry under paragraph (1), the Select Committee determines that there is such substantial credible evidence and the matter cannot be appropriately disposed of under paragraph (3), the Select Committee shall promptly initiate an adjudicatory review. Upon the conclusion of such adjudicatory review, the Select Committee shall report to the Senate, as soon as practicable, the results of such adjudicatory review, together with its recommendations (if any) pursuant to subsection (a)(2).

(e)(1) Any individual who is the subject of a reprimand or order of restitution, or both, pursuant to subsection (a)(3) may, within 30 days of the Select Committee's report to the Senate of its action imposing a reprimand or order of restitution, or both, appeal to the Senate by providing written notice of the basis for the appeal to the Select Committee and the presiding officer of the Senate. The presiding officer of the Senate shall cause the notice of the appeal to be printed in the Congressional Record and the Senate Journal.

(2) A motion to proceed to consideration of an appeal pursuant to paragraph (1) shall be highly privileged and not debatable. If the motion to proceed to consideration of the appeal is agreed to, the appeal shall be decided on the basis of the Select Committee's report to the Senate. Debate on the appeal shall be limited to 10 hours, which shall be divided equally between, and controlled by, those favoring and those opposing the appeal.

(f) The Select Committee may, in its discretion, employ hearing examiners to hear testimony and make findings of fact and/or recommendations to the Select Committee concerning the disposition of complaints.

(g) Notwithstanding any other provision of this section, no adjudicatory review shall be initiated of any alleged violation of any law, the Senate Code of Official Conduct, rule, or regulation which was not in effect at the time the alleged violation occurred. No provisions of the Senate Code of Official Conduct shall apply to or require disclosure of any act, relationship, or transaction which occurred prior to the effective date of the applicable provision of the Code. The Select Committee may initiate an adjudicatory review of any alleged violation of a rule or law which was in effect prior to the enactment of the Senate Code of Official Conduct if the alleged violation occurred while such rule or law was in effect and the violation was not a matter resolved on the merits by the predecessor Select Committee.

(h) The Select Committee shall adopt written rules setting forth procedures to be used in conducting preliminary inquiries and adjudicatory reviews.

(i) The Select Committee from time to time shall transmit to the Senate its recommendation as to any legislative measures which it may consider to be necessary for the effective discharge of its duties.[6]

Sec. 3. (a) The Select Committee is authorized to (1) make such expenditures; (2) hold such hearings; (3) sit and act at such times and places during the sessions, recesses, and adjournment

[6] Subsections (b)–(h) were added by and subsection (i) was amended by S. Res. 110, § 202, 95th Cong., 1st Sess. (1977). Subsections (a)–(e) and (g)–(h) were amended by S. Res. 222, 106th Cong., 1st Sess. (1999).

periods of the Senate; (4) require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents; (5) administer such oaths; (6) take such testimony orally or by deposition; (7) employ and fix the compensation of a staff director, a counsel, an assistant counsel, one or more investigators, one or more hearing examiners[7], and such technical, clerical, and other assistants and consultants as it deems advisable; and (8) to procure the temporary services (not in excess of one year) or intermittent services of individual consultants, or organizations thereof, by contract as independent contractors or, in the case of individuals, by employment at daily rates of compensation not in excess of the per diem equivalent of the highest rate of compensation which may be paid to a regular employee of the Select Committee.[8]

(b)(1) The Select Committee is authorized to retain and compensate counsel not employed by the Senate (or by any department or agency of the executive branch of the Government) whenever the Select Committee determines that the retention of outside counsel is necessary or appropriate for any action regarding any complaint or allegation, which, in the determination of the Select Committee is more appropriately conducted by counsel not employed by the Government of the United States as a regular employee.[9]

(2) Any adjudicatory review as defined in section 2(b)(3) shall be conducted by outside counsel as authorized in paragraph (1), unless the Select Committee determines not to use outside counsel.[10]

(c) With the prior consent of the department or agency concerned, the Select Committee may (1) utilize the services, information and facilities of any such department or agency of the Government, and (2) employ on a reimbursable basis or otherwise the services of such personnel of any such department or agency as it deems advisable. With the consent of any other committee of the Senate, or any subcommittee thereof, the Select Committee may utilize the facilities and the services of the staff of such other committee or subcommittee whenever the chairman of the Select Committee determines that such action is necessary and appropriate.[11]

(d)(1) Subpoenas may be authorized by—

(A) the Select Committee; or

(B) the chairman and vice chairman, acting jointly.

(2) Any such subpoena shall be issued and signed by the chairman and the vice chairman and may be served by any person designated by the chairman and vice chairman.

(3) The chairman or any member of the Select Committee may administer oaths to witnesses.[12]

(e)(1) The Select Committee shall prescribe and publish such regulations as it feels are necessary to implement the Senate Code of Official Conduct.

(2) The Select Committee is authorized to issue interpretative rulings explaining and clarifying the application of any law, the Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction.

(3) The Select Committee shall render an advisory opinion, in writing within a reasonable time, in response to a written request by a Member or officer of the Senate or a candidate for nomination for election, or election to the Senate, concerning the application of any law, the Sen-

[7] Paragraph 7 was amended by S. Res. 110, § 204, 95th Cong., 1st Sess. (1977).

[8] Paragraph 8 was added by S. Res. 230, 95th Cong., 1st Sess. (1977).

[9] Subsection (b)(1) was added by S. Res. 110 § 204, 95th Cong., 1st Sess. (1977).

[10] Subsection (b)(2) was amended by S. Res. 222, 106th Cong., 1st Sess. (1999).

[11] Subsection (c) was added by S. Res. 110, § 204, 95th Cong., 1st Sess., (1977).

[12] Subsection (d) was added by S. Res. 312, 95th Cong., 1st Sess. (1977) and was amended by S. Res. 222, 106th Cong., 1st Sess. (1999).

ate Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion.

(4) The Select Committee may in its discretion render an advisory opinion in writing within a reasonable time in response to a written request by any employee of the Senate concerning the application of any law, the Senate Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion.

(5) Notwithstanding any provision of the Senate Code of Official Conduct or any rule or regulation of the Senate, any person who relies upon any provision or finding of an advisory opinion in accordance with the provisions of paragraphs (3) and (4) and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction by the Senate.

(6) Any advisory opinion rendered by the Select Committee under paragraphs (3) and (4) may be relied upon by (A) any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered: Provided, however, that the request for such advisory opinion included a complete and accurate statement of the specific factual situation; and, (B) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

(7) Any advisory opinion issued in response to a request under paragraph (3) or (4) shall be printed in the Congressional Record with appropriate deletions to assure the privacy of the individual concerned. The Select Committee shall, to the extent practicable, before rendering an advisory opinion, provide any interested party with an opportunity to transmit written comments to the Select Committee with respect to the request for such advisory opinion. The advisory opinions issued by the Select Committee shall be compiled, indexed, reproduced, and made available on a periodic basis.

(8) A brief description of a waiver granted under paragraph 2(c) [NOTE: Now Paragraph 1] of Rule XXXIV or paragraph 1 of Rule XXXV of the Standing Rules of the Senate shall be made available upon request in the Select Committee office with appropriate deletions to assure the privacy of the individual concerned.[13]

Sec. 4. The expenses of the Select Committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the Select Committee.

Sec. 5. As used in this resolution, the term ''officer or employee of the Senate'' means—

(1) an elected officer of the Senate who is not a Member of the Senate;

(2) an employee of the Senate, any committee or subcommittee of the Senate, or any Member of the Senate;

(3) the Legislative Counsel of the Senate or any employee of his office;

(4) an Official Reporter of Debates of the Senate and any person employed by the Official Reporters of Debates of the Senate in connection with the performance of their official duties;

(5) a Member of the Capitol Police force whose compensation is disbursed by the Secretary of the Senate;

(6) an employee of the Vice President if such employee's compensation is disbursed by the Secretary of the Senate; and

[13] Subsection was added by S. Res. 110, § 206, 95th Cong., 1st Sess. (1977).

(7) an employee of a joint committee of the Congress whose compensation is disbursed by the Secretary of the Senate.

SUBPART B—PUBLIC LAW 93–191—FRANKED MAIL, PROVISIONS RELATING TO THE SELECT COMMITTEE

Sec. 6. (a) The Select Committee on Standards and Conduct of the Senate [NOTE: Now the Select Committee on Ethics] shall provide guidance, assistance, advice and counsel, through advisory opinions or consultations, in connection with the mailing or contemplated mailing of franked mail under section 3210, 3211, 3212, 3218(2) or 3218, and in connection with the operation of section 3215, of title 39, United States Code, upon the request of any Member of the Senate or Member-elect, surviving spouse of any of the foregoing, or other Senate official, entitled to send mail as franked mail under any of those sections. The select committee shall prescribe regulations governing the proper use of the franking privilege under those sections by such persons.

(b) Any complaint filed by any person with the select committee that a violation of any section of title 39, United State Code, referred to in subsection (a) of this section is about to occur or has occurred within the immediately preceding period of 1 year, by any person referred to in such subsection (a), shall contain pertinent factual material and shall conform to regulations prescribed by the select committee. The select committee, if it determines there is reasonable justification for the complaint, shall conduct an investigation of the matter, including an investigation of reports and statements filed by that complainant with respect to the matter which is the subject of the complaint. The committee shall afford to the person who is the subject of the complaint due notice and, if it determines that there is substantial reason to believe that such violation has occurred or is about to occur, opportunity for all parties to participate in a hearing before the select committee. The select committee shall issue a written decision on each complaint under this subsection not later than thirty days after such a complaint has been filed or, if a hearing is held, not later than thirty days after the conclusion of such hearing. Such decision shall be based on written findings of fact in the case by the select committee. If the select committee finds, in its written decision, that a violation has occurred or is about to occur, the committee may take such action and enforcement as it considers appropriate in accordance with applicable rules, precedents, and standing orders of the Senate, and such other standards as may be prescribed by such committee.

(c) Notwithstanding any other provision of law, no court or administrative body in the United States or in any territory thereof shall have jurisdiction to entertain any civil action of any character concerning or related to a violation of the franking laws or an abuse of the franking privilege by any person listed under subsection (a) of this section as entitled to send mail as franked mail, until a complaint has been filed with the select committee and the committee has rendered a decision under subsection (b) of this section.

(d) The select committee shall prescribe regulations for the holding of investigations and hearings, the conduct of proceedings, and the rendering of decisions under this subsection providing for equitable procedures and the protection of individual, public, and Government interests. The regulations shall, insofar as practicable, contain the substance of the administrative procedure provisions of sections 551–559 and 701–706, of title 5, United States Code. These regulations shall govern matters under this subsection subject to judicial review thereof.

(e) The select committee shall keep a complete record of all its actions, including a record of the votes on any question on which a record vote is demanded. All records, data, and files of the select committee shall be the property of the Senate and shall be kept in the offices of the select committee or such other places as the committee may direct.

SUBPART C—STANDING ORDERS OF THE SENATE REGARDING UNAUTHORIZED DISCLOSURE OF INTELLIGENCE INFORMATION, S. RES. 400, 94TH CONGRESS, PROVISIONS RELATING TO THE SELECT COMMITTEE

SEC. 8. * * *

(c)(1) No information in the possession of the select committee relating to the lawful intelligence activities of any department or agency of the United States which has been classified under established security procedures and which the select committee, pursuant to subsection (a) or (b) of this section, has determined should not be disclosed, shall be made available to any person by a Member, officer, or employee of the Senate except in a closed session of the Senate or as provided in paragraph (2).

(2) The select committee may, under such regulations as the committee shall prescribe to protect the confidentiality of such information, make any information described in paragraph (1) available to any other committee or any other Member of the Senate. Whenever the select committee makes such information available, the committee shall keep a written record showing, in the case of any particular information, which committee or which Members of the Senate received such information. No Member of the Senate who, and no committee which, receives any information under this subsection, shall disclose such information except in a closed session of the Senate.

(d) It shall be the duty of the Select Committee on Standards and Conduct to investigate any unauthorized disclosure of intelligence information by a Member, officer or employee of the Senate in violation of subsection (c) and to report to the Senate concerning any allegation which it finds to be substantiated.

(e) Upon the request of any person who is subject to any such investigation, the Select Committee on Standards and Conduct shall release to such individual at the conclusion of its investigation a summary of its investigation together with its findings. If, at the conclusion of its investigation, the Select Committee on Standards and Conduct determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, officer, or employee of the Senate, it shall report its findings to the Senate and recommend appropriate action such as censure, removal from committee membership, or expulsion from the Senate, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

SUBPART D—RELATING TO RECEIPT AND DISPOSITION OF FOREIGN GIFTS AND DECORATIONS RECEIVED BY MEMBERS, OFFICERS AND EMPLOYEES OF THE SENATE OR THEIR SPOUSES OR DEPENDENTS, PROVISIONS RELATING TO THE SELECT COMMITTEE ON ETHICS

Section 7342 of title 5, United States Code, states as follows:

Sec. 7342. Receipt and disposition of foreign gifts and decorations.

''(a) For the purpose of this section—

''(1) 'employee' means—

''(A) an employee as defined by section 2105 of this title and an officer or employee of the United States Postal Service or of the Postal Rate Commission;

''(B) an expert or consultant who is under contract under section 3109 of this title with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under such section, any individual involved in the performance of such services;

''(C) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or the government of the District of Columbia;

''(D) a member of a uniformed service;

''(E) the President and the Vice President;

''(F) a Member of Congress as defined by section 2106 of this title (except the Vice President) and any Delegate to the Congress; and

''(G) the spouse of an individual described in subparagraphs (A) through (F) (unless such individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of such an individual, other than a spouse or dependent who is an employee under subparagraphs (A) through (F);

''(2) 'foreign government' means-

''(A) any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;

''(B) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (A); and

''(C) any agent or representative of any such unit or such organization, while acting as such;

''(3) 'gift' means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government;

''(4) 'decoration' means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government;

''(5) 'minimal value' means a retail value in the United States at the time of acceptance of $100 or less, except that—

''(A) on January 1, 1981, and at 3 year intervals thereafter, 'minimal value' shall be redefined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3–year period; and

''(B) regulations of an employing agency may define 'minimal value' for its employees to be less than the value established under this paragraph; and

''(6) 'employing agency' means—

''(A) the Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in subsections (c)(2)(A), (e)(1), and (g)(2)(B) shall be carried out by the Clerk of the House;

''(B) the Select Committee on Ethics of the Senate, for Senators and employees of the Senate, except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in subsections (c)(2),(d), and (g)(2)(B) shall be carried out by the Secretary of the Senate;

''(C) the Administrative Office of the United States Courts, for judges and judicial branch employees; and

''(D) the department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees.

''(b) An employee may not—

''(l) request or otherwise encourage the tender of a gift or decoration; or

''(2) accept a gift or decoration, other than in accordance with, the provisions of subsections (c) and (d).

''(c)(1) The Congress consents to—

''(A) the accepting and retaining by an employee of a gift of minimal value tendered and received as a souvenir or mark of courtesy; and

''(B) the accepting by an employee of a gift of more than minimal value when such gift is in the nature of an educational scholarship or medical treatment or when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, except that

''(i) a tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States; and

''(ii) an employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency.

''(2) Within 60 days after accepting a tangible gift of more than minimal value (other than a gift described in paragraph (1)(B)(ii)), an employee shall—

''(A) deposit the gift for disposal with his or her employing agency; or

''(B) subject to the approval of the employing agency, deposit the gift with that agency for official use.

Within 30 days after terminating the official use of a gift under subparagraph (B), the employing agency shall forward the gift to the Administrator of General Services in accordance with subsection (e)(1) or provide for its disposal in accordance with subsection (e)(2).

''(3) When an employee deposits a gift of more than minimal value for disposal or for official use pursuant to paragraph (2), or within 30 days after accepting travel or travel expenses as provided in paragraph (1)(B)(ii) unless such travel or travel expenses are accepted in accordance with specific instructions of his or her employing agency, the employee shall file a statement with his or her employing agency or its delegate containing the information prescribed in subsection (f) for that gift.

''(d) The Congress consents to the accepting, retaining, and wearing by an employee of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the employing agency of such employee. Without this approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the employee, within sixty days of acceptance, with the employing agency for official use, for forwarding to the Administrator of General Services for disposal in accordance with subsection (e)(1), or for disposal in accordance with subsection (e)(2).

''(e)(1) Except as provided in paragraph (2), gifts and decorations that have been deposited with an employing agency for disposal shall be (A) returned to the donor, or (B) forwarded to the Administrator of General Services for transfer, donation, or other disposal in accordance with the provisions of the Federal Property and Administrative Services Act of 1949. However, no gift or decoration that has been deposited for disposal may be sold without the approval of the Secretary of State, upon a determination that the sale will not adversely affect the foreign relations of the United States. Gifts and decorations may be sold by negotiated sale.

''(2) Gifts and decorations received by a Senator or an employee of the Senate that are deposited with the Secretary of the Senate for disposal, or are deposited for an official use which has terminated, shall be disposed of by the Commission on Arts and Antiquities of the United States Senate. Any such gift or decoration may be returned by the Commission to the donor or may be transferred or donated by the Commission, subject to such terms and conditions as it may prescribe, (A) to an agency or instrumentality of (i) the United States, (ii) a State, territory, or possession of the United States, or a political subdivision of the foregoing, or (iii) the District of Columbia, or (B) to an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code. Any such gift or decoration not disposed of as provided in the preceding sentence shall be forwarded to the Administrator of General Services for disposal in accordance with paragraph (1). If the Administrator does not dispose of such gift or decoration within one year, he shall, at the request of the Commission, return it to the Commission and the Commission may dispose of such gift or decoration in such manner as it considers proper, except that such gift or decoration may be sold only with the approval of the Secretary of State upon a determination that the sale will not adversely affect the foreign relations of the United States.

''(f)(1) Not later than January 31 of each year, each employing agency or its delegate shall compile a listing of all statements filed during the preceding year by the employees of that agency pursuant to subsection (c)(3) and shall transmit such listing to the Secretary of State who shall publish a comprehensive listing of all such statements in the Federal Register.

''(2) Such listings shall include for each tangible gift reported—

''(A) the name and position of the employee;

''(B) a brief description of the gift and the circumstances justifying acceptance;

''(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift;

''(D) the date of acceptance of the gift;

''(E) the estimated value in the United States of the gift at the time of acceptance; and

''(F) disposition or current location of the gift.

''(3) Such listings shall include for each gift of travel or travel expenses—

''(A) the name and position of the employee;

''(B) a brief description of the gift and the circumstances justifying acceptance; and

''(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift.

''(4) In transmitting such listings for the Central Intelligence Agency, the Director of Central Intelligence may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.

''(g)(1) Each employing agency shall prescribe such regulations as may be necessary to carry out the purpose of this section. For all employing agencies in the executive branch, such regulations shall be prescribed pursuant to guidance provided by the Secretary of State. These regulations shall be implemented by each employing agency for its employees.

''(2) Each employing agency shall—

''(A) report to the Attorney General cases in which there is reason to believe that an employee has violated this section;

''(B) establish a procedure for obtaining an appraisal, when necessary, of the value of gifts; and

''(C) take any other actions necessary to carry out the purpose of this section.

''(h) The Attorney General may bring a civil action in any district court of the United States against any employee who knowingly solicits or accepts a gift from a foreign government not consented to by this section or who fails to deposit or report such gift as required by this section. The court in which such action is brought may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus $5,000.

''(i) The President shall direct all Chiefs of a United States Diplomatic Mission to inform their host governments that it is a general policy of the United States Government to prohibit United States Government employees from receiving gifts or decorations of more than minimal value.

''(j) Nothing in this section shall be construed to derogate any regulation prescribed by any employing agency which provides for more stringent limitations on the receipt of gifts and decorations by its employees.

''(k) The provisions of this section do not apply to grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.''

PART II: SUPPLEMENTARY PROCEDURAL RULES

145 Cong. Rec. S1832 (daily ed. Feb. 23, 1999) [1]

RULE 1: GENERAL PROCEDURES

(a) OFFICERS: In the absence of the Chairman, the duties of the Chair shall be filled by the Vice Chairman or, in the Vice Chairman's absence, a Committee member designated by the Chairman.

(b) PROCEDURAL RULES: The basic procedural rules of the Committee are stated as a part of the Standing Orders of the Senate in Senate Resolution 338, 88th Congress, as amended, as well as other resolutions and laws. Supplementary Procedural Rules are stated herein and are hereinafter referred to as the Rules. The Rules shall be published in the Congressional Record not later than thirty days after adoption, and copies shall be made available by the Committee office upon request.

(c) MEETINGS:

(1) The regular meeting of the Committee shall be the first Thursday of each month while the Congress is in session.

(2) Special meetings may be held at the call of the Chairman or Vice Chairman if at least forty-eight hours notice is furnished to all members. If all members agree, a special meeting may be held on less than forty-eight hours notice.

(3)(A) If any member of the Committee desires that a special meeting of the Committee be called, the member may file in the office of the Committee a written request to the Chairman or Vice Chairman for that special meeting.

(B) Immediately upon the filing of the request the Clerk of the Committee shall notify the Chairman and Vice Chairman of the filing of the request. If, within three calendar days after the filing of the request, the Chairman or the Vice Chairman does not call the requested special meeting, to be held within seven calendar days after the filing of the request, any three of the members of the Committee may file their written notice in the office of the Committee that a special meeting of the Committee will be held at a specified date and hour; such special meeting may not occur until forty-eight hours after the notice is filed. The Clerk shall imme-

[1] As amended 145 Cong. Rec. S14203 (daily ed. Nov. 5, 1999).

diately notify all members of the Committee of the date and hour of the special meeting. The Committee shall meet at the specified date and hour.

(d) QUORUM:

(1) A majority of the members of the Select Committee shall constitute a quorum for the transaction of business involving complaints or allegations of, or information about, misconduct, including resulting preliminary inquiries, adjudicatory reviews, recommendations or reports, and matters relating to Senate Resolution 400, agreed to May 19, 1976.

(2) Three members shall constitute a quorum for the transaction of the routine business of the Select Committee not covered by the first subparagraph of this paragraph, including requests for opinions and interpretations concerning the Code of Official Conduct or any other statute or regulation under the jurisdiction of the Select Committee, if one member of the quorum is a Member of the Majority Party and one member of the quorum is a Member of the Minority Party. During the transaction of routine business any member of the Select Committee constituting the quorum shall have the right to postpone further discussion of a pending matter until such time as a majority of the members of the Select Committee are present.

(3) Except for an adjudicatory hearing under Rule 5 and any deposition taken outside the presence of a Member under Rule 6, one Member shall constitute a quorum for hearing testimony, provided that all Members have been given notice of the hearing and the Chairman has designated a Member of the Majority Party and the Vice Chairman has designated a Member of the Minority Party to be in attendance, either of whom in the absence of the other may constitute the quorum.

(e) ORDER OF BUSINESS: Questions as to the order of business and the procedure of the Committee shall in the first instance be decided by the Chairman and Vice Chairman, subject to reversal by a vote by a majority of the Committee.

(f) HEARINGS ANNOUNCEMENTS: The Committee shall make public announcement of the date, place and subject matter of any hearing to be conducted by it at least one week before the commencement of that hearing, and shall publish such announcement in the Congressional Record. If the Committee determines that there is good cause to commence a hearing at an earlier date, such notice will be given at the earliest possible time.

(g) OPEN AND CLOSED COMMITTEE MEETINGS: Meetings of the Committee shall be open to the public or closed to the public (executive session), as determined under the provisions of paragraphs 5 (b) to (d) of Rule XXVI of the Standing Rules of the Senate. Executive session meetings of the Committee shall be closed except to the members and the staff of the Committee. On the motion of any member, and with the approval of a majority of the Committee members present, other individuals may be admitted to an executive session meeting for a specific period or purpose.

(h) RECORD OF TESTIMONY AND COMMITTEE ACTION: An accurate stenographic or transcribed electronic record shall be kept of all Committee proceedings, whether in executive or public session. Such record shall include Senators' votes on any question on which a recorded vote is held. The record of a witness's testimony, whether in public or executive session, shall be made available for inspection to the witness or his counsel under Committee supervision; a copy of any testimony given by that witness in public session, or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be made available to any witness if he so requests. (See Rule 5 on Procedures for Conducting Hearings.)

(i) SECRECY OF EXECUTIVE TESTIMONY AND ACTION AND OF COMPLAINT PROCEEDINGS:

(1) All testimony and action taken in executive session shall be kept secret and shall not be released outside the Committee to any individual or group, whether governmental or private, without the approval of a majority of the Committee.

(2) All testimony and action relating to a complaint or allegation shall be kept secret and shall not be released by the Committee to any individual or group, whether governmental or private, except the respondent, without the approval of a majority of the Committee, until such time as a report to the Senate is required under Senate Resolution 338, 88th Congress, as amended, or unless otherwise permitted under these Rules. (See Rule 8 on Procedures for Handling Committee Sensitive and Classified Materials.)

(j) RELEASE OF REPORTS TO PUBLIC: No information pertaining to, or copies of any Committee report, study, or other document which purports to express the view, findings, conclusions or recommendations of the Committee in connection with any of its activities or proceedings may be released to any individual or group whether governmental or private, without the authorization of the Committee. Whenever the Chairman or Vice Chairman is authorized to make any determination, then the determination may be released at his or her discretion. Each member of the Committee shall be given a reasonable opportunity to have separate views included as part of any Committee report. (See Rule 8 on Procedures for Handling Committee Sensitive and Classified Materials.)

(k) INELIGIBILITY OR DISQUALIFICATION OF MEMBERS AND STAFF:

(1) A member of the Committee shall be ineligible to participate in any Committee proceeding that relates specifically to any of the following:

(A) a preliminary inquiry or adjudicatory review relating to (i) the conduct of (I) such member; (II) any officer or employee the member supervises; or (ii) any complaint filed by the member; and

(B) the determinations and recommendations of the Committee with respect to any preliminary inquiry or adjudicatory review described in subparagraph (A).

For purposes of this paragraph, a member of the committee and an officer of the Senate shall be deemed to supervise any officer or employee consistent with the provision of paragraph 12 of Rule XXXVII of the Standing Rules of the Senate.

(2) If any Committee proceeding appears to relate to a member of the Committee in a manner described in subparagraph (1) of this paragraph, the staff shall prepare a report to the Chairman and Vice Chairman. If either the Chairman or the Vice Chairman concludes from the report that it appears that the member may be ineligible, the member shall be notified in writing of the nature of the particular proceeding and the reason that it appears that the member may be ineligible to participate in it. If the member agrees that he or she is ineligible, the member shall so notify the Chairman or Vice Chairman. If the member believes that he or she is not ineligible, he or she may explain the reasons to the Chairman and Vice Chairman, and if they both agree that the member is not ineligible, the member shall continue to serve. But if either the Chairman or Vice Chairman continues to believe that the member is ineligible, while the member believes that he or she is not ineligible, the matter shall be promptly referred to the Committee. The member shall present his or her arguments to the Committee in executive session. Any contested questions concerning a member's eligibility shall be decided by a majority vote of the Committee, meeting in executive session, with the member in question not participating.

(3) A member of the Committee may, at the discretion of the member, disqualify himself or herself from participating in any preliminary inquiry or adjudicatory review pending before the Committee and the determinations and recommendations of the Committee with respect to any such preliminary inquiry or adjudicatory review.

(4) Whenever any member of the Committee is ineligible under paragraph (1) to participate in any preliminary inquiry or adjudicatory review, or disqualifies himself or herself under paragraph (3) from participating in any preliminary inquiry or adjudicatory review, an-

other Senator shall be appointed by the Senate to serve as a member of the Committee solely for purposes of such preliminary inquiry or adjudicatory review and the determinations and recommendations of the Committee with respect to such preliminary inquiry or adjudicatory review. Any member of the Senate appointed for such purposes shall be of the same party as the member who is ineligible or disqualifies himself or herself.

(5) The President of the Senate shall be given written notice of the ineligibility or disqualification of any member from any preliminary inquiry, adjudicatory review, or other proceeding requiring the appointment of another member in accordance with subparagraph (k)(4).

(6) A member of the Committee staff shall be ineligible to participate in any Committee proceeding that the staff director or outside counsel determines relates specifically to any of the following:

(A) the staff member's own conduct;

(B) the conduct of any employee that the staff member supervises;

(C) the conduct of any member, officer or employee for whom the staff member has worked for any substantial period; or

(D) a complaint, sworn or unsworn, that was filed by the staff member. At the direction or with the consent of the staff director or outside counsel, a staff member may also be disqualified from participating in a Committee proceeding in other circumstances not listed above.

(l) RECORDED VOTES: Any member may require a recorded vote on any matter.

(m) PROXIES; RECORDING VOTES OF ABSENT MEMBERS:

(1) Proxy voting shall not be allowed when the question before the Committee is the initiation or continuation of a preliminary inquiry or an adjudicatory review, or the issuance of a report or recommendation related thereto concerning a Member or officer of the Senate. In any such case an absent member's vote may be announced solely for the purpose of recording the member's position and such announced votes shall not be counted for or against the motion.

(2) On matters other than matters listed in paragraph (m)(1) above, the Committee may order that the record be held open for the vote of absentees or recorded proxy votes if the absent Committee member has been informed of the matter on which the vote occurs and has affirmatively requested of the Chairman or Vice Chairman in writing that he be so recorded.

(3) All proxies shall be in writing, and shall be delivered to the Chairman or Vice Chairman to be recorded.

(4) Proxies shall not be considered for the purpose of establishing a quorum.

(n) APPROVAL OF BLIND TRUSTS AND FOREIGN TRAVEL REQUESTS BETWEEN SESSIONS AND DURING EXTENDED RECESSES: During any period in which the Senate stands in adjournment between sessions of the Congress or stands in a recess scheduled to extend beyond fourteen days, the Chairman and Vice Chairman, or their designees, acting jointly, are authorized to approve or disapprove blind trusts under the provision of Rule XXXIV.

(o) COMMITTEE USE OF SERVICES OR EMPLOYEES OF OTHER AGENCIES AND DEPARTMENTS: With the prior consent of the department or agency involved, the Committee may (1) utilize the services, information, or facilities of any such department or agency of the Government, and (2) employ on a reimbursable basis or otherwise the services of such personnel of any such department or agency as it deems advisable. With the consent of any other committee of the Senate, or any subcommittee, the Committee may utilize the facilities and the services of the staff of such

other committee or subcommittee whenever the Chairman and Vice Chairman of the Committee, acting jointly, determine that such action is necessary and appropriate.

RULE 2: PROCEDURES FOR COMPLAINTS, ALLEGATIONS, OR INFORMATION

(a) COMPLAINT, ALLEGATION, OR INFORMATION: Any member or staff member of the Committee shall report to the Committee, and any other person may report to the Committee, a sworn complaint or other allegation or information, alleging that any Senator, or officer, or employee of the Senate has violated a law, the Senate Code of Official Conduct, or any rule or regulation of the Senate relating to the conduct of any individual in the performance of his or her duty as a Member, officer, or employee of the Senate, or has engaged in improper conduct which may reflect upon the Senate. Such complaints or allegations or information may be reported to the Chairman, the Vice Chairman, a Committee member, or a Committee staff member.

(b) SOURCE OF COMPLAINT, ALLEGATION, OR INFORMATION: Complaints, allegations, and information to be reported to the Committee may be obtained from a variety of sources, including but not limited to the following:

(1) sworn complaints, defined as a written statement of facts, submitted under penalty of perjury, within the personal knowledge of the complainant alleging a violation of law, the Senate Code of Official Conduct, or any other rule or regulation of the Senate relating to the conduct of individuals in the performance of their duties as members, officers, or employees of the Senate;

(2) anonymous or informal complaints;

(3) information developed during a study or inquiry by the Committee or other committees or subcommittees of the Senate, including information obtained in connection with legislative or general oversight hearings;

(4) information reported by the news media; or

(5) information obtained from any individual, agency or department of the executive branch of the Federal Government.

(c) FORM AND CONTENT OF COMPLAINTS: A complaint need not be sworn nor must it be in any particular form to receive Committee consideration, but the preferred complaint will:

(1) state, whenever possible, the name, address, and telephone number of the party filing the complaint;

(2) provide the name of each member, officer or employee of the Senate who is specifically alleged to have engaged in improper conduct or committed a violation;

(3) state the nature of the alleged improper conduct or violation;

(4) supply all documents in the possession of the party filing the complaint relevant to or in support of his or her allegations as an attachment to the complaint.

RULE 3: PROCEDURES FOR CONDUCTING A PRELIMINARY INQUIRY

(a) DEFINITION OF PRELIMINARY INQUIRY: A ''preliminary inquiry'' is a proceeding undertaken by the Committee following the receipt of a complaint or allegation of, or information about, misconduct by a Member, officer, or employee of the Senate to determine whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred.

(b) BASIS FOR PRELIMINARY INQUIRY: The Committee shall promptly commence a preliminary inquiry whenever it has received a sworn complaint, or other allegation of, or information about, alleged misconduct or violations pursuant to Rule 2.

(c) SCOPE OF PRELIMINARY INQUIRY:

(1) The preliminary inquiry shall be of such duration and scope as is necessary to determine whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred. The Chairman and Vice Chairman, acting jointly, on behalf of the Committee may supervise and determine the appropriate duration, scope, and conduct of a preliminary inquiry. Whether a preliminary inquiry is conducted jointly by the Chairman and Vice Chairman or by the Committee as a whole, the day to day supervision of a preliminary inquiry rests with the Chairman and Vice Chairman, acting jointly.

(2) A preliminary inquiry may include any inquiries, interviews, sworn statements, depositions, or subpoenas deemed appropriate to obtain information upon which to make any determination provided for by this Rule.

(d) OPPORTUNITY FOR RESPONSE: A preliminary inquiry may include an opportunity for any known respondent or his or her designated representative to present either a written or oral statement, or to respond orally to questions from the Committee. Such an oral statement or answers shall be transcribed and signed by the person providing the statement or answers.

(e) STATUS REPORTS: The Committee staff or outside counsel shall periodically report to the Committee in the form and according to the schedule prescribed by the Committee. The reports shall be confidential.

(f) FINAL REPORT: When the preliminary inquiry is completed, the staff or outside counsel shall make a confidential report, oral or written, to the Committee on findings and recommendations, as appropriate.

(g) COMMITTEE ACTION: As soon as practicable following submission of the report on the preliminary inquiry, the Committee shall determine by a recorded vote whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred. The Committee may make any of the following determinations:

(1) The Committee may determine that there is not such substantial credible evidence and, in such case, the Committee shall dismiss the matter. The Committee, or Chairman and Vice Chairman acting jointly on behalf of the Committee, may dismiss any matter which, after a preliminary inquiry, is determined to lack substantial merit. The Committee shall inform the complainant of the dismissal.

(2) The Committee may determine that there is such substantial credible evidence, but that the alleged violation is inadvertent, technical, or otherwise of a de minimis nature. In such case, the Committee may dispose of the matter by issuing a public or private letter of admonition, which shall not be considered discipline and which shall not be subject to appeal to the Senate. The issuance of a letter of admonition must be approved by the affirmative recorded vote of no fewer than four members of the Committee voting.

(3) The Committee may determine that there is such substantial credible evidence and that the matter cannot be appropriately disposed of under paragraph (2). In such case, the Committee shall promptly initiate an adjudicatory review in accordance with Rule 4. No adjudicatory review of conduct of a Member, officer, or employee of the Senate may be initiated except by the affirmative recorded vote of not less than four members of the Committee.

RULE 4: PROCEDURES FOR CONDUCTING AN ADJUDICATORY REVIEW

(a) DEFINITION OF ADJUDICATORY REVIEW: An ''adjudicatory review'' is a proceeding undertaken by the Committee after a finding, on the basis of a preliminary inquiry, that there is substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred.

(b) SCOPE OF ADJUDICATORY REVIEW: When the Committee decides to conduct an adjudicatory review, it shall be of such duration and scope as is necessary for the Committee to determine whether a violation within its jurisdiction has occurred. An adjudicatory review shall be conducted by outside counsel as authorized by section 3(b)(1) of Senate Resolution 338 unless the Committee determines not to use outside counsel. In the course of the adjudicatory review, designated outside counsel, or if the Committee determines not to use outside counsel, the Committee or its staff, may conduct any inquiries or interviews, take sworn statements, use compulsory process as described in Rule 6, or take any other actions that the Committee deems appropriate to secure the evidence necessary to make a determination.

(c) NOTICE TO RESPONDENT: The Committee shall give written notice to any known respondent who is the subject of an adjudicatory review. The notice shall be sent to the respondent no later than five working days after the Committee has voted to conduct an adjudicatory review. The notice shall include a statement of the nature of the possible violation, and description of the evidence indicating that a possible violation occurred. The Committee may offer the respondent an opportunity to present a statement, orally or in writing, or to respond to questions from members of the Committee, the Committee staff, or outside counsel.

(d) RIGHT TO A HEARING: The Committee shall accord a respondent an opportunity for a hearing before it recommends disciplinary action against that respondent to the Senate or before it imposes an order of restitution or reprimand (not requiring discipline by the full Senate).

(e) PROGRESS REPORTS TO COMMITTEE: The Committee staff or outside counsel shall periodically report to the Committee concerning the progress of the adjudicatory review. Such reports shall be delivered to the Committee in the form and according to the schedule prescribed by the Committee, and shall be confidential.

(f) FINAL REPORT OF ADJUDICATORY REVIEW TO COMMITTEE: Upon completion of an adjudicatory review, including any hearings held pursuant to Rule 5, the outside counsel or the staff shall submit a confidential written report to the Committee, which shall detail the factual findings of the adjudicatory review and which may recommend disciplinary action, if appropriate. Findings of fact of the adjudicatory review shall be detailed in this report whether or not disciplinary action is recommended.

(g) COMMITTEE ACTION:

(1) As soon as practicable following submission of the report of the staff or outside counsel on the adjudicatory review, the Committee shall prepare and submit a report to the Senate, including a recommendation or proposed resolution to the Senate concerning disciplinary action, if appropriate. A report shall be issued, stating in detail the Committee's findings of fact, whether or not disciplinary action is recommended. The report shall also explain fully the reasons underlying the Committee's recommendation concerning disciplinary action, if any. No adjudicatory review of conduct of a Member, officer or employee of the Senate may be conducted, or report or resolution or recommendation relating to such an adjudicatory review of conduct may be made, except by the affirmative recorded vote of not less than four members of the Committee.

(2) Pursuant to S. Res. 338, as amended, section 2 (a), subsections (2), (3), and (4), after receipt of the report prescribed by paragraph (f) of this rule, the Committee may make

any of the following recommendations for disciplinary action or issue an order for reprimand or restitution, as follows:

(i) In the case of a Member, a recommendation to the Senate for expulsion, censure, payment of restitution, recommendation to a Member's party conference regarding the Member's seniority or positions of responsibility, or a combination of these;

(ii) In the case of an officer or employee, a recommendation to the Senate of dismissal, suspension, payment of restitution, or a combination of these;

(iii) In the case where the Committee determines, after according to the Member, officer, or employee due notice and opportunity for a hearing, that misconduct occurred warranting discipline less serious than discipline by the full Senate, and subject to the provisions of paragraph (h) of this rule relating to appeal, by a unanimous vote of six members order that a Member, officer or employee be reprimanded or pay restitution or both;

(iv) In the case where the Committee determines that misconduct is inadvertent, technical, or otherwise of a de minimis nature, issue a public or private letter of admonition to a Member, officer or employee, which shall not be subject to appeal to the Senate.

(3) In the case where the Committee determines, upon consideration of all the evidence, that the facts do not warrant a finding that there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred, the Committee may dismiss the matter.

(4) Promptly, after the conclusion of the adjudicatory review, the Committee's report and recommendation, if any, shall be forwarded to the Secretary of the Senate, and a copy shall be provided to the complainant and the respondent. The full report and recommendation, if any, shall be printed and made public, unless the Committee determines by the recorded vote of not less than four members of the Committee that it should remain confidential.

(h) RIGHT OF APPEAL:

(1) Any individual who is the subject of a reprimand or order of restitution, or both, pursuant to subsection (g)(2)(iii), may, within 30 days of the Committee's report to the Senate of its action imposing a reprimand or order of restitution, or both, appeal to the Senate by providing written notice of the appeal to the Committee and the presiding officer of the Senate. The presiding officer shall cause the notice of the appeal to be printed in the Congressional Record and the Senate Journal.

(2) S. Res. 338 provides that a motion to proceed to consideration of an appeal pursuant to paragraph (1) shall be highly privileged and not debatable. If the motion to proceed to consideration of the appeal is agreed to, the appeal shall be decided on the basis of the Committee's report to the Senate. Debate on the appeal shall be limited to 10 hours, which shall be divided equally between, and controlled by, those favoring and those opposing the appeal.

RULE 5: PROCEDURES FOR HEARINGS

(a) RIGHT TO HEARING: The Committee may hold a public or executive hearing in any preliminary inquiry, adjudicatory review, or other proceeding. The Committee shall accord a respondent an opportunity for a hearing before it recommends disciplinary action against that respondent to the Senate or before it imposes an order of restitution or reprimand. (See Rule 4(d).)

(b) NON-PUBLIC HEARINGS: The Committee may at any time during a hearing determine in accordance with paragraph 5(b) of Rule XXVI of the Standing Rules of the Senate whether to receive the testimony of specific witnesses in executive session. If a witness desires to express

a preference for testifying in public or in executive session, he or she shall so notify the Committee at least five days before he or she is scheduled to testify.

(c) ADJUDICATORY HEARINGS: The Committee may, by the recorded vote of not less than four members of the Committee, designate any public or executive hearing as an adjudicatory hearing; and any hearing which is concerned with possible disciplinary action against a respondent or respondents designated by the Committee shall be an adjudicatory hearing. In any adjudicatory hearing, the procedures described in paragraph (j) shall apply.

(d) SUBPOENA POWER: The Committee may require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such correspondence, books, papers, documents or other articles as it deems advisable. (See Rule 6.)

(e) NOTICE OF HEARINGS: The Committee shall make public an announcement of the date, place, and subject matter of any hearing to be conducted by it, in accordance with Rule 1(f).

(f) PRESIDING OFFICER: The Chairman shall preside over the hearings, or in his absence the Vice Chairman. If the Vice Chairman is also absent, a Committee member designated by the Chairman shall preside. If an oath or affirmation is required, it shall be administered to a witness by the Presiding Officer, or in his absence, by any Committee member.

(g) WITNESSES:

(1) A subpoena or other request to testify shall be served on a witness sufficiently in advance of his or her scheduled appearance to allow the witness a reasonable period of time, as determined by the Committee, to prepare for the hearing and to employ counsel if desired.

(2) The Committee may, by recorded vote of not less than four members of the Committee, rule that no member of the Committee or staff or outside counsel shall make public the name of any witness subpoenaed by the Committee before the date of that witness's scheduled appearance, except as specifically authorized by the Chairman and Vice Chairman, acting jointly.

(3) Any witness desiring to read a prepared or written statement in executive or public hearings shall file a copy of such statement with the Committee at least two working days in advance of the hearing at which the statement is to be presented. The Chairman and Vice Chairman shall determine whether such statements may be read or placed in the record of the hearing.

(4) Insofar as practicable, each witness shall be permitted to present a brief oral opening statement, if he or she desires to do so.

(h) RIGHT TO TESTIFY: Any person whose name is mentioned or who is specifically identified or otherwise referred to in testimony or in statements made by a Committee member, staff member or outside counsel, or any witness, and who reasonably believes that the statement tends to adversely affect his or her reputation may—

(1) Request to appear personally before the Committee to testify in his or her own behalf; or

(2) File a sworn statement of facts relevant to the testimony or other evidence or statement of which he or she complained. Such request and such statement shall be submitted to the Committee for its consideration and action.

(i) CONDUCT OF WITNESSES AND OTHER ATTENDEES: The Presiding Officer may punish any breaches of order and decorum by censure and exclusion from the hearings. The Committee, by majority vote, may recommend to the Senate that the offender be cited for contempt of Congress.

(j) ADJUDICATORY HEARING PROCEDURES:

(1) NOTICE OF HEARINGS: A copy of the public announcement of an adjudicatory hearing, required by paragraph (e), shall be furnished together with a copy of these Rules to all witnesses at the time that they are subpoenaed or otherwise summoned to testify.

(2) PREPARATION FOR ADJUDICATORY HEARINGS:

(A) At least five working days prior to the commencement of an adjudicatory hearing, the Committee shall provide the following information and documents to the respondent, if any:

(i) a list of proposed witnesses to be called at the hearing;

(ii) copies of all documents expected to be introduced as exhibits at the hearing; and

(iii) a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

(B) At least two working days prior to the commencement of an adjudicatory hearing, the respondent, if any, shall provide the information and documents described in divisions (i), (ii) and (iii) of subparagraph (A) to the Committee.

(C) At the discretion of the Committee, the information and documents to be exchanged under this paragraph shall be subject to an appropriate agreement limiting access and disclosure.

(D) If a respondent refuses to provide the information and documents to the Committee (see (A) and (B) of this subparagraph), or if a respondent or other individual violates an agreement limiting access and disclosure, the Committee, by majority vote, may recommend to the Senate that the offender be cited for contempt of Congress.

(3) SWEARING OF WITNESSES: All witnesses who testify at adjudicatory hearings shall be sworn unless the Presiding Officer, for good cause, decides that a witness does not have to be sworn.

(4) RIGHT TO COUNSEL: Any witness at an adjudicatory hearing may be accompanied by counsel of his or her own choosing, who shall be permitted to advise the witness of his or her legal rights during the testimony.

(5) RIGHT TO CROSS-EXAMINE AND CALL WITNESSES:

(A) In adjudicatory hearings, any respondent and any other person who obtains the permission of the Committee, may personally or through counsel cross-examine witnesses called by the Committee and may call witnesses in his or her own behalf.

(B) A respondent may apply to the Committee for the issuance of subpoenas for the appearance of witnesses or the production of documents on his or her behalf. An application shall be approved upon a concise showing by the respondent that the proposed testimony or evidence is relevant and appropriate, as determined by the Chairman and Vice Chairman.

(C) With respect to witnesses called by a respondent, or other individual given permission by the Committee, each such witness shall first be examined by the party who called the witness or by that party's counsel.

(D) At least one working day before a witness's scheduled appearance, a witness or a witness's counsel may submit to the Committee written questions proposed to be asked of that witness. If the Committee determines that it is necessary, such questions may be asked by any member of the Committee, or by any Committee staff member if directed by a Committee member. The witness or witness's counsel may also submit additional sworn testimony for the record within twenty-four hours after the last day that the witness has testified. The insertion of such testimony in that day's record is subject to the ap-

proval of the Chairman and Vice Chairman acting jointly within five days after the testimony is received.

(6) ADMISSIBILITY OF EVIDENCE:

(A) The object of the hearing shall be to ascertain the truth. Any evidence that may be relevant and probative shall be admissible unless privileged under the Federal Rules of Evidence. Rules of evidence shall not be applied strictly, but the Presiding Officer shall exclude irrelevant or unduly repetitious testimony. Objections going only to the weight that should be given evidence will not justify its exclusion.

(B) The Presiding Officer shall rule upon any question of the admissibility of testimony or other evidence presented to the Committee. Such rulings shall be final unless reversed or modified by a recorded vote of not less than four members of the Committee before the recess of that day's hearings.

(C) Notwithstanding paragraphs (A) and (B), in any matter before the Committee involving allegations of sexual discrimination, including sexual harassment, or sexual misconduct, by a Member, officer, or employee within the jurisdiction of the Committee, the Committee shall be guided by the standards and procedures of Rule 412 of the Federal Rules of Evidence, except that the Committee may admit evidence subject to the provisions of this paragraph only upon a determination of not less than four members of the full Committee that the interests of justice require that such evidence be admitted.

(7) SUPPLEMENTARY HEARING PROCEDURES: The Committee may adopt any additional special hearing procedures that it deems necessary or appropriate to a particular adjudicatory hearing. Copies of such supplementary procedures shall be furnished to witnesses and respondents, and shall be made available upon request to any member of the public.

(k) TRANSCRIPTS:

(1) An accurate stenographic or recorded transcript shall be made of all public and executive hearings. Any member of the Committee, Committee staff member, outside counsel retained by the Committee, or witness may examine a copy of the transcript retained by the Committee of his or her own remarks and may suggest to the official reporter any typographical or transcription errors. If the reporter declines to make the requested corrections, the member, staff member, outside counsel or witness may request a ruling by the Chairman and Vice Chairman, acting jointly. Any member or witness shall return the transcript with suggested corrections to the Committee offices within five working days after receipt of the transcript, or as soon thereafter as is practicable. If the testimony was given in executive session, the member or witness may only inspect the transcript at a location determined by the Chairman and Vice Chairman, acting jointly. Any questions arising with respect to the processing and correction of transcripts shall be decided by the Chairman and Vice Chairman, acting jointly.

(2) Except for the record of a hearing which is closed to the public, each transcript shall be printed as soon as is practicable after receipt of the corrected version. The Chairman and Vice Chairman, acting jointly, may order the transcript of a hearing to be printed without the corrections of a member or witness if they determine that such member or witness has been afforded a reasonable time to correct such transcript and such transcript has not been returned within such time.

(3) The Committee shall furnish each witness, at no cost, one transcript copy of that witness's testimony given at a public hearing. If the testimony was given in executive session, then a transcript copy shall be provided upon request, subject to appropriate conditions and restrictions prescribed by the Chairman and Vice Chairman. If any individual violates such

conditions and restrictions, the Committee may recommend by majority vote that he or she be cited for contempt of Congress.

RULE 6: SUBPOENAS AND DEPOSITIONS

(a) SUBPOENAS:

(1) AUTHORIZATION FOR ISSUANCE: Subpoenas for the attendance and testimony of witnesses at depositions or hearings, and subpoenas for the production of documents and tangible things at depositions, hearings, or other times and places designated therein, may be authorized for issuance by either (A) a majority vote of the Committee, or (B) the Chairman and Vice Chairman, acting jointly, at any time during a preliminary inquiry, adjudicatory review, or other proceeding.

(2) SIGNATURE AND SERVICE: All subpoenas shall be signed by the Chairman or the Vice Chairman and may be served by any person eighteen years of age or older, who is designated by the Chairman or Vice Chairman. Each subpoena shall be served with a copy of the Rules of the Committee and a brief statement of the purpose of the Committee's proceeding.

(3) WITHDRAWAL OF SUBPOENA: The Committee, by recorded vote of not less than four members of the Committee, may withdraw any subpoena authorized for issuance by it or authorized for issuance by the Chairman and Vice Chairman, acting jointly. The Chairman and Vice Chairman, acting jointly, may withdraw any subpoena authorized for issuance by them.

(b) DEPOSITIONS:

(1) PERSONS AUTHORIZED TO TAKE DEPOSITIONS: Depositions may be taken by any member of the Committee designated by the Chairman and Vice Chairman, acting jointly, or by any other person designated by the Chairman and Vice Chairman, acting jointly, including outside counsel, Committee staff, other employees of the Senate, or government employees detailed to the Committee.

(2) DEPOSITION NOTICES: Notices for the taking of depositions shall be authorized by the Committee, or the Chairman and Vice Chairman, acting jointly, and issued by the Chairman, Vice Chairman, or a Committee staff member or outside counsel designated by the Chairman and Vice Chairman, acting jointly. Depositions may be taken at any time during a preliminary inquiry, adjudicatory review or other proceeding. Deposition notices shall specify a time and place for examination. Unless otherwise specified, the deposition shall be in private, and the testimony taken and documents produced shall be deemed for the purpose of these rules to have been received in a closed or executive session of the Committee. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness's failure to appear, or to testify, or to produce documents, unless the deposition notice was accompanied by a subpoena authorized for issuance by the Committee, or the Chairman and Vice Chairman, acting jointly.

(3) COUNSEL AT DEPOSITIONS: Witnesses may be accompanied at a deposition by counsel to advise them of their rights.

(4) DEPOSITION PROCEDURE: Witnesses at depositions shall be examined upon oath administered by an individual authorized by law to administer oaths, or administered by any member of the Committee if one is present. Questions may be propounded by any person or persons who are authorized to take depositions for the Committee. If a witness objects to a question and refuses to testify, or refuses to produce a document, any member of the Committee who is present may rule on the objection and, if the objection is overruled, direct the

witness to answer the question or produce the document. If no member of the Committee is present, the individual who has been designated by the Chairman and Vice Chairman, acting jointly, to take the deposition may proceed with the deposition, or may, at that time or at a subsequent time, seek a ruling by telephone or otherwise on the objection from the Chairman or Vice Chairman of the Committee, who may refer the matter to the Committee or rule on the objection. If the Chairman or Vice Chairman, or the Committee upon referral, overrules the objection, the Chairman, Vice Chairman, or the Committee as the case may be, may direct the witness to answer the question or produce the document. The Committee shall not initiate procedures leading to civil or criminal enforcement unless the witness refuses to testify or produce documents after having been directed to do so.

(5) FILING OF DEPOSITIONS: Deposition testimony shall be transcribed or electronically recorded. If the deposition is transcribed, the individual administering the oath shall certify on the transcript that the witness was duly sworn in his or her presence and the transcriber shall certify that the transcript is a true record of the testimony. The transcript with these certifications shall be filed with the chief clerk of the Committee, and the witness shall be furnished with access to a copy at the Committee's offices for review. Upon inspecting the transcript, within a time limit set by the Chairman and Vice Chairman, acting jointly, a witness may request in writing changes in the transcript to correct errors in transcription. The witness may also bring to the attention of the Committee errors of fact in the witness's testimony by submitting a sworn statement about those facts with a request that it be attached to the transcript. The Chairman and Vice Chairman, acting jointly, may rule on the witness's request, and the changes or attachments allowed shall be certified by the Committee's chief clerk. If the witness fails to make any request under this paragraph within the time limit set, this fact shall be noted by the Committee's chief clerk. Any person authorized by the Committee may stipulate with the witness to changes in this procedure.

RULE 7: VIOLATIONS OF LAW; PERJURY; LEGISLATIVE RECOMMENDATIONS; EDUCATIONAL MANDATE; AND APPLICABLE RULES AND STANDARDS OF CONDUCT

(a) VIOLATIONS OF LAW: Whenever the Committee determines by the recorded vote of not less than four members of the full Committee that there is reason to believe that a violation of law, including the provision of false information to the Committee, may have occurred, it shall report such possible violation to the proper Federal and state authorities.

(b) PERJURY: Any person who knowingly and willfully swears falsely to a sworn complaint or any other sworn statement to the Committee does so under penalty of perjury. The Committee may refer any such case to the Attorney General for prosecution.

(c) LEGISLATIVE RECOMMENDATIONS: The Committee shall recommend to the Senate by report or resolution such additional rules, regulations, or other legislative measures as it determines to be necessary or desirable to ensure proper standards of conduct by Members, officers, or employees of the Senate. The Committee may conduct such inquiries as it deems necessary to prepare such a report or resolution, including the holding of hearings in public or executive session and the use of subpoenas to compel the attendance of witnesses or the production of materials. The Committee may make legislative recommendations as a result of its findings in a preliminary inquiry, adjudicatory review, or other proceeding.

(d) Educational Mandate: The Committee shall develop and implement programs and materials designed to educate Members, officers, and employees about the laws, rules, regulations, and standards of conduct applicable to such individuals in the performance of their duties.

(e) APPLICABLE RULES AND STANDARDS OF CONDUCT:

(1) Notwithstanding any other provision of this section, no adjudicatory review shall be initiated of any alleged violation of any law, the Senate Code of Official Conduct, rule, or regulation which was not in effect at the time the alleged violation occurred. No provisions of the Senate Code of Official Conduct shall apply to or require disclosure of any act, relationship, or transaction which occurred prior to the effective date of the applicable provision of the Code.

(2) The Committee may initiate an adjudicatory review of any alleged violation of a rule or law which was in effect prior to the enactment of the Senate Code of Official Conduct if the alleged violation occurred while such rule or law was in effect and the violation was not a matter resolved on the merits by the predecessor Committee.

RULE 8: PROCEDURES FOR HANDLING COMMITTEE SENSITIVE AND CLASSIFIED MATERIALS

(a) PROCEDURES FOR HANDLING COMMITTEE SENSITIVE MATERIALS:

(1) Committee Sensitive information or material is information or material in the possession of the Select Committee on Ethics which pertains to illegal or improper conduct by a present or former Member, officer, or employee of the Senate; to allegations or accusations of such conduct; to any resulting preliminary inquiry, adjudicatory review or other proceeding by the Select Committee on Ethics into such allegations or conduct; to the investigative techniques and procedures of the Select Committee on Ethics; or to other information or material designated by the staff director, or outside counsel designated by the Chairman and Vice Chairman.

(2) The Chairman and Vice Chairman of the Committee shall establish such procedures as may be necessary to prevent the unauthorized disclosure of Committee Sensitive information in the possession of the Committee or its staff. Procedures for protecting Committee Sensitive materials shall be in writing and shall be given to each Committee staff member.

(b) PROCEDURES FOR HANDLING CLASSIFIED MATERIALS:

(1) Classified information or material is information or material which is specifically designated as classified under the authority of Executive Order 11652 requiring protection of such information or material from unauthorized disclosure in order to prevent damage to the United States.

(2) The Chairman and Vice Chairman of the Committee shall establish such procedures as may be necessary to prevent the unauthorized disclosure of classified information in the possession of the Committee or its staff. Procedures for handling such information shall be in writing and a copy of the procedures shall be given to each staff member cleared for access to classified information.

(3) Each member of the Committee shall have access to classified material in the Committee's possession. Only Committee staff members with appropriate security clearances and a need-to-know, as approved by the Chairman and Vice Chairman, acting jointly, shall have access to classified information in the Committee's possession.

(c) PROCEDURES FOR HANDLING COMMITTEE SENSITIVE AND CLASSIFIED DOCUMENTS:

(1) Committee Sensitive documents and materials shall be stored in the Committee's offices, with appropriate safeguards for maintaining the security of such documents or materials. Classified documents and materials shall be further segregated in the Committee's offices in secure filing safes. Removal from the Committee offices of such documents or materials is prohibited except as necessary for use in, or preparation for, interviews or Committee meetings, including the taking of testimony, or as otherwise specifically approved by the staff director or by outside counsel designated by the Chairman and Vice Chairman.

(2) Each member of the Committee shall have access to all materials in the Committee's possession. The staffs of members shall not have access to Committee Sensitive or classified documents and materials without the specific approval in each instance of the Chairman, and Vice Chairman, acting jointly. Members may examine such materials in the Committee's offices. If necessary, requested materials may be hand delivered by a member of the Committee staff to the member of the Committee, or to a staff person(s) specifically designated by the member, for the Member's or designated staffer's examination. A member of the Committee who has possession of Committee Sensitive documents or materials shall take appropriate safeguards for maintaining the security of such documents or materials in the possession of the Member or his or her designated staffer.

(3) Committee Sensitive documents that are provided to a Member of the Senate in connection with a complaint that has been filed against the Member shall be hand delivered to the Member or to the Member's Chief of Staff or Administrative Assistant. Committee Sensitive documents that are provided to a Member of the Senate who is the subject of a preliminary inquiry, adjudicatory review, or other proceeding, shall be hand delivered to the Member or to his or her specifically designated representative.

(4) Any Member of the Senate who is not a member of the Committee and who seeks access to any Committee Sensitive or classified documents or materials, other than documents or materials which are matters of public record, shall request access in writing. The Committee shall decide by majority vote whether to make documents or materials available. If access is granted, the Member shall not disclose the information except as authorized by the Committee.

(5) Whenever the Committee makes Committee Sensitive or classified documents or materials available to any Member of the Senate who is not a member of the Committee, or to a staff person of a Committee member in response to a specific request to the Chairman and Vice Chairman, a written record shall be made identifying the Member of the Senate requesting such documents or materials and describing what was made available and to whom.

(d) NON-DISCLOSURE POLICY AND AGREEMENT:

(1) Except as provided in the last sentence of this paragraph, no member of the Select Committee on Ethics, its staff or any person engaged by contract or otherwise to perform services for the Select Committee on Ethics shall release, divulge, publish, reveal by writing, word, conduct, or disclose in any way, in whole, or in part, or by way of summary, during tenure with the Select Committee on Ethics or anytime thereafter, any testimony given before the Select Committee on Ethics in executive session (including the name of any witness who appeared or was called to appear in executive session), any classified or Committee Sensitive information, document or material, received or generated by the Select Committee on Ethics or any classified or Committee Sensitive information which may come into the possession of such person during tenure with the Select Committee on Ethics or its staff. Such information, documents, or material may be released to an official of the executive branch properly cleared for access with a need-to-know, for any purpose or in connection with any proceeding, judicial or otherwise, as authorized by the Select Committee on Ethics, or in the event of termination of the Select Committee on Ethics, in such a manner as may be determined by its successor or by the Senate.

(2) No member of the Select Committee on Ethics staff or any person engaged by contract or otherwise to perform services for the Select Committee on Ethics, shall be granted access to classified or Committee Sensitive information or material in the possession of the Select Committee on Ethics unless and until such person agrees in writing, as a condition of employment, to the non-disclosure policy. The agreement shall become effective when signed by the Chairman and Vice Chairman on behalf of the Committee.

RULE 9: BROADCASTING AND NEWS COVERAGE OF COMMITTEE PROCEEDINGS

(a) Whenever any hearing or meeting of the Committee is open to the public, the Committee shall permit that hearing or meeting to be covered in whole or in part, by television broadcast, radio broadcast, still photography, or by any other methods of coverage, unless the Committee decides by recorded vote of not less than four members of the Committee that such coverage is not appropriate at a particular hearing or meeting.

(b) Any witness served with a subpoena by the Committee may request not to be photographed at any hearing or to give evidence or testimony while the broadcasting, reproduction, or coverage of that hearing, by radio, television, still photography, or other methods is occurring. At the request of any such witness who does not wish to be subjected to radio, television, still photography, or other methods of coverage, and subject to the approval of the Committee, all lenses shall be covered and all microphones used for coverage turned off.

(c) If coverage is permitted, it shall be in accordance with the following requirements:

(1) Photographers and reporters using mechanical recording, filming, or broadcasting apparatus shall position their equipment so as not to interfere with the seating, vision, and hearing of the Committee members and staff, or with the orderly process of the meeting or hearing.

(2) If the television or radio coverage of the hearing or meeting is to be presented to the public as live coverage, the coverage shall be conducted and presented without commercial sponsorship.

(3) Personnel providing coverage by the television and radio media shall be currently accredited to the Radio and Television Correspondents' Galleries.

(4) Personnel providing coverage by still photography shall be currently accredited to the Press Photographers' Gallery Committee of Press Photographers.

(5) Personnel providing coverage by the television and radio media and by still photography shall conduct themselves and the coverage activities in an orderly and unobtrusive manner.

RULE 10: PROCEDURES FOR ADVISORY OPINIONS

(a) WHEN ADVISORY OPINIONS ARE RENDERED:

(1) The Committee shall render an advisory opinion, in writing within a reasonable time, in response to a written request by a Member or officer of the Senate or a candidate for nomination for election, or election to the Senate, concerning the application of any law, the Senate Code of Official Conduct, or any rule or regulation of the Senate within the Committee's jurisdiction, to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion.

(2) The Committee may issue an advisory opinion in writing within a reasonable time in response to a written request by any employee of the Senate concerning the application of any law, the Senate Code of Official Conduct, or any rule or regulation of the Senate within the Committee's jurisdiction, to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion.

(b) FORM OF REQUEST: A request for an advisory opinion shall be directed in writing to the Chairman of the Committee and shall include a complete and accurate statement of the specific factual situation with respect to which the request is made as well as the specific question or questions which the requestor wishes the Committee to address.

(c) OPPORTUNITY FOR COMMENT:

(1) The Committee will provide an opportunity for any interested party to comment on a request for an advisory opinion—

(A) which requires an interpretation on a significant question of first impression that will affect more than a few individuals; or

(B) when the Committee determines that comments from interested parties would be of assistance.

(2) Notice of any such request for an advisory opinion shall be published in the Congressional Record, with appropriate deletions to insure confidentiality, and interested parties will be asked to submit their comments in writing to the Committee within ten days.

(3) All relevant comments received on a timely basis will be considered.

(d) ISSUANCE OF AN ADVISORY OPINION:

(1) The Committee staff shall prepare a proposed advisory opinion in draft form which will first be reviewed and approved by the Chairman and Vice Chairman, acting jointly, and will be presented to the Committee for final action. If (A) the Chairman and Vice Chairman cannot agree, or (B) either the Chairman or Vice Chairman requests that it be taken directly to the Committee, then the proposed advisory opinion shall be referred to the Committee for its decision.

(2) An advisory opinion shall be issued only by the affirmative recorded vote of a majority of the members voting.

(3) Each advisory opinion issued by the Committee shall be promptly transmitted for publication in the Congressional Record after appropriate deletions are made to insure confidentiality. The Committee may at any time revise, withdraw, or elaborate on any advisory opinion.

(e) RELIANCE ON ADVISORY OPINIONS:

(1) Any advisory opinion issued by the Committee under Senate Resolution 338, 88th Congress, as amended, and the rules may be relied upon by—

(A) Any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered if the request for such advisory opinion included a complete and accurate statement of the specific factual situation; and

(B) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

(2) Any person who relies upon any provision or finding of an advisory opinion in accordance with the provisions of Senate Resolution 338, 88th Congress, as amended, and of the rules, and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction by the Senate.

RULE 11: PROCEDURES FOR INTERPRETATIVE RULINGS

(a) BASIS FOR INTERPRETATIVE RULINGS: Senate Resolution 338, 88th Congress, as amended, authorizes the Committee to issue interpretative rulings explaining and clarifying the application of any law, the Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction. The Committee also may issue such rulings clarifying or explaining any rule or regulation of the Select Committee on Ethics.

(b) REQUEST FOR RULING: A request for such a ruling must be directed in writing to the Chairman or Vice Chairman of the Committee.

(c) ADOPTION OF RULING:

(1) The Chairman and Vice Chairman, acting jointly, shall issue a written interpretative ruling in response to any such request, unless—

(A) they cannot agree,

(B) it requires an interpretation of a significant question of first impression, or

(C) either requests that it be taken to the Committee, in which event the request shall be directed to the Committee for a ruling.

(2) A ruling on any request taken to the Committee under subparagraph (1) shall be adopted by a majority of the members voting and the ruling shall then be issued by the Chairman and Vice Chairman.

(d) PUBLICATION OF RULINGS: The Committee will publish in the Congressional Record, after making appropriate deletions to ensure confidentiality, any interpretative rulings issued under this Rule which the Committee determines may be of assistance or guidance to other Members, officers or employees. The Committee may at any time revise, withdraw, or elaborate on interpretative rulings.

(e) RELIANCE ON RULINGS: Whenever an individual can demonstrate to the Committee's satisfaction that his or her conduct was in good faith reliance on an interpretative ruling issued in accordance with this Rule, the Committee will not recommend sanctions to the Senate as a result of such conduct.

(f) RULINGS BY COMMITTEE STAFF: The Committee staff is not authorized to make rulings or give advice, orally or in writing, which binds the Committee in any way.

RULE 12: PROCEDURES FOR COMPLAINTS INVOLVING IMPROPER USE OF THE MAILING FRANK

(a) AUTHORITY TO RECEIVE COMPLAINTS: The Committee is directed by section 6(b) of Public Law 93–191 to receive and dispose of complaints that a violation of the use of the mailing frank has occurred or is about to occur by a Member or officer of the Senate or by a surviving spouse of a Member. All such complaints will be processed in accordance with the provisions of these Rules, except as provided in paragraph (b).

(b) DISPOSITION OF COMPLAINTS:

(1) The Committee may dispose of any such complaint by requiring restitution of the cost of the mailing, pursuant to the franking statute, if it finds that the franking violation was the result of a mistake.

(2) Any complaint disposed of by restitution that is made after the Committee has formally commenced an adjudicatory review, must be summarized, together with the disposition, in a report to the Senate, as appropriate.

(3) If a complaint is disposed of by restitution, the complainant, if any, shall be notified of the disposition in writing.

(c) ADVISORY OPINIONS AND INTERPRETATIVE RULINGS: Requests for advisory opinions or interpretative rulings involving franking questions shall be processed in accordance with Rules 10 and 11.

RULE 13: PROCEDURES FOR WAIVERS

(a) AUTHORITY FOR WAIVERS: The Committee is authorized to grant a waiver under the following provisions of the Standing Rules of the Senate:

(1) Section 101(h) of the Ethics in Government Act of 1978, as amended (Rule XXXIV), relating to the filing of financial disclosure reports by individuals who are expected to perform or who have performed the duties of their offices or positions for less than one hundred and thirty days in a calendar year;

(2) Section 102(a)(2)(D) of the Ethics in Government Act, as amended (Rule XXXIV), relating to the reporting of gifts;

(3) Paragraph 1 of Rule XXXV relating to acceptance of gifts; or

(4) Paragraph 5 of Rule XLI relating to applicability of any of the provisions of the Code of Official Conduct to an employee of the Senate hired on a per diem basis.

(b) REQUESTS FOR WAIVERS: A request for a waiver under paragraph (a) must be directed to the Chairman or Vice Chairman in writing and must specify the nature of the waiver being sought and explain in detail the facts alleged to justify a waiver. In the case of a request submitted by an employee, the views of his or her supervisor (as determined under paragraph 12 of Rule XXXVII of the Standing Rules of the Senate) should be included with the waiver request.

(c) RULING: The Committee shall rule on a waiver request by recorded vote with a majority of those voting affirming the decision. With respect to an individual's request for a waiver in connection with the acceptance or reporting the value of gifts on the occasion of the individual's marriage, the Chairman and the Vice Chairman, acting jointly, may rule on the waiver.

(d) AVAILABILITY OF WAIVER DETERMINATIONS: A brief description of any waiver granted by the Committee, with appropriate deletions to ensure confidentiality, shall be made available for review upon request in the Committee office. Waivers granted by the Committee pursuant to the Ethics in Government Act of 1978, as amended, may only be granted pursuant to a publicly available request as required by the Act.

RULE 14: DEFINITION OF ''OFFICER OR EMPLOYEE''

(a) As used in the applicable resolutions and in these rules and procedures, the term ''officer or employee of the Senate'' means:

(1) An elected officer of the Senate who is not a Member of the Senate;

(2) An employee of the Senate, any committee or subcommittee of the Senate, or any Member of the Senate;

(3) The Legislative Counsel of the Senate or any employee of his office;

(4) An Official Reporter of Debates of the Senate and any person employed by the Official Reporters of Debates of the Senate in connection with the performance of their official duties;

(5) A member of the Capitol Police force whose compensation is disbursed by the Secretary of the Senate;

(6) An employee of the Vice President, if such employee's compensation is disbursed by the Secretary of the Senate;

(7) An employee of a joint committee of the Congress whose compensation is disbursed by the Secretary of the Senate;

(8) An officer or employee of any department or agency of the Federal Government whose services are being utilized on a full-time and continuing basis by a Member, officer,

employee, or committee of the Senate in accordance with Rule XLI(3) of the Standing Rules of the Senate; and

(9) Any other individual whose full-time services are utilized for more than ninety days in a calendar year by a Member, officer, employee, or committee of the Senate in the conduct of official duties in accordance with Rule XLI(4) of the Standing Rules of the Senate.

RULE 15: COMMITTEE STAFF

(a) COMMITTEE POLICY:

(1) The staff is to be assembled and retained as a permanent, professional, nonpartisan staff.

(2) Each member of the staff shall be professional and demonstrably qualified for the position for which he or she is hired.

(3) The staff as a whole and each member of the staff shall perform all official duties in a nonpartisan manner.

(4) No member of the staff shall engage in any partisan political activity directly affecting any congressional or presidential election.

(5) No member of the staff or outside counsel may accept public speaking engagements or write for publication on any subject that is in any way related to his or her employment or duties with the Committee without specific advance permission from the Chairman and Vice Chairman.

(6) No member of the staff may make public, without Committee approval, any Committee Sensitive or classified information, documents, or other material obtained during the course of his or her employment with the Committee.

(b) APPOINTMENT OF STAFF:

(1) The appointment of all staff members shall be approved by the Chairman and Vice Chairman, acting jointly.

(2) The Committee may determine by majority vote that it is necessary to retain staff members, including a staff recommended by a special counsel, for the purpose of a particular preliminary inquiry, adjudicatory review, or other proceeding. Such staff shall be retained only for the duration of that particular undertaking.

(3) The Committee is authorized to retain and compensate counsel not employed by the Senate (or by any department or agency of the Executive Branch of the Government) whenever the Committee determines that the retention of outside counsel is necessary or appropriate for any action regarding any complaint or allegation, preliminary inquiry, adjudicatory review, or other proceeding, which in the determination of the Committee, is more appropriately conducted by counsel not employed by the Government of the United States as a regular employee. The Committee shall retain and compensate outside counsel to conduct any adjudicatory review undertaken after a preliminary inquiry, unless the Committee determines that the use of outside counsel is not appropriate in the particular case.

(c) DISMISSAL OF STAFF: A staff member may not be removed for partisan, political reasons, or merely as a consequence of the rotation of the Committee membership. The Chairman and Vice Chairman, acting jointly, shall approve the dismissal of any staff member.

(d) STAFF WORKS FOR COMMITTEE AS WHOLE: All staff employed by the Committee or housed in Committee offices shall work for the Committee as a whole, under the general direction of the Chairman and Vice Chairman, and the immediate direction of the staff director or outside counsel.

(e) NOTICE OF SUMMONS TO TESTIFY: Each member of the Committee staff or outside counsel shall immediately notify the Committee in the event that he or she is called upon by a properly constituted authority to testify or provide confidential information obtained as a result of and during his or her employment with the Committee.

RULE 16: CHANGES IN SUPPLEMENTARY PROCEDURAL RULES

(a) ADOPTION OF CHANGES IN SUPPLEMENTARY RULES: The Rules of the Committee, other than rules established by statute, or by the Standing Rules and Standing Orders of the Senate, may be modified, amended, or suspended at any time, pursuant to a recorded vote of not less than four members of the full Committee taken at a meeting called with due notice when prior written notice of the proposed change has been provided each member of the Committee.

(b) PUBLICATION: Any amendments adopted to the Rules of this Committee shall be published in the Congressional Record in accordance with Rule XXVI(2) of the Standing Rules of the Senate.

SELECT COMMITTEE ON ETHICS

PART III—SUBJECT MATTER JURISDICTION

Following are sources of the subject matter jurisdiction of the Select Committee:

(a) The Senate Code of Official Conduct approved by the Senate in Title I of S. Res. 110, 95th Congress, April 1, 1977, as amended, and stated in Rules 34 through 43 of the Standing Rules of the Senate;

(b) Senate Resolution 338, 88th Congress, as amended, which states, among others, the duties to receive complaints and investigate allegations of improper conduct which may reflect on the Senate, violations of law, violations of the Senate Code of Official Conduct and violations of rules and regulations of the Senate; recommend disciplinary action; and recommend additional Senate Rules or regulations to insure proper standards of conduct;

(c) Residual portions of Standing Rules 41, 42, 43 and 44 of the Senate as they existed on the day prior to the amendments made by Title I of S. Res. 110;

(d) Public Law 93–191 relating to the use of the mail franking privilege by Senators, officers of the Senate; and surviving spouses of Senators;

(e) Senate Resolution 400, 94th Congress, Section 8, relating to unauthorized disclosure of classified intelligence information in the possession of the Select Committee on Intelligence;

(f) Public Law 95–105, Section 515, relating to the receipt and disposition of foreign gifts and decorations received by Senate members, officers and employees and their spouses or dependents;

(g) Preamble to Senate Resolution 266, 90th Congress, 2d Session, March 22, 1968; and

(h) The Code of Ethics for Government Service, H. Con. Res. 175, 85th Congress, 2d Session, July 11, 1958 (72 Stat. B12). Except that S. Res. 338, as amended by Section 202 of S. Res. 110 (April 2, 1977), and as amended by Section 3 of S. Res. 222 (1999), provides:

(g) Notwithstanding any other provision of this section, no adjudicatory review shall be initiated of any alleged violation of any law, the Senate Code of Official Conduct, rule, or regulation which was not in effect at the time the alleged violation occurred. No provisions of the Senate Code of Official Conduct shall apply to or require disclosure of any act, relationship, or transaction which occurred prior to the effective date of the applicable provision of the Code. The Select Committee may initiate an adjudicatory review of any alleged violation of a rule or law which

was in effect prior to the enactment of the Senate Code of Official Conduct if the alleged violation occurred while such rule or law was in effect and the violation was not a matter resolved on the merits by the predecessor Select Committee.

APPENDIX A—OPEN AND CLOSED MEETINGS

Paragraphs 5 (b) to (d) of Rule XXVI of the Standing Rules of the Senate reads as follows:

(b) Each meeting of a standing, select, or special committee of the Senate, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, except that a meeting or series of meetings by a committee or a subcommittee thereof on the same subject for a period of no more than fourteen calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in classes (1) through (6) would require the meeting to be closed followed immediately by a record vote in open session by a majority of the members of the committee or subcommittee when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(6) may divulge matters required to be kept confidential under other provisions of law or Government regulations.

(c) Whenever any hearing conducted by any such committee or subcommittee is open to the public, that hearing may be broadcast by radio or television, or both, under such rules as the committee or subcommittee may adopt.

(d) Whenever disorder arises during a committee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the Chair to enforce order on his own initiative and without any point of order being made by a Senator. When the Chair finds it necessary to maintain order, he shall have the power to clear the room, and the committee may act in closed session for so long as there is doubt of the assurance of order.

APPENDIX B—''SUPERVISORS'' DEFINED

Paragraph 12 of Rule XXXVII of the Standing Rules of the Senate reads as follows:

For purposes of this rule—

(a) a Senator or the Vice President is the supervisor of his administrative, clerical, or other assistants;

(b) a Senator who is the chairman of a committee is the supervisor of the professional, clerical, or other assistants to the committee except that minority staff members shall be under the supervision of the ranking minority Senator on the committee;

(c) a Senator who is a chairman of a subcommittee which has its own staff and financial authorization is the supervisor of the professional, clerical, or other assistants to the subcommittee except that minority staff members shall be under the supervision of the ranking minority Senator on the subcommittee;

(d) the President pro tempore is the supervisor of the Secretary of the Senate, Sergeant at Arms and Doorkeeper, the Chaplain, the Legislative Counsel, and the employees of the Office of the Legislative Counsel;

(e) the Secretary of the Senate is the supervisor of the employees of his office;

(f) the Sergeant at Arms and Doorkeeper is the supervisor of the employees of his office;

(g) the Majority and Minority Leaders and the Majority and Minority Whips are the supervisors of the research, clerical, and other assistants assigned to their respective offices;

(h) the Majority Leader is the supervisor of the Secretary for the Majority and the Secretary for the Majority is the supervisor of the employees of his office; and

(i) the Minority Leader is the supervisor of the Secretary for the Minority and the Secretary for the Minority is the supervisor of the employees of his office.

REVISIONS
Rules of Procedure
Select Committee on Ethics

Date revised	Amendment
December 1989.	Allows for a reduced quorum to take testimony except during an adjudicatory hearing.
February 1993	Adopted, under Admissibility of Evidence, paragraph (C), Rule 412 of the Federal Rules of Evidence.
May 1993	Corrected the following grammatical errors in the publication: page 2 section (d)(1) change paragraph 11 to paragraph 12; page 14 section (k)(B) change paragraph 11 to paragraph 12; page 15 section (5) change to ''Whenever a member of the Committee is ineligible . . .''
April 1997	Amends Rule 9(c) Procedures for Handling Committee Sensitive and Classified Documents:
	(1) Strike ''Committee Sensitive and classified documents and materials shall be segregated in secure filing safes.'' **Insert ''Committee Sensitive documents and materials shall be stored in the Committee's offices, with appropriate safeguards for maintaining the security of such documents or materials. Classified documents and materials shall be further segregated in the Committee's offices in secure filing safes.''**
	(2) Strike ''If necessary, requested materials may be taken by a member of the Committee staff to the office of a member of the Committee for his or her examination, but the Committee staff member shall remain with the Committee Sensitive or classified documents or materials at all times except as specifically authorized by the Chairman or Vice Chairman.'' **Insert ''If necessary, requested materials may be hand delivered by a member of the Committee staff to the member of the Committee, or to a staff person(s) specifically designated by the member, for the member's or designated staffer's examination. A member of the Committee who has possession of Committee Sensitive documents or materials shall take appropriate safeguards for maintaining the security of such documents or materials in the possession of the member or his or her designated staffer.**
	(3) Committee Sensitive documents that are provided to a Member of the Senate in connection with a complaint that has been filed against the Member shall be hand delivered to the Member or to the Member's Chief of Staff or Administrative Assistant. Committee Sensitive documents that are provided to a Member of the Senate who is the subject of a preliminary inquiry, an initial review, or an investigation, shall be hand delivered to the Member or to his or her specifically designated representative.
	(4) [Renumbered]
	(5) [Renumbered]
	Amends Committee Rule 14 by adding the following sentence to paragraph (c). **''The Committee shall rule on a waiver request by recorded vote, with a majority of those voting affirming the decision. With respect to an individual's request for a waiver in connection with the acceptance or reporting the value of gifts on the occasion of the individual's marriage, the Chairman and the Vice Chairman, acting jointly, may rule on the waiver.''**

Date revised	Amendment
November 1999.	Extensively amends the Supplementary Procedural Rules to reflect changes to the Committee charter as agreed to by S. Res. 222 [‘‘Senate Ethics Procedure Reform Resolution of 1999’’].

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APPENDIX D

SELECTED FEDERAL ETHICS-RELATED LAWS

TITLE 2, UNITED STATES CODE

2 U.S.C. § 66a. Restriction on payment of dual compensation by Secretary of Senate

Unless otherwise specifically authorized by law, no part of any appropriation disbursed by the Secretary of the Senate shall be available for payment of compensation to any person holding any position, for any period for which such person received compensation for holding any other position, the compensation for which is disbursed by the Secretary of the Senate.

2 U.S.C. § 439a. Use of contributed amounts for certain purposes

Amounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures, and any other amounts contributed to an individual for the purpose of supporting his or her activities as a holder of Federal office, may be used by such candidate or individual, as the case may be, to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office, may be contributed to any organization described in section 170(c) of Title 26, or may be used for any other lawful purpose, including transfers without limitation to any national, State, or local committee of any political party; except that no such amounts may be converted by any person to any personal use, other than to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office.

TITLE 5, UNITED STATES CODE

5 U.S.C. § 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.
(d)(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—
(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;
(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;
(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:
(i) all such written communications;
(ii) memoranda stating the substance of all such oral communications; and
(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and
(ii) of this subparagraph;
(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and
(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.
(2) This subsection does not constitute authority to withhold information from Congress.

5 U.S.C. § 3110. Employment of relatives; restrictions
(a) For the purpose of this section—
(1) ''agency'' means—
(A) an Executive agency;
(B) an office, agency, or other establishment in the legislative branch;
(C) an office, agency, or other establishment in the judicial branch; and
(D) the government of the District of Columbia;
(2) ''public official'' means an officer (including the President and a Member of Congress), a member of the uniformed service, an employee and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement, in connection with employment in an agency; and
(3) ''relative'' means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in- law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in- law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.
(b) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.
(c) An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.
(d) The Office of Personnel Management may prescribe regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this section.
(e) This section shall not be construed to prohibit the appointment of an individual who is a preference eligible in any case in which the passing over of that individual on a certificate of eligibles furnished under section 3317(a) of this title will result in the selection for appointment of an individual who is not a preference eligible.

5 U.S.C. § 3303. Competitive service; recommendations of Senators or Representatives

An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant.

5 U.S.C. § 5533. Dual pay from more than one position; limitations; exceptions

(a) Except as provided by subsections (b), (c), and (d) of this section, an individual is not entitled to receive basic pay from more than one position for more than an aggregate of 40 hours of work in one calendar week (Sunday through Saturday).

(b) Except as otherwise provided by subsection (c) of this section, the Office of Personnel Management, subject to the supervision and control of the President, may prescribe regulations under which exceptions may be made to the restrictions in subsection

(a) of this section when appropriate authority determines that the exceptions are warranted because personal services otherwise cannot be readily obtained.

(c)(1) Unless otherwise authorized by law and except as otherwise provided by paragraph (2) or (4) of this subsection, appropriated funds are not available for payment to an individual of pay from more than one position if the pay of one of the positions is paid by the Secretary of the Senate or the Clerk of the House of Representatives, or one of the positions is under the Office of the Architect of the Capitol, and if the aggregate gross pay from the positions exceeds $7,724 a year ($10,540, in the case of pay disbursed by the Secretary of the Senate).

(2) Notwithstanding paragraph (1) of this subsection, appropriated funds are not available for payment to an individual of pay from more than one position, for each of which the pay is disbursed by the Clerk of the House of Representatives, if the aggregate gross pay from those positions exceeds the maximum per annum gross rate of pay authorized to be paid to an employee out of the clerk hire allowance of a Member of the House.

(3) For the purposes of this subsection, ''gross pay'' means the annual rate of pay (or equivalent thereof in the case of an individual paid on other than an annual basis) received by an individual.

(4) Paragraph (1) of this subsection does not apply to pay on a when-actually- employed basis received from more than one consultant or expert position if the pay is not received for the same day.

(d) Subsection (a) of this section does not apply to—

(1) pay on a when-actually-employed basis received from more than one consultant or expert position if the pay is not received for the same hours of the same day;

(2) pay consisting of fees paid on other than a time basis;

(3) pay received by a teacher of the public schools of the District of Columbia for employment in a position during the summer vacation period;

(4) pay paid by the Tennessee Valley Authority to an employee performing part-time or intermittent work in addition to his normal duties when the Authority considers it to be in the interest of efficiency and economy;

(5) pay received by an individual holding a position—

(A) the pay of which is paid by the Secretary of the Senate or the Clerk of the House of Representatives; or

(B) under the Architect of the Capitol;

(6) pay paid by the United States Coast Guard to an employee occupying a part-time position of lamplighter; and

(7) pay within the purview of any of the following statutes:

(A) section 162 of title 2;

(B) section 23(b) of title 13;

(C) section 327 of title 15;

(D) section 907 of title 20;

(E) section 873 of title 33; or

(F) section 631 or 631a of title 31, District of Columbia Code.

(e)(1) This section does not apply to an individual employed under sections 174j–1 to 174j–7 or 174k of title 40.

(2) Subsection (c) of this section does not apply to pay received by a teacher of the public schools of the District of Columbia for employment in a position during the summer vacation period.

5 U.S.C. § 7342. Receipt and disposition of foreign gifts and decorations

(a) For the purpose of this section—

(1) ''employee'' means—

(A) an employee as defined by section 2105 of this title and an officer or employee of the United States Postal Service or of the Postal Rate Commission;

(B) an expert or consultant who is under contract under section 3109 of this title with the United States or any agency, department, or establishment thereof, including, inthe case of an organization performing services under such section, any individual involved in the performance of such services;

(C) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or the government of the District of Columbia;

(D) a member of a uniformed service;

(E) the President and the Vice President;

(F) a Member of Congress as defined by section 2106 of this title (except the Vice President) and any Delegate to the Congress; and

(G) the spouse of an individual described in subparagraphs (A) through (F) (unless such individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of such an individual, other than a spouse or dependent who is an employee under subparagraphs (A) through (F);

(2) ''foreign government'' means-

(A) any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;

(B) any international or multinational organization whose membership is composed of any unit of foreign government

described in subparagraph (A); and
(C) any agent or representative of any such unit or suchorganization, white acting as such;
(3) ''gift'' means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government;
(4) ''decoration'' means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government;
(5) ''minimal value'' means a retail value in the United States at the time of acceptance of $100 or less, except that-
(A) on January 1, 1981, and at 3 year intervals thereafter, ''minimal value'' shall be redefined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period; and
(B) regulations of an employing agency may define ''minimal value'' for its employees to be less than the value established under this paragraph; and (6) ''employing agency'' means
(A) the Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in subsections (c)(2)(A), (e)(1), and (g)(2)(B) shall be carried out by the Clerk of the House;
(B) the Select Committee on Ethics of the Senate, for Senators and employees of the Senate, except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in subsections (c)(2),(d), and (g)(2)(B) shall be carried out by the Secretary of the Senate;
(C) the Administrative Office of the United States Courts, for judges and judicial branch employees; and
(D) the department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees.
(b) An employee may not-
(l) request or otherwise encourage the tender of a gift or decoration; or
(2) accept a gift or decoration, other than in accordance with, the provisions of subsections (c) and (d).
(c)(1) The Congress consents to—
(A) the accepting and retaining by an employee of a gift of minimal value tendered and received as a souvenir or mark of courtesy; and
(B) the accepting by an employee of a gift of more than minimal value when such gift is in the nature of an educational scholarship or medical treatment or when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, except that
(i) a tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States; and
(ii) an employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance .is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency.
(2) Within 60 days after accepting a tangible gift of more than minimal value (other than a gift described in paragraph (1)(B)(ii)), an employee shall-
(A) deposit the gift for disposal with his or her employing agency; or
(B) subject to the approval of the employing agency, deposit the gift with that agency for official use.Within 30 days after terminating the official use of a gift under subparagraph (B), the employing agency shall forward the gift to the Administrator of General Services in accordance with subsection (e)(1) or provide for its disposal in accordance with subsection (e)(2).
(3) When an employee deposits a gift of more than minimal value for disposal or for official use pursuant to paragraph (2), or within 30 days after accepting travel or travel expenses as provided in paragraph (1)(B)(ii) unless such travel or travel expenses are accepted in accordance with specific instructions of his or her employing agency, the employee shall file a statement with his or her employing agency or its delegate containing the information prescribed in subsection (f) for that gift.
(d) The Congress consents to the accepting, retaining, and wearing by an employee of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the employing agency of such employee. Without this approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the employee, within sixty days of acceptance, with the employing agency for official use, for forwarding to the Administrator of General Services for disposal in accordance with subsection (e)(1), or for disposal in accordance with subsection (e)(2).
(e)(1) Except as provided in paragraph (2), gifts and decorations that have been deposited with an employing agency for disposal shall be (A) returned to the donor, or (B) forwarded to the Administrator of General Services for transfer, donation, or other disposal in accordance with the provisions of the Federal Property and Administrative Services Act of 1949. However, no gift or decoration that has been deposited for disposal may be sold without the approval of the Secretary of State, upon a determination that the sale will not adversely affect the foreign relations of the United States. Gifts and decorations may be sold by negotiated sale.
(2) Gifts and decorations received by a Senator or an employee of the Senate that are deposited with the Secretary of the Senate for disposal, or are deposited for an official use which has terminated, shall be disposed of by the Commission on Arts and Antiquities of the United States Senate. Any such gift or decoration may be returned by the

Commission to the donor or may be transferred or donated by the Commission, subject to such terms and conditions as it may prescribe,
(A) to an agency or instrumentality of (i) the United States, (ii) a State, territory, or possession of the United States, or a political subdivision of the foregoing, or (iii) the District of Columbia, or
(B) to an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code. Any such gift or decoration not disposed of as provided in the preceding sentence shall be forwarded to the Administrator of General Services for disposal in accordance with paragraph (1). If the Administrator does not dispose of such gift or decoration within one year, he shall, at the request of the Commission, return it to the Commission and the Commission may dispose of such gift or decoration in such manner as it considers proper, except that such gift or decoration may be sold only with the approval of the Secretary of State upon a determination that the sale will not adversely affect the foreign relations of the United States.
(f)(1) Not later than January 31 of each year, each employing agency or its delegate shall compile a listing of all statements filed during the preceding year by the employees of that agency pursuant to subsection (c)(3) and shall transmit such listing to the Secretary of State who shall publish a comprehensive listing of all such statements in the Federal Register.
(2)Such listings shall include for each tangible gift reported(A) the name and position of the employee;
(B) a brief description of the gift and the circumstances justifying acceptance;
(C) the identity, if known, of the foreign government and thename and position of the individual who presented the gift; (D) the date of acceptance of the gift;
(E) the estimated value in the United States of the gift at the time of acceptance; and
(F) disposition or current location of the gift.
(3) Such listings shall include for each gift of travel or travel expenses-
(A) the name and position of the employee;
(B) a brief description of the gift and the circumstances justifying acceptance; and
(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift.
(4) In transmitting such listings for the Central Intelligence Agency, the Director of Central Intelligence may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.
(g)(1) Each employing agency shall prescribe such regulations as may be necessary to carry out the purpose of this section. For all employing agencies in the executive branch, such regulations shall be prescribed pursuant to guidance provided by the Secretary of State. These regulations shall be implemented by each employing agency for its employees.
(2) Each employing agency shall
(A) report to the Attorney General cases in which there is reason to believe that an employee has violated this section;
(B) establish a procedure for obtaining an appraisal, when necessary, of the value of gifts; and
(C) take any other actions necessary to carry out the purpose of this section.
(h) The Attorney General may bring a civil action in any district court of the United States against any employee who knowingly solicits or accepts a gift from a foreign government not consented to by this section or who fails to deposit or report such gift as required by this section. The court in which such action is brought may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus $5,000.
(i) The President shall direct all Chiefs of a United States Diplomatic Mission to inform their host governments that it is a general policy of the United States Government to prohibit United States Government employees from receiving gifts or decorations of more than minimal value.
(j) Nothing in this section shall be construed to derogate any regulation prescribed by any employing agency which provides for more stringent limitations on the receipt of gifts and decorations by its employees.
(k) The provisions of this section do not apply to grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.

5 U.S.C. § 7351. Gifts to superiors
(a) An employee may not—
(1) solicit a contribution from another employee for a gift to an official superior;
(2) make a donation as a gift or give a gift to an official superior; or
(3) accept a gift from an employee receiving less pay than himself.
(b) An employee who violates this section shall be subject to appropriate disciplinary action by the employing agency or entity.
(c) Each supervising ethics office (as defined in section 7353(d)(1)) is authorized to issue regulations implementing this section, including regulations exempting voluntary gifts or contributions that are given or received for special occasions such as marriage or retirement or under other circumstances in which gifts are traditionally given or exchanged.

5 U.S.C. § 7353. Gifts to Federal employees
(a) Except as permitted by subsection (b), no Member of Congress or officer or employee of the executive, legislative, or judicial branch shall solicit or accept anything of value from a person—

(1) seeking official action from, doing business with, or (in the case of executive branch officers and employees) conducting activities regulated by, the individual's employing entity; or
(2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.
(b)(1) Each supervising ethics office is authorized to issue rules or regulations implementing the provisions of this section and providing for such reasonable exceptions as may be appropriate.
(2)(A) Subject to subparagraph (B), a Member, officer, or employee may accept a gift pursuant to rules or regulations established by such individual's supervising ethics office pursuant to paragraph (1).
(B) No gift may be accepted pursuant to subparagraph (A) in return for being influenced in the performance of any official act.
(3) Nothing in this section precludes a Member, officer, or employee from accepting gifts on behalf of the United States Government or any of its agencies in accordance with statutory authority.
(c) A Member of Congress or an officer or employee who violates this section shall be subject to appropriate disciplinary and other remedial action in accordance with any applicable laws, Executive orders, and rules or regulations.
(d) For purposes of this section—
(1) the term ''supervising ethics office'' means—
(A) the Committee on Standards of Official Conduct of the House of Representatives or the House of Representatives as a whole, for Members, officers, and employees of the House of Representatives;
(B) the Select Committee on Ethics of the Senate, or the Senate as a whole, for Senators, officers, and employees of the Senate;
(C) the Judicial Conference of the United States for judges and judicial branch officers and employees;
(D) the Office of Government Ethics for all executive branch officers and employees; and
(E) in the case of legislative branch officers and employees other than those specified in subparagraphs (A) and (B), the committee referred to in either such subparagraph to which reports filed by such officers and employees under title I of the Ethics in Government Act of 1978 are transmitted under such title, except that the authority of this section may be delegated by such committee with respect to such officers and employees; and
(2) the term ''officer or employee'' means an individual holding an appointive or elective position in the executive, legislative, or judicial branch of Government, other than a Member of Congress.

5 U.S.C. App. § 501. Outside earned income limitation
(a) Outside earned income limitation.—
(1) Except as provided by paragraph (2), a Member or an officer or employee who is a noncareer officer or employee and who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the 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, may not in any calendar year have outside earned income attributable to such calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year.
(2) In the case of any individual who during a calendar year becomes a Member or an officer or employee who is a noncareer officer or employee and who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the 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, such individual may not have outside earned income attributable to the portion of that calendar year which occurs after such individual becomes a Member or such an officer or employee which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year multiplied by a fraction the numerator of which is the number of days such individual is a Member or such officer or employee during such calendar year and the denominator of which is 365.
(b) Honoraria prohibition.—An individual may not receive any honorarium while that individual is a Member, officer or employee.
(c) Treatment of charitable contributions.—Any honorarium which, except for subsection (b), might be paid to a Member, officer or employee, but which is paid instead on behalf of such Member, officer or employee to a charitable organization, shall be deemed not to be received by such Member, officer or employee. No such payment shall exceed $2,000 or be made to a charitable organization from which such individual or a parent, sibling, spouse, child, or dependent relative of such individual debives any financial benefit.

5 U.S.C. App. § 502. Limitations on outside employment
(a) Limitations.—A Member or an officer or employee who is a noncareer officer or employee and who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the 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 shall not—
(1) receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship;
(2) permit that Member's, officer's, or employee's name to be used by any such firm, partnership, association,

corporation, or other entity;
(3) receive compensation for practicing a profession which involves a fiduciary relationship;
(4) serve for compensation as an officer or member of the board of any association, corporation, or other entity; or
(5) receive compensation for teaching, without the prior notification and approval of the appropriate entity referred to in section 503.
(b) Teaching compensation of justices and judges retired from regular active service.—For purposes of the limitation under section 501(a), any compensation for teaching approved under subsection (a)(5) of this section shall not be treated as outside earned income—
(1) when received by a justice of the United States retired from regular active service under section 371(b) of title 28, United States Code;
(2) when received by a judge of the United States retired from regular active service under section 371(b) of title 28, United States Code, for teaching performed during any calendar year for which such judge has met the requirements of subsection (f) of section 371 of title 28, United States Code, as certified in accordance with such subsection; or
(3) when received by a justice or judge of the United States retired from regular active service under section 372(a) of title 28, United States Code.

5 U.S.C. App. § 503. Administration
This title shall be subject to the rules and regulations of—
(1) and administered by—
(A) the Committee on Standards of Official Conduct of the House of Representatives, with respect to Members, officers, and employees of the House of Representatives; and
(B) in the case of Senators and legislative branch officers and employees other than those officers and employees specified in subparagraph (A), the committee to which reports filed by such officers and employees under title I are transmitted under such title, except that the authority of this section may be delegated by such committee with respect to such officers and employees;
(2) the Office of Government Ethics and administered by designated agency ethics officials with respect to officers and employees of the executive branch; and
(3) and administered by the Judicial Conference of the United States (or such other agency as it may designate) with respect to officers and employees of the judicial branch.

5 U.S.C. App. § 504. Civil penalties
(a) Civil action.—The Attorney General may bring a civil action in any appropriate United States district court against any individual who violates any provision of section 501 or 502. The court in which such action is brought may assess against such individual a civil penalty of not more than $10,000 or the amount of compensation, if any, which the individual received for the prohibited conduct, whichever is greater.
(b) Advisory opinions.—Any entity described in section 503 may render advisory opinions interpreting this title, in writing, to individuals covered by this title. Any individual to whom such an advisory opinion is rendered and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who, after the issuance of such advisory opinion, acts in good faith in accordance with its provisions and findings shall not, as a result of such actions, be subject to any sanction under subsection (a).

5 U.S.C. App. § 505. Definitions
For purposes of this title:
(1) The term ''Member'' means a Senator in, a Representative in, or a Delegate or Resident Commissioner to, the Congress.
(2) The term ''officer or employee'' means any officer or employee of the Government except any special Government employee (as defined in section 202 of title 18, United States Code).
(3) The term ''honorarium'' means a payment of money or anything of value for an appearance, speech or article (including a series of appearances, speeches, or articles if the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the Government) by a Member, officer or employee, excluding any actual and necessary travel expenses incurred by such individual (and one relative) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed.
(4) The term ''travel expenses'' means, with respect to a Member, officer or employee, or a relative of any such individual, the cost of transportation, and the cost of lodging and meals while away from his or her residence or principal place of employment.
(5) The term ''charitable organization'' means an organization described in section 170(c) of the Internal Revenue Code of 1986.

TITLE 18, UNITED STATES CODE

18 U.S.C. § 201. Bribery of public officials and witnesses

(a) For the purpose of this section—

(1) the term ''public official'' means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;

(2) the term ''person who has been selected to be a public official'' means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed; and

(3) the term ''official act'' means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.

(b) Whoever—

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

(A) to influence any official act; or

(B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

(A) being influenced in the performance of any official act;

(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) being induced to do or omit to do any act in violation of the official duty of such official or person;

(3) directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom;

(4) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for being influenced in testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom;

shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(c) Whoever—

(1) otherwise than as provided by law for the proper discharge of official duty—

(A) directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person;

(2) directly or indirectly, gives, offers or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such person's absence therefrom;

(3) directly or indirectly, demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon any such trial, hearing, or other proceeding, or for or because of such person's absence therefrom;

shall be fined under this title or imprisoned for not more than two years, or both.

(d) Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a

witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or in the case of expert witnesses, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.
(e) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.

18 U.S.C. § 202. Definitions
(a) For the purpose of sections 203, 205, 207, 208, and 209 of this title the term ''special Government employee'' shall mean an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis, a part-time United States commissioner, a part-time United States magistrate, or, regardless of the number of days of appointment, an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28. Notwithstanding the next preceding sentence, every person serving as a part-time local representative of a Member of Congress in the Member's home district or State shall be classified as a special Government employee. Notwithstanding section 29(c) and (d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r(c) and (d)), a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is voluntarily serving a period of extended active duty in excess of one hundred and thirty days shall be classified as an officer of the United States within the meaning of section 203 and sections 205 through 209 and 218. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving involuntarily shall be classified as a special Government employee. The terms ''officer or employee'' and ''special Government employee'' as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces.
(b) For the purposes of sections 205 and 207 of this title, the term ''official responsibility'' means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.
(c) Except as otherwise provided in such sections, the terms ''officer'' and ''employee'' in sections 203, 205, 207 through 209, and 218 of this title shall not include the President, the Vice President, a Member of Congress, or a Federal judge.
(d) The term ''Member of Congress'' in sections 204 and 207 means—
(1) a United States Senator; and
(2) a Representative in, or a Delegate or Resident Commissioner to, the House of Representatives.
(e) As used in this chapter, the term—
(1) ''executive branch'' includes each executive agency as defined in title 5, and any other entity or administrative unit in the executive branch;
(2) ''judicial branch'' means the Supreme Court of the United States; the United States courts of appeals; the United States district courts; the Court of International Trade; the United States bankruptcy courts; any court created pursuant to article I of the United States Constitution, including the Court of Appeals for the Armed Forces, the United States Claims Court, and the United States Tax Court, but not including a court of a territory or possession of the United States; the Federal Judicial Center; and any other agency, office, or entity in the judicial branch; and
(3) ''legislative branch'' means—
(A) the Congress; and
(B) the Office of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the United States Capitol Police, and any other agency, entity, office, or commission established in the legislative branch.

December 7, 1979

79–84

MEMORANDUM OPINION FOR THE SPECIAL COUNSEL, MERIT SYSTEMS PROTECTION BOARD

Merit Systems *Protection* Board—Special Counsel—

Employment of Temporary or Intermittent

Attorneys and Investigators (31 U.S.C. § 686)

Assistant Attorney General Harmon has asked me to respond to your request for our view whether your desire to employ temporary or intermittent investigators and attorneys to investigate and assist in the processing of your cases is consistent with relevant law and ethical considerations.(fn.1)

It is our understanding that you want to appoint both employees tailed from other Federal agencies and individuals from the private sector. They will serve under your supervision on a part-time basis not to exceed 6 months. These employees will be appointed when you have a backlog of work and will perform the sane functions as permanent employees of your Office; in particular, they will screen cases and interview witnesses.

I.

Temporary or intermittent experts and consultants may be regained by agencies when authorized by an appropriation or other statute. 5 U-S.C. 3109. Although your recent appropriation act authorizes you to employ experts and consultants, Act of Sept. 29, 1979, Pub. L. No- 96–74, 93 Stat. 572, in our view this appropriation may not be used to hire employees to perform the same functions as are performed by regular employees in your Office. Subchapter 1–2 of The Federal Personnel Manual, Chapter 304, provides a definition of ''consultant'' and ''expert.'' A consultant who is excepted from the competitive service is ''a person who serves as an advisor to an officer or instrumentality of the Government, as distinguished from an officer or employee who carries out the agency's duties and responsibilities.'' A consultant position is defined as ''a position requiring the performance of purely advisory or consultant services, not including performance of operating functions.'' The definition of expert is somewhat broader but, in our view, does not provide a basis for the plan you contemplate. The Federal Personnel Manual describes an expert as ''a person with excellent qualifications and a high degree of attainment in a professional * * * field. His knowledge and mastery of the principles, practices, problems, methods, and techniques of his field of activity, or of a specialized area in a field, are clearly superior to those usually possessed by ordinarily competent persons in that activity.'' An expert position is one that ''for satisfactory performance, requires the services of an expert in the particular field * * * and with duties that cannot be performed satisfactorily by someone not an expert in that field.'' This, although your appropriation for temporary experts could most likely be used to hire particularly qualified attorneys or investigators to work on unusually difficult matters, we do not understand this to be your current plan, and we do not believe that short-term employees hired to perform work exactly like that of your regular staff can properly be considered experts.

II.

Because we believe that the temporary agency and private-sector employees you want to appoint cannot be considered experts or consultants, the question arises whether there is any other statutory authorization for hiring them.

EMPLOYEES FROM OTHER FEDERAL AGENCIES

Section 686(a) of title 31, United States Code, authorizes purchase of services by one Federal Government entity from another Federal Government entity. This statute states:

> Any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefore and if it is determined by the head of such executive department, establishment, bureau, or office to be in the interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for * * * services. of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render, and shall pay promptly by check to such Federal agency as may be requisitioned, * * * all or part of the estimated or actual cost thereof * * *.

We read § 686(a) as allowing you to request the services of attorneys and investigators employed in another Federal Government entity that has authority to conduct activities similar to those the employees will be pursuing for you. Two prerequisites to your use of funds to reimburse the transferor agency are that the funds were appropriated for the type of work you will have the detailed attorneys and investigators perform,(fn.2)and that you provide an adequate rationale why the work cannot be satisfactorily performed by your own staff or by using the funds to increase your agency's

staff. This second requirement would be met if you can make a showing that Government efficiency is best served by bringing into your agency on a temporary basis employees who have gained experience in the kind of work to be performed while working for other agencies rather than hiring new employees and having to train them for a job that will last at most 6 months.

EMPLOYEES FROM THE PRIVATE SECTOR

You also propose to accept the gratuitous services of attorneys and investigators from the private sector.(fn.3) The acceptance of voluntary services is prohibited by 31 U.S.C. 665(b), which states that:

> No officer or employee of the United States shall accept voluntary service for the United States or employ personal service in excess of that authorized by law * * *.

This has been interpreted by the Attorney General to prohibit a contract for services for which no payment is required, but the prohibition on acceptance of voluntary services was not intended to cover services rendered gratuitously in an official capacity under a regular appointment to a position otherwise permitted by law to be nonsalaried. 30 Op. Att'y. Gen. 51 (1913). See also subchapter l–4.d of The Federal Personnel Manual, Chapter 311.

Subchapter 1–4 of Chapter 311 defines gratuitous service as that offered and accepted without pay under an appointment to perform duties the pay for which has not been established by law. If Congress has fixed a minimum salary for a position, an individual cannot waive that salary. Glavey v. United States, 182 U.S. 595 (1901). Cf., MacMath v. United States, 248 U.S. 151 (1918). You are in a better position than we to determine as a factual matter whether the attorneys and investigators you hope to hire from the private sector will be filling jobs for which a minimum salary has been fixed by law. Even if there is such a minimum salary set, this element of the definition of gratuitous service could be interpreted to mean that if the Government is to pay anything more than a nominal sum, the minimum salary established by law must be paid, but that ''a position for which no minimum salary is set by law'' includes all those positions for which no salary or a nominal salary is paid. Section 5102(c)(13) of title 5, U.S. Code, states that chapter 51 of title 5 providing for the classification of pay and allowances does not apply to employees who serve without pay or at nominal rates of pay.

We conclude, therefore, that you can appoint attorneys and investigators from the private sector and that you can pay a nominal sum such as you propose to those providing the gratuitous service. We do not think, as stated above, that your appropriation for hiring temporary consultants or experts can be used to provide these funds and thus you will have to be able to justify the appointment and expenditure under 5 U.S.C. 1206(j), authorizing you to appoint the legal administrative and support personnel necessary to perform the functions of your Office, and as an expense necessary thereto under your recent appropriation act.

III.

Finally, we consider whether the plan you propose is consistent with relevant conflict of interest laws. This advice is necessarily general and does not preclude the need for careful consideration of particular factual circumstances.

The employees whose services you obtain from other Federal agencies will continue to be subject to the conflict of interest restrictions for regular Government employees. Your proposed plan raises no unusual questions as to those employees and therefore we see no need to discuss the requirements in detail.

Those appointed from the private sector will be subject to the same requirements as regular Government employees, but they may be made subject to the less stringent conflict of interest requirements for special Government employees if you decide in advance to appoint them to serve less than 130 days in any 365-day period. 18 U.S.C. 202(a) defines ''special government employee'' as ''an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States * * * who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis * * *.'' In estimating in advance of appointment the number of days an employee may serve, an agency must in good faith find that the special Government employee will serve no more than 130 days; a part of a day must be counted as a full day, and a Saturday, Sunday, or holiday on which duties are to be performed must be counted equally with a regular work day. Federal Personnel Manual, Chapter 735, Appendix C. If an employee does, however, serve for more than the 130 days, he or she will nevertheless continue to be regarded as a special Government employee so long as the original estimate was made in good

faith. Id. Once an employee is appointed as a special Government employee, the restrictions imposed by the conflict of interest laws apply even on days the employee does not serve the Government. Id.

COMPENSATION

Sections 203 and 209 of title 18 limit the compensation employees may receive in addition to their Government salary. The restrictions of § 209 on the receipt of ''salary, or any contribution to or supplementation of salary'' as compensation for services as an employee of the United States from any source other than the Government of the United States is expressly not applicable to special Government employees. § 209(c). The restrictions found in § 203(a) on receipt of outside compensation when one is serving as an officer or employee of the United States in relation to any matter in which the United States is a party or has a direct and substantial interest before any department, agency, or commission, applies to special Government employees only in relation to particular matter involving a specific party or parties in which the employee has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is pending in the department or agency of the Government in which he or she is serving.(fn.4) Furthermore, § 203 applies to matters pending in the department only when a special Government employee has served in the agency for no more than 60 days during the immediately preceding 365 days. § 203(c).

If you do not hire private employees as special Government employees, they will be subject, as are the regular Government employees whose services you might utilize, to the restrictions of § 203. But even if the private employees were special Government employees, if they serve without compensation, they nevertheless will not be subject to § 209. See § 209(e).

If the employees from the private sector are regular employees and are paid by the Government, § 209 requires [hat their private-sector compensation be reviewed to ensure that it does not include payment for Government work and to reflect their more limited participation in the private firm's business. To satisfy § 203, these employees' salaries will have to be reviewed further, if necessary, 10 ensure that they do not share fees for representational services performed by another as outlined above. (fn.5)

REPRESENTATION RESTRICTIONS

Regular Government employees must refrain from acting as agents or attorneys for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission, in connection with any particular matter in which the United States is a party or has a direct and substantial interest. 18 U.S.C. § 205. This section restricts special Government employees in more limited fashion; such an employee may not act as attorney or agent in relation to any particular matter involving a specific party or parties in which that employee has at any time participated in the course of his or her Government service, or, if the employee has served at least 61 days, any matter that is pending in the department in which he or she is serving. A special Government employee is not otherwise barred from acting as an attorney in court proceedings or in proceedings before other agencies.

Section 208 of title 18 requires an officer or employee (including a special Government employee) to disqualify himself or herself from participating in decisions with regard to particular matters where he or she, a spouse, minor child. partner, organization in which the employee is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest. A waiver is available under certain conditions, § 208(b), and, as with the applicability of all of the conflict of interest sections discussed in this opinion, a careful examination of the particular facts would have to be made in each individual case.

POST-EMPLOYMENT RESTRICTIONS

Section 207 of title 18 was amended by the Ethics in Government Act of 1978 to require that regular employees and special Government employees be permanently barred from acting as attorney or agent or otherwise representing any person other than the United States in making any communication, with intent to influence, or in making any informal or formal appearance before any department, agency, commission, or court in relation to any particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and

in which the employee participated personally and substantially, Pub. L. No. 95–521, Title V, T 501(a), as amended by Pub. L. No. 96–28 (92 Stat. 1864, 93 Stat. 76).(6) The employee will also be prohibited for 2 years from acting as agent or attorney in similar circumstances with regard to matters under his or her official responsibility, but in all likelihood the realm of official responsibility of the employees you would have would be no broader than the matters in which they participated personally and substantially,

LEON ULMAN
Deputy Assistant Attorney General
Office of Legal Counsel

Endnotes

1. We understand from your staff that you are no longer interested in employing such persons to train your permanent staff or to assist in the development of a computer-based information retrieval system.

2. Funds appropriated for the hiring of attorneys and investigators to perform the tasks you intend to have the detailed employees perform may be used only for the purposes for which they are appropriated, 31 U.S.C.628, but they are available to pay either employees of your own or those detailed from another agency.

3. We leave aside for the moment the question of whether you can pay each private sector employee a nominal sum, not to exceed $100, for all services rendered by the participant during the 6 months of the program.

4. Section 203 applies as well to receipt of compensation by an employee for services rendered by another, such as a law partner.

5. The restrictions of §209 do not prohibit continued participation by employees in bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plans maintained by a private employer. See §209(b).

6. We assume that the employees you are considering hiring will not be among those designated for more stringent coverage under §207(d).

18 U.S.C. § 203. Compensation to Members of Congress, officers, and others in matters affecting the Government
(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—
(1) demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another—
(A) at a time when such person is a Member of Congress, Member of Congress Elect, Delegate, Delegate Elect, Resident Commissioner, or Resident Commissioner Elect; or
(B) at a time when such person is an officer or employee or Federal judge of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court, court- martial, officer, or any civil, military, or naval commission; or
(2) knowingly gives, promises, or offers any compensation for any such representational services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Member Elect, Delegate, Delegate Elect, Commissioner, Commissioner Elect, Federal judge, officer, or employee;
shall be subject to the penalties set forth in section 216 of this title.
(b) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—
(1) demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another, at a time when such person is an officer or employee of the District of Columbia, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the District of Columbia is a party or has a direct and substantial interest, before any department, agency, court, officer, or commission; or
(2) knowingly gives, promises, or offers any compensation for any such representational services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was an officer or employee of the District of Columbia;shall be subject to the penalties set forth in section 216 of this title.
(c) A special Government employee shall be subject to subsections (a) and (b) only in relation to a particular matter involving a specific party or parties—

(1) in which such employee has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise; or
(2) which is pending in the department or agency of the Government in which such employee is serving except that paragraph (2) of this subsection shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.
(d) Nothing in this section prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for or otherwise representing his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—
(1) in those matters in which he has participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or
(2) in those matters that are the subject of his official responsibility, subject to approval by the Government official responsible for appointment to his position.
(e) Nothing in this section prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register.
(f) Nothing in this section prevents an individual from giving testimony under oath or from making statements required to be made under penalty of perjury.

18 U.S.C. § 204. Practice in United States Claims Court or the United States Court of Appeals for the Federal Circuit by Members of Congress

Whoever, being a Member of Congress or Member of Congress Elect, practices in the United States Claims Court or the United States Court of Appeals for the Federal Circuit shall be subject to the penalties set forth in section 216 of this title.

18 U.S.C. § 205. Activities of officers and employees in claims against and other matters affecting the Government

(a) Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, other than in the proper discharge of his official duties—
(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim, in consideration of assistance in the prosecution of such claim; or
(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest;
shall be subject to the penalties set forth in section 216 of this title.
(b) Whoever, being an officer or employee of the District of Columbia or an officer or employee of the Office of the United States Attorney for the District of Columbia, otherwise than in the proper discharge of official duties—
(1) acts as agent or attorney for prosecuting any claim against the District of Columbia, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim; or
(2) acts as agent or attorney for anyone before any department, agency, court, officer, or commission in connection with any covered matter in which the District of Columbia is a party or has a direct and substantial interest;
shall be subject to the penalties set forth in section 216 of this title.
(c) A special Government employee shall be subject to subsections (a) and (b) only in relation to a covered matter involving a specific party or parties—
(1) in which he has at any time participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or
(2) which is pending in the department or agency of the Government in which he is serving.
Paragraph (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.(d)(1)Nothing in subsection (a) or (b) prevents an officer or employee, if not inconsistent with the faithful performance of that officer's or employee's duties, from acting without compensation as agent or attorney for, or otherwise representing

> ''(A) any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings; or
>
> ''(B) except as provided in paragraph (2), any cooperative, voluntary, professional, recreational, or similar organization or group not established or operated for profit, if a ma-

jority of the organization's or groups's members are current officers or employees of the United States or of the District of Columbia, or their spouses or dependent children.

''(2) Paragraph (1)(B)does not apply with respect to a covered matter that—

''(A) is a claim under subsection (a)(1) or (b)(1);

''(B) is a judicial or administrative proceeding where the organization or group is a party; or

''(C) involves a grant, contract, or other agreement (including a request for any such grant, contract, or agreement) providing for the disbursement of Federal funds to the organization or group.''

(e) Nothing in subsection (a) or (b) prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for, or otherwise representing, his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—

(1) in those matters in which he has participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or

(2) in those matters which are the subject of his official responsibility, subject to approval by the Government official responsible for appointment to his position.

(f) Nothing in subsection (a) or (b) prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register.

(g) Nothing in this section prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(h) For the purpose of this section, the term ''covered matter'' means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.

(i)Nothing in this section prevents an employee from acting pursuant to—

(1) chapter 71 of title 5;

(2) section 1004 or chapter 12 of title 39;

(3) section 30 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b);

(4) chapter 10 of title I of the Foreign Service Act of 1980 (22 U.S.C, 4104 et seq.); or

(5) any provision of any other Federal or District of Columbia law that authorizes labor-management relations between an agency or instrumentality of the United States or the District of Columbia and any labor organization that represents its employees.''.

(End section 205).

Department of Justice Representation of Federal Employees in Fair Employment Suits

Government attorneys are prohibited by 18 U.S.C.§ 205 from representing employees in judicial personnel administration proceedings, as long as the representation is uncompensated and is not inconsistent with the attorney's performance of his or her official duties. However, Department of Justice regulations prohibit department attorneys from representing federal employees in fair employment suits in federal court, explicitly limiting such representation to administrative complaint procedures.

July 23, 1982

MEMORANDUM OPINION FOR THE ASSISTANT ATTORNEY

GENERAL, CIVIL RIGHTS DIVISION

This responds to your request for the views of this Office regarding the representation by Department of Justice attorneys of federal employees with Equal Employment Opportunity (EEO) complaints. Specifically, you asked whether a Department of Justice attorney could represent a federal employee in a fair employment suit against a federal agency, and if so, whether such representation depended upon the division or section in which the attorney works, or whether the employee's claim was against the Department of Justice.

The statute which addresses the ''conflict of interest'' issues raised by your request is 18 U.S.C. § 205.(fn. 1) This section prohibits ''officer[s] or employee[s] of the United States'' from

''act[ing] as agent or attorney for prosecuting any claim against the United States, or receiv[ing] any gratuity, [therefor]'' or from ''act[ing] as agent or attorney for anyone before any department, agency, [or] court . . . in connection with any proceeding, . . . in which the United States is a party or has a direct and substantial interest.'' Excepted from the prohibitions contained in this section are ''officer[s] or employee[s] [who,] if not inconsistent with the faithful performance of [their] duties, . . . act [ ] without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.''

With respect to Department of Justice employees, the Department has promulgated regulations with similar language in 28 C.F.R. § 45.735–9(c)(1)(fn.2), and § 45.735–6(c) (1981)(fn. 3). In addition, in 1973 the Department issued DOJ Order 1713.5 establishing its policy regarding volunteer representation of employees of the Department who are involved in EEO complaint procedures.(fn. 4) This order, which is embraced by regulations most recently revised by the Department in 1980, prohibits the representation of EEO complainants in federal court by Department attorneys, explicitly limiting such representation to administrative complaint procedures.

As you noted in your opinion request, Attorney General Edward H. Levi issued two memoranda on November 20, 1975, encouraging representation by all government attorneys of federal employees with EEO complaints ''during all phases of the proceedings ,'' so long as the representation would not be inconsistent with the employee's faithful performance of his or her duties and the employee is not compensated for such work. Levi, Memorandum to All Employees re: Representing Equal Employment Opportunity Complainants at 1 (November 20, 1975); Levi, Memorandum to Heads of Departments and Agencies re: Representation by Federal Employees of EEO Complainants (November 20, 1975). The memorandum directed to the heads of agencies stated that, while the Department of Justice found no distinction under § 205 between administrative and judicial proceedings, the determination whether policy considerations warranted a distinction between administrative and judicial proceedings was the responsibility of each agency.

The memorandum directed to Department of Justice employees did not explicitly prohibit representation by federal employees of EEO complainants in judicial proceedings; however, the memorandum does appear to have contemplated such a limitation, (fn.5)particularly when considered in the context of the 1973 DOJ Order 1713.5, which established the ''EEO Volunteer Representatives Program'' for the Department, and current Department regulations citing that order.(fn.6)

Thus, in answer to your specific question, Department of Justice attorneys are presently prohibited from representing federal EEO complainants in federal courts-without regard to the division in which the attorney is employed, or whether the complaint has been filed against the Department of Justice. We would add that this prohibition is based on DOJ Order 1713.5 and current Department regulations, not on our interpretation of the conflict of interest provisions contained in § 205. Both prior to and since Attorney General Levi's November 20, 1975, memorandum to agency heads, this Office has taken the position that § 205 excepts from its general conflicts provision the representation of federal employees in personnel administration proceedings in court as well as before agencies, so long as the representation does not, in the judgment of an appropriate official, conflict with the attorney's official duties.(fn.7)

LARRY L. SIMMS
Deputy Assistant Attorney General
Office of Legal Counsel

Endnotes

1. 18 U.S.C. §205 provides in pertinent part:

Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

* * * *

Nothing herein prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

2. Section 45.735–9(c)(1) provides in pertinent part:

Representation of Federal Employees in Equal Employment Opportunity (EEO) complaint procedures may be provided in accordance with §45.735–6(c) of this title and the Department's established EEO policy (see DOJ order 1713.5) rather than this subsection.

3. Section 45.735–6(c) provides:

(c) Nothing in this part shall be deemed to prohibit an employee, if it is not otherwise inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person in a disciplinary, loyalty, or other Federal personnel administration proceeding involving such person.

4. *See* Department of Justice Order No. 1713.5, Volunteer Representatives for Employees Involved in EEO Complaint Procedures (Oct. 30, 1973).

5. In discussing the relevant conflict of interest provision, the memorandum states that a federal employee ''representing a person *before a government* agency in a personnel proceeding, such as the EEO complaint process,'' is generally exempt from the conflict of interest laws, so long as the representation is uncompensated and is not inconsistent with the attorney's faithful performance of his or her duties. Levi, Memorandum to All Employees, *supra* at 2 (emphasis added).

6. *But* cf. Rex E. Lee, Assistant Attorney General, Civil Division, Memorandum to All Section and Unit Chiefs re: Representation by Federal Employees of EEO Complainants (Mar. 26, 1976) (concluding that the Levi memorandum to Department employees *does* authorize representation in federal courts by Department of Justice attorneys, but advising Civil Division attorneys that they are not authorized to participate in such representation because of the conflicts that might arise ''since the representation of the government in these cases is a traditional function of the Civil Division once the case proceeds to litigation.'' Id. at 1.).

7. See Roger X. Cramton, Assistant Attorney General, Memorandum for the Deputy Attorney General re: Representation by Department of Justice Attorneys of Federal Workers Claiming Discrimination in Employment (Oct. 31, 1972); Leon Ulman, Acting Assistant Attorney General Memorandum for the Assistant Attorney General, Criminal Division re: *Charles E. Langyher, III, et al. v. United States*—Applicability of 18 U.S.C. §205 to Participation of Counsel (May 10, 1972); Frank Wozencraft, Assistant Attorney General, Letter to the General Counsel, United States Civil Service Commission (May 8, 1967); Norbert X. Schlei, Assistant Attorney General, Letter to the General Counsel. Post Office Department (Feb. 26, 1965).

8 U.S.C. § 206. Exemption of retired officers of the uniformed services

Sections 203 and 205 of this title shall not apply to a retired officer of the uniformed services of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress.

18 U.S.C. § 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches

(a) Restrictions on all officers and employees of the executive branch and certain other agencies.—

(1) Permanent restrictions on representation on particular matters.—Any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including any independent agency of the United States), or of the District of Columbia, and who, after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia) in connection with a particular matter—

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) in which the person participated personally and substantially as such officer or employee, and

(C) which involved a specific party or specific parties at the time of such participation,

shall be punished as provided in section 216 of this title.

(2) Two-year restrictions concerning particular matters under official responsibility.—Any person subject to the restrictions contained in paragraph (1) who, within 2 years after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia), in connection with a particular matter—
(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,
(B) which such person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States or the District of Columbia, and
(C) which involved a specific party or specific parties at the time it was so pending,
shall be punished as provided in section 216 of this title.
(3) Clarification of restrictions.—The restrictions contained in paragraphs (1) and (2) shall apply—
(A) in the case of an officer or employee of the executive branch of the United States (including any independent agency), only with respect to communications to or appearances before any officer or employee of any department, agency, court, or court-martial of the United States on behalf of any other person (except the United States), and only with respect to a matter in which the United States is a party or has a direct and substantial interest; and
(B) in the case of an officer or employee of the District of Columbia, only with respect to communications to or appearances before any officer or employee of any department, agency, or court of the District of Columbia on behalf of any other person (except the District of Columbia), and only with respect to a matter in which the District of Columbia is a party or has a direct and substantial interest.
(b) One-year restrictions on aiding or advising.—
(1) In general.—Any person who is a former officer or employee of the executive branch of the United States (including any independent agency) and is subject to the restrictions contained in subsection (a)(1), or any person who is a former officer or employee of the legislative branch or a former Member of Congress, who personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States within the 1-year period preceding the date on which his or her service or employment with the United States terminated, and who had access to information concerning such trade or treaty negotiation which is exempt from disclosure under section 552 of title 5, which is so designated by the appropriate department or agency, and which the person knew or should have known was so designated, shall not, on the basis of that information, knowingly represent, aid, or advise any other person (except the United States) concerning such ongoing trade or treaty negotiation for a period of 1 year after his or her service or employment with the United States terminates. Any person who violates this subsection shall be punished as provided in section 216 of this title.
(2) Definition.—For purposes of this paragraph—
(A) 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
(B) the term ''treaty'' means an international agreement made by the President that requires the advice and consent of the Senate.
(c) One-year restrictions on certain senior personnel of the executive branch and independent agencies.—
(1) Restrictions.—In addition to the restrictions set forth in subsections (a) and (b), any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including an independent agency), who is referred to in paragraph (2), and who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in section 216 of this title.
(2) Persons to whom restrictions apply.—(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))—
(i) employed at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5,
(ii) employed in a position which is not referred to in clause (i) and for which the basic rate of pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of basic pay payable for level V of the Executive Schedule,
(iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3, or
(iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade O–7 or above.
(B) Paragraph (1) shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.
(C) At the request of a department or agency, the Director of the Office of Government Ethics may waive the restrictions contained in paragraph (1) with respect to any position, or category of positions, referred to in clause (ii) or (iv) of subparagraph (A), in such department or agency if the Director determines that—
(i) the imposition of the restrictions with respect to such position or positions would create an undue hardship on the

department or agency in obtaining qualified personnel to fill such position or positions, and
(ii) granting the waiver would not create the potential for use of undue influence or unfair advantage.
(d) Restrictions on very senior personnel of the executive branch and independent agencies.—
(1) Restrictions.—In addition to the restrictions set forth in subsections (a) and (b), any person who—
(A) serves in the position of Vice President of the United States,
(B) is employed in a position in the executive branch of the United States (including any independent agency) at a rate of pay payable for level I of the Executive Schedule or employed in a position in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule, or
(C) is appointed by the President to a position under section 105(a)(2)(A) of title 3 or by the Vice President to a position under section 106(a)(1)(A) of title 3,
and who, within 1 year after the termination of that person's service in that position, knowingly makes, with the intent to influence, any communication to or appearance before any person described in paragraph (2), on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of the executive branch of the United States, shall be punished as provided in section 216 of this title.
(2) Persons who may not be contacted.—The persons referred to in paragraph (1) with respect to appearances or communications by a person in a position described in subparagraph (A), (B), or (C) of paragraph (1) are—
(A) any officer or employee of any department or agency in which such person served in such position within a period of 1 year before such person's service or employment with the United States Government terminated, and
(B) any person appointed to a position in the executive branch which is listed in sections 5312, 5313, 5314, 5315, or 5316 of title 5.
(e) Restrictions on Members of Congress and officers and employees of the legislative branch.—
(1) Members of Congress and elected officers.—(A) Any person who is a Member of Congress or an elected officer of either House of Congress and who, within 1 year after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B) or (C), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.
(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former Member of Congress are any Member, officer, or employee of either House of Congress, and any employee of any other legislative office of the Congress.
(C) The persons referred to in subparagraph (A) with respect to appearances or communications by a former elected officer are any Member, officer, or employee of the House of Congress in which the elected officer served.
(2) Personal staff.—(A) Any person who is an employee of a Senator or an employee of a Member of the House of Representatives and who, within 1 year after the termination of that employment, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.
(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a person who is a former employee are the following:
(i) the Senator or Member of the House of Representatives for whom that person was an employee; and
(ii) any employee of that Senator or Member of the House of Representatives.
(3) Committee staff.—Any person who is an employee of a committee of Congress and who, within 1 year after the termination of that person's employment on such committee, knowingly makes, with the intent to influence, any communication to or appearance before any person who is a Member or an employee of that committee or who was a Member of the committee in the year immediately prior to the termination of such person's employment by the committee, on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.
(4) Leadership staff.—(A) Any person who is an employee on the leadership staff of the House of Representatives or an employee on the leadership staff of the Senate and who, within 1 year after the termination of that person's employment on such staff, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.
(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the following:
(i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are any Member of the leadership of the House of Representatives and any employee on the leadership staff of the House of Representatives; and
(ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate and any employee on the leadership staff of the Senate.
(5) Other legislative offices.—(A) Any person who is an employee of any other legislative office of the Congress and

who, within 1 year after the termination of that persons's employment in such office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by any officer or employee of such office, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the employees and officers of the former legislative office of the Congress of the former employee.

(6) Limitation on restrictions.—(A) The restrictions contained in paragraphs (2), (3), and (4) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was paid a rate of basic pay equal to or greater than an amount which is 75 percent of the basic rate of pay payable for a Member of the House of Congress in which such employee was employed.

(B) The restrictions contained in paragraph (5) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was employed in a position for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the basic rate of pay payable for level V of the Executive Schedule.

(7) Definitions.—As used in this subsection—

(A) the term ''committee of Congress'' includes standing committees, joint committees, and select committees;

(B) a person is an employee of a House of Congress if that person is an employee of the Senate or an employee of the House of Representatives;

(C) the term ''employee of the House of Representatives'' means an employee of a Member of the House of Representatives, an employee of a committee of the House of Representatives, an employee of a joint committee of the Congress whose pay is disbursed by the Clerk of the House of Representatives, and an employee on the leadership staff of the House of Representatives;

(D) the term ''employee of the Senate'' means an employee of a Senator, an employee of a committee of the Senate, an employee of a joint committee of the Congress whose pay is disbursed by the Secretary of the Senate, and an employee on the leadership staff of the Senate;

(E) a person is an employee of a Member of the House of Representatives if that person is an employee of a Member of the House of Representatives under the clerk hire allowance;

(F) a person is an employee of a Senator if that person is an employee in a position in the office of a Senator;

(G) the term ''employee of any other legislative office of the Congress'' means an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the Copyright Royalty Tribunal, the United States Capitol Police, and any other agency, entity, or office in the legislative branch not covered by paragraph (1), (2), (3), or (4) of this subsection;

(H) the term ''employee on the leadership staff of the House of Representatives'' means an employee of the office of a Member of the leadership of the House of Representatives described in subparagraph (L), and any elected minority employee of the House of Representatives;

(I) the term ''employee on the leadership staff of the Senate'' means an employee of the office of a Member of the leadership of the Senate described in subparagraph (M);

(J) the term ''Member of Congress'' means a Senator or a Member of the House of Representatives;

(K) the term ''Member of the House of Representatives'' means a Representative in, or a Delegate or Resident Commissioner to, the Congress;

(L) the term ''Member of the leadership of the House of Representatives'' means the Speaker, majority leader, minority leader, majority whip, minority whip, chief deputy majority whip, chief deputy minority whip, chairman of the Democratic Steering Committee, chairman and vice chairman of the Democratic Caucus, chairman, vice chairman, and secretary of the Republican Conference, chairman of the Republican Research Committee, and chairman of the Republican Policy Committee, of the House of Representatives (or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989);

(M) the term ''Member of the leadership of the Senate'' means the Vice President, and the President pro tempore, Deputy President pro tempore, majority leader, minority leader, majority whip, minority whip, chairman and secretary of the Conference of the Majority, chairman and secretary of the Conference of the Minority, chairman and co-chairman of the Majority Policy Committee, and chairman of the Minority Policy Committee, of the Senate (or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989).

(f) Restrictions relating to foreign entities.—

(1) Restrictions.—Any person who is subject to the restrictions contained in subsection (c), (d), or (e) and who knowingly, within 1 year after leaving the position, office, or employment referred to in such subsection—

(A) represents a foreign entity before any officer or employee of any department or agency of the United States with the intent to influence a decision of such officer or employee in carrying out his or her official duties, or

(B) aids or advises a foreign entity with the intent to influence a decision of any officer or employee of any department or agency of the United States, in carrying out his or her official duties,

shall be punished as provided in section 216 of this title.

(2) Special rule for Trade Representative.—With respect to a person who is the United States Trade Representative or Deputy United States Trade Representative, the restrictions described in paragraph

(1) shall apply to representing, aiding, or advising foreign entities at any time after the termination of that person's service as the United States Trade Representative.
(3) Definition.—For purposes of this subsection, the term ''foreign entity'' means the government of a foreign country as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended, or a foreign political party as defined in section 1(f) of that Act.
(g) Special rules for detailees.—For purposes of this section, a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.
(h) Designations of separate statutory agencies and bureaus.—
(1) Designations.—For purposes of subsection (c) and except as provided in paragraph (2), whenever the Director of the Office of Government Ethics determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and that there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate department or agency. On an annual basis the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his or her responsibilities under this paragraph.
(2) Inapplicability of designations.—No agency or bureau within the Executive Office of the President may be designated under paragraph (1) as a separate department or agency. No designation under paragraph (1) shall apply to persons referred to in subsection
(c)(2)(A)(i) or (iii).
(i) Definitions.—For purposes of this section—
(1) the term ''officer or employee'', when used to describe the person to whom a communication is made or before whom an appearance is made, with the intent to influence, shall include—
(A) in subsections (a), (c), and (d), the President and the Vice President; and
(B) in subsection (f), the President, the Vice President, and Members of Congress;
(2) the term ''participated'' means an action taken as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action; and
(3) the term ''particular matter'' includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.
(j) Exceptions.—
(1) Official government duties.—The restrictions contained in this section shall not apply to acts done in carrying out official duties on behalf of the United States or the District of Columbia or as an elected official of a State or local government.
(2) State and local governments and institutions, hospitals, and organizations.—The restrictions contained in subsections (c), (d), and (e) shall not apply to acts done in carrying out official duties as an employee of—
(A) an agency or instrumentality of a State or local government if the appearance, communication, or representation is on behalf of such government, or
(B) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or representation is on behalf of such institution, hospital, or organization.
(3) International organizations.—The restrictions contained in this section shall not apply to an appearance or communication on behalf of, or advice or aid to, an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States.
(4) Special knowledge.—The restrictions contained in subsections (c), (d), and (e) shall not prevent an individual from making or providing a statement, which is based on the individual's own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received.
(5) Exception for scientific or technological information.—The restrictions contained in subsections (a), (c), and (d) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the department or agency concerned or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee. For purposes of this paragraph, the term ''officer or employee'' includes the Vice President.
(6) Exception for testimony.—Nothing in this section shall prevent an individual from giving testimony under oath, or from making statements required to be made under penalty of perjury. Notwithstanding the preceding sentence—
(A) a former officer or employee of the executive branch of the United States (including any independent agency) who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter; and
(B) a former officer or employee of the District of Columbia who is subject to the restrictions contained in subsection

(a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the District of Columbia) in that matter.
(7) Political parties and campaign committees.—
(A) Except as provided in subparagraph (B), the restrictions contained in subsections (c), (d), and (e) shall not apply to a communication or appearance made solely on behalf of a candidate in his or her capacity as a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party.
(B) Subparagraph (A) shall not apply to-
(i) any communication to, or appearance before, the Federal Election Commission by a former officer or employee of the Federal Election Commission; or
(ii) a communication or appearance made by a person who is subject to the restrictions contained in subsections (c), (d), or (e) if, at the time of the communication or appearance, the person is employed by a person or entity other than-
(I) a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party; or
(II) a person or entity who represents, aids, or advises only persons or entities described in subclause (I). (C) For purposes of this paragraph-
(i) the term ''candidate'' means any person who seeks nomination for election, or election, to Federal or State office or who has authorized others to explore on his or her behalf the possibility of seeking nomination for election, or election, to Federal or State office;
(ii) the term ''authorized committee'' means any political committee designated in writing by a candidate as authorized to receive contributions or make expenditures to promote the nomination for election, or the election, of such candidate, or to explore the possibility of seeking nomination for election, or the election, of such candidate, except that a political committee that receives contributions or makes expenditures to promote more than 1 candidate may not be designated as an authorized committee for purposes of subparagraph (A);
(iii) the term ''national committee'' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level;
(iv) the term ''national Federal campaign committee'' means an organization that, by virtue of the bylaws of a political party, is established primarily for the purpose of providing assistance, at the national level, to candidates nominated by that party for election to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;
(v) the term ''State committee'' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level;
(vi) the term ''political party'' means an association, committee, or organization that nominates a candidate for election to any Federal or State elected office whose name appears on the election ballot as the candidate of such association, committee, or organization; and
(vii) the term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.
(k)(1)(A) The President may grant a waiver of a restriction imposed by this section to any officer or employee described in paragraph (2) if the President determines and certifies in writing that it is in the public interest to grant the waiver and that the services of the officer or employee are critically needed for the benefit of the Federal Government. Not more than 25 officers and employees currently employed by the Federal Government at any one time may have been granted waivers under this paragraph.
(B)(i) A waiver granted under this paragraph to any person shall apply only with respect to activities engaged in by that person after that person's Federal Government employment is terminated and only to that person's employment at a Government-owned, contractor operated entity with which the person served as an officer or employee immediately before the person's Federal Government employment began.
(ii) Notwithstanding clause (i), a waiver granted under this paragraph to any person who was an officer or employee of Lawrence Livermore National Laboratory, Los Alamos National Laboratory, or Sandia National Laboratory immediately before the person's Federal Government employment began shall apply to that person's employment by any such national laboratory after the person's employment by the Federal Government is terminated.
(2) Waivers under paragraph (1) may be granted only to civilian officers and employees of the executive branch, other than officers and employees in the Executive Office of the President.
(3) A certification under paragraph (1) shall take effect upon its publication in the Federal Register and shall identify—
(A) the officer or employee covered by the waiver by name and by position, and
(B) the reasons for granting the waiver.
A copy of the certification shall also be provided to the Director of the Office of Government Ethics.
(4) The President may not delegate the authority provided by this subsection.
(5)(A) Each person granted a waiver under this subsection shall prepare reports, in accordance with subparagraph (B), stating whether the person has engaged in activities otherwise prohibited by this section for each six-month period described in subparagraph (B), and if so, what those activities were.
(B) A report under subparagraph (A) shall cover each six-month period beginning on the date of the termination of the person's Federal Government employment (with respect to which the waiver under this subsection was granted) and ending two years after that date. Such report shall be filed with the President and the Director of the Office of Government Ethics not later than 60 days after the end of the six-month period covered by the report. All reports filed

with the Director under this paragraph shall be made available for public inspection and copying.
(C) If a person fails to file any report in accordance with subparagraphs (A) and (B), the President shall revoke the waiver and shall notify the person of the revocation. The revocation shall take effect upon the person's receipt of the notification and shall remain in effect until the report is filed.
(D) Any person who is granted a waiver under this subsection shall be ineligible for appointment in the civil service unless all reports required of such person by subparagraphs (A) and (B) have been filed.
(E) As used in this subsection, the term ''civil service'' has the meaning given that term in section 2101 of title 5.

18 U.S.C. § 210. Offer to procure appointive public office
Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined under this title or imprisoned not more than one year, or both.

18 U.S.C. § 211. Acceptance or solicitation to obtain appointive public office
Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined under this title or imprisoned not more than one year, or both.
Whoever solicits or receives any thing of value in consideration of aiding a person to obtain employment under the United States either by referring his name to an executive department or agency of the United States or by requiring the payment of a fee because such person has secured such employment shall be fined under this title, or imprisoned not more than one year, or both. This section shall not apply to such services rendered by an employment agency pursuant to the written request of an executive department or agency of the United States.

18 U.S.C. § 216. Penalties and injunctions
(a) The punishment for an offense under section 203, 204, 205, 207, 208, or 209 of this title is the following:
(1) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in this title, or both.
(2) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in this title, or both.
(b) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.
(c) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

18 U.S.C. § 219. Officers and employees acting as agents of foreign principals
(a) Whoever, being a public official, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938 or a lobbyist required to register under the Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity, as defined in section 3(6) of that Act shall be fined under this title or imprisoned for not more than two years, or both.
(b) Nothing in this section shall apply to the employment of any agent of a foreign principal as a special Government employee in any case in which the head of the employing agency certifies that such employment is required in the national interest. A copy of any certification under this paragraph shall be forwarded by the head of such agency to the Attorney General who shall cause the same to be filed with the registration statement and other documents filed by such agent, and made available for public inspection in accordance with section 6 of the Foreign Agents Registration Act of 1938, as amended.
(c) For the purpose of this section ''public official'' means Member of Congress, Delegate, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government.

18 U.S.C. § 286. Conspiracy to defraud the Government with respect to claims
Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, shall be fined under this title or imprisoned not more than ten years, or both.

18 U.S.C. § 287. False, fictitious or fraudulent claims
Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.

18 U.S.C. § 431. Contracts by Member of Congress
Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertakes, executes, holds, or enjoys, in whole or in part, any contract or agreement, made or entered into in behalf of the United States or any agency thereof, by any officer or person authorized to make contracts on its behalf, shall be fined under this title.
All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced by the United States or any agency thereof, in consideration of any such contract or agreement, it shall forthwith be repaid; and in case of failure or refusal to repay the same when demanded by the proper officer of the department or agency under whose authority such contract or agreement shall have been made or entered into, suit shall at once be brought against the person so failing or refusing and his sureties for the recovery of the money so advanced.

18 U.S.C. § 432. Officer or employee contracting with Member of Congress
Whoever, being an officer or employee of the United States, on behalf of the United States or any agency thereof, directly or indirectly makes or enters into any contract, bargain, or agreement, with any Member of or Delegate to Congress, or any Resident Commissioner, either before or after he has qualified, shall be fined under this title.

18 U.S.C. § 433. Exemptions with respect to certain contracts
Sections 431 and 432 of this title shall not extend to any contract or agreement made or entered into, or accepted by any incorporated company for the general benefit of such corporation; nor to the purchase or sale of bills of exchange or other property where the same are ready for delivery and payment therefor is made at the time of making or entering into the contract or agreement. Nor shall the provisions of such sections apply to advances, loans, discounts, purchase or repurchase agreements, extensions, or renewals thereof, or acceptances, releases or substitutions of security therefor or other contracts or agreements made or entered into under the Reconstruction Finance Corporation Act, the Agricultural Adjustment Act, the Federal Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Farm Credit Act of 1933, or the Home Owners Loan Act of 1933, the Farmers' Home Administration Act of 1946, the Bankhead-Jones Farm Tenant Act, or to crop insurance agreements or contracts or agreements of a kind which the Secretary of Agriculture may enter into with farmers.Any exemption permitted by this section shall be made a matter of public record.

18 U.S.C. § 597. Expenditures to influence voting
Whoever makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate; and
Whoever solicits, accepts, or receives any such expenditure in consideration of his vote or the withholding of his vote—
Shall be fined under this title or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

18 U.S.C. § 598. Coercion by means of relief appropriations
Whoever uses any part of any appropriation made by Congress for work relief, relief, or for increasing employment by providing loans and grants for public-works projects, or exercises or administers any authority conferred by any Appropriation Act for the purpose of interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election, shall be fined under this title or imprisoned not more than one year, or both.

18 U.S.C. § 599. Promise of appointment by candidate
Whoever, being a candidate, directly or indirectly promises or pledges the appointment, or the use of his influence or

support for the appointment of any person to any public or private position or employment, for the purpose of procuring support in his candidacy shall be fined under this title or imprisoned not more than one year, or both; and if the violation was willful, shall be fined under this title or imprisoned not more than two years, or both.

18 U.S.C. § 600. Promise of employment or other benefit for political activity

Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined under this title or imprisoned not more than one year, or both.18 U.S.C. § 601. Deprivation of employment or other benefit for political contribution

(a) Whoever, directly or indirectly, knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of—

(1) any employment, position, or work in or for any agency or other entity of the Government of the United States, a State, or a political subdivision of a State, or any compensation or benefit of such employment, position, or work; or

(2) any payment or benefit of a program of the United States, a State, or a political subdivision of a State;

if such employment, position, work, compensation, payment, or benefit is provided for or made possible in whole or in part by an Act of Congress, shall be fined under this title, or imprisoned not more than one year, or both.

(b) As used in this section—

(1) the term ''candidate'' means an individual who seeks nomination for election, or election, to Federal, State, or local office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, to Federal, State, or local office, if he has (A) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(2) the term ''election'' means (A) a general, special primary, or runoff election, (B) a convention or caucus of a political party held to nominate a candidate, (C) a primary election held for the selection of delegates to a nominating convention of a political party, (D) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (E) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States or of any State; and

(3) the term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

18 U.S.C. § 602. Solicitation of political contributions

(a) It shall be unlawful for—

(1) a candidate for the Congress;

(2) an individual elected to or serving in the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(3) an officer or employee of the United States or any department or agency thereof; or

(4) a person receiving any salary or compensation for services from money derived from the Treasury of the United States; to knowingly solicit any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined under this title or imprisoned not more than 3 years, or both.

(b) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Rate Commission, unless that activity is prohibited by section 7323 or 7324 of such title.

18 U.S.C. § 603. Making political contributions

(a) It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for service from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, employee or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.

(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e) (1) of the Federal Election Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee.

(c) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Rate Commission, unless that activity is prohibited by section 7323 or 7324 of such title.

18 U.S.C. § 604. Solicitation from persons on relief

Whoever solicits or receives or is in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose from any person known by him to be entitled to, or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, shall be fined under this title or imprisoned not more than one year, or both.

18 U.S.C. § 605. Disclosure of names of persons on relief

Whoever, for political purposes, furnishes or discloses any list or names of persons receiving compensation, employment or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager; and

Whoever receives any such list or names for political purposes—Shall be fined under this title or imprisoned not more than one year, or both.

18 U.S.C. § 606. Intimidation to secure political contributions

Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges, or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined under this title or imprisoned not more than three years, or both.

18 U.S.C. § 607. Place of solicitation

(a) It shall be unlawful for any person to solicit or receive any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties by any person mentioned in section 603, or in any navy yard, fort, or arsenal. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.

(b) The prohibition in subsection (a) shall not apply to the receipt of contributions by persons on the staff of a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, provided, that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided that such contributions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.

18 U.S.C. § 641. Public money, property or records

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of $1000, he shall be fined under this title or imprisoned not more than one year, or both.

The word ''value'' means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

18 U.S.C. § 713. Use of likenesses of the great seal of the United States, the seals of the President and Vice President, and the seal of the United States Senate

(a) Whoever knowingly displays any printed or other likeness of the great seal of the United States, or of the seals of the President or the Vice President of the United States, or the seal of the United States Senate, or any facsimile thereof, in, or in connection with, any advertisement, poster, circular, book, pamphlet, or other publication, public meeting, play, motion picture, telecast, or other production, or on any building, monument, or stationery, for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship or approval by the Government of the United States or by any department, agency, or instrumentality thereof, shall be fined under this title or imprisoned not more than six months, or both.

(b) Whoever, except as authorized under regulations promulgated by the President and published in the Federal Register, knowingly manufactures, reproduces, sells, or purchases for resale, either separately or appended to any article

manufactured or sold, any likeness of the seals of the President or Vice President, or any substantial part thereof, except for manufacture or sale of the article for the official use of the Government of the United States, shall be fined under this title or imprisoned not more than six months, or both.
(c) Whoever, except as directed by the United States Senate, or the Secretary of the Senate on its behalf, knowingly uses, manufactures, reproduces, sells or purchases for resale, either separately or appended to any article manufactured or sold, any likeness of the seal of the United States Senate, or any substantial part thereof, except for manufacture or sale of the article for the official use of the Government of the United States, shall be fined under this title or imprisoned not more than six months, or both.
(d) A violation of the provisions of this section may be enjoined at the suit of the Attorney General,
(1) in the case of the great seal of the United States and the seals of the President and Vice President, upon complaint by any authorized representative of any department or agency of the United States; and
(2) in the case of the seal of the United States Senate, upon complaint by the Secretary of the Senate.

18 U.S.C. § 1001. Statements or entries generally
(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully-
(I) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
(2) makes any materially false, fictitious, or fraudulent statement or representation; or
(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry;
shall be fined under this title or imprisoned not more than 5 years or both.
(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such partyor counsel to a judge or magistrate in that proceeding.
(c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to-
(1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or
(2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

18 U.S.C. § 1719. Franking privilege
Whoever makes use of any official envelope, label, or indorsement authorized by law, to avoid the payment of postage or registry fee on his private letter, packet, package, or other matter in the mail, shall be fined under this title.

18 U.S.C. § 1905. Disclosure of confidential information generally
Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311–1314), publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than $1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment.

18 U.S.C. § 1913. Lobbying with appropriated moneys
No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.
Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined under this title or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or

employment.

TITLE 22, UNITED STATES CODE

22 U.S.C. § 2458a. Federal employee participation in cultural exchange programs (Section 108A, Mutual Educational and Cultural Exchange Act of 1961, as amended)

(a) Grants and other foreign government assistance; family or household expense assistance prohibited; ''Federal employee'' defined

(1) Congress consents to the acceptance by a Federal employee of grants and other forms of assistance provided by a foreign government to facilitate the participation of such Federal employee in a cultural exchange—

(A) which is of the type described in section 2452(a)(2)(i) of this title,

(B) which is conducted for a purpose comparable to the purpose stated in section 2451 of this title, and

(C) which is specifically approved by the Director of the United States Information Agency for purposes of this section;

but the Congress does not consent to the acceptance by any Federal employee of any portion of any such grant or other form of assistance which provides assistance with respect to any expenses incurred by or for any member of the family or household of such Federal employee.

(2) For purposes of this section, the term ''Federal employee'' means any employee as defined in subparagraphs (A) through (F) of section 7342(a)(1) of Title 5, but does not include a person described in subparagraph (G) of such section.

(b) Foreign grants and other assistance not gifts for purposes of section 7342 of Title 5

The grants and other forms of assistance with respect to which the consent of Congress is given in subsection (a) of this section shall not constitute gifts for purposes of section 7342 of Title 5.

(c) Regulations

The Director of the United States Information Agency is authorized to promulgate regulations for purposes of this section.

TITLE 26, UNITED STATES CODE

26 U.S.C. § 7701(k). Definitions

(k) Treatment of certain amounts paid to charity.—In the case of any payment which, except for section 501(b) of the Ethics in Government Act of 1978, might be made to any officer or employee of the Federal Government but which is made instead on behalf of such officer or employee to an organization described in section 170(c)—

(1) such payment shall not be treated as received by such officer or employee for all purposes of this title and for all purposes of any tax law of a State or political subdivision thereof, and

(2) no deduction shall be allowed under any provision of this title (or of any tax law of a State or political subdivision thereof) to such officer or employee by reason of having such payment made to such organization.

For purposes of this subsection, a Senator, a Representative in, or a Delegate or Resident Commissioner to, the Congress shall be treated as an officer or employee of the Federal Government.

4TITLE 31, UNITED STATES CODE

31 U.S.C. § 1301. Application [of Appropriated Funds]

(a) Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

(b) The reappropriation and diversion of the unexpended balance of an appropriation for a purpose other than that for which the appropriation originally was made shall be construed and accounted for as a new appropriation. The unexpended balance shall be reduced by the amount to be diverted.

(c) An appropriation in a regular, annual appropriation law may be construed to be permanent or available continuously only if the appropriation—

(1) is for rivers and harbors, lighthouses, public buildings, or the pay of the Navy and Marine Corps; or

(2) expressly provides that it is available after the fiscal year covered by the law in which it appears.

(d) A law may be construed to make an appropriation out of the Treasury or to authorize making a contract for the payment of money in excess of an appropriation only if the law specifically states that an appropriation is made or that such a contract may be made.

TITLE 39, UNITED STATES CODE

39 U.S.C. § 1002. Political recommendations

(a) Except as provided in subsection (e) of this section, each appointment, promotion, assignment, transfer, or designation, interim or otherwise, of an officer or employee in the Postal Service (except a Governor or member of the Postal Rate Commission) shall be made without regard to any recommendation or statement, oral or written, with respect to any person who requests or is under consideration for such appointment, promotion, assignment, transfer, or

designation, made by—
(1) any Member of the Senate or House of Representatives (including the Resident Commissioner from Puerto Rico);
(2) any elected official of the government of any State (including the Commonwealth of Puerto Rico) or of any county, city, or other political subdivision of such State or Commonwealth;
(3) any official of a national political party or of a political party of any State (including the Commonwealth of Puerto Rico), county, city, or other subdivision of such State or Commonwealth; or
(4) any other individual or organization.
(b) Except as provided in subsection (e) of this section, a person or organization referred to in clause (1), (2), (3), or (4) of subsection (a) of this section is prohibited from making or transmitting to the Postal Service, or to any other officer or employee of the Government of the United States, any recommendation or statement, oral or written, with respect to any person who requests or is under consideration for any such appointment, promotion, assignment, transfer, or designation. The Postal Service and any officer or employee of the Government of the United States, subject to subsection (e) of this section—
(1) shall not solicit, request, consider, or accept any such recommendation or statement; and
(2) shall return any such written recommendation or statement received by him, appropriately marked as in violation of this section, to the person or organization making or transmitting the same.
(c) A person who requests or is under consideration for any such appointment, promotion, assignment, transfer, or designation is prohibited from requesting or soliciting any such recommendation or statement from any person or organization except a statement of the type referred to in subsection (e)(2) of this section.
(d) Each employment form of the Postal Service used in connection with any such appointment, promotion, assignment, transfer, or designation shall contain appropriate language in boldface type informing all persons concerned of the provisions of this section. During the time any such appointment, promotion, assignment, transfer, or designation is under consideration, appropriate notice of the provisions of this section printed in boldface type shall be posted in the post office concerned.
(e) The Postal Service or any authorized officer or employee of the Government of the United States may solicit, accept, and consider, and any other individual or organization may furnish or transmit to the Postal Service or such authorized officer or employee, any statement with respect to a person who requests or is under consideration for such appointment, promotion, assignment, transfer, or designation, if—
(1) the statement is furnished pursuant to a request or requirement of the Postal Service and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of such person;
(2) the statement relates solely to the character and residence of such person;
(3) the statement is furnished pursuant to a request made by an authorized representative of the Government of the United States solely in order to determine whether such person meets the loyalty, suitability, and character requirements for employment with the Government of the United States; or
(4) the statement is furnished by a former employer of such person pursuant to a request of the Postal Service, and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of such person during his employment with such former employer.
(f) The Postal Service shall take any action it determines necessary and proper, including but not limited to suspension, removal from office, or disqualification from the Postal Service, to enforce the provisions of this section.
(g) The provisions of this section shall not affect the right of an officer or employee of the Postal Service to petition Congress as authorized by section 7211 of title 5.

TITLE 41, UNITED STATES CODE

41 U.S.C. § 22. Interest of member of Congress
No Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon. Nor shall the provisions of this section apply to any contracts or agreements heretofore or hereafter entered into under the Agricultural Adjustment Act [7 U.S.C.A. § 601 et seq.], the Federal Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Federal Farm Mortgage Corporation Act, the Farm Credit Act of 1933, and the Home Owners' Loan Act of 1933 [12 U.S.C.A. § 1461 et seq.], and shall not apply to contracts or agreements of a kind which the Secretary of Agriculture may enter into with farmers: Provided, That such exemption shall be made a matter of public record.

TITLE 44, UNITED STATES CODE

44 U.S.C. § 1106 Inserting ''compliments'' forbidden
A report, document, or publication distributed by or from an executive department or independent agency or establishment of the Government may not contain a notice that it is sent with ''the compliments'' of an officer of the Government, or with a special notice that it is so sent, except that notice that it has been sent, with a request for an acknowledgment of its receipt, may be given. (Pub. L. 90–620, Oct. 22, 1968, 82 Stat. 1261.)

STATUTES and RULES CREATING OVERLAPPING OR SHARED JURISDICTION BETWEEN LEGISLATIVE and EXECUTIVE BRANCH

STATUTE/RULE	COMMITTEE JURISDICTION	EXECUTIVE BRANCH JURISDICTION
Financial Disclosure (5 U.S.C. App. 101, and Rule 34)	Filing and review of Financial Disclosure Reports	Dept. of Justice: Civil penalties for failure to file in compliance with the Act . (Forms are signed under penalty of perjury; also, look for amendment to 18 USC 1001 applying it to the legislative branch.)
Outside Earned Income (5 U.S.C. App. 501, and Rule 36)	Administration of provision	Dept. of Justice: Civil penalties for violations under the statute
Prohibition of Honoraria (5 U.S.C. App. 501, and Rule 36)	Administration of provision. Rule continues in force, notwithstanding the Supreme Court ruling in U.S. v. NTEU.	Dept. of Justice: Civil penalties for violations under the statute (enforcement suspended per Feb. 26, 1996 DOJ Office of Legal Counsel Memorandum following United States v. National Treasury Employees Union, 115 S. Ct. 1003 (1995).
Foreign Gifts and Decorations Act (5 U.S.C. 7342, and Rule 35.1(c)(15))	0Administration of provision	Dept. of Justice: Civil penalties for violations under the statute
Mutual Educational and Cultural Exchange Act (22 U.S.C. 2458a, and Rule 35.1(c)(15))	Advise whether necessary expenses are consistent with the law and Senate Rule; Committee may make inquiry based on inherent authority	United States Information Agency retains jurisdiction to issue regulations concerning the Act.
Bribery of Public Officials and Witnesses (18 U.S.C. 201, and Rule 37.1 & 2)	Administration of the Rule, and Committee may make inquiry based on inherent authority	Dept. of Justice: Criminal penalties for violations under the statute
Compensation to Members, Officers, and Employees in matters affecting the Government (18 U.S.C. 203, and Rule 37.1 & 2)	Administration of the Rule, and Committee may make inquiry based on inherent authority	Dept. of Justice: Criminal penalties for violations under the statute
Activities of Officers and Employees in claims against and other matters affecting Government (18 U.S.C. 205, and Rule 37.1 & 2)	Administration of the Rule, and Committee may make inquiry based on inherent authority	Dept. of Justice: Criminal penalties for violations under the statute
Restrictions on Former Officers and Employees (18 U.S.C. 207, and Rule 37.8 & 9)	Administration of the Rule	Dept. of Justice: Criminal penalties for violations under the statute

APPENDIX E

IMPROPER CONDUCT REFLECTING UPON THE SENATE

AND

GENERAL PRINCIPLES OF PUBLIC SERVICE

IMPROPER CONDUCT REFLECTING UPON THE SENATE

Certain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as ''improper conduct which may reflect upon the Senate,'' and has provided the basis for the Senate's most serious disciplinary cases in modern times.[1]

The Senate did not attempt to delineate all the types of conduct or the guidelines which should be followed in determining which actions by a Member would constitute ''improper conduct'' reflecting on the Senate.[2] The drafters of the resolution in 1964 intended that ''improper conduct'' be cognizable by the Senate when it was so notorious or reprehensible that it could discredit the institution as a whole, not just the individual, thereby invoking the Senate's inherent and constitutional right to protect its own integrity and reputation.

Senate Resolution 338, as amended, makes it the duty of the Select Committee to—''receive complaints and investigate allegations of improper conduct which may reflect upon the Senate, violations of law, violations of the Senate Code of Official Conduct, and violations of rules and regulations of the Senate, relating to the conduct of individuals in the performance of their duties as Members of the Senate, or as officers or employees of the Senate, and to make appropriate findings of fact and conclusions with respect thereto . . .''[3] (emphasis added)

S. Res. 338 gives the Committee the authority to investigate Members who engage in ''improper conduct which may reflect upon the Senate,'' regardless of whether such conduct violates a specific statute, Senate Rule, or regulation. Indeed, the original Rules Committee proposal, rejected by the Senate, would have given the Committee the authority to investigate only alleged violations

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[1] In February 1980, press reports linked Harrison A. Williams, Jr. to the FBI's ABSCAM sting operation and investigation of business crime and political corruption. Williams was indicted on October 30, 1980, on nine counts, including bribery, receipt of an unlawful gratuity, conflict of interest, and conspiracy to defraud the United States. The Select Committee on Ethics commenced a preliminary inquiry after the initial press reports appeared in 1980, but deferred further action until after the trial. On May 1, 1981, the jury found Williams guilty on all counts. On May 5, the Committee adopted a resolution authorizing an investigation of the Senator, and held hearings at which Williams was represented by counsel and was permitted to call and examine witnesses.

> Despite Senator Williams' claims that he never engaged in illegal conduct, on August 24 the Committee found his conduct ''ethically repugnant'' and recommended his expulsion. In its report, the Committee concluded, among other things, that the Senator had offered to use his influence to win a government contract and that he intended to conceal his interest in the mining venture. The report declared that these and Williams' other actions tended ''to bring the Senate into dishonor and disrepute, and only the most severe sanction is appropriate for such an abuse of the public trust.''
>
> On March 3, 1982 the Senate began debating whether to expel Senator Williams. Several Senators suggested that censure was a more appropriate sanction. However, when it became apparent that the censure movement lacked support and that the Senate would most likely vote for expulsion, Senator Williams resigned from the Senate on March 11, 1982. Senate Report 97- 187 (September 3, 1981).

[2] When asked about the types of misconduct the committee might investigate, Senator John Sherman Cooper explained as follows: ''I cannot foresee every case . . . I believe one of the great duties of such a committee would be to have the judgment to know what it should investigate and what it should not, after looking into a question.'' 110 Cong. Record 16,933 (1964)

[3] S. Res. 338, 88th Cong., 2d. Sess. (1964), as amended by S. Res. 110, 95th Cong., 1st Sess. (1977).

of the rules of the Senate.[4] In offering the amendment containing the language adopted by the Senate[5], Senator Cooper described his amendment as authorizing the new committee ''to receive complaints of unethical, improper, illegal conduct of members.''[6] Senator Case, in discussing this amendment, noted that the Committee ''would not be limited to alleged violations of Senate rules, but it would take into account all improper conduct of any kind whatsoever.''[7]

In 1966, pursuant to S. Res. 338, the Select Committee on Standards and Conduct began to develop recommendations for rules and regulations regarding Senators' conduct. The Committee ultimately proposed S. Res. 266, the Senate Code of Official Conduct, which addressed outside employment, disclosure of financial interests, and campaign contributions. The floor debate on this resolution demonstrates that the Rules were not intended to be a comprehensive code of conduct for Senators, but were targeted at a limited area of activity, and more importantly, that they were not intended to displace generally accepted norms of conduct. During that debate, the Committee's Chairman, Senator John Stennis, stated:

''We do not try to write a full code of regulations . . . . [O]ur effort is merely to add rules and not to replace that great body of unwritten but generally accepted standards that will, of course, continue in effect.''[8]

In addition, the Committee's Vice Chairman, Senator Wallace Bennett, stated that it was impossible to develop written rules that address every possible area of misconduct.[9]

The phrase ''improper conduct'' as used by S. Res. 338 can be given meaning by reference to generally accepted standards of conduct, the letter and spirit of laws and Rules,[10] and by reference to past cases where the Senate has disciplined its Members for conduct that was deemed improper, regardless of whether it violated any law or Senate rule or regulation.

As early as 1797, Senator William Blount was expelled from the Senate for inciting Native Americans against the government, despite the fact that he had committed no crime, and neither acted in his official capacity nor during a session of Congress.[11] In 1811, the Senate censured Senator Thomas Pickering for reading a confidential communication on the Senate floor, despite the fact that there was no written rule prohibiting such conduct.[12] In 1873, a Senate Committee recommended the expulsion of Senator James Patterson, for accepting stock at a reduced price knowing that the offeror intended to influence him in his official duties, for giving a false account of the transaction, suppressing material facts, and denying the existence of material facts which must have been known to him.[13]

In 1929, the Senate condemned Senator Hiram Bingham for placing an employee of a trade association with a direct interest in pending tariff legislation on the Senate payroll. In 1954, the Senate condemned Senator Joseph McCarthy for his lack of cooperation with and abuse of two Senate committees that investigated his conduct.

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[4] S. Rep. No. 1147, 88th Cong., 2d Sess. 1 (1964).

[5] S. Res. 338, § 2(a)(1) (1964); 110 Cong. Rec. 16939 (1964)(emphasis added).

[6] S. Rep. No. 1125, 88th Cong., 2d Sess. 13 (1964).

[7] 110 Cong. Rec. 16933 (1964)(emphasis added).

[8] 114 Cong. Rec. 6833 (1968).

[9] Id. at 6842.

[10] In a report of a 1964 investigation into certain activities undertaken by Bobby Baker, then Secretary to the Majority of the Senate, the Committee on Rules and Administration stated: ''It is possible for anyone to follow the 'letter of the law' and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the 'letter' but also the 'spirit' of the law.'' S. Rep. No. 1175, 88th Cong., 2d Sess. 5(1964).

[11] See In Re Chapman, 166 U.S. 661, 669–670 (1897).

[12] S. Doc. No. 7, 92d Cong., 1st Sess. 6 (1972) (Expulsion and Censure Cases).

[13] The Senate decided not to act on the Committee's recommendation before the end of the session, and Senator Patterson left the Senate at the end of his term. S. Rep. No. 519, 42d Cong., 3rd Sess. VIII-X (1873).

None of these cases involved conduct that was found to violate any law, rule, or regulation, but in each case, the conduct was deemed to violate accepted standards and values controlling Senators' conduct.

After the passage of S. Res. 338 establishing the Select Committee on Standards and Conduct, the first case involving a finding of improper conduct was the investigation of Senator Thomas Dodd. The Committee investigated allegations of unethical conduct concerning the Senator's relationship with a private businessman with overseas interests; the conversion of campaign contributions to personal use; the free use of loaned automobiles; and the acceptance of reimbursements from both the Senate and private sources. Although no Senate rule or law prohibited the use of campaign funds for personal use at that time, the Committee found that the testimonial dinners investigated were political in character, and thus the proceeds should not have been converted to personal use.[14]

The Committee recommended, and the Senate adopted, a resolution censuring Senator Dodd for having engaged in a course of conduct

''exercising the influence and power of his office as a United States Senator . . . to obtain, and use for his personal benefit, funds from the public through political testimonials and a political campaign.''

uch conduct, although not violative of any specific law or Senate rule in force at that time, was found to be ''contrary to accepted morals, derogates from the public trust expected of a Senator, and tends to bring the Senate into dishonor and disrepute.''[15]

In 1980, the Select Committee on Ethics investigated charges of financial irregularities in the office of Senator Talmadge, concerning excess official reimbursements, inaccurate financial disclosure and reporting, failure timely and properly to file campaign disclosures, and the personal use of campaign funds, potentially in violation of various federal laws and Senate rules. Finding that Senator Talmadge ''either knew, or should have know, of these improper acts and omissions'', the Committee recommended and the Senate adopted a finding that the conduct was ''reprehensible and tends to bring the Senate into dishonor and disrepute and is hereby denounced.'' S.Rpt.No. 96–337, 96th Cong., 1st Sess. 18 (1979).

A ''denouncement'' was expressly recommended because the Committee felt that the facts were ''distinguishable from those of earlier matters in which the Senate 'censured' or 'condemned' a Member,'' and that the judgment of the Committee and the Senate concerning such conduct could be made using ''words that do not depend on analogy to dissimilar historical circumstances for interpretation.'' S.Rpt. No. 96–337, supra at 18.

In 1990, upon the recommendation of the Committee, the Senate denounced Senator David Durenberger, in part based on his financial arrangements in connection with a condominium he owned in Minneapolis, finding that his conduct was deemed to have ''brought discredit upon the United States Senate'' by a ''pattern of improper conduct,'' although the Committee did not find that any law or rule had been violated in connection with the condominium.[16] However, the Committee Chairman noted that the Senator's conduct violated the spirit of 18 U.S.C. § 431, which generally prohibits a Member from benefiting from a contract with the federal government.[17]

In 1991 the Committee concluded that Senator Alan Cranston engaged in improper conduct which reflected on the Senate by engaging in an impermissible pattern of conduct in which fund raising and official activities were substantially linked. The Committee found that for about two years, Senator Cranston had personally or through his staff contacted the Federal Home Loan Bank Board

[14] S. Rep. No. 193, 90th Cong., 1st Sess. (1967).
[15] S. Res. 112, 90th Cong., 1st Sess. (1967).
[16] S. Rep. No. 382, 101st Cong., 2d Sess. 14 (1990).
[17] 136 Cong. Rec. 510,560 (daily ed. July 25, 1990) (statement of Senator Heflin).

on behalf of Lincoln Savings and Loan during a period when he was soliciting and accepting substantial contributions from Mr. Keating (Lincoln Savings and Loan) or his affiliates, and that Senator Cranston's office practices further evidenced an impermissible pattern of conduct in which fund raising and official activities were substantially linked. The Committee specifically found that none of the activities of Senator Cranston violated any law or Senate rule. Nonetheless, the Committee found that his impermissible pattern of conduct

''violated established norms of behavior in the Senate, and was improper conduct that reflects upon the Senate, as contemplated in Section 2(a)(1) of S. Res. 338, 88th Congress, as amended.'' [18]

The Committee found that Senator Cranston's conduct was improper and repugnant, and that it deserved the ''fullest, strongest, and most severe sanction which the Committee has the authority to impose.'' The Committee issued a strong and severe reprimand of Senator Cranston.

In 1992, the Committee found that Senator Hatfield engaged in improper conduct reflecting upon the Senate by failing to disclose certain gifts and travel reimbursements as required by the Ethics in Government Act of 1978 (Senate Rule 34). Based upon this finding, at the conclusion of its Preliminary Inquiry, the Committee (with the Senator's agreement to accept it), issued a ''rebuke'' to the Senator, thereby resolving the matter without further proceeding (See Committee Rule 4(f)(3)).

Most recently, in 1995, the Committee recommended the expulsion of Senator Bob Packwood of Oregon based upon its findings that:

1) Senator Packwood endeavored to obstruct and impede the Committee's inquiry, acts which the Committee found to be reprehensible and contemptuous of the Senate's constitutional self- disciplinary process, a violation of his duty of trust to the Senate, and an abuse of his position as a Senator reflecting discredit upon the Senate;

2) Senator Packwood engaged in a pattern of abuse of power and authority by repeatedly committing sexual misconduct through 18 unwanted and unwelcome sexual advances between 1969 and 1990, acts which the Committee found to bring discredit and dishonor upon the Senate and conduct unbecoming a Senator; and

3) Senator Packwood abused his position of power and authority by engaging in a deliberate and systematic plan to enhance his personal financial position by soliciting, encouraging and coordinating employment opportunities for his wife from persons who had a particular interest in legislation or issues that he could influence, acts which the Committee found to bring discredit and dishonor upon the Senate and conduct unbecoming a Senator.

On September 8, Senator Packwood announced on the Senate floor his intention to resign from the Senate; his resignation was effective October 1, 1995.

Finally, in other circumstances the Committee has stopped short of finding that alleged conduct was ''improper conduct reflecting upon the Senate,'' but has found that the conduct should not be condoned or should otherwise be criticized in a public statement by the Committee. [19]

GENERAL PRINCIPLES OF PUBLIC SERVICE

[18] S. Rep. No. 223, 102d Cong., 1st Sess. 36 (1991).

[19] Decision of the Committee Concerning Senator DeConcini (aggressive conduct with regulators was inappropriate, intervention with regulators gave appearance of being improper and was attended with insensitivity and poor judgment), February 27, 1991; Decision of the Committee Concerning Senator Glenn (exercised poor judgment in arranging a meeting with Congressman), February 27, 1991; Decision of the Committee Concerning Senator McCain (exercised poor judgment in intervening with regulators), February 27, 1991; and Decision of the Committee Concerning Senator Riegle (conduct regarding intervention with regulators not condoned, created appearance of being improper, attended with insensitivity and poor judgment), February 27, 1991; Statement of the Committee Regarding Senator D'Amato (conducting the business of his office in an improper and inappropriate manner, negligent in failing to establish appropriate standards for operation of office). August 2, 1991.

The Code of Ethics for Government Service, passed by Concurrent Resolution on July 11, 1958, is also specifically listed in the Committee's Rules as a source of jurisdiction for the Committee under S. Res. 338. It sets out ten broadly-worded standards that should be adhered to by all government employees, including office-holders. The first and last of these standards state that any person in government service should:

''1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

10. Uphold these principles, ever conscious that public office is a public trust.'' [20]

Again, these principles generally encompass conduct that may not violate a specific law, rule, or regulation, but that is not consistent with ''loyalty to the highest moral principles.'' A violation of this Code has not, to date, been used as a basis for Senate disciplinary action, although the House has disciplined its Members for violations of the Code on several occasions. The Select Committee's Rules of Procedure (See Appendix C) set out the sources of the Committee's subject matter jurisdiction, which include the Preamble to S. Res. 266, and the Code of Ethics for Government Service.

The Preamble to S. Res. 266, by which the Senate Code of Official Conduct was first adopted in 1968, reiterated the guiding principle that ''a public office is a public trust.'' This Preamble remains a part of Senate's Standing Orders.

[20] The Code of Ethics for Government Service, H. Con. Res. 175, 85th Cong., 2d Sess., July 11, 1958 (72 Stat. B12).

The Code further states that any person in Government service should:

2.Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.

3.Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

4.Seek to find and employ more efficient and economical waysof getting tasks accomplished.

5.Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and 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.

6.Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

7.Engage in no business with the Government, either directly or indirectly which is inconsistent with the conscientious performance of his governmental duties.

8.Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

9.Expose corruption wherever discovered.

APPENDIX F

Regulations Governing

THE USE OF THE MAILING FRANK

by

Members and Officers of The United States Senate

(S. Pub. 105–11)

April, 1997

SELECT COMMITTEE ON ETHICS

UNITED STATES SENATE

SELECT COMMITTEE ON ETHICS

Pat Roberts, Kansas, *Chairman*
Harry Reid, Nevada, *Vice Chairman*
Bob Smith, New Hampshire
George Voinovich, Ohio
Kent Conrad, North Dakota
Richard Durbin, Illinois
Victor Baird, *Staff Director and Chief Counsel*
Annette Gillis, *Chief Clerk*

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FOREWORD

The Senate Select Committee on Ethics has established these Regulations in an effort to provide guidance and assistance on the use of the franked mail privilege. The Regulations define frankable mail matter and discuss the procedures surrounding the use of the frank.

The Regulations apply to all Members of the Senate, and Senate officials who are authorized to use the frank. While day-to-day decisions on the use of the frank are usually made by staff assistants, the responsibility for proper use rests with individual Members and officers of the Senate. Staff should, therefore, familiarize themselves with these Regulations.

The Members of the Ethics Committee, and its staff, are available to answer written and oral questions on the proper use of the frank.

CHAPTER ONE
WHO MAY USE THE MAILING FRANK

1. Senators and Officers of the Senate

Senators and others authorized to use the mailing frank by sections 3210, 3211, and 3218 of Title 39 of the United States Code include:

(a) a Senator, until the expiration of the 90 day period immediately following the date on which he leaves office;

(b) a Senator-elect;

(c) the Vice-President;

(d) the Secretary of the Senate;

(e) the Sergeant at Arms of the Senate;

(f) the Legislative Counsel of the Senate;

(g) the Senate Legal Counsel;

(h) any authorized person in case of a vacancy in the offices of (d), (e), (f) or (g) above; and

(i) the surviving spouse or a designated surviving relative of a Senator who died during his or her term of office, for not more than 180 days after the Senator's death.

2. Responsibility for Use of the Mailing Frank

The franked mail privilege is the personal responsibility of each Senator (see Chapter Four, paragraph 1 of these Regulations). While individual employees within the office of a Senator have the day-to-day use of the mailing frank, as authorized by section 3210 et seq., and as directed by the Senator, it remains the responsibility of the Senator to oversee the use of the franked mail privilege by his or her office and to ensure that the use of the privilege is consistent with the requirements established by the statute, these Regulations, the Standing Rules of the Senate, Interpretative Rulings of the Select Committee on Ethics, and Regulations established by the Committee on Rules and Administration.

3. Senator-elect

A Senator-elect may use the frank to mail matter relating to his or her official duties and functions. Examples of such frankable mail would include correspondence relating to official meetings attended and legislative initiatives to be pursued. While mail matter regarding personal, political, or other non-official undertakings would not be frankable, a Senator-elect may use the franked mail privilege to respond to inquiries from constituents on official business and activities, and the privilege may be used to respond to letters of congratulations on the Senator's election.

4. Prohibition on Loan of the Frank

(a) Section 3215 of Title 39, U.S. Code, states: ''A person entitled to use a frank may not lend it or permit its use by any committee, organization, or association, or permit its use by any person for the benefit or use of any committee, organization, or association. This section does not apply to any standing, select, special or joint committee or subcommittee thereof, or commission, of the Senate, House of Representatives, or Congress, composed of Members of Congress, or to the Democratic Caucus or the Republican Conference of the House of Representatives or of the Senate.''

(b) This prohibition on the loan of the frank means that a Senator or official authorized to franked mail matter may not allow the frank to be used in any way that would inure to the benefit of any third party not permitted to use the frank. Such organizations include:

-charitable fund-raising organization(s)

-political campaign committee(s)

-testimonial fund-raising dinner sponsor(s)

-trade organization(s)

-bar committee(s)

-political party(ies)

-State society(ies)

Other sections of the statute prohibit personal, partisan, and political uses of the frank. Any solicitation of funds for any purpose is likewise prohibited. If a mailing under the frank would result in an economic benefit to a non-Senate organization which otherwise would have had to pay postage on the mailing, use of the frank would be improper.

Similarly, because of the potential for abuse, a non-Senate organization is not permitted to stuff or mail franked envelopes, or to prepare and mail self-mailers. This restriction does not apply to the labeling of self-mailers or unstuffed, unsealed franked envelopes by a non-Senate organization under the direct supervision of an employee from a Senator's office. Such envelopes or self-mailers must be returned to the Senate Service Department or to an office of the Senator for stuffing and mailing. [1]

(c) The sending back of a return-addressed and franked piece of mail to a Senator, or to an officer of the Senate, by an addressee does not constitute a loan of the frank if the mail matter is frankable and if the return of the frank remains under the Senator's or officer's control and is used solely to expedite the conduct of official Senate business. The following are examples of proper uses of the frank:

- A Senator may provide a franked envelope to a radio or television station to facilitate the return of a frankable radio or television tape.

- The Secretary of the Senate may enclose a franked self-addressed envelope in a letter to State officials requesting the return of certain forms and reports required to be filed under Federal election laws.

- A Senate committee which maintains a mailing list for its official reports may use a franked return-address postal card for addresses to indicate its continued desire to receive reports.

- A Senator may provide a franked, pre-addressed mailer or envelope for the return to the Senator of responses to a qualified survey questionnaire.

(See paragraph 5 of Chapter 2, below, and Appendix 2.)

5. Senator Who Has Resigned

A Senator who resigns his office is entitled, under section 3210(b)(3) of Title 39, U.S. Code, to use the frank for matters of official business relating to the closing of his office during the 90- day period immediately following his resignation.

[1] The non-Senate group must be reimbursed for the cost of the labels provided and for the cost of the printing labeling process.

Reimbursement is not required where the non-Senate organization is an agency of the Federal government or a State university. (See Paragraph 2 of Senate Rule 40, Senate Rule 38, and Paragraph 8 of Chapter 3 below, concerning the preperation of mass mailing material.)

6. Upon the Death of a Senator; Responding to Letters of Condolence Upon the Death of a Senator's Spouse

(a) Section 3218 provides that upon the death of a Senator, the surviving spouse of the Senator (or, if there is no surviving spouse, a member of the immediate family of the Senator designated by the Secretary of the Senate) may send non-political correspondence relating to the death of the Senator for a period not to exceed 180 days after the Senator's death.

(b) All frankable correspondence involving legislative and constituent service matters being handled by the office of the deceased Senator is to be mailed using the franked mail privilege of the Secretary of the Senate, under procedures established by the Secretary.

(c) Although the franked mail statute does not authorize the use of the mailing frank to mail letters of condolence to the public, a Senator may use the franked mail privilege to send replies to letters of condolence received from the public upon the death of a member of the Senator's immediate family.

7. Committees

(a) Mail matter of any standing, select or special committee established by a Resolution of the Senate, or of any joint committee or commission established by Congress, whose chairman is a Senator, may be sent under the frank of the chairman, if the mail matter is frankable under section 3210. Mail matter must relate, in the case of a standing, select or special committee of the Congress, exclusively to the official business of the committee and may not focus unduly upon the chairman or any other Member of the Committee.

The Democratic Caucus and the Republican Conference of the Senate may use the frank under the authority of section 3215 to mail matter which meets the tests of frankability set forth in section 3210. Mail matter sent under the frank of either the Democratic Caucus or the Republican Conference must relate exclusively to the official legislative and related activities of the Congress and may not be partisan or political. (See Chapter Two, paragraph 1 of these Regulations and 2 U.S.C. 439(b)).

(b) The services of a campaign committee, political party or other partisan political organization, or an organization utilizing a list of names and addresses developed for or by such a campaign committee or political organization, may not be used to prepare or process any part of a franked mailing.

8. Penalty for Unauthorized Use

Section 1719 of Title 18, U.S. Code, states: ''Whoever makes use of any official envelope, label, or endorsement authorized by law, to avoid the payment of postage or registry fee on his private letter, packet, package, or other matter in the mail, shall be fined not more than $300.''

CHAPTER TWO
CONTENTS OF FRANKABLE MAIL

1. Policy of Congress

Section 3210(a)(1) of Title 39, U.S. Code, as enacted by Public Law 93–191 and as amended by Public Law 94–177, states, It is the policy of the Congress that the privilege of sending mail as franked mail shall be established under this section in order to assist and expedite the conduct of the official business, activities, and duties of the Congress of the United States.

2. Intent of Congress

Section 3210(a)(2) states, ''It is the intent of the Congress that such official business, activities, and duties cover all matters which directly or indirectly pertain to the legislative process or to any congressional representative functions generally, or to the functioning, working, or operating of the Congress and the performance of official duties in connection therewith, and shall include, but not be limited to, the conveying of information to the public, and the requesting of the views of the public, or the views and information of another authority of Government, as a guide or a means of assistance in the performance of those functions.''

3. Matters of Public Concern or Public Service

Section 3210(a)(3)(A) authorizes the franking of mail matter ''regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress.''

These matters generally relate to legislative actions or the official business of a Senator's office and must relate principally to the Federal government. There are some limited instances where the frank may properly be used to send material of purely State and local concern. For example, a Senator may communicate with State and local officials on matters of State and local concern, and with constituents who have inquired or communicated on State or local matters. Nevertheless, mass mailings sent at a Senator's initiative should relate to federal matters and the impact of federal policies on States, communities, and individual citizens, and should not contain matters of purely State and local concern.

(See also paragraph 4, below.)

4. Newsletters and News Releases

Section 3210(a)(3)(B) authorizes the franking of newsletters and press re-leases dealing with ''such matters as the impact of laws and decisions on State and local governments and individual citizens; reports on public and official actions taken by Members of Congress; and discussions of proposed or pending legislation or governmental actions and the positions of the Members of Congress on, and arguments for or against, such matters.''

Personal material or material of a partisan political nature shall not be included in newsletters and news releases mailed under the frank. For an explanation of what constitutes unfrankable personal material and unfrankable political material, see also paragraphs 16 and 17 respectively in this chapter.

Biographical matter concerning the Senator or any member of his family shall not be included in a newsletter, as stated in paragraph 14 of this chapter. The inclusion of pictures of the Senator in a newsletter shall be limited by the provisions of paragraph 15 of this chapter.

The type in which the Senator's name appears anywhere in a newsletter, other than the masthead, may not exceed 1/4″ in height.

A ''personal reference'' (the use of a Senator's name or the word ''Senator'' in place of the Senator's name) may not appear in a newsletter or other mass mailing more than an average of eight times per page. For example, in a two-page newsletter, page one could contain ten ''personal references'', and page two could contain five ''personal references'', as long as, taken together, they would not exceed sixteen—an average of eight per page. For purposes of this limitation, the use of a Senator's name, preceded by the word ''Senator'', as in ''Senator Smith'', or ''Senator John Smith'', constitutes only one ''personal reference.''

(1) This limitation does not include the Senator's name in the frank on the self-mailer, or on the masthead, nor does it apply to the mass mailing of otherwise frankable official Government records or publications. For example, the personal reference rule does not apply to the mass mailing of hearing transcripts or a copy of, or an excerpt from, the Congressional Record. If, however, portions or excerpts are reprinted from such sources in the text of a newsletter or other mass mailing, then the personal reference rule does apply and personal references are limited to no more than an average of eight per page.

(2) The personal reference limitation is not applicable to a frankable opening statement by a Senator before a committee of the Congress.

For the purposes of the limitation on personally phrased references to the Senator, a ''page'' is each side of an 8 1/2″ by 11″ or 8 1/2″ by 14″ sheet of paper, irrespective of the number of folds utilized in the design of the matter mailed. Thus, if a newsletter is on a legal-size sheet of paper and has print on both sides, it would be a two-page newsletter, even if the paper were folded to resemble a four-page pamphlet.

(See paragraph 5 of Chapter 3, ''Moratorium on Use of the Frank for Mass Mailings'' and paragraph 9 of Chapter 3, ''Preparation of Mass Mailing Material.'')

5. Questionnaire Seeking Public Opinion

Section 3210(a)(3)(C) authorizes franking of questionnaires ''seeking public opinion on any law, pending or proposed legislation, public issue, or subject.'' Such questionnaires must be designed to aid a Senator in the conduct of the official business of the Senate and must relate to existing Federal law, pending or proposed legislation, or public policy questions and issues with which the Senator is concerned.

The Committee on Rules and Administration has established guidelines on the use of the frank for the return of questionnaires. (See Appendix 2 to these Regulations.)

A tabulation of the results of questionnaires received by the Senator may be included in his newsletter or other frankable reports to his constituents.

6. Mail Between a Senator's Washington Office and Home State Offices

Section 3210(a)(3)(D) authorizes the franking of ''mail matter dispatched by a Member of Congress between his Washington office and any Congressional district offices, or between his district offices.''

As applied to Senators, Congressional district offices refer to home State offices.

Mail matter franked under this provision must relate to the official duties of a Senator and is subject to the restrictions on the frankability of mail matter in general, including those relating to the use of personal or political material set forth in paragraphs 16 and 17 respectively of this chapter.

7. Mail to Other Legislators

Section 3210(a)(3)(E) authorizes the franking of ''mail matter directed by one Member of Congress to another Member of Congress or to representatives of the legislative bodies of State and local governments.''

Mail matter franked under this provision must relate to the official duties of a Senator and is subject to the restrictions on the frankability of mail matter in general, including those relating to the use of personal or political material set forth in paragraphs 16 and 17 respectively of this chapter.

8. Congratulatory Messages

Section 3210(a)(3)(F) authorizes the franking of ''mail matter expressing congratulations to a person who has achieved some public distinction.''

This provision precludes the use of the franking privilege for mailing letters of congratulations and condolences upon occasions such as birth, graduation from high school and college, marriage, death and other landmark occasions which, although they may as well be viewed as a personal or private distinction, mark neither a unique public occasion, nor the achievement of a public distinction accorded in recognition of unusual public service to community, state, or nation.

The following examples are ''public distinctions'' for which the frank could be used to mail a letter of congratulations: senior citizens who have received a high school diploma through an adult education program; newly naturalized American citizens; enlisting or re-enlisting in the Armed Forces of the United States; and becoming an Eagle Scout, VFW State Commander, American Legion State Commander, or head of a state or regional union council.

9. Federal and Other Publications

Section 3210(a)(3)(G) authorizes the franking of ''mail matter, including general mass mailings, which consist of Federal laws, Federal regulations, other Federal publications, publications purchased with Federal funds, or publications containing items of general information.''

Frankable Federal publications include the Agricultural Yearbook, Congressional Directory, Senate wall calendar, Department of Agriculture pamphlets, and any other publication printed by order of Congress which relates to the legislative process. Seeds and agricultural reports from the Department of Agriculture are specifically frankable as stated under paragraph 19 of this chapter.

10. Congressional Record

(a) Section 3212 authorizes Senators to send the Congressional Record as franked mail. That section also states, ''Members of Congress may send, as franked mail, any part of, or a reprint of any part of, the Congressional Record, including speeches or reports contained therein, if such matter is mailable as franked mail under section 3210. . . .''

(b) Matter reprinted from the Congressional Record does not become frankable under section 3210 et seq., simply because it has appeared in the Congressional Record.

11. Books

The personal books belonging to a Senator, other than Federal publications, are not frankable.

Surplus and other books and publications from the Library of Congress are frankable to other libraries or persons. A Senator may provide franked labels to the Library of Congress to be used in shipping such books or publications as long as the Senator takes such steps as may be necessary to avoid misuse resulting in an improper loan of the frank. (See paragraph 4 of Chapter 1.)

Ordinarily, a book which is printed privately under the authorship or editorship of a Senator is not frankable; however, if the book is substantially biographical under the provisions of paragraph 14 of this chapter, it may be mailed under the frank in response to a specific request for biographical material.

12. Public Service Material

Section 3210(f) provides that:

> ''Any mass mailing which otherwise would be permitted to be mailed as franked mail under this section shall not be so mailed unless the cost of preparing and printing of the mail matter is paid exclusively from the funds appropriated by Congress, except that an otherwise frankable mass mailing may contain, as an enclosure or supplement, any public service material which is purely instructional or informational in nature, and which in content is frankable under this section.''

Rule 40 (Franking Privilege and Radio and Television Studios)

Paragraph 2 provides:

> ''A Senator shall use only official funds of the Senate, including his official Senate allowances, to purchase paper, to print, or to prepare any mass mailing material which is to be sent out under the frank.''

The franked mail statute, 39 U.S.C. 3210 (a)(5)(D) authorizes the Select Committee to prescribe regulations as the Committee considers necessary and proper for Members of the Senate to conform to the provisions of the statute. Under this authority the Select Committee is presently engaged in an effort to properly define the parameters of the term frankable public service material. Pending a definitive opinion by the Committee in defining this term, Members and staff are cautioned to employ a narrow reading of the term frankable public service material and where a question exists as to public service material which is intended to be used in a franked mass mailing, the Committee will provide guidance on a case-by-case basis for Members before the mailing is sent out under the franked mail statute.

13. Voting Information

Section 3210(a)(3)(H) authorizes the franking of ''mail matter which consists of voter registration or election information or assistance prepared and mailed in a non-partisan manner.''

Letters from a Senator thus may be sent under the frank to new student voters, recently naturalized citizens, and other newly enfranchised voters encouraging them to vote by providing information or assistance. Special caution must be exercised, however, to ensure that this mail does not include unfrankable political material as described in paragraph 17 of this chapter.

Voter registration or election information or assistance of a non-partisan nature may be included in an otherwise frankable newsletter.

14. Biographical Matter

Section 3210(a)(3)(I) authorizes the franking of ''mail matter which constitutes or includes a biography or autobiography of any Member of, or Member-elect to, Congress or any biographical or autobiographical material concerning such Member or Member-elect or the spouse or other members of the family of such Member or Member-elect, and which is so mailed as a part of a Federal publication or in response to a specific request therefor and is not included for publicity purposes in a newsletter or other general mass mailing of the Member or Member-elect under the franking privilege.''

This matter may be a book or a part of a book, a specially printed brochure, a newspaper or magazine article, a copy of a speech, or other available form.

The frankability of biographical matter could be affected by the inclusion of personal matter for publicity, advertising, or potential use for political purposes. (See paragraphs 16 and 17 of this chapter.)

15. The Picture of a Senator

Section 3210(a)(3)(J) authorizes the franking of ''mail matter which contains a picture, sketch, or other likeness of any Member or Member-elect and which is so mailed as a part of a Federal publication or in response to a specific request therefor and, when contained in a newsletter or other general mass mailing of any Member or Member-elect, is not of such size, or does not occur with such frequency in the mail matter concerned, as to lead to the conclusion that the purpose of such picture, sketch, or likeness is to advertise the Member or Member-elect rather than to illustrate accompanying text.''

Any picture, sketch, or other likeness in which a Senator appears in a newsletteror other mass mailing shall conform to the following requirements:

-Such pictures, sketches, or other likenesses must relate to the content of the newsletter; i.e., a brief caption will not be deemed sufficient as accompanying text if the picture, sketch, or other likeness is otherwise unrelated to the body of the newsletter.

-The total number of pictures, sketches, or other likeness (excluding a photograph, sketch, or other illustration in the masthead) in which the Senator appears in a single issue may not be more than four.

-A picture, sketch, or other likeness of a Senator alone shall be no larger than 12 square inches.

-A picture, sketch, or other likeness of a Senator with one or more other persons shall be no larger than 20 square inches.

Photographs of a Senator may only be mailed in direct response to specific requests from the public.

16. Personal Matter

(a) Section 3210(a)(4) prohibits the use of the frank for ''the transmission through the mail . . . of matter which in its nature is purely personal to the sender or to any other person and is unrelated to the official business, activities, and duties of the public officials covered by subsection (b)(1) of this section (who are authorized to use the frank).''

(b) Section 3210(a)(5)(A) prohibits the use of the frank for ''mail matter which constitutes or includes any article, account, sketch, narration, or other text laudatory and complimentary of any Member of, or Member-elect to, Congress on a purely personal or political basis rather than on the basis of performance of official duties as a Member or on the basis of activities as a Member-elect.''

Mail matter complimenting a Senator is frankable only if it relates to achievements in the performance of Senate duties. However, the use, in a newsletter or other mass mailing, of matter which is laudatory or complimentary to the Senator, no matter how deserving or how accurate may give the impression that the Senator is advertising himself for political purposes.

(c) Section 3210 (a)(5)(B)(i) permits a Member or Member-elect to express greetings from his or her spouse or members of the family of such Member or Member-elect if such greetings are brief and incidental to an otherwise frankable mailing.

(d) Section 3210 (a)(5)(B)(ii) prohibits the use of the frank for ''reports of how or when such Member or Member-elect, or the spouse or any other member of the family of such Member or Member-elect, spends time other than in the performance of, or in connection with, the legislative, representative, and other official functions of such Member or the activities of such Member-elect as a Member-elect.''

(e) Section 3210(a)(5)(B)(iii) prohibits the use of the frank for -any card expressing holiday greetings from (a Senator).- This prohibition extends to acknowledgments of holiday greetings sent to a Senator, but does not preclude an expression of holiday greetings at the commencement or conclusion of otherwise frankable correspondence.

17. Political Matter

(a) Section 3210(a)(3)(B) authorizes the frank for mail matter which reports on ''public and official actions taken by Members of Congress'' or which discusses ''proposed or pending legislation or governmental actions and the positions of the Members of Congress on, and arguments for or against, such matters.''

(b) Mail matter may, therefore, include arguments or opinions which explain or advocate support or opposition to potential, proposed, or pending legislation, or policy positions of any branch or agency of government, provided that the arguments or opinions focus on the merits of the policy issues and not on political considerations.

(c) Section 3210(a)(5)(C) prohibits the use of the frank for ''mail matter which specifically solicits political support for the sender or any other person or any political party or a vote or financial assistance for any candidate for any political office.''

(d) Mail matter which mentions that the Senator or an employee of a Senator is a candidate for political office is not frankable. Similarly, mail matter which constitutes electioneering, or which advocates the election or defeat of any individuals, or a political party is not frankable.

(e) The use of the political designation ''D'' or ''R'' when used for purposes of party identification in an otherwise frankable mailing is not prohibited.

(f) After general election for his office, a Senator who was a candidate may send under his frank and in response to a specific request from a history scholar, library, museum, or individual collector the following types of material: platform statements, bumper stickers, posters and buttons.

18. Solicitation of Funds

No solicitation of funds for any purpose may be made under the franked mail privilege (2 U.S.C. 439(b)).

19. Seeds and Agricultural Reports

(a) Section 3213 authorizes the use of the frank to mail seeds and agricultural reports emanating from the Department of Agriculture in response to a specific request of a Senator.

(b) Former members of Congress are entitled to use the frank to mail seeds and such agricultural reports in response to a specific request during the 90-day period immediately following the expiration of their term of office.

20. Correction of Mailing Lists

Instructions to a local postmaster to make any necessary changes to the name and address may be printed on the front of an envelope or self-mailer used in a frankable mailing.

(a) Postal Service Regulation 122.5 states that mailing lists submitted by Members of Congress will be corrected as frequently as requested and that payment for correction of lists submitted by Members of Congress is made under the official mail reimbursement program.

(b) A Senator may include instructions, on the front of a franked envelope or self-mailer, to a local postmaster to make any necessary changes to the name and address printed on the franked envelope or self-mailer, so long as the frank is used, in this instance, in connection with a frankable mailing.

(c) A Senator may not use the mailing list of a private organization in a franked mailing and, subsequently, provide the organization with information to be used to update its mailing list.

(d) The chairman of a committee or subcommittee of the Senate may use his frank to update the mailing list of his committee or subcommittee, so long as the mailing list is compiled from specific requests and is used only to mail official publications, such as transcripts of hearings, reports, news releases and announcements. For this purpose, the chairman may also use his frank to send return address cards to addresses on the list.

CHAPTER THREE
MASS MAILING

1. Definition of a Mass Mailing

As defined by Pub.L. 103–283 effective Oct. 1, 1994, the term ''mass mailing'' means, with respect to a session of Congress, any mailing of news-letters or other pieces of mail with substantially identical content (whether such mail is deposited singly or in bulk, or at the same time or different times), totaling more than 500 pieces in that session, except that such term does not include any mailing:

(i) of matter in direct response to a communication from a person to whom the matter is mailed;

(ii) to other Members of Congress, or to Federal, State or local government officials;

(iii) of a news release to the communications media;

(iv) of a town meeting notice, but no such mailing may be made fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) for any Federal, State, or local office in which a Member of the Senate is a candidate for election; or

(v) of a Federal publication or other item that is provided by the Senate to all Senators or made available by the Senate for purchase by all Senators from official funds specifically for distribution.

Any mailing which meets any one of the five exceptions above is not a ''mass mailing'' and is therefore not subject to the moratorium or registration requirements, which are described in paragraphs 4, 5, and 6, of this chapter.

A franked mailing made specifically and solely in response to, and mailed not more than 120 days after the date of receipt of, a written request, inquiry, or expression of opinion or concern from the person to whom it is addressed is not a mass mailing. (S. Res. 212 Section 13 Nov. 19, 1989)

No mailing to Government officials is a mass mailing. Government officials (whether Federal, State, or local) include any elected or appointed official of the United States and of any state or territory or a political subdivision thereof.

No mailing of news releases to the communications media is a mass mailing.

2. Definition of a Candidate

The term ''candidate'' means an individual who seeks nomination for election, or election, to Federal office, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election-

(a) if such individual has received contributions aggregating in excess of $5,000 or has made expenditures aggregating in excess of $5,000; or

(b) if such individual has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual- and if such person has received such contributions aggregating in excess of $5,000 or has made such expenditures aggregating in excess of $5,000. (2 U.S.C. Section 431(2))

3. Definition of a Primary or General Election

A primary or general election includes a party convention or caucus which has authority to nominate a candidate for the Senate and any subsequent primary or general election.

4. Registration of Mass Mailing

Paragraph 3 of Rule 40 provides that a Senator must register each mass mailing which he or she sends under the frank. Section 323 of the Legislative Branch Appropriations Act, 1991, requires that such registration be quarterly. Registration is made quarterly by filing with the Secretary of the Senate a copy of the mailing attached to a form providing a description of the group or groups of persons to whom the mass mailing was sent. For example, quarterly registrations of mailings sent during each quarter are due by the close of the quarter, but may be made at the time each mass mailing is sent.

5. Moratorium on the Use of the Frank for Mass Mailings

Section 3210(a)(6)(C) provides that: ''No Member of the Senate may mail any mass mailings as franked mail if such mass mailing is mailed fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) for any national, State or local office in which such Member is a candidate for election.'' The moratorium also applies to the period before any convention which has the authority to nominate a candidate for the Senate.

The moratorium does not apply to a Senator who does not face any convention, primary, or general election opposition. The moratorium does apply, however, if there is even the possibility under applicable State law of any opposition, including the possibility of write-in opposition. (See Senate Rule 40.1, as amended by S. Res. 224, June 21, 1994)

The moratorium also does not apply to the mass mailings of a Senate committee which are mailed under the frank of the chairman of the committee. Such mass mailings must relate only to the committee's business and may not focus on a Member in a manner that reasonably could be deemed to be personal or partisan in nature.

6. Restrictions on the Use of Mass Mailing by All Senators Prior to a Biennial Federal General Election

Regulations promulgated by the Committee on Rules and Administration provide that no Senator shall send any mass mailing during the period beginning 60 days before the date of a biennial Federal election. These Regulations are reprinted in their entirety (see page 27).

7. Restrictions on the Use of Mass Mailing by Candidates Prior to a Primary, General, or Special Election

A Senator who is a candidate may not send any franked mass mailing unless such mailing is delivered to a postal facility at least 60 days prior to the date of a primary, its equivalent, or a general, or special election. Similarly, Senators subject to the 60-day moratorium regarding the biennial Federal election shall not send any franked mass mailing unless such mailing is delivered to a postal facility at least 60 days prior to the date of the election. In computing this 60-day period, the date of the election is excluded and the time of mailing is determined by the time of delivery to a postal facility. Thus, delivery before midnight of the 60th day before the election would be in compliance with the moratorium. For example, if the primary election in which a Senator is a candidate is September 10th, the 60th day before the election is July 12th.

In order to comply with this limitation, each Member has the responsibility to ascertain from the Service Department how far in advance of the deadline he or she must submit such material so that it can be prepared, printed and delivered to the Postal Service in compliance with the law.

8. Preparation of Mass Mailing Material

All mass mailing must be prepared and mailed by the Senate Service Department, which shall provide the Financial Clerk a monthly certification of each Senator's mass mailing costs, to be

debited from the Senator's Official Personnel and Office Expense Account. Mass mailings charged against the Account may not exceed $50,000 in any fiscal year. Funds in a Senator's Official Mail Account may not be used for the postal costs of mass mailings. [Pub.L. 103–283]

Section 3210(f) provides that:

> ''Any mass mailing which otherwise would be permitted to be mailed as franked mail under this section shall not be so mailed unless the cost of preparing and printing the mail matter is paid exclusively from funds appropriated by Congress, except that an otherwise frankable mass mailing may contain, as an enclosure or supplement, any public service material which is purely instructional or informational in nature, and which in content is frankable under this section.''

Rule 40 (Franking Privilege and Radio and Television Studios)

Paragraph 2 provides:

''A Senator shall use only official funds of the Senate, including his official Senate allowances, to purchase paper, to print, or to prepare any mass mailing material which is to be sent out under the frank.''

The franked mail statute, 39 U.S.C. 3210(a)(5)(D) authorizes the Select Committee to prescribe regulations as the Committee considers necessary and proper for Members of the Senate to conform to the provisions of the statute. Under this authority the Select Committee is presently engaged in an effort to properly define the parameters of the term ''frankable public service material.'' Pending a definitive opinion by the Committee in defining this term, Members and staff are cautioned to employ a narrow reading of the term ''frankable public service material'' and where a question exists as to public service material which is intended to be used in a frankable mass mailing, the Committee will provide guidance on a case-by-case basis for Members before the mailing is sent out under the franked mail statute.

9. Use of Senate Computer Facilities

Paragraph 5 of Senate Rule 40 provides:

> ''The Senate computer facilities shall not be used (a) to store, maintain, or otherwise process any lists of names and addresses identifying the individuals included in such lists as campaign workers or contributors, as members of a political party, or by any other partisan political designation, (b) to produce computer printouts except as authorized by user guides approved by the Committee on Rules and Administration, or (c) to produce mailing labels for mass mailings, or computer tapes and discs, for use other than in service facilities maintained and operated by the Senate or under contract to the Senate. The Committee on Rules and Administration shall prescribe such regulations not inconsistent with the purposes of this paragraph as it determines necessary to carry out such purposes.''

10. Prior Review of Mass Mailings

At the request of a Senator or employee, the Select Committee will examine the proposed mail matter and render an opinion as to whether the mailing is in compliance with section 3210 and the regulations promulgated thereunder.

CHAPTER FOUR
VIOLATIONS

1. Proper Use of Frank

The use of the frank as authorized by law is a privilege which Senators and others must view as a personal responsibility and which must be vigilantly safeguarded against abuse. Mail sent under the frank is not free; its cost is paid by the Congress and is ultimately paid by the taxpayer. Every citizen has the right, therefore, to expect that a Senator will use his frank only in the proper exercise of the duties of his office.

2. Responsibility of Senators' Assistants

The actual determination of whether or not to send a particular piece of mail under a Senator's frank probably will be made by the Senator's assistants who prepare mail for delivery. An improper use of the frank by an assistant, ranging from an inadvertent mistake on a single letter to a willful abuse of the frank in connection with a mass mailing, will be imputed to the employing Senator under most circumstances. To help avoid these violations of the franking law, Senators should assure that their assistants know what kinds of mail are frankable by providing for the training and supervision of their employees and their familiarization with these Regulations.

3. Complaints

The Select Committee on Ethics is assigned the responsibility of receiving and disposing of complaints that a violation of the use of the mailing frank has occurred or is about to occur. The Committee is empowered, if it determines there is a reasonable justification for the complaint, to conduct an investigation of the matter, afford due process, conduct a hearing, issue a decision, take appropriate action, and recommend disciplinary measures.

4. Restitution for Mistake

A mistake exists when a Senator, or an assistant to a Senator acting within the scope of his employment, improperly or unlawfully uses the frank through ignorance or forgetfulness.

A Senator who uses the frank mistakenly may offer to pay for the cost of the mailing. Such an offer will be viewed as an act of good faith by the Select Committee on Ethics in deciding whether to conduct further proceedings in case of a complaint against the Senator because of the mailing. The Committee may then direct that the payment be made.

Section 3216(d) of Title 39, United States Code provides, ''Money collected for matter improperly mailed under the franking privilege shall be deposited as miscellaneous receipts in the general fund of the Treasury.''

APPENDIX
LAWS RELATING TO THE MAILING OF CONGRESSIONAL FRANKED MAIL

Section 3210. Franked mail transmitted by the Vice President, Members of Congress, and congressional officials

(a)(1) It is the policy of the Congress that the privilege of sending mail as franked mail shall be established under this section in order to assist and expedite the conduct of the official business, activities, and duties of the Congress of the United States.

(2) It is the intent of the Congress that such official business, activities, and duties cover all matters which directly or indirectly pertain to the legislative process or to any congressional representative functions generally, or to the functioning, working or operating of the Congress and the performance of official duties in connection therewith, and shall include, but not be limited to, the conveying of information to the public, and the requesting of the views of the public, or the views and information of other authority of government, as a guide or a means of assistance in the performance of those functions.

(3) It is the intent of the Congress that mail matter which is frankable specifically includes, but is not limited to-

(A) mail matter to any person and to all agencies and officials of Federal, State, and local governments regarding programs, decisions, and other related matters of public concerns or public service, including any matter relating to actions of a past or current Congress;

(B) the usual and customary congressional newsletter or press release which may deal with such matters as the impact of laws and decisions on State and local governments and individual citizens; reports on public and official actions taken by Members of Congress; and discussions of proposed or pending legislation or governmental actions and the positions of Members of Congress on, and arguments for or against, such matters;

(C) the usual and customary congressional questionnaire seeking public opinion on any law, pending or proposed legislation, public issue, or subject;

(D) mail matter dispatched by a Member of Congress between his Washington office and any congressional district offices, or between his district offices;

(E) mail matter directed by one Member of Congress to another Member of Congress or to representatives of the legislative bodies of State and local governments;

(F) mail matter expressing congratulations to a person who has achieved some public distinction;

(G) mail matter, including general mass mailings, which consists of Federal laws, Federal regulations, other Federal publications, publications purchased with Federal funds, or publications containing items of general information;

(H) mail matter which consists of voter registration or election information or assistance prepared and mailed in a non-partisan manner;

(I) mail matter which constitutes or includes a biography or autobiography of any Member of, or Member-elect to, Congress or any biographical or autobiographical material concerning such Member or Member-elect or the spouse or other members of the family of such Member or Member-elect, and which is so mailed as a part of a Federal publication or in response to a specific request therefor and is not included for publicity purposes in a newsletter or other general mass mailing of the Member or Member-elect under the franking privilege; or

(J) mail matter which contains a picture, sketch, or other likeness of any Member or Member-elect and which is so mailed as a part of a Federal publication or in response to

a specific request therefor and when contained in a newsletter or other general mass mailing of any Member or Member-elect, is not of such size, or does not occur with such frequency in the mail matter concerned, as to lead to the conclusion that the purpose of such picture, sketch, or likeness is to advertise the Member or Member-elect rather than to illustrate accompanying text.

(4) It is the intent of the Congress that the franking privilege under this section shall not permit, and may not be used for, the transmission through the mails as franked mail of matter which in its nature is purely personal to the sender or to any other person and is unrelated to the official business, activities, and duties of the public officials covered by subsection (b)(1) of this section.

(5) It is the intent of the Congress that a Member of or Member-elect to Congress may not mail as franked mail-

(A) mail matter which constitutes or includes any article, account, sketch, narration, or other text laudatory and complimentary of any Member of, or Member-elect to, Congress on a purely personal or political basis rather than on the basis of performance of official duties as a Member or on the basis of activities as a Member-elect;

(B) mail matter which constitutes or includes-

(i) greetings from the spouse or other members of the family of such Member or Member-elect unless it is a brief reference in otherwise frankable mail;

(ii) reports of how or when such Member or Member-elect, or the spouse or any other member of the family of such Member or Member-elect, spends time other than in the performance of, or in connection with, the legislative, representative, and other official functions of such Member or the activities of such Member-elect as a Member-elect; or

(iii) any card expressing holiday greetings from such Member or Member-elect; or

(C) mail matter which specifically solicits political support for the sender or any other person or any political party, or a vote or financial assistance for any candidate for any public office.

The House Commission on Congressional Mailing Standards and the Select Committee on Standards and Conduct of the Senate shall prescribe for their respective Houses such rules and regulations and shall take such other action, as the Commission or Committee considers necessary and proper for the Members and Members-elect to conform to the provisions of this clause and applicable rules and regulations. Such rules and regulations shall include, but not be limited to, provisions prescribing the time within which such mailings shall be mailed at or delivered to any postal facility to attain compliance with this clause and the time when such mailings shall be deemed to have been so mailed or delivered and such compliance attained.

(6)(A) It is the intent of Congress that a Member of, or Member-elect to,Congress may not mail any mass mailing as franked mail-

(i) if the mass mailing is postmarked fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) in which the Member is a candidate for reelection; or

(ii) in the case of a Member of, or Member-elect to, the House who is a candidate for any other public office, if the mass mailing-

(I) is prepared for delivery within any portion of the jurisdiction of or the area covered by the public office which is outside the area constituting the congressional district from which the Member or Member-elect was elected; or

(II) is mailed fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) in which the Member or Member-elect is a candidate for any other public office.

(B) Any mass mailing which is mailed by the chairman of any organization referred to in the last sentence of section 3215 of this title which relates to the normal and regular business of the organization may be mailed without regard to the provisions of this paragraph.

(C) No Member of the Senate may mail any mass mailing as franked mail if such mass mailing is mailed fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) for any national, State, or local office in which such Member is a candidate for election.

(D) The Select Committee on Ethics of the Senate and the House Commission on Congressional Mailing Standards shall prescribe for their respective House rules and regulations, and shall take other action as the Committee or the Commission considers necessary and proper for Members and Members-elect to comply with the provisions of this paragraph and applicable rules and regulations. The rules and regulations shall include provisions prescribing the time within which mailings shall be mailed at or delivered to any postal facility and the time when the mailings shall be deemed to have been mailed or delivered to comply with the provisions of this paragraph.

For purposes of this section, ''. . . the term mass mailing' means, with respect to a session of Congress, a mailing of more than five hundred newsletters or other pieces of mail with substantially identical content (whether such mail is deposited singly or in bulk, or at the same time or different times), but does not include any mailing''(i) of matter in direct response to a communication from a person to whom the matter is mailed; (ii) to other Members of Congress, or to Federal, State, or local government officials; or (iii) of a news release to the communications media; or (iv) of a town meeting notice, but no such mailing may be made fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) for any Federal, State, or local office in which a Member of the Senate is a candidate for election; or (v) of a Federal publication or other item that is provided by the Senate to all Senators or made available by the Senate for purchase by all Senators from official funds specifically for distribution.'' With respect to (i), a franked mailing made specifically and solely in response to, and mailed not more than 120 days after the date of receipt of a written request, inquiry, or expression of opinion or concern from the person to whom it is addressed is not a mass mailing. S. Res. 212 (101st Congress).

(b)(1) The Vice President, each Member of or Member-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House), the Legislative Counsels of the House of Representatives, and the Senate, the Law Revision Counsel of the House of Representatives, and the Senate Legal Counsel, may send, as franked mail, matter relating to their official business, activities, and duties, as intended by Congress to be mailable as franked mail under subsection (a)(2) and (3) of this section.

(2) If a vacancy occurs in the Office of the Secretary of the Senate, the Sergeant at Arms of the Senate, an elected officer of the House of Representatives (other than a Member of the House), the Legislative Counsel of the House of Representatives or the Senate, the Law Revision Counsel of the House of Representatives, or the Senate Legal Counsel, any authorized person may exercise the franking privilege in the officer's name during the period of vacancy.

(3) The Vice President, each Member of Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, and each of the elected officers of the House (other than a Member of the House), during the 90-day period immediately following the date on which they leave office, may send, as franked mail, matter on official business relating to the closing of their respective offices. The House Commission on Congressional Mailing Standards and the Select Committee on Standards and Conduct of the Senate shall prescribe for their respective Houses such rules and regulations, and shall take such other action as the Commission or Committee considers necessary and proper to carry out the provisions of this paragraph.

(c) Franked mail may be in any form appropriate for mail matter, including, but not limited to, correspondence, newsletters, questionnaires, recordings, facsimiles, reprints, and reproductions. Franked mail shall not include matter which is intended by Congress to be nonmailable as franked mail under subsection (a)(4) and (5) of this section.

(d)(1) A Member of the Congress may mail franked mail with a simplified form of address for delivery-

(A) within that area constituting the congressional district or State from which he was elected; and

(B) with respect to a Member of the House of Representatives on and after the date on which the proposed redistricting of congressional districts in his State by legislative or judicial proceedings is initially completed (whether or not the redistricting is actually in effect), within any additional area of each congressional district proposed or established in such redistricting and containing all or part of the area constituting the congressional district from which he was elected, unless or until the congressional district so proposed or established is changed by legislative or judicial proceedings.

(2) A Member-elect to the Congress may mail franked mail with a simplified form of address for delivery within that area constituting the congressional district or State from which he was elected.

(3) A Delegate, Delegate-elect, Resident Commissioner, or Resident Commissioner-elect to the House of Representatives may mail franked mail with a simplified form of address for delivery within the area from which he was elected.

(4) Any franked mail which is mailed under this subsection shall be mailed at the equivalent rate of postage which assures that the mail will be sent by the most economical means practicable.

(5) The Senate Committee on Rules and Administration and the House Commission on congressional Mailing Standards shall prescribe for their respective Houses rules and regulations governing any franked mail which is mailed under this subsection and shall by regulation limit the number of such mailings allowed under this subsection.

(6)(A) Any Member of, or Member-elect to, the House of Representatives entitled to make any mailing as franked mail under this subsection shall, before making any mailing, submit a sample or description of the mail matter involved to the House Commission on Congressional Mailing Standards for an advisory opinion as to whether the proposed mailing is in compliance with the provisions of this subsection.

(B) The Senate Select Committee on Ethics may require any Member of, or Member-elect to, the Senate entitled to make any mailings as franked mail under this subsection to submit a sample or description of the mail matter to the Committee for an advisory opinion as to whether the proposed mailing is in compliance with the provisions of this subsection.

(7) Franked mail mailed with a simplified form of address under this subsection-

(A) shall be prepared as directed by the Postal Service; and

(B) may be delivered to-

(i) each box holder or family on a rural or star route;

(ii) each post office box holder; and

(iii) each stop or box on a city carrier route.

(8) For the purposes of this subsection, a congressional district includes, in the case of a Representative at Large or Representative at Large-elect, the State from which he was elected.

(e) The frankability of mail matter shall be determined under the provisions of this section by the type and content of the mail sent, or to be sent.

(f) Any mass mailing which otherwise would be permitted to be mailed as franked mail under this section shall not be so mailed unless the cost of preparing and printing the mail matter is paid exclusively from funds appropriated by Congress, except that an otherwise frankable mass mailing may contain, as an enclosure or supplement, any public service material which is purely instructional or informational in nature, and which in content is frankable under this section.

(g) Notwithstanding any other provision of Federal, State, or local law, or any regulation thereunder, the equivalent amount of postage determined under section 3216 of this title on franked mail mailed under the frank of the Vice President or a Member of Congress, and the cost of preparing or printing such frankable matter for such mailing under the frank, shall not be considered as a contribution to, or an expenditure by, the Vice President or a Member of Congress for the purpose of determining any limitation on expenditures or contributions with respect to any such official, imposed by any Federal, State, or local law or regulation, in connection with any campaign of such official for election to any Federal office.

(h) All mass mailing material must be prepared and mailed by the Senate Service Department, which shall provide the Financial Clerk a monthly certification of each Senator's mass mailing costs, to be debited from the Senator's Official Personnel and Office Expense Account. Mass mailings charged against the Account may not exceed $50,000 in any fiscal year. Funds in a Senator's Official Mail Account may not be used for the postal costs of mass mailings. [Pub.L. 103–283]

§3211. Public documents

The Vice President, Members of Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House) during the 90-day period immediately following the expiration of their respective terms of office, may send and receive as franked mail all public documents printed by order of Congress.

§ 3212. Congressional Record under frank of Members of Congress

(a) Members of Congress may send the Congressional Record as franked mail.

(b) Members of Congress may send, as franked mail, any part of, or reprint of any part of, the Congressional Record, including speeches or reports contained therein, if such matter is mailable as franked mail under section 3210 of this title.

§ 3213. Seeds and reports from Department of Agriculture

Seeds and agriculture reports emanating from the Department of Agriculture may be mailed-

(1) as penalty mail by the Secretary of Agriculture; and

(2) during the 90-day period immediately following the expiration of their terms of office, as franked mail by Members of Congress.

* * * * * * *

§ 3215. Lending or permitting use of frank unlawful

A person entitled to use a frank may not lend it or permit its use by any committee, organization, or association, or permit its use by any person for the benefit or use of any committee, organization, or association. This section does not apply to any standing, select, special, or joint committee, or subcommittee thereof, or commission, of the Senate, House of Representatives, or Congress, composed of Members of Congress, or to the Democratic caucus or the Republican conference of the House of Representatives or of the Senate.

§ 3216. Reimbursement for franked mailings [1]

(a) The equivalent of-

(1) postage on, and fees and charges in connection with, mail matter sent through the mails-

(A) under the franking privilege (other than under section 3219 of this title), by the Vice President, Members of and Members-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House), the Legislative Counsels of the House of Representatives and the Senate, the Law Revision Counsel and the Senate Legal Counsel; and

(B) by the survivors of a Member of Congress under section 3218 of this title; and

* * * * * * *

§ 3218. Franked mail for survivors of Members of Congress

Upon the death of a Member during his term of office, the surviving spouse of such Member (or, if there is no surviving spouse, a member of the immediate family of the Member designated by the Secretary of the Senate or the Clerk of the House of Representatives, as appropriate, in accordance with rules and procedures established by the Secretary or the Clerk) may send, for a period not to exceed 180 days after his death, as franked mail, nonpolitical correspondence relating to the death of the Member.

* * * * * * *

[1] The Senate limits expenditures for franked mail costs by imposing allocations on its Members and officers. Contact the Rules Committee, Ext. 4–6686, for information on current allocation figures.

REGULATIONS GOVERNING OFFICIAL MAIL

Adopted by the
Committee on Rules and Administration
United States Senate
October 30, 1997Amended on September 30, 1998

DEFINITIONS

Sec. 1. As used in these regulations --

(a) the term ''election fiscal year'' means a Federal fiscal year in which regular biennial general elections of Senators are held;

(b) the term ''final printing and mailing clearance'' means an approval of a blue line, color key, or other page proof giving final authorization to print and mail material submitted by a Senate office to the Sergeant at Arms;

(c) the term ''franked mail'' as defined in section 3201(4) of title 39, United States Code means:

> ''...mail which is transmitted in the mail under a frank.''

(d) the term ''mass mailing'' as defined in section 3210(a)(6)(E) of title 39, United States Code, as amended by the Legislative Branch Appropriations Act, 1995 (P.L. 103-283) means:

> ''....with respect to a session of Congress, a mailing of more than five hundred newsletters or other pieces of mail with substantially identical content (whether such mail is deposited singly or in bulk, or at the same time or different times), but does not include any mailing--(i) of matter in direct response to a communication from a person to whom the matter is mailed; (ii) to other Members of Congress, or to Federal, State, or local government officials, or (iii) of a news release to the communications media, or (iv) of a town meeting notice, but no such mailing may be made fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) for any Federal, State, or local office in which a Member of the Senate is a candidate for election, or (v) of a Federal publication or other item that is provided by the Senate to all Senators or made available by the Senate for purchase by all Senators from official funds specifically for distribution.'' With respect to (i), a franked mailing made specifically and solely in response to, and mailed not more than 120 days after the date of receipt of a written request, inquiry, or expression of opinion or concern from the person to whom it is addressed is not a mass mailing. S.Res.212 (101st Congress)

(e) the term ''name addressed mail'' means any mailing sent to named individuals at specific addresses;

(f) the term ''newsletter'' means any professionally photo-composed mailing consisting of documents which set forth, in textual and graphic form (or both), factual information and commentary on prospective, pending, or past issues of public policy. Newsletters may not be mailed in franked envelopes;

(g) the term ''non-election fiscal year'' means a Federal fiscal year other than an election fiscal year;

(h) the term ''postal patron mail'' means any mailing prepared and mailed pursuant to section 3210(d) of title 39, United States Code;

(i) the term ''official mail costs'' means the equivalent of--

> (1) postage on, and fees and charges in connection with, mail matter sent through the mail under the franking privilege; and

(2) the portions of the fees and charges paid for handling and delivery by the Postal Service of mailgrams considered as franked mail under section 3219 of title 39, United States Code; and

(3) all other official mail other than the franking privileged as defined in section 58(a)(3)(B) and (C) of title 2, United States Code.

(j) the term ''opinion survey'' means any assemblage of mass mailings and related individual mailings, including, but not limited to, survey questionnaires, pre-survey letters, response forms, follow-up letters, and instructions that are sent to a sample group of individuals for the purpose of obtaining a reliable estimate of the opinion of the population from which the survey sample is drawn and are processed in accordance with the ''Guidelines for Opinion Surveys'' issued by the Committee on Rules and Administration in September 1979;

(k) the term ''Senate office'' means the Vice President of the United States, a United States Senator, a United States Senator-elect, a committee of the Senate, the Joint Committee on Printing, the Joint Economic Committee, an officer of the Senate, or an office of the Senate authorized by section 3210(b)(1) of title 39, United States Code, to send franked mail;

(l) the term ''town meeting notice'' means any mailing which relates solely to a notice of the time and place at which a Senator or a member or members of his or her staff will be available to meet constituents regarding legislative issues or problems with Federal programs. The notice may include a short description as to the subject matter or purpose of the town meeting and an official photo in the banner of the notice;

(m) the term ''prepared'' means all necessary preparation prior to mailing; including the production of additional copies of a mailing, the folding of the mailing, and inserting of the mail into envelopes.

POSTAL ALLOCATIONS FOR NON-ELECTION FISCAL YEARS

Sec. 2. (a) With respect to a non-election fiscal year, as soon as practicable after the enactment of the appropriation for Senate franked mail costs for such year, the Committee on Rules and Administration shall determine the following amounts:

(1) the amount that has been appropriated for franked mail costs of the Senate for the non-election fiscal year;

(2) the amount necessary to be reserved for contingencies, which shall not exceed 10 percent of the amount determined pursuant to paragraph (1);

(3) the amount necessary for franked mail costs of Senate offices other than Senators for the non-election fiscal year;

(4) the amount necessary for each Senator to send one State-wide postal patron mailing, based on total addresses in each state;

(5) 1/3 of the amount appropriated in (2)(a)(1), after deducting the amount necessary for contingencies and offices other than Senators;

(6) the amount which may be available for allocation to Senators, when the amount in (2)(a)(5) and amounts in (2)(a)(2) and (2)(a)(3) are subtracted from the amount appropriated for official mail paragraph (2)(a)(1);

(7) the factor to be used to equitably distribute remaining appropriated funds, determined by dividing the amount in paragraph (2)(a)(6) by the sum of the amounts in paragraph (2)(a)(4);

(b) As soon as practicable after making the determination described in section (a), the Committee on Rules and Administration shall make the following allocations:

(1) the allocation to Senate offices (other than a Senator's personal office) for the non-election fiscal year;

(2) the allocation for contingencies;

(3) the allocation to each Senator--

(A) to include the amount determined in subsection (2)(a)(5), divided by 100, establishing the base amount for each office plus,

(B) the amount to be allocated to each Member, determined by multiplying each amount in (2)(a)(4) by the prorated percentage determined in subsection (2)(a)(7).

POSTAL ALLOCATIONS FOR ELECTION FISCAL YEARS

Sec. 3 (a) With respect to an election fiscal year, as soon as practicable after the enactment of the appropriation for Senate franked mail costs for such year, the Committee on Rules and Administration shall determine the following amounts:

(1) the amount that has been appropriated for franked mail costs of the Senate for the election fiscal year;

(2) the amount necessary to be reserved for contingencies, which shall not exceed 10 percent of the amount determined in paragraph (3)(a)(1);

(3) for the election fiscal year, the amount necessary for franked mail costs of Senate offices other than Senators and Senators-elect;

(4) one-third of the amount appropriated in (3)(a)(1), after deducting the amount necessary for contingencies and offices other than Senators;

(5) the amount which may be available for allocation to Senators, for an election fiscal year, when the amount in (3)(a)(4), and the amounts in (3)(a)(2), and (3)(a)(3) are subtracted from the amount appropriated for official mail in paragraph (3)(a)(1);

(6) for the period beginning on the date immediately following the date of the general election and ending January 3 of the election fiscal year, 10 percent of two-twelfths of the full funding amount necessary for each Senator-elect to send one State-wide postal patron mailing;

(7) for the period January 3 through September 30 of the election fiscal year, 75 percent of the full funding amount necessary for each newly-elected Senator to send one State-wide postal patron mailing;

(8) for the period October 1 through January 3 of the election fiscal year, 25 percent of the full funding amount necessary for each Senator whose service as a Senator will end on January 3 of the election fiscal year to send one State-wide postal patron mailing;

(9) for the period January 3 through April 3 of the election fiscal year, 10 percent of 25 percent of the full funding amount necessary for each Senator whose service as a Senator will end on January 3 of the election fiscal year to send one State-wide postal patron mailing;

(10) for the election fiscal year, the full funding amounts necessary for each Senator, other than those Senators whose terms of service as Senators will begin or end on January 3 of the election fiscal year, to send one State-wide postal patron mailing;

(11) the factor to be used to equitably distribute remaining election fiscal year appropriated funds, determined by dividing the amount in paragraph (3)(a)(5) by the sum of the amounts in paragraph (3)(a)(6) through (3)(a)(10).

(b) As soon as practicable after making the determination described in subsection (b), the Committee on Rules and Administration shall make the following allocations:

(1) the allocation to a Senate office (other than a Senator or Senator-elect) for the election fiscal year;

(2) the allocation for contingencies;

(3) the allocation to each Senator--

(A) to include the amount determined in subsection (3)(a)(4), divided by 100, establishing the base amount for each office (3/4 of the individual amount to Senators-elect, and 1/4 to departing Senators), plus,

(B) the amount determined in (3)(a)(5), allocated;

(i) to each Senator referred to in (3)(a)(6), adjusted by the amount determined in (3)(a)(11);

(ii) to each Senator referred to in (3)(a)(7), adjusted by the amount determined in (3)(a)(11);

(iii) to each Senator referred to in (3)(a)(8), adjusted by the amount determined in (3)(a)(11);

(iv) to each Senator referred to in (3)(a)(9), adjusted by the amount determined in (3)(a)(11);

(v) to each Senator referred to in (3)(a)(10), adjusted by the amount determined in (3)(a)(11).

USES OF FUNDS RESERVED FOR CONTINGENCIES

Sec. 4. The amounts described in sections 2(a)(2) and 3(a)(2) shall be available for distribution by the Committee on Rules and Administration only for---

(a) providing a Senator appointed to complete the term of a Senator who dies or retires with an allocation for the fiscal year in which such appointment is effective;

(b) providing the Secretary of the Senate with sufficient postage to send franked mail as provided for by section 3218 of title 39, United States Code; and

(c) reimbursing a Senator for a charge to the Senator's allocation for franked mail costs when the charge is the result of an error on the part of an office of the Sergeant at Arms.

COST DETERMINATION AND REPORTING

Franked Mail, Mass Mail, Mail Prepared Pursuant to Section 9 of these Regulations

Sec. 5. (a)(1) The postage on all franked mail shall be determined by the Senate Customer Service Records Section and reported to the U. S. Postal Service. State offices must advise their D.C. offices of their franked mail counts on a monthly basis. By the 5th of each month, the D.C. offices will inform the Service Department of these counts. Timely and accurate reports are required to ensure proper accounting of franked mail.

(2) Not more than 250 extra copies of a mass mailing printed with the frank may be returned to an office for distribution in reception rooms and at town meetings. Additional copies, printed without the frank, may be requested on a separate work order.

(3) No mass mailing and no mailing prepared pursuant to section 9 shall be mailed until the density analysis, indicating the total number of pieces to be mailed and the locations to which they will be mailed, has been approved by the office for which the mail is being sent. Such approval shall be signified by signing a statement of approval on the density analysis sheet. The approved copy of the density analysis shall be retained by the Customer Service Records Section with the work order and a copy of the mail matter.

(4) Before processing a request for a mass mailing submitted by a Member office, the Sergeant at Arms shall determine: (A) the postage cost of the mailing, and (B) that the postage cost of the request, when added to costs incurred or encumbered for mass mailings by that Member in the fiscal year, will not exceed the amount ($50,000) allowed for mass mailings by each Member each fiscal year (P.L. 103-283). If the requested mailing exceeds that amount, the Sergeant at Arms shall notify the Member and take no further action on the request.

Record Keeping

(b) (1) The Sergeant at Arms shall maintain records of the following information for each Senate office to which postage allocations are applicable:

(A) the amount of the allocation for franked mail costs;

(B) each amount of franked mail cost determined pursuant to this section;

(C) the amount of the allocation for franked mail costs for such Senate office which remains after the amount described in paragraph (B) is added to or subtracted from, as appropriate, the amount described in paragraph (A).

(2) The Sergeant at Arms shall provide offices with monthly reports on the status of their postal allocations.

(3) The Sergeant at Arms shall provide to each Member a monthly report detailing the postage costs associated with franked mailings and mass mailings, and shall provide the office of the Financial Clerk of the Senate a monthly certification of franked mailing and mass mailing costs for each Member. The Financial Clerk of the Senate shall debit these costs from the respective expense accounts for such franked mailing and mass mailing, and issue a check in payment.

Publication of Mass Mail Costs

(c) Two weeks after the close of each calendar quarter, or as soon as practicable thereafter, the Sergeant at Arms and Doorkeeper of the Senate shall send to each Senate office a statement of the cost of postage and paper and of the other operating expenses incurred as a result of mass mailings processed for such Senate office during such quarter. The statement shall provide information regarding the cost of postage and paper and other costs, and shall distinguish the costs attributable to mass mailings. The statement shall also include the total cost per capita in the State. A compilation of all such statements shall be sent to the Senate Committee on Rules and Administration. A summary tabulation of such information shall be published quarterly in the Congressional Record and included in the semiannual Report of the Secretary of the Senate. Such summary tabulation shall set forth for each Senate office the following information: the Senate office's name, the total number of pieces of mass mail mailed during the quarter, the total cost of such mail, and, in the case of Senators, the cost of such mail divided by the total population of the State from which the Senator was elected, and the total number of pieces of mass mail divided

by the total population of the State from which the Senator was elected, and the allocation made to each Senator from the appropriation for official mail expenses.

PREPARATION OF OFFICIAL MAIL

Sec. 6. (a) All mass mailings shall be submitted to and mailed by the Sergeant at Arms and shall be charged against the Senator's Official Personnel Office Expense Account, pursuant to the Legislative Branch Appropriations Act, 1995 (P.L. 103-283). All mailings are to be presented to the Sergeant at Arms for accountability prior to mailing. Such mailings shall not exceed total postage cost of $50,000 in any fiscal year, and must adhere to all regulations pertaining to mass mailings.

Two Sheet Limit

(b) A mass mailing by a Senator shall not exceed 2 sheets of legal size paper (or their equivalent), including any enclosure that---

(1) is prepared by or for the Senator who makes the mailing; or

(2) contains information concerning, expresses the views of, or otherwise relates to the Senator who makes the mailing.

Taxpayer Expense Notice

(c) Each mass mailing by a Senate office shall contain the following notice in a prominent place on the bottom of the cover page of the document: ''PREPARED, PUBLISHED, AND MAILED AT TAXPAYER EXPENSE.'' The notice shall be printed in a type size not smaller than seven point.

Mail to be Mailed under the Frank

(d) All mass mailings by Senate offices shall be mailed under the frank.

Mail to be Mailed by the Sergeant at Arms

(e) The following mail matter shall be mailed through the Sergeant at Arms --

(1) all mass mailings by Senate offices, whether printed on the Sergeant at Arms high speed laser printers or elsewhere;

(2) all mail prepared pursuant to section 9 of these regulations;

Town Meeting Notices

(3) Town meeting notices shall be processed as postal patron mail, unless sending name addressed mail to selected persons in the area served by the town meeting would be more economical, or the town meeting is to be on a subject or subjects that would not be of interest to all the people who would receive a postal patron mailing. Town meeting notices may not be mailed in franked envelopes;

(4) All franked and mass mail sent from D.C. offices, including flats and parcels, and constituent response mail and comparable mail prepared through an offices' Office Automation System shall be picked up by the Senate Post Office and delivered by the Senate Post Office to the Sergeant at Arms;

(5) Constituent response mail mailed through the Sergeant at Arms shall be sorted and bundled by zip code and endorsed with the most economical rate unless otherwise specified

by the Senator for whom the mail is mailed. Senators may specify that such mail be endorsed ''AUTO PRESORT'' or ''BLK. RATE.''

Survey Questionnaires

(f) Mass mailings, other than opinion surveys, shall not contain franked response cards or forms. Any mass mailing containing a questionnaire shall contain instructions to the recipients on how to properly return their responses.

Rates and Endorsements

(g) (1) Name addressed mass mailings shall be sent at the lowest postal rate for which the mail qualifies, unless the office for whom the mail is being mailed directs, in writing, that it be mailed at a higher rate.

(2) Bulk rate mail will have no endorsement other than ''BLK RATE'' or ''AUTO PRESORT.''

Pictures of Missing Children

(h) (1) Unless (A) a Senator, committee chairman, or other office head for whom a mass mailing or automated mail system mailing is being sent directs that such picture and information not be printed on a particular mailing; or (B) the Sergeant at Arms finds, with respect to any or all of the mass mailings in a period of time, that the printing of such pictures and information will significantly slow the processing of the mail, all mass-mailings that are mailed as self-mailers shall bear on the address panel a picture of and information about a missing child in accordance with this subsection, and all letters prepared, folded, inserted in envelopes, and mailed by the Sergeant at Arms shall be inserted in window envelopes bearing the picture of and information about the same missing child whose picture appears on mass mailings during the same work-week. No other official mail of the Senate shall be used for the mass dissemination of pictures of, and information about, missing children.

(2) Only pictures of, and information about, missing children that are provided by the National Center for Missing and Exploited Children (hereinafter in this section referred to as the Center) are to be printed on mass mail and envelopes subject to this section. The Sergeant at Arms shall be the liaison with the Center for obtaining such pictures and information.

(3) The Sergeant at Arms and the Director of the Center or his or her designee shall make arrangements for the Sergeant at Arms to periodically receive photographs of and information about a missing child for each State from which the Center has such photographs and information.

(4) The pictures of, and information about, missing children shall be made part of the printing plates prepared for mailings subject to this section. To the greatest extent possible, mail prepared for a Senator shall bear the photograph of, and information about, a missing child from the Senator's State.

(5) Whenever information is received from the Center that a child has been found whose picture and information are currently being printed on Senate mail, the Sergeant at Arms shall determine whether or not printing plates currently in use or awaiting use shall be discarded and new plates prepared. Whenever information is received from the Center that a child has been found whose picture and information were previously printed on Senate mail, the Sergeant at Arms shall notify offices on whose mail such picture and information were printed, and such offices shall destroy any extra copies of such mail that are on hand.

(6) The Sergeant at Arms shall transmit to the Center at the end of each month a list of the mass mailings and automated mail system letters mailed that month indicating for each mailing the State to which mailed, the number of pieces, and the child whose picture appeared thereon.

ORANGE BAG MAIL AND EXPRESS MAIL

Orange Bag Mail

Sec. 7. (a)Orange bags are used by offices only for intra-office mail from Washington,D.C. to State offices. These bags are charged at priority rates. (Orange bags used by State offices are only for transportation of franked mail to the Post Office).Express Mail

(b) The frank may not be used for express mail. Expenses for non-frankable official mail, such as Express mail, Overseas mail, Registered and Certified mail, etc., may be defrayed from any source of funds only as provided by subsections (d) and (I) of section 311 of the Legislative Branch Appropriations Act of 1991, Public Law 101-520. Offices are advised that the Senate Post Office has created a system through which offices may present express mail, together with an authorization card similar to the cards used to purchase office supplies from the Keeper of Stationery, and have the cost of the express mail charged to the office's official office expense account. Offices choosing to use express mail originating outside Washington may establish commercial accounts with the U.S. Postal Service instead of pre-paying each mailing.

RESTRICTION ON THE USE OF MASS MAIL AND TOWN MEETING NOTICES PRIOR TO A PRIMARY OR BIENNIAL FEDERAL GENERAL ELECTION

Sec. 8. (a) NO SENATOR MAY SEND mass mailings during the period beginning 60 days before the date of any biennial Federal general election. The 60-day pre-election moratorium on mass mailings does not apply to a committee when such mass mailings are mailed under the frank of the Chairman and relate to the normal and regular business of the committee.

Use of mass mail by Senators who are candidates is further restricted (unless the Senator's candidacy has been certified as uncontested pursuant to procedures of the Committee on Rules and Administration);

(b) Mass mailings may not be sent fewer than 60 days immediately before the date of any primary or general election (whether regular, special, or runoff) for any Federal, State, or local office in which a Member of the Senate is a candidate for election, unless the candidacy of the Senator in such elections is uncontested.

(c) Town meeting notices in excess of 500 notices per town meeting may not be sent fewer than 60 days immediately before the date of any primary or general election (whether regular, special, or runoff) for any Federal, State, or local office in which a Member of the Senate is a candidate for election. There is no exception for uncontested candidacies (P.L. 103-283).

(d) Solicitation forms provided by a Member through a mass mailing which are intended to be mailed back by constituents, may not be responded to during the 60 days immediately before the date of any primary or general election (whether regular, special, or runoff) for any Federal, State, or local office in which a Member of the Senate is a candidate for election.

RESPONSES TO ORGANIZED MAIL CAMPAIGNS

Sec. 9. (a) Whenever a Senator determines that he or she is the recipient of mail generated by an organized mail campaign and that the resources of his or her office are not sufficient to enter the names and addresses into the offices' mail management system, the Senator may use

the services of commercial vendors under contracts approved by the Committee on Rules and Administration. This service converts names and addresses to machine readable media which then may be added to such Senator's mail management system. The Sergeant at Arms has the responsibility for the processing and administrative support for this service.

(b) Expenses for work performed in accordance with this section shall be paid from funds from a Senator's Official Personnel and Office Expense Account and shall be reported to offices with their quarterly mass mail cost reports required by section 5(c).

CHANGE OF ADDRESS PROGRAMS

Sec. 10. Offices may have names and address on their mail files processed through the National Change of Address (NCOA) Program. A Senator may use any of the vendors certified by the U. S. Postal Service to provide NCOA service. A current list of vendors can be obtained from the Senate Computer Center. Processing costs charged by the NCOA vendor and transportation costs charged by the delivery service shall be billed to, and paid by, such Senator from his or her Official Personnel and Office Expense Account.

(a) Such Senator shall request the Senate Computer Center to prepare his or her mail file for shipment to the vendor selected by the Senator, using the delivery service selected by the Senator. A Sergeant at Arms ''Request for Assistance'' form shall be used for this purpose, and shall include a statement in the following format:

Processing and shipping costs will be paid by the

Office of Senator _____(insert name).

Bills are to be submitted to _____(insert address).

_____

Senator's Signature

(b) The Senate Computer Center will provide the Senator with information about the mail file that will assist the Senator in estimating processing costs that will be incurred. Sergeant at Arms should be contacted for other options regarding change of address.

(c) The Computer Center will prepare the Senator's file for processing, and arrange for transportation, using the delivery service designated by the Senator. The NCOA vendor and the delivery service will be provided with copies of the ''Request for Assistance'' for their use in billing the Senator for their services. On receipt of the corrected file from the NCOA vendor, the Senate Computer Center will restore it to the Senate Mail File System or provide the updated file to the appropriate vendor.

PAPER AND ENVELOPE ALLOWANCES

Sec. 12. (a)(1)(A) Each year the Secretary of the Senate shall provide each Senator with the greater of---

(i) one and one-third sheets of blank paper per adult constituent, as reported by the Bureau of the Census; or

(ii) 1,800,000 sheets of blank paper.

(B) each year the Secretary of the Senate shall provide each Senator with letterhead paper and envelopes in the greater of the following quantities:

(i) 100 sheets and 100 envelopes per 1,000 constituents of the Senator; or

(ii) 180,000 sheets and 180,000 envelopes.

(2) a portion of a Senator's allowance for paper that is unused at the end of a year may be used during the following year but lapses at the end of that year and shall not be available for use thereafter.

(3) a portion of a Senator's allowance for paper that is unused at the time the Senator resigns, retires, or otherwise leaves office shall lapse and shall not be available for use thereafter.

(4) No portion of the paper allowance of a Senator may be given or otherwise transferred to another Senate office.

(b) (1) Each year the Secretary of the Senate shall provide each office set forth below with 180,000 sheets of blank paper, 180,000 sheets of letterhead paper, and 180,000 envelopes:

(A) each standing committee of the Senate;

(B) each select committee of the Senate;

(C) each special committee of the Senate;

(D) each impeachment trial committee of the Senate

(2) A portion of an allowance for paper made pursuant to paragraph (1) that is unused at the end of a year shall not be available for use thereafter.

(c) (1) The Secretary of the Senate shall provide each of the following offices with such quantities of paper and envelopes as may be necessary for the performance of its official duties:

(A) the Joint Committee on the Library;

(B) the Joint Committee on Printing;

(C) the Joint Committee on Taxation;

(D) the Joint Economic Committee;

(E) the President of the Senate;

(F) the President pro tempore of the Senate;

(G) the Majority Leader of the Senate;

(H) the Assistant Majority Leader of the Senate;

(I) the Secretary for the Majority;

(J) the Minority Leader of the Senate;

(K) the Assistant Minority Leader of the Senate;

(L) the Secretary for the Minority;

(M) the Republican Conference;

(N) the Republican Policy Committee;

(O) the Republican Steering Committee;

(P) the Democratic Conference;

(Q) the Democratic Policy Committee;

(R) the Democratic Steering Committee;

(S) the Architect of the Capitol, including the Senate Restaurants and the Superintendent of the Senate Office Buildings;

(T) the Attending Physician;

(U) the Capitol Police;

(V) the Chaplain of the Senate;

(W) the Secretary of the Senate, including all offices reporting thereto;

(X) the Senate Legislative Counsel;

(Y) the Senate Legal Counsel;

(Z) the Senate Sergeant at Arms, including all offices reporting thereto;

(AA) the Congressional Budget Office;

(BB) the Democratic Senatorial Campaign Committee;

(CC) the Republican Senatorial Campaign Committee;

(DD) the Senate Employees' Federal Credit Union;

(EE) the Senate Day Care Center;

(FF) the Senate Defense Liaison Office;

(HH) the Senate Press Galleries;.

(2) Except as provided in paragraph (3), no portion of an allowance for paper made pursuant to paragraph (1) may be given or otherwise transferred to a Senator or an office named in subsection (b)(1).

(3) Paper from the allowance of the Sergeant at Arms may be used to reprint matter previously printed and charged to the allowance of another office if---

(A) an error in the previously printed matter was caused by the Sergeant at Arms; and

(B) (i) the previously printed matter was destroyed prior to distribution; or

(ii) the previously printed matter was distributed before the discovery of the error, and the reprinted matter is noted as a corrected version of such previously printed matter.

(d) For the purposes of this section---

(1) blank paper means paper that is 8.5 inches by 11 inches or 8.5 inches by 14 inches; and

(2) letterhead paper means paper that is 8.5 inches by 11 inches.

(e) For the purposes of this section, the term ''year'' means the period beginning on January 3 of a calendar year and ending on January 2 of the following year. Paper for any mass mailing the work order for which is submitted prior to the close of business of the Sergeant at Arms on January 2 of any year shall be charged to the allotment for such year ending on January 2 (or, in the case of Senators, to any remaining balance from the previous year) if the office for which the mass mailing is being prepared gives the Sergeant at Arms, by its close of business the following February 14, a final printing and mailing clearance. If final clearance for printing is not given by close of business on February 14, the work order for such work shall be canceled and, if the office still desires to have the work completed, a new work order shall be prepared and the paper charged to the year in which such work order is dated (or, in the case of Senators, to any remaining balance from the previous year). Costs incurred in processing a work order that is canceled because the final clearance for printing was not received prior to close of business February 14 shall be reported in the cost report for the quarter ending March 31.

PRINTING OF LETTERHEAD STATIONERY AND ENVELOPES

Sec. 13. (a) The return address on envelopes to be used with franked mail must bear the nine-digit zip code of the office sending the mail.

(b) Envelopes with Senators' return addresses and nine-digit zip codes shall not be used for mail from committees. Envelopes with committee return addresses and nine-digit zip codes shall not be used for mail from Senators' offices.

(c) Senators' letterhead stationery and envelope allowances may be used for personal office letterhead stationery and envelopes and committee letterhead stationery. Such allowances shall not be used for committee envelopes.

(d) Paper used for the following purposes shall not be charged to an office's paper allowance-

(1) mailings that relate solely to a notice of appearance or scheduled itinerary of a Senator in the State represented by the Senator and which is mailed to the part of the State where such appearance is to occur;

(2) ''Dear friend'' letters or post cards processed in accordance with section 9 of these regulations;

(3) non-personalized Senate letterhead stationery used for automated mail system letters printed on the Sergeant at Arms high speed laser printers.

(e) Committee envelopes may bear only the frank of the chairman or the ranking minority member, the name and address of the full committee, including the nine-digit zip code of the committee, and ''Official Business'' or ''Public Document.''

APPENDIX G

FILE FORM WITH:
SECRETARY OF THE SENATE
OFFICE OF PUBLIC RECORDS
232 HART BUILDING
WASHINGTON, D.C. 20510

EMPLOYEE ADVANCE AUTHORIZATION AND DISCLOSURE OF TRAVEL REIMBURSEMENT

Part I: [Complete this section in advance of the travel.] ☐ *Amended Version*

I, _____ (Please print name of Member or Officer) hereby authorize, _____ (Please print name of Individual) a staff member under my direct supervision, to accept reimbursement for necessary transportation, lodging, and related expenses for travel to the event described below. I have determined that this travel is in connection with his/her duties as a Senate employee of an officeholder, and will not create the appearance that he/she is using public office for private gain.

Reimbursement, or payment of necessary expenses, to be made by: _____

Dates of the reimbursed travel: _____

Place of travel: _____

Purpose of travel: _____

_____

Date _____ *Signature of Member or Officer* _____

Part II: [Complete this section after the travel is completed.] ☐ *Amended Version*

In compliance with Rule 35.2(a) and (c), I make the following disclosures with respect to travel expenses that have been or will be reimbursed to me, as set out above:.

PLEASE FILL IN THE APPROPRIATE BOXES: *(Please include any expenses reimbursed for an accompanying spouse or dependent)*

(Check One) METHOD	TOTAL TRANSPORTATION EXPENSES	TOTAL LODGING EXPENSES	TOTAL MEAL EXPENSES	OTHER EXPENSES (Total)
☐ GOOD FAITH ESTIMATE ☐ ACTUAL REIMBURSEMENT				

Date _____ *Signature of Employee* _____

I have made a determination that the expenses set out in Part II, in connection with the travel described in Part I, are necessary transportation, lodging, and related expenses as defined in Rule 35.

Date _____ *Signature of Member or Officer* _____

FILE THIS FORM WITH THE OFFICE OF PUBLIC RECORDS WITHIN 30 AFTER COMPLETION OF TRAVEL **Form RE-1/2**

REVISED 11/98

FILE FORM WITH:
SECRETARY OF THE SENATE
OFFICE OF PUBLIC RECORDS
232 HART BUILDING
WASHINGTON, D.C. 20510

DISCLOSURE OF MEMBER OR OFFICER'S REIMBURSED TRAVEL EXPENSES

[THIS DISCLOSURE MUST BE PROVIDED TO THE SECRETARY OF THE SENATE WITHIN THIRTY (30) DAYS AFTER THE TRAVEL IS COMPLETED.]

In compliance with Rule 35.2(a) and (c), I _____, make the following disclosures with respect to travel expenses that have been or will be reimbursed to me.

☐ *Amended Version*

Reimbursement, or payment of necessary expenses, to be made by: _____

Dates of the reimbursed travel: _____

Place of travel: _____

Purpose of travel: _____

PLEASE FILL IN THE APPROPRIATE BOXES: *(Please include any expenses reimbursed for an accompanying spouse or dependent)*

(Check One) METHOD	TOTAL TRANSPORTATION EXPENSES	TOTAL LODGING EXPENSES	TOTAL MEAL EXPENSES	OTHER EXPENSES (Total)
☐ GOOD FAITH ESTIMATE ☐ ACTUAL REIMBURSEMENT				

I have made a determination that the travel described above was in connection with my duties as an officeholder, and did not create the appearance that I was using public office for private gain.

_____
Signature of Member or Officer

_____
Date

Form RE-3

REVISED 11/98

WHO MUST FILE UNDER AMENDED SENATE RULE 35

2. (a)(1) A reimbursement (including payment in kind) to a Member, officer, or employee from an individual other than a registered lobbyist or agent of a foreign principal for necessary transportation, lodging and related expenses for travel to a meeting, speaking engagement, fact finding trip or similar event in connection with the duties of the Member, officer, or employee as an officeholder shall be deemed to be a reimbursement to the Senate and not a gift prohibited by this rule, if the Member, officer, or employee-

(A) in the case of an employee, receives advance authorization, from the Member or officer under whose direct supervision the employee works, to accept reimbursement; and

(B) discloses the expenses reimbursed or to be reimbursed and the authorization to the Secretary of the Senate within 30 days after the travel is completed.

(2) For purposes of clause (1) events, the activities of which are substantially recreational in nature, shall not be considered to be in connection with the duties of a Member, officer, or employee as an officeholder.

(b) Each advance authorization to accept reimbursement shall be signed by the Member or officer under whose direct supervision the employee works and shall include-

(1) the name of the employee;

(2) the name of the person who will make the reimbursement;

(3) the time, place, and purpose of the travel; and

(4) a determination that the travel is in connection with the duties of the employee as an officeholder and would not create the appearance that the employee is using public office for private gain.

(c) Each disclosure made under subparagraph (a)(1) of expenses reimbursed or to be reimbursed shall be signed by the Member or officer (in the case of travel by that Member or officer) or by the Member or officer under whose direct supervision the employee works (in the case of travel by an employee) and shall include-

(l) a good faith estimate of total transportation expenses reimbursed or to be reimbursed;

(2) a good faith estimate of total lodging expenses reimbursed or to be reimbursed;

(3) a good faith estimate of total meal experts reimbursed or to be reimbursed;

(4) a good faith estimate of the total of other expenses reimbursed or to be reimbursed;

(5) a determination that all such expenses are necessary transportation, lodging, and related expenses as defined in this paragraph; and

(6) in the case of a reimbursement to a Member or officer, a determination that the travel was in connection with the duties of the Member or officer as an officeholder and would not create the appearance that the Member or officer is using public office for private gain.

‘‘(d) For the purposes of this paragraph, the term ‘‘necessary transportation, lodging, and related expenses’’-

(1) includes reasonable expenses that are necessary for travel for a period not exceeding 3 days exclusive of travel time within the United States or 7 days exclusive of travel time outside of the United States unless approved in advance by the Select Committee on Ethics;

(2) is limited to reasonable expenditures for transportation, lodging, conference fees and materials, and food and refreshments, including reimbursement for necessary transportation, whether or not such transportation occurs within the periods described in clause (1);

(3) does not include expenditures for recreational activities, nor does it include entertainment other than that provided to all attendees as an integral part of the event, except for activities or entertainment otherwise permissible under this rule; and

(4) may include travel expenses incurred on behalf of either the spouse or a child of the Member, officer, or employee, subject to a determination signed by the Member or officer (or in the case of an employee, the Member or officer under whose direct supervision the employee works) that the attendance of the spouse or child is appropriate to assist in the representation of the Senate.

(e) The Secretary of the Senate shall make available to the public all advance authorizations and disclosures of reimbursement filed pursuant to subparagraph (a) as soon as possible after they are received.

December 9, 1999

Dear Colleague:

The Foreign Gifts and Decorations Act, 5 U.S.C. 7342, requires that no later than January 31 of each year, the Select Committee on Ethics shall compile a list of certain gifts which Members, officers, or employees of the Senate, or a spouse or dependent of any such person, have received from a foreign government or a multinational organization during the preceding calendar year. The Committee must send this list to the Secretary of State, who then is required to publish the data in the Federal Register.

Gifts which must be listed are (1) tangible gifts with a value in excess of $100, and (2) travel or expenses of travel with a value in excess of $100, taking place entirely outside of the United States excluding travel or expenses of travel accepted under 108A of the Mutual Educational Cultural Exchange Act of 1961. The Foreign Gifts and Decorations Act places an obligation upon recipients of such gifts to report certain details to the Ethics Committee. The information which is required for each tangible gift is as follows:

(A) the name and position of the recipient;

(B) a brief description of the gift and the circumstances justifying acceptance;

(C) the identity of the foreign government and the name and position of the individual, if known, who presented the gift;

(D) the date of acceptance of the gift;

(E) the estimated value in the United States of the gift at the time of acceptance; and

(F) disposition and current location of the gift.

Information which is required for gifts of travel or expenses of travel is as follows:

(A) the name and position of the recipient;

(B) a brief description of the gift and the circumstances justifying acceptance;

(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift; and

(D) the date travel took place.

Tangible gifts, deemed to have been accepted on behalf of the United States, are required to be deposited with the Secretary of the Senate within 60 days of acceptance. The recipient must make the report to the Ethics Committee at the time of deposit. Reports concerning gifts of travel or expenses of travel must be made to the Ethics Committee within 30 days of acceptance. If you or an officer or employee whom you supervise, or the spouse or dependent of any of these persons, have accepted any gifts described above during calendar year 1999, and if you have not already reported the acceptance and required details in writing to the Ethics Committee, we request that each individual recipient complete a copy of the attached form and return it to the Ethics Committee no later than January 15, 2000.

The attached form should also be used to report details of foreign gifts, pursuant to the statute, as they might be received during calendar year 2000. For your guidance in the future, the Foreign Gifts and Decorations Act does not permit acceptance from a foreign government of tangible gifts of more than $100 in value unless accepted on behalf of the United States Government and the gift is deposited with the government within 60 days, nor does it permit acceptance of travel or expenses of travel (transportation, food, lodging, and entertainment) with a value of more than $100 unless the travel takes place entirely outside of the United States, or is approved by the USIA under Section 108A of the Mutual Educational and Cultural Exchange Act of 1961.

Sincerely,

PatRoberts	Harry Reid
Chairman	Vice Chairman

File this Report with:
Select Committee on Ethics
220 Hart Senate Office Building
Washington, DC 20510
Telephone 224-2981

SELECT COMMITTEE ON ETHICS

Report of Acceptance of Gifts From a Foreign Government or Multinational Organization

Required by 5 U.S.C. 7342. Text of pertinent portions attached. Not applicable to foreign decorations or to grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.

For use by a Senator, or officer, or employee of the Senate, or the spouse, or dependent of any such person, who has accepted from a foreign government a tangible gift or a gift of travel or expenses for travel taking place entirely outside the United States (such as, transportation, food, lodging or entertainment), of more than minimal value (defined as more than $100).

Name(s) of Reporting Individual(s) (include title & Senate office):

_____

_____

_____

Signature of Reporting Individual(s) or Person Preparing Report (include title and Senate office of preparer):

_____

Date of this Report: _____

Tangible Gifts of More Than Minimal Value

Date Accepted	Brief description of gift	Estimated value in U.S. when accepted	Disposition, Current Location		Identity of foreign donor and government	Circumstances justifying acceptance
			Do you wish to retain gift for official use?	If "yes", where will gift be displayed?		
Example: Jan. 5, 1990	*Candelabrum, handcrafted of a filigree design. Silver with gold plating*	*$300*	*Yes*	*SH 220*	*Defense Minister Yitzhank Rabin Govt. of Israel*	*Nonacceptance would cause donor embarrassment*

Gifts of Travel or Expense of Travel (of more than Minimal Value) Taking Place Entirely Outside of the United States

Date(s) Accepted	Brief description (transportation, food, lodging and entertainment)	Identity of foreign government and donor	Circumstances justifying acceptance
Example: Jan. 5-6, 1990	*Transportation within Israel via small military aircraft to military installations, including lodging and meals.*	*Government of Israel*	*Official travel to view installations and to discuss mideast security. No commercial transportation was available to these sites.*

APPENDIX H

Mr. Smith. Mr. President, consistent with the provisions of Senate Resolution 321, adopted October 3, 1996, I ask that the Regulations Regarding Disclosure of Certain *Pro Bono* Legal Service, adopted by the Senate Select Committee on Ethics on February 13, 1997, be printed in the Congressional Record of the 105th Congress.

SENATE SELECT COMMITTEE ON ETHICS REGULATIONS

On October 3, 1996, the Senate agreed to S. Res. 321, which provides:

Resolved, That (a) notwithstanding the provisions of the Standing Rules of the Senate or Senate Resolution 508, adopted by the Senate on September 4, 1980, pro bono legal services provided to a Member of the Senate with respect to a civil action challenging the validity of a Federal statute that expressly authorizes a Member to file an action -

(1) shall not be deemed a gift to the Member;

(2) shall not be deemed to be a contribution to the office account of the Member; and

(3) shall not require the establishment of a legal expense trust fund.

(b) The Select Committee on Ethics shall establish regulations providing for the public disclosure of information relating to pro bono legal services performed as authorized by this resolution.

The following regulations, adopted on and effective as of February 13, 1997, are promulgated by the Select Committee on Ethics pursuant to S. Res. 321, and are applicable to Members of the United States Senate during the time of their service in or to the Senate.

REGULATIONS REGARDING DISCLOSURE OF CERTAIN *PRO BONO* LEGAL SERVICES

A Member who accepts pro bono legal services with respect to a civil action challenging the validity of a Federal statute as authorized by S. Res. 32I shall submit a report to the Office of Public Records of the Secretary of the Senate and the Senate Select Committee on Ethics within 30 days of the date on which an attorney or law firm begins performance of the pro bono services for the Member (or, for such services provided to a Member prior to the publication of these regulations, within 30 days of the publication of these regulations in the Congressional Record).

All reports filed pursuant to these Regulations shall include the following information:

(1) a description of the nature of the civil action, including the Federal statute to be challenged;

(2) the caption of the case and the cause number, as well as the court in which the action pending, if the civil action has been filed in court; and

(3) the name and address of each attorney who performed pro bono services for the Member with respect to the civil action, as well as the name and address of the firm, if any, with which the attorney is affiliated.

All documents filed pursuant to these regulations shall be available at the Office of Public Records of the Secretary of the Senate for public inspection and copying within two business days following receipt of the documents by that office.

Any person requesting a copy of such documents shall be required to pay a reasonable fee to cover the cost of reproduction.

REMINDER REGARDING AMICUS CURIAE

The disclosure requirements for accepting certain pro bono legal services pursuant to S. Res. 321 do NOT affect the ability of a Member to accept pro bono legal services to appear in a legal proceeding by amicus curiae brief without necessity of a Legal Expense Trust Fund and without disclosure or reporting. See, Committee Interpretative Ruling 442 (4/15/92), and Committee Regulations Governing Trust Funds (9/30/8O, amended 8/10/88).

APPENDIX I

Regulations Governing Trust Funds to Defray Legal Expenses Incurred by Members, Officers and Employees of the United States Senate

Adopted:September 30, 1980
Amended:August 10, 1988

Select Committee on Ethics
United States Senate

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Foreword

From time to time, Members, officers, and employees of the United States Senate may find it necessary to defend themselves against charges (or in a rare case, to initiate a civil lawsuit) in proceedings which would not have arisen but for their positions, or by virtue of their service in or to the United States Senate. The expenses of such investigative, civil, criminal, or other legal proceeding could be substantial, thereby necessitating that Members, officers, and employees avail themselves of contributions from friends, supporters, constituents, and others to defray legal expenses which would not have been incurred but for their positions, or by virtue of their service in or to the United States Senate. Provisions of the Standing Rules of the Senate, however, may place Members, officers, and employees at a disadvantage in this regard relative to their fellow citizens, should the latter choose to raise funds to defray legal expenses which they incur. Rule 35 places limitations on gifts which may be received by Members, officers, and employees, and on the circumstances under which such gifts may be received. In addition, Rule 38 prohibits, under certain circumstances, the establishment by Members of ''unofficial office accounts'' for the purpose of defraying allowable but otherwise unreimbursed expenses incurred in connection with official duties.

To eliminate any doubt as to the permissibility under Senate Rules of Members, officers, and employees of the Senate (or their spouses or dependents) accepting funds to defray investigative, civil, criminal or other legal expenses, the Senate, on September 30, 1980, agreed to S. Res. 508. Senate Resolution 508 provides:

> Nothing in the provisions of the Standing Rules of the Senate shall be construed to limit contributions to defray investigative, civil, criminal, or other legal expenses of Members, officers, or employees of the Senate relating to their service in the United States Senate, subject to limitations, regulations, procedures and reporting requirements as shall be promulgated by the Select Committee on Ethics. Nothing in the provisions of the Standing Rules of the Senate shall be construed to limit contributions to defray the legal expenses of the spouses or dependents of Members, officers, or employees of the Senate.

These regulations are promulgated by the Select Committee on Ethics pursuant to S. Res. 508, and are applicable to Members, officers, and employees of the United States Senate during the time of their service in or to the Senate. These regulations governing legal expense funds do not apply to the spouse or dependents of any Member, officer, or employee of the Senate; i.e., there are no limitations on, or regulations prohibiting, the solicitation, receipt, or disbursement of contributions by spouses or dependents from funds established to defray legal expenses incurred on their own behalf and for their own benefit.

Members, officers, and their staffs are encouraged to familiarize themselves with these regulations. The Committee welcomes comments and recommendations for its consideration in future revisions of these regulations.

Chapter One

Purposes, Uses and Establishments of Legal Expense Trust Funds

A Member, officer, or employee of the Senate may establish a trust fund which shall be used to defray legal expenses incurred by the Member, officer, or employee in investigative, civil, criminal, or other legal proceedings relating to or arising by virtue of his or her service in or to the United States Senate.

A. Who May Establish a Legal Expense Trust Fund?

Any Member, officer or employee of the Senate may establish a trust fund.

B. Circumstances Under Which a Legal Expense Fund May Be Established

A legal expense trust fund may be established in circumstances in which a Member, officer, or employee incurs or reasonably expects to incur legal expenses in the course of any investigative, civil, criminal, or other legal proceeding relating to or arising by virtue of his or her service in or to the Senate.

Funds may be raised to defray the costs of legal proceedings of any nature—including, but not limited to, a Congressional inquiry or investigation; a criminal investigation or proceedings—provided that such proceedings relate to or arise by virtue of the service of the Member, officer, or employee in or to the Senate.

Funds to defray legal expenses may not be established in cases in which the legal expenses are for purely personal matters, to include—but not be limited to—such matters as tax planning, personal injury litigation, protection of property rights, divorces, or the probate of an estate. A trust fund may be established, however, for a Member, officer, or employee to defray legal expenses incurred, either as plaintiff or defendant, in a defamation suit, if it meets the criteria set forth above.

It should be noted that there may be institutional issues of interest to the Senate involved in certain of these proceedings. Nothing in these regulations, however, is intended to alter existing provisions of statutes, case law, or the Standing Rules and Orders of the Senate, which govern the standing of Members or the Senate to institute legal proceedings affecting the institution, including, but not limited to, their standing to file suit, assert defenses, or raise issues involving institutional interests of the Senate which may require a Senate Resolution, or in which the office of Senate Legal Counsel may have responsibility.

Nothing in these regulations shall be construed to require or provide for the establishment of a legal expense trust fund where a Senate Member, officer, or employee appears in a legal proceeding by amicus curiae brief.

C. Expenses Which May Be Defrayed By a Legal Expense TrustFund

The proceeds of a legal expense trust fund may be used to defray all expenses reasonably related to the purposes for which the trust fund was established, including, but not limited to, all expenses reasonably related to legal proceedings as contemplated in subparagraph (B) above; all reasonably incurred costs of administering the trust fund, including, but not limited to, costs incident to the solicitation of funds; and for the discharge of federal, state, and local tax liabilities, should any be deemed to exist, which are incurred as a result of the creation, operation, or administration of the trust fund.

D. How a Legal Expense Trust Fund is Established

A legal expense trust fund is established, and contributions may be solicited and received and disbursements made, upon the filing of a copy of the executed trust agreement with the Committee and the Office of Public Records of the Secretary of the Senate by the Member, officer, or employee seeking to establish such a fund, along with sworn affidavits by the Member, officer, or employee seeking to establish the trust fund, and by the trustee thereof.

The trust instrument shall contain the following:

(1) a provision incorporating by reference the provisions of these regulations and Senate Resolution 508 (96th Congress, 2nd Session);

(2) a designation of a trustee who meets the requirements of a trustee set forth in Chapter Two of these regulations; and

(3) a provision which stipulates the jurisdiction whose laws shall control the interpretation and enforcement of the terms of the trust.

The affidavit of the Member, officer, or employee seeking to establish the trust fund must state:

(1) the nature of the legal proceeding (or proceedings) which necessitate the establishment of such a trust fund;

(2) that he or she will be bound by the provisions of these regulations and the resolution pursuant to which they are promulgated; and

(3) that although a trustee of the trust fund has been designated, the Member, officer, or employee seeking to establish the trust fund bears ultimate responsibility for the proper administration of the trust fund.

The affidavit of the trustee must state that he or she has read and understands the provisions of the regulations governing the establishment, administration, and termination of legal expense trust funds, and that he or she consents to administer such a trust fund in conformity with these regulations and the Standing Rules of the Senate.

Upon the filing of the trust instrument and sworn affidavits, the Committee shall review the trust instrument, affidavits, and any supporting documents or instruments filed therewith to determine whether they conform with the requirements established by these regulations. If defects are ascertained, the Committee shall bring them to the attention of the Member, officer, or employee who has established the trust fund and his or her trustee, which parties will then have thirty days within which to take necessary corrective action.

The Committee shall review the quarterly reports required under Chapter Four hereof, and shall monitor the activities of the trust fund to ensure continued compliance with the provisions contained herein. The Committee may, for cause, direct that the trust fund be terminated involuntarily, subject to the provisions of Chapters Five and Six hereof.

All documents required to be filed under this chapter relating to the creation and administration of a legal expense trust fund shall be made a matter of public record in the same manner as outlined in Chapter Four, Section C.

E. Number of Legal Expense Trust Funds

No Member, officer or employee may establish and/or maintain more than one legal expense trust fund at any one time.

Chapter Two

Administration of a Legal Expense Trust Fund

A. Who May Serve as Trustee

It is preferable, though not a condition precedent to the establishment of a legal expense trust fund, that the trustee be, an attorney, an accountant, or a financial institution. The trustee may not be a Member, officer, or employee of the Senate; a member of the immediate family of the individual on whose behalf the fund is established; counsel for such individual in the legal proceeding or proceedings necessitating the creation of the trust fund; or a member, partner, associate, or employee of the firm employing counsel for such individual in the proceeding or proceedings necessitating the creation of the trust fund.

In addition, no officer or employee of the Senate may solicit, receive, or handle any contributions to a legal expense trust fund established pursuant to these regulations. This prohibition does not apply, however, to the two assistants to a Senator who have been designated as ''Political Fund Designees'' pursuant to the provisions of Rule 41 of the Standing Rules of the Senate.

B. Duties of the Trustee

In addition to the duties imposed by any applicable state laws, the trustee shall be responsible for the receipt of contributions to the trust fund; authorization of expenditures and disbursements from the trust fund; filing reports as required by Chapter Four hereof; and the performance of other tasks incident to the administration of the trust fund.

As required by Section D of Chapter One hereof, each trustee shall consent in writing to administer the trust fund in conformity with these regulations and the Standing Rules and Order of the Senate.

Chapter Three
Contributions

A. Who May Contribute

Any individual, association, partnership or other legal entity may contribute to a legal expense trust fund established pursuant to these regulations, except for the following:

1. any officer or employee of the United States Senate, or the spouse or dependent thereof, other than the officer or employee establishing the fund (or his or her spouse or dependent);

2. any corporation or labor organization (as the term ''labor organization'' is defined in the Federal Election Campaign Act, 2 U.S.C. section 441b[b][1];

3. any Member's principal campaign committee;

4. any foreign national (as defined in the Federal Election Campaign Act, 2 U.S.C. section 441[e]).

B. How Much May Be Contributed

Contributions from any one source to a legal expense trust fund, when aggregated, shall not exceed $10,000 per fiscal year of the trust fund. This limitation shall not apply to the Member, officer, or employee establishing a trust fund, or any relative (as the term ''relative'' is defined in Section 107[2] of Title I of the Ethics in Government Act of 1978, 2 U.S.C. section 707[2]) of such individual.

Subject to the qualifications of this paragraph, the above limitation shall not apply to the provision of pro bono legal representation where the Member, officer or employee, is a defendant in a legal proceeding. In a legal proceeding where the Member, officer, or employee is not a defendant, pro bono legal representation with a fair market value in excess of the above limitation may be accepted only where the Committee determines, in its sole discretion, that the limitation does not apply. Pro bono legal representation with a fair market value in excess of the above limitation may be accepted in a legal proceeding by a defendant (or as permitted by the Committee in its discretion where the Member, officer, or employee is not a defendant) only from law firms (or lawyers) approved by the Committee, subject to such conditions as the Committee may prescribe.

Any individual or firm providing pro bono legal services with a fair market value in excess of the above limitation, and any Senate Member, officer, or employee, accepting such services, hereby expressly consents and agrees that the individual or firm providing such services may not lobby the Senate Member, officer, or employee for whom services are provided, during the period when such services are being provided and for a period of six months after pro bono representation is terminated. Lobby shall be interpretated in a manner consistent with the meaning given the term ''lobbying'' in Senate Rule 37110][c]. An individual or firm who may not lobby a Senate Member may also not lobby persons supervised by the Member as determined by Senate Rule 37(11). Where a firm is prohibited from lobbying, then all members, associates and employees of the firm is also prohibited from lobbying.

C. Definition of First Fiscal Year of the Trust Fund

For the purposes of these regulations, the first fiscal year of a trust fund shall be deemed to have started on the first day of the calendar quarter following the establishment of the trust fund. Any contributions received prior to that date shall be deemed to have been received in the first fiscal quarter of the trust fund.

D. Segregation of Funds

All contributions to a legal expense trust fund must be kept in a separate bank account established therefore. They shall be segregated from, and may not be commingled with, the personal, political, or official funds of the Member, officer, or employee establishing the trust fund, or the funds of any other individual or legal entity.

Chapter Four
Disclosure and Reporting Requirements

A. When Reports Must Be Filed

The trustee shall submit a report of the contributions received and expenditures made during each quarter, as described in paragraph(B)below, to the Office of Public Records of the Secretary of the Senate and the Senate Select Committee on Ethics no later than 15 days following the last day of every calendar quarter (March 31, June 30, September 30, December 31) for the duration of the legal expense trust fund. Should the filing date fall on a Saturday, Sunday, or holiday, the next succeeding business day shall be deemed the date of the filing.

In the event no contributions are received nor expenditures disbursed during the calendar quarter, the trustee shall file a letter to that effect in lieu of such a report.

B. What Must Be Reported

All reports filed pursuant to this Chapter shall include the name and address of each contributor who has contributed during the calendar quarter and whose contributions during the fiscal year exceed $25, and the total amount of contributions by such contributor during the calendar quarter.

Each report shall also include the name and address of each individual or other entity to which an expenditure from the fund has been made during each calendar quarter, along with a brief description of the nature and the amount of each expenditure.

Any Member, officer, or employee accepting pro bono legal services (pursuant to the terms of Chapter Three, section B of these regulations) must report with respect to such services: the name and address of the individual or firm contributing such services; and the fair market value of those services provided by such individual or firm.

C. Public Availability of Documents

All documents filed pursuant to these regulations shall be available at the Office of Public Records of the Secretary of the Senate for public inspection and copying within two business days following receipt of the documents by that office.

Any person requesting a copy of such documents shall be required to pay a reasonable fee to cover the cost of reproduction.

Chapter Five
Termination

A. When Shall a Legal Expense Fund Be Terminated

A legal expense trust fund established pursuant to these regulations may be terminated by any one of three means:

1. voluntary termination: the Member, officer, or employee who established the trust fund may direct, for whatever reason, that the trust fund be terminated;

2. automatic termination: by its terms, no later than six months following the completion of the legal proceedings for which the trust fund was created, unless, upon application and for good cause shown, the Committee extends the life of the trust fund, in which event the trust fund would terminate upon the expiration of all extensions; or

3. involuntary termination: the Committee may direct the involuntary termination of the trust fund pursuant to the provisions of Chapter Six hereof.

For purposes of granting extensions, the Committee would consider as ''good cause'' the existence of deficits in the trust fund; i.e., outstanding legal expenses which exceed the balance remaining in the trust fund. In such a case, the Committee may grant an extension (or extensions) for a reasonable time thereafter, during which time funds to make up the deficit may be solicited and received. Copies of all extensions granted by the Committee shall be forwarded to the Office of Public Records of the Secretary of the Senate and shall be available for public inspection in accordance with the provisions of Chapter Four, Section C.

Upon termination of the trust fund, no further contributions may be accepted, nor additional expenditures be made.

B. Distribution of Unexpended Funds Upon Termination

Funds remaining upon the termination of the fund shall be, within 30 days thereafter, either donated and distributed to one or more organizations described in section 501(c)(3) of the Internal Revenue Code of 1954 and made exempt from taxation under section 501(a) thereof, or returned to contributors to the trust fund on a pro-rata basis.

C. Final Report

Within sixty days of the termination of the trust fund, a final report disclosing the totals of all contributions and expenditures as described in Chapter Four hereof, and of all distributions as described in Section B of this Chapter, must be filed by the trustee with the Committee and the Office of Public Records of the Secretary of the Senate. Upon filing, the report shall be available for public inspection in accordance with Section C of Chapter Four of these regulations.

Chapter Six
Enforcement

A. Audits

The Committee shall monitor the activities of any legal expense trust fund established pursuant to these regulations, and may direct that an audit be made of such trust fund when, in the judgment of the Committee, there is reason to believe that the trust fund is being improperly administered, or for other good cause.

B. Who Performs the Audit

Upon a determination by the Committee that an audit of a trust fund should be made, the Committee shall select a qualified auditor to examine the records of such trust fund. The expense of an audit performed at the direction of the Committee shall be borne by the Committee.

C. Involuntary Termination

Upon a finding by the Committee that the trust fund is being improperly administered, or for other good cause, the Committee may direct that the trust fund be terminated and that the funds be distributed in accordance with the provisions of Chapter Five hereof.

D. Sanctions

Upon a finding by the Committee that the trust fund has been improperly administered, or that these regulations have been otherwise violated, the Committee may recommend disciplinary action (including, but not limited to, in the case of a Member: censure, expulsion, or recommendation to the appropriate party conference regarding such Member's seniority or positions of responsibility; and, in the case of an officer or employee: censure, suspension or dismissal), after according the individual concerned due notice and opportunity for full hearing.

Chapter Seven
Retroactivity

Nothing in these regulations shall preclude a Member, officer, or employee of the Senate who remains liable for expenses incurred prior to the enactment of Senate Resolution 508 (96th Congress, 2nd Session) from establishing a legal expense trust fund if otherwise consistent with these regulations.

Chapter Eight
Interpretative Rulings

Senate Resolution 338, as amended, authorizes the Committee, in its discretion, to issue interpretative rulings explaining and clarifying the application of any law, the Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction. The Committee may issue such rulings in the interpretation and clarification of Senate Resolution 508, and these regulations pursuant thereto, in accordance with the procedures set forth in Rule 12 of the Rules of Procedure of the Committee.

APPENDIX J

POLICY FOR USE OF SENATE ROOMS, THE RUSSELL ROTUNDA and COURTYARD, THE HART ATRIUM and THE CAPITOL ROTUNDA

The Senate Committee on Rules and Administration has jurisdiction over assignment and use of space in the Senate Office Buildings, the Senate Wing of the Capitol, and the Courtyard of the Russell Building. While rooms may be occupied or administered by other offices or committees, they are subject to the Rules Committee policy for the use of Senate rooms.

Senate Rooms

The following regulations have been established for use by all offices in the assignment of their rooms:

1. **Rooms are available only for Senate-related business**. Weddings or other events of a personal nature are not allowed. Requests for the use of any space in the Senate Office Buildings and the Senate Wing of the Capitol must be made by a Senator or officer of the Senate and must be specific, i.e., organization using space, type of function, and the agenda.

A request for a Senate room for a public use by a committee, or under the auspices of a committee, must be made or approved by the chairman of that committee. (If the committee is a joint committee, the request must be made or approved by the Senator who is chairman or vice-chairman of that joint committee.) A use is considered to be ''by a committee'' or ''under the auspices of a committee'' when the announcement, agenda or notice for the use identifies Senate participants as members of the committee.

All requests for reservations must be followed by an official letter which must include the date, time, purpose of the function, name of the group who will be using the room, number of people attending, and a staff contact and telephone number. The letter also must indicate if additional services will be needed and must be received by the Rules Committee within one week of the date on which the reservation request was made. **Requests for reservations are subject to written approval by the Rules Committee and are not confirmed until written approval is received by the requesting office.**

Requests for a room assigned to a Senator, committee chairman, or officer of the Senate should be made directly to that individual.

Senate committee hearings and official legislative meetings take precedence over all other functions, and it may be necessary to cancel or move a function on short notice based on the legislative schedule of the Senate.

2. Reservations should be made as early as possible, as rooms are assigned on a first-come, first-served basis. Rooms may not be ''held'' on a tentative basis. Room reservation information is available to Senate staff only.

3. To accommodate the room requests of all Senators and committees, no long-term room reservations are permitted, and a constituent group may not request a room more than once in a calendar month.

4. Cancellations should be reported immediately.

5. The Senator sponsoring the function is expected to be in attendance, and is responsible for any loss of or damage to Senate property, and **for any financial obligation incurred.** Room reservations will not be accepted for any group having unpaid bills.

6. The group using a room must adhere to the time period scheduled for its use in order to accommodate other scheduled functions.

Breakfasts are allowed only from 8:00 a.m. until 10:00 a.m., lunches from Noon until 2:00 p.m., and receptions/dinners for a two-hour period after 5:00 p.m. Evening functions must conclude by 10:00 p.m.

7. Press conferences are permissible if the issues are Senate related. Press conferences related to political campaign issues are not permissible.

8. The Office of the Superintendent (224–3146) will make arrangements for the set-up of a room with the sponsoring Senator's staff or designated constituent contact. At the time the reservation is approved by the Rules Committee, Senate offices should notify their constituent contact that arrangements for the set-up of the room must be made with the Superintendent's Office as soon as possible in order to guarantee the availability of adequate furniture, equipment, and supplies.

9. Any constituent group using audio-visual materials must advise the sponsoring office of the subject matter in advance.

10. Since rooms are available only for Senate-related business, there is no charge for such use and there is no charge for set-up of rooms by the Superintendent's Office. Therefore, **no charge is permitted in connection with the use of Senate space, nor may any charge be assessed for admittance or refreshments in Senate space. No products may be displayed or sold on the premises. Senate space may NOT be used for any political campaign activity, fundraising (including charitable contributions in lieu of honoraria), commercial, promotional, or profit-making purpose whatsoever.** The Rules Committee, upon written request, may authorize organizations to arrange for reimbursement from participants for the actual cost of meals through the Senate Restaurant. Money may not be collected in the Senate Office Buildings, and payment to the Senate Restaurant must be made by the organization.

11. Awards ceremonies generally are not permitted because they may be construed as promotional. Therefore, a request for an exception to permit an awards ceremony must be included in the letter requesting the room reservation.

12. **No signs or placards displaying a company or group name or logo are permitted. Banners are strictly prohibited, and no material may be attached to the wails of the rooms.**

13. The Senate will not be held responsible for articles brought into the Senate buildings and grounds for functions and exhibits.

14. **No outside caterers are permitted.** If food and non-alcoholic beverages are to be provided, the Senate Restaurant Catering Service (224–2363) must supply these refreshments. Alcoholic beverages only may be brought in from outside suppliers if they cannot be furnished by the Senate Restaurant Catering Service. **No food or beverages are permitted in the corridors outside the reserved room.** All food and beverages served at a function must be consumed within the scheduled room.

15. The United States Capitol Police must be furnished with a list of all guests attending functions which continue after 7:00 p.m. in the Senate Wing of the Capitol or the Senate Office Buildings. The list must be in alphabetical order according to the guest's surname, and must note the individual's social security number. The list also must be provided 24 hours in advance. **Admittance cannot be guaranteed if the list is not submitted to the Capitol Police within the required time.**

16. Music is not permitted before 6:00 p.m. while the Senate is in session or before 5:00 p.m. while in recess.

17. **No parking accommodations are provided for guests by the Rules Committee.**

18. The Senator sponsoring the function will be held accountable for enforcement of these regulations.

Russell Rotunda

1. All requests for the use of the Russell Rotunda must be submitted in writing to the Chairman of the Rules Committee. The letter of request must be signed by the sponsoring Senator.

2. Only educational, cultural, and commemorative exhibits will be permitted. Handouts are **not** permitted.

APPENDIX K

COMMITTEE ON
RULES AND ADMINISTRATION
WASHINGTON, DC 20510–6325

November 14, 1996

We very much appreciated receiving your letter containing suggested changes to the Internet Usage Policy adopted by the Committee on Rules and Administration. On October 3 our staff, along with staff from the Ethics Committee, met with several members' staff to discuss this policy and your proposed changes.

We believe the meeting was very helpful in understanding your objectives as well as explaining the constraints we serve under. Briefly, the Committee is statutorily charged with determining allowable expenses which can be funded from the contingent fund of the Senate (2 U.S.C. 68). Absent other authorizing legislation, this statute constrains the Rules Committee from approving expenses ''. . . for any expense not intimately and directly connected with the routine legislative business of the Senate . . .''. (2 U.S.C. 68–2.) This authority forms the basis of Committee's regulations, policies and decisions, including the Internet Usage Policy issued on July 22.

The meeting also revealed a significant misunderstanding of the Internet policy and the ability of Senators to use Internet services for official purposes. It became apparent that your staff believed the Committee Internet Usage Policy prohibited links to ''home-state'' sites. This was not and is not the intent of the Committee, and we will clarify the language to clearly state that Senators may permit non-governmental links on their home pages (including links to ''home-state'' sites), provided such links are not made for personal, partisan political, or promotional/commercial purposes.

Regarding the concern that a Senator might be held responsible for second generation links, the Rules Committee policy already requires that a Senator include a notification when a link causes a user to exit the Senator's home page. For this reason, a Senator obviously cannot be held responsible for subsequent links beyond that provided by the Senator.

Additionally, the Rules Committee policy already allows a Senator to post a biography on his or her home page. The Sergeant at Arms is currently authorized to post such biographies on the default home page of Senators who chose not to maintain their own home page.

Should you continue to believe an amendment to existing statutes is appropriate, we would move quickly to hold hearings and report out any proposed legislation on this matter.

If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Wendell H. Ford	John Warner
Ranking Member	Chairman

COMMITTEE ON
RULES AND ADMINISTRATION
WASHINGTON, DC 20510–6325

July 26, 1996

Dear Colleague:

Attached, please find the amended policy for Internet Services for the United States Senate, which the Ranking Member and I approved on behalf of the Committee on Rules and Administration on July 22, 1996.

The purpose of this policy is to provide guidance to Senate offices concerning their responsibilities in using Internet services provided by the Senate.

Should you have any questions regarding this matter, please contact John McConnell at 4–2233.

With kind regards, I am

Sincerely,

John Warner
Chairman

Enclosure

Adopted by the Committee on Rules and Administration on July 22, 1996.

U.S. SENATE INTERNET SERVICES USAGE RULES AND POLICIES

Policy for Internet Services

A. SCOPE AND RESPONSIBILITY

1. Senate Internet Services (''FTP Server, Gopher, World Wide Web and Electronic mail'') may only be used for official purposes. The use of Senate Internet Services for personal, promotional, commercial, or partisan political/campaign purposes is prohibited.

2. Members of the Senate, as well as Committee Chairmen and Officers of the Senate may post to the Internet Servers information files which contain matter relating to their official business, activities, and duties. All other offices must request approval from the Committee on Rules and Administration before posting material on the Internet Information Servers.

3. It is the responsibility of each Senator, Committee Chairman, Officer of the Senate, or office head to oversee the use of the Internet Services by his or her office and to ensure that the use of the services is consistent with the requirements established by this policy and applicable laws and regulations.

4. Official records, may not be placed on the Internet Servers unless otherwise approved by the Secretary of the Senate and prepared in accordance with Section 501 of Title 44 of the United States Code. Such records include, but are not limited to: bills, public laws, committee reports, and other legislative materials.

B. POSTING OR LINKING TO THE FOLLOWING MATTER IS PROHIBITED

1. Political Matter

a. Matter which specifically solicits political support for the sender or any other person or political party, or a vote or financial assistance for any candidate for any political office is prohibited.

b. Matter which mentions a Senator or an employee of a Senator as a candidate for political office, or which constitutes electioneering, or which advocates the election or defeat of any individuals, or a political party is prohibited.

2. Personal Matter

a. Matter which by its nature is purely personal and is unrelated to the official business activities and duties of the sender is prohibited.

b. Matter which constitutes or includes any article, account, sketch, narration, or other text laudatory and complimentary of any Senator on a purely personal or political basis rather than on the basis of performance of official duties as a Senator is prohibited.

c. Reports of how or when a Senator, the Senator's spouse, or any other member of the Senator's family spends time other than in the performance of, or in connection with, the legislative, representative, and other official functions of such Senator is prohibited.

d. Any transmission expressing holiday greetings from a Senator is prohibited. This prohibition does not preclude an expression of holiday greetings at the commencement or conclusion of an otherwise proper transmission.

3. Promotional Matter

a. The solicitation of funds for any purpose is prohibited.

b. The placement of logos or links used for personal, promotional, commercial, or partisan political/campaign purposes is prohibited.

C. RESTRICTIONS ON THE USE OF INTERNET SERVICES

1. During the 60 day period immediately preceding the date of any primary or general election (whether regular, special, or runoff) for any national, state, or local office in which the Senator is a candidate, no Member may place, update or transmit information using a Senate Internet Server (''FTP Server, Gopher, and World Wide Web), unless the candidacy of the Senator in such election is uncontested.

2. Electronic mail may not be transmitted by a Member during the 60 day period before the date of the Member's primary or general election unless it is in response to a direct inquiry.

3. During the 60 day period immediately before the date of a biennial general Federal election, no Member may place or update on the Internet Server any matter on behalf of a Senator who is a candidate for election, unless the candidacy of the Senator in such election is uncontested.

4. If a Member is under the restrictions as defined in subtitle C, paragraph (1), above, the following statement must appear on the homepage: (''Pursuant to Senate policy this homepage may not be updated for the 60 day period immediately before the date of a primary or general

election''). The words ''Senate Policy'' must be hypertext linked to the Internet services policy on the Senate Homepage.

5. A Senator's homepage may not refer or be hypertext linked to another Member's site or electronic mail address without authorization from that Member.

6. Any Links to Information not located on a Senate Internet Server must be identified as a link to a non-Senate entity.

APPENDIX L

Rules Committee
Moratoria Statement
January 6, 2000

Dear Senator:

This notice is to remind you that the use of certain Senate allowances and facilities is limited or prohibited during the 60-day period immediately preceding a primary or general election. **Some of these restrictions apply whether or not you are a candidate.** Any Senator whose state law provides for a method of nomination other than a primary election should contact the Rules Committee staff for guidance (4–6352). The restrictions on the use of the Senate Recording Studio, mass mailings, Internet services, and mobile offices apply whenever the Senator is a candidate for any public office. The restrictions on official travel apply only when the Senator is a candidate for the Senate or other Federal office.

UNCONTESTED CANDIDACIES

Official travel, mobile office, Senate Recording Studio, Internet services, and mass mailing restrictions do not apply when the Senator's candidacy is uncontested. An uncontested candidacy is established when the Rules Committee receives written certification from the appropriate state official that the Senator's candidacy may not be contested under state law. Since the candidacy of a Senator who is running for re-election from a state which permits write-in votes on election day without prior registration or other advance qualification by the candidate may be contested, such a Member is subject to the above restrictions. However, travel expenses may be allowed if information is submitted to the Rules Committee which establishes that such candidacy was, in fact, uncontested. Upon receipt of such information, vouchers for travel reimbursements will be in order for payment.

OFFICIAL TRAVEL

The statutory authority for reimbursing a Senator or members of his or her staff for official travel expenses [2 U.S.C. 58(e)] from the official personnel and office expense account specifies that they:

> . . . shall not be reimbursed for any travel expenses (other than actual transportation expenses) for any travel occurring during the 60 days immediately before the date of any primary or general election (whether regular, special, or runoff) in which the Senator is a candidate for . . . [Federal] . . . public office (within the meaning of
>
> 43l(b) of this title), unless his candidacy in such election is uncontested.

(Note: 43 l(b), which has been redesignated 2 U.S.C. 431(2), pertains to candidates for the Federal offices defined in 2 U.S.C.431(3).)

The only allowable reimbursements to Senators and/or members of their staff for official travel during the time period specified will be for the expense of transportation, i.e. airfares, train fares, buses, mileage for privately-owned autos, rental autos, taxis, etc. Reimbursements for other travel related expenses are specifically prohibited.

MOBILE OFFICES

The statutory authority for a Senator to be reimbursed from the contingent fund of the Senate for rental payments and operating costs for one mobile office for use in the state he or she represents [2 U.S.C. 59(f)(4)] specifies:

> No payment shall be made . . . for rental payments and operating costs of a mobile office of a Senator which are attributable to or incurred during the 60-day period ending with the date of any primary or general election (whether regular, special, or runoff) in which that Senator is a candidate for public office, unless his candidacy in such election is uncontested.

RECORDING STUDIO

The use of the Senate Recording Studio by Members who are candidates for election to any public office is prohibited during the 60-day period by paragraph 6 of Rule XL of the Standing Rules of the Senate, which states:

> (a) The radio and television studios provided by the Senate or by the House of Representatives may not be used by a Senator or an individual who is a candidate for nomination for election, or election, to the Senate less than 60 days immediately before the date of any primary or general election (whether regular, special or runoff) in which that Senator is a candidate for public office or that individual is a candidate for Senator, unless the candidacy of the Senator in such election is uncontested.
>
> (b) This paragraph shall not apply if the facilities are to be used at the request of, and at the expense of, a licensed broadcast organization or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

MASS MAILING

The franking statute [39 U.S.C. 3210(a)(6)] does not permit a Member of Congress to use the frank for sending mass mailings within the 60-day period before any primary or election in which the Member is a candidate for public office.

Similarly, Paragraph 1 of Rule XL of the Standing Rules of the Senate states:

> A Senator or an individual who is a candidate for nomination for election, or election, to the Senate may not use the frank for any mass mailing (as defined in section 3210(a)(6)(E) of title 39, United States Code) if such mass mailing is mailed at or delivered to any postal facility less than 60 days immediately before the date of any primary or general election (whether regular, special, or runoff) in which the Senator is a candidate for public office or the individual is a candidate for Senator, unless the candidacy of the Senator in such election is uncontested.

Please note that regulations promulgated by this Committee provide that no Senator (whether or not a candidate, and whether or not that candidacy is uncontested) may send any mass mailing (which does not include town meeting notices or opinion surveys) during the period beginning 60 days before the date of each biennial Federal general election.

Furthermore, Federal law prohibits the mailing of a town meeting notice by a Senator during the 60 days immediately before the date of any primary election (whether regular, special, or runoff) for any Federal, State, or local office in which that Senator is a candidate for election (39 U.S.C. 3210(a)(6)(E)(iv)). There is no exception for uncontested candidacies.

Finally, Committee regulations provide that solicitation forms provided by a Senator through a mass mailing which are intended to be mailed back by constituents may not be responded to during the 60 days immediately before the date of any primary or general election (whether regular, special, or runoff) for any Federal, State, or local office in which that Senator is a candidate for election.

Each Member is responsible for submitting any material for mass mailing to the Senate Service Department far enough in advance of any appropriate deadline so that it can be prepared, printed, and delivered to the Postal Service in compliance with the above limitation(s).

INTERNET SERVICES

The United States Senate Internet Services Usage Rules and Policies restrict the use of Internet services prior to an election as follows:

1. During the 60-day period immediately preceding the date of any primary or general election (whether regular, special, or runoff) for any national, state, or local office in which the Senator is a candidate, no Member may place, update or transmit information using a Senate Internet Server (FTP Server, Gopher, and World Wide Web), unless the candidacy of the Senator in such election is uncontested.

2. Electronic mail may not be transmitted by a Member during the 60-day period before the date of the Member's primary or general election unless it is in response to a direct inquiry.

3. During the 60-day period immediately before the date of a biennial general Federal election, no Member may place or update on the Internet Server any matter on behalf of a Senator who is a candidate for election, unless the candidacy of the Senator in such election is uncontested.

4. If a Member is under the restrictions as defined in paragraph (1), above, the following statement must appear on the homepage: ''Pursuant to Senate policy this homepage may not be updated for the 60-day period immediately before the date of a primary or general election.'' The words ''Senate policy'' must be hypertext linked to the Internet services policy on the Senate Home Page.

If you have any questions concerning any of the above pre-election restrictions on the use of certain Senate allowances and facilities, you may contact either of us or have your staff contact the Rules Committee staff on 4–6352.

Sincerely,

Mitch McConnell	Christopher J. Dodd
Chairman	Ranking Member

APPENDIX M

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