



July 11, 2019

Representative Theodore E. Deutch, Chairman  
Representative Kenny Marchant, Ranking Member  
Committee on Ethics  
1015 Longworth House Office Building  
Washington, D.C. 20515  
*submitted electronically to* [Ethics.Comments@mail.house.gov](mailto:Ethics.Comments@mail.house.gov)

**Re: Comments regarding Outside Position Regulations to  
address conflicts of interest**

Dear Chairman Deutch and Ranking Member Marchant,

The Campaign Legal Center (“CLC”) respectfully submits these comments to the Committee on Ethics in response to the request for input on types of service and positions with outside entities that may lead to conflicts of interest. CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy across all levels of government. Our work promotes an American political process that is accessible to all citizens, resulting in representative, responsive, and accountable government.

CLC supports this Committee’s efforts to more fully address conflicts of interest arising from Members’ participation in non-governmental activities.

While the new requirement that a Member, officer, or employee not serve as

an officer or director of any public company is an important first step in addressing conflicts, the Committee should use this opportunity both to strengthen and to add clarity to conflict of interest rules in the House.

CLC makes the following comments and recommendations for the Committee on Ethics' consideration as it develops these important rules.

- **A Member, officer, or employee should not hold any outside position, compensated or uncompensated, with an entity that the Member knows or reasonably should know is specifically and uniquely overseen by a committee on which the Member serves.**

Conflicts concerns are heightened when a Member, officer, or employee oversees an entity in which they have a personal financial interest. A Member, officer, or employee is already prohibited from using their entrusted authority for personal financial gain and from voting on a question if they have a direct personal or pecuniary interest in the question.<sup>1</sup> The Committee should reinforce existing House Rules provisions and specify that holding an outside position with, or owning stock in,<sup>2</sup> an entity that is specifically and uniquely overseen by the committee or committees on which a Member, officer, or employee serves constitutes a conflicting interest. Massachusetts's house rules, for example, specify that serving on a committee where the house member's private right is immediately concerned is prohibited—just as

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<sup>1</sup> “Rule XXIII: Code of Official Conduct” and “Rule III: The Members, Delegates, and Resident Commissioner of Puerto Rico,” *Rules of The House of Representatives* (116th Congress), <https://rules.house.gov/sites/democrats.rules.house.gov/files/116-1/116-House-Rules-Clerk.pdf> (last visited July 11, 2019).

<sup>2</sup> The same conflict of interest concerns that exist when a Member, officer, or employee holds an outside position with an entity overseen by their committee exist when they own stock in a company that is specifically and uniquely overseen by their committee, unless the stock is held through a mutual fund or other type of diversified investment fund.

voting on a matter that affects their personal financial interests is prohibited—due to the potential for conflicts of interest.<sup>3</sup>

Prior to or shortly after beginning service on a House committee, a Member, officer, or employee should be required to resign from any position and divest any assets that are specifically and uniquely regulated by the committee. The Member, officer, or employee should be required to certify that they hold no position or asset in an entity that is specifically and uniquely regulated by the committee on which they serve, and that they will not take a position or purchase any asset specifically and uniquely regulated by that committee for the duration of their tenure and for a period after their tenure ends.

- **A Member, officer, or employee should not hold any position, including any advisory role, with any entity that the Member knows or reasonably should know has business with the United States government.**

Even if a Member, officer, or employee does not directly have jurisdiction over an entity through committee membership, there is still a significant risk of a conflict if a Member, officer, or employee has a position with an entity that seeks or holds taxpayer-funded contracts with the federal government. A Member, officer, or employee could attempt to use their insider status, knowledge, and significant influence to achieve a favorable

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<sup>3</sup> “Rule 19(a)(14)”, *House Rules of the Commonwealth of Mass.*, <https://malegislature.gov/Laws/Rules/House> (last visited July 11, 2019) (“No member shall serve on any committee or vote on any question in which his or her private right is immediately concerned, distinct from the public interest.”)

outcome for that entity. Federal law currently prohibits a Member from entering into a contract with the federal government,<sup>4</sup> or directly or indirectly benefitting from such a contract,<sup>5</sup> and House rules should make clear that a Member, officer, or employee is also prohibited from holding a position with a federal contractor. In New York City, for example, city employees who are full-time public servants are prohibited from having a position with a firm that the public servant knows or should know is engaged in business dealings with any city agency, not just the public servant's own agency.<sup>6</sup>

- **The Committee should extend the prohibition on board membership to other positions.**

The appearance or reality of a conflict of interest may arise even if a Member, officer, or employee is not an “officer or director” of an entity, but otherwise has a position with that entity. New York City’s definition of “position,” for example, not only includes any officer, director, trustee, employee, or management position; it also includes any agent, attorney, broker, or consultant.<sup>7</sup> This rule recognizes that there are a range of positions that can present conflicts of interest. Additionally, New York City restricts employees’ volunteer activities if the volunteering conflicts with the official duties<sup>8</sup> or if the entity has business with the city.<sup>9</sup>

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<sup>4</sup> 18 U.S.C. §§ 431, 432.

<sup>5</sup> 41 U.S.C. § 22.

<sup>6</sup> N.Y.C. CHARTER §§ 2601(12), 2604(a)(1)(b), 2604(a)(6).

<sup>7</sup> N.Y.C. CHARTER § 2601(18).

<sup>8</sup> N.Y.C. CHARTER § 2604(b)(2).

<sup>9</sup> N.Y.C. CHARTER § 2604(c)(6).

- **The Committee should establish a framework for assessing conflicts of interest that can be used to assess outside positions not contemplated by these new regulations.**

In addition to defining what types of positions and entities could produce a conflict, the Committee should provide clear, workable standards to assess conflict of interests that Members, officers, and employees can readily apply to their outside activities for those scenarios not explicitly mentioned in the final regulations. This will allow the Committee and individuals to assess conflicts not immediately contemplated by the Committee in these regulations. In California, for example, a disqualifying conflict of interest in a governmental decision is one that would have a foreseeable financial impact on a public official's financial interest.<sup>10</sup> In Kentucky, public servants are provided a list of five considerations designed to help them determine whether they should recuse from an official decision.<sup>11</sup>

CLC thanks the Committee on Ethics for the opportunity to submit these comments and appreciates your consideration.

Respectfully submitted,

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<sup>10</sup> CAL. GOV'T CODE § 87100; *see also* CAL. FAIR POL. PRAC. COMM'N, RECOGNIZING CONFLICTS OF INTEREST 11 (2015), <https://bit.ly/2VNa29X>.

<sup>11</sup> KY. REV. STAT. ANN. § 11A.030 (West 1992).

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