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## SPECIAL TASK FORCE ON ETHICS ENFORCEMENT

Rep. MICHAEL E. CAPUANO (D–MA), *Chair*
Rep. LAMAR S. SMITH (R–TX), *Ranking Member*

Rep. DAVID E. PRICE (D–NC)*
Rep. ROBERT C. "BOBBY" SCOTT (D–VA)
Rep. BETTY L. McCOLLUM (D–MN)

Rep. DAVID L. CAMP (R–MI)
Rep. DAVID L. HOBSON (R–OH)
Rep. TODD TIAHRT (R–KS)

*Rep. Price was appointed to the Task Force in July 2007 to replace Rep. Martin T. Meehan, who resigned from Congress July 1, 2007.

**Congress of the United States**
**Washington, DC 20515**

December 19, 2007

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John A. Boehner
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Speaker Pelosi and Mr. Boehner,

The Special Task Force on Ethics Enforcement has completed its work. The Task Force has held numerous meetings over the past year to study, as instructed, the creation of an independent ethics enforcement entity within the House of Representatives.

Several Members of the Task Force have decided to withhold comment on the report at this time. On behalf of Mr. Price, Mr. Scott, and Ms. McCollum, I submit to you our proposal and accompanying recommendations. It is my understanding that the other Members of the Task Force will be submitting their report at a later time. When they do, we will incorporate it at the end of this report.

Thank you for entrusting me with this opportunity to serve the House of the Representatives.

Sincerely,

Michael E. Capuano
Chairman
Special Task Force of Ethics Enforcement

## FORMATION

The Special Task Force on Ethics Enforcement was established on January 31, 2007. Speaker of the House Nancy Pelosi and House Republican Leader John Boehner appointed Representatives Michael E. Capuano and Lamar S. Smith as Chair and Ranking Member, respectively. Speaker Pelosi also appointed the following Democratic Members of Congress to serve on the Task Force: Martin T. Meehan, Robert C. "Bobby" Scott, and Betty L. McCollum. Republican Leader Boehner appointed the following Republican Members of Congress to serve on the Task Force: David L. Camp, David L. Hobson, and Todd Tiahrt. Rep. Meehan resigned from Congress in July 2007, and Rep. David E. Price was appointed to fill the vacancy on the Task Force. None currently serve on the House Committee on Standards of Official Conduct (commonly known as the "Ethics Committee"), though some have served on this committee in the past.

A number of staff members greatly assisted the work of the Task Force in the course of its duration: Christina Tsafoulias, Legislative Assistant to Rep. Capuano; Paul Taylor, Chief Republican Counsel to the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties; Bernard Raimo, Counsel to the Speaker; Ed Cassidy, Senior Advisor & Floor Assistant to the Republican Leader; and Robert F. Weinhagen, Jr., Senior Counsel in the Office of Legislative Counsel. In addition, the following staff aided Members of the Task Force: Jean Louise Beard, Chief of Staff, and Kate Roetzer, Legislative Assistant to Rep. Price; Allison Havourd and Rob Guido, Legislative Assistants to Rep. Camp; Christopher Hickling, Legislative Director to Rep. Meehan; Ben Taylor, Legislative Assistant to Rep. Hobson; Carla Murrell-Hargrove, Staff Assistant, and Rashage Green, Legislative Assistant to Rep. Scott; Jeff Kahrs, Chief of Staff to Rep. Tiahrt; and Emily Lawrence, Legislative Director to Rep. McCollum. The Task Force would also like to thank the offices of the Parliamentarian and General Counsel, the Committee on Standards of Official Conduct, and the Congressional Research Service for their assistance.

## EXECUTIVE SUMMARY

Over the past eleven months, the Task Force has considered the questions of whether to create an independent ethics enforcement entity within the House of Representatives and how best to increase transparency and accountability within the ethics process.

As a result of months of study and discussion among Task Force members and stakeholders, the Task Force proposes the creation of an Office of Congressional Ethics as an independent office within the House. The office will be composed of six board members, jointly appointed by the Speaker and Minority Leader, and a staff. It will be the responsibility of the board to review information on alle-

gations of misconduct by Members, officers, and employees of the House and make recommendations to the Committee on Standards of Official Conduct for the Committee's official consideration and action.

Two board members may initiate a review by notifying all other board members in writing. The board will then have 30 calendar days to consider the matter in a preliminary phase and may vote to either terminate the review or progress to a second-phase review. Once in the second phase, the board has 45 calendar days (with a possible one-time extension of 14 days) to complete consideration of the matter and refer it to the Standards Committee with a recommendation for dismissal, further review, or as unresolved due to a tie vote. The board's referral may not contain any conclusions regarding the validity of the allegations upon which it is based or the guilt or innocence of the individual who is the subject of the review. All matters that enter into a second-phase review must be referred to the Standards Committee.

Once the Standards Committee receives a matter through this process, it will have 45 calendar days (with one possible extension of the same duration) to deliberate and decide on a course of action. All final authority and responsibility to either dismiss a case or empanel an investigative subcommittee continues to lie with the Standards Committee. In most cases, the Committee will publicly announce its disposition on the matter at the end of the applicable time period, along with a report and findings from the board. However, no public announcements are required when neither the board nor the Ethics Committee has found substantial wrongdoing.

Through the implementation of these recommendations, the Task Force expects to significantly increase transparency in the process through greater reporting on a timely basis and to provide for an independent element of consideration by individuals who are not current Members of the House of Representatives.

## PURPOSE

During the 109th Congress, several Members were involved in controversies ranging from improper use of their office to inappropriate contact with participants in the House Page Program. In response to these well-documented incidents, one of the first actions of the 110th Congress was to pass changes to the U.S. House of Representatives Code of Official Conduct and other Rules of the House. In follow up to strengthening the rules governing the conduct of Members, Speaker Pelosi and Republican Leader Boehner announced that they would establish a Task Force to study enforcement of ethics rules. The Special Task Force on Ethics Enforcement was charged with determining whether the House should establish an independent ethics entity to serve as part of the ethics enforcement process. Currently, the Standards Committee is the sole ethics entity within the House, overseeing the receipt of all complaints, inquiries, investigations, and adjudication.

Many Members of Congress and constitutional scholars have expressed concerns regarding the constitutionality of establishing an independent entity to supplement the existing House ethics process. The two commonly cited passages are as follows:

• Article I, section 5, clause 2 of the United States Constitution: "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member."

• Article I, section 6, clause 1 of the United States Constitution: "Senators and Representatives . . . for any Speech or Debate in either House, . . . shall not be questioned in any other place."

Task Force members were cognizant of these issues as they considered policy recommendations, and were careful to ensure that any proposal strictly adhere to constitutional precepts.

## BACKGROUND

Ethics reform in the House has been an ongoing process since the creation of the Committee on Standards of Official Conduct in 1967. On average, the House has adopted significant ethics reforms, usually at the recommendation of a special task force, once a decade. Such reforms occurred after significant study of the ethics process, generally coupled with heightened public concern due to contemporaneous scandal.

In 1977, the House adopted changes to the ethics process as proposed by the House Commission on Administrative Review. This Commission was led by Representatives David R. Obey (D–WI) and William E. Frenzel (R–MN), and charged with reviewing the administrative structure of the House. A number of reforms were implemented as a result of this initiative, including increased financial disclosure obligations for Members, limits on Members' outside earned income, and the abolition of "unofficial" office accounts which Members often used to supplement official monies.[1]

In 1989, the House Bipartisan Leadership Task Force on Ethics convened, co-chaired by Representatives Vic Fazio (D–CA) and Lynn Martin (R–IL). This Task Force's work culminated in the passage of the Ethics Reform Act of 1989, which banned honoraria, instituted a one-year post-employment waiting period before lobbying, tightened gift rules, established the Office of Advice and Education, and provided for bifurcation between the investigative and adjudicatory duties of the Standards Committee.[2]

Finally, in 1997, the House established the Ethics Reform Task Force. This group was co-chaired by Representatives Robert L. Livingston (R–LA) and Benjamin L. Cardin (D–MD). A number of recommendations were implemented, including the first creation of a supplemental pool of Members from which to draw for investigative subcommittees, restrictions on the filing of complaints, limits to Members' service on the Standards Committee, and the adoption of a rule providing for professional, nonpartisan Committee staff.[3]

In light of the fact that Congress worked for 178 years without formal rules on ethics or ethics procedures, the Task Force believes that Congress has come a long way in the 40 years since the establishment of the Standards Committee in 1967. Members of the Task Force also recognize that such matters are constantly in need of review and updating.

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[1] Financial Ethics (H. Doc. No. 95–73).
[2] Ethics Reform Act of 1989 (Public Law No. 101–194).
[3] H. Res. 168—To implement the recommendations of the bipartisan House Ethics Reform Task Force (105th Congress).

## PROCESS

The Special Task Force on Ethics Enforcement met with current and former Members of Congress, advocacy and reform groups, scholars, current and former Standards Committee staff, and other stakeholders. The purpose of the exchanges was to familiarize Task Force members with varying viewpoints on the ethics process in the House of Representatives, as well as with proposals for reform of the current system. Throughout this process, the Task Force focused solely on the central question of whether to create an independent ethics enforcement entity. Numerous preliminary meetings took place in executive session in order to facilitate frank discussion among Task Force members and those asked to share their views.

Members met in executive session on February 9, 2007 and March 1, 2007 to discuss matters relating to process, scheduling, and research.

Members met in executive session on March 6, 2007, with Ken Kellner, Senior Counsel to the House Committee on Standards of Official Conduct.

Members met in executive session on March 8, 2007, with Thomas Mann, Senior Fellow at the Brookings Institution and Norman Ornstein, Resident Scholar at the American Enterprise Institute.

Members met in executive session on March 13, 2007, with Meredith McGehee, Policy Director for the Campaign Legal Center and Fred Wertheimer, President and CEO of Democracy 21. Both represent a larger coalition that supports the establishment of an Office of Public Integrity.

Members met in executive session on March 15, 2007, with former Representatives Robert Livingston, who served as co-chair of the 1997 House Ethics Task Force, and Louis Stokes, a former Chairman of the Committee on Standards of Official Conduct.

Members met in executive session on March 20, 2007 with Tom Fitton, President of Judicial Watch and Melanie Sloan, Executive Director of Citizens for Responsibility and Ethics in Washington (CREW).

Members met in executive session on March 22, 2007, with Senator Ben Cardin, Co-Chair of the 1997 House Ethics Task Force, and Don Wolfensberger, Director of the Congress Project at the Woodrow Wilson International Center for Scholars.

Members met in executive session on March 27, 2007, with Sarah Dufendach, Chief of Legislative Affairs for Common Cause, Gary Kalman, Democracy Advocate for U.S. PIRG, and Lloyd Leonard, Senior Director of Advocacy for the League of Women Voters.

Members met in executive session on March 29, 2007 with Patricia Harned, President of the Ethics Resource Center, Bradley Smith, former Federal Elections Commission Chairman, and Judge Anthony Wilhoit, Executive Director of the Kentucky Legislative Ethics Commission.

Members met in executive session on April 17, 2007 with Rob Walker, Chief Counsel and Staff Director of the Senate Select Committee on Ethics and former Chief Counsel and Staff Director of the House Committee on Standards of Official Conduct.

The Special Task Force on Ethics Enforcement held a public hearing on Thursday, April 19, 2007. The following individuals appeared as witnesses to offer testimony: Tom Fitton, President of Judicial Watch; Meredith McGehee, Policy Director for the Campaign Legal Center; Fred Wertheimer, President and CEO of Democracy 21; and Don Wolfensberger, Director of the Congress Project at the Woodrow Wilson International Center for Scholars. Mr. Fitton, Ms. McGehee, and Mr. Wertheimer all testified in support of the general concept of an independent ethics enforcement entity though some proposal details differed. Mr. Wolfensberger offered his perspective on this process based on years of service as an employee of the U.S. House of Representatives, and stated his opposition to the creation of an independent entity. Task Force members had the opportunity to pose follow-up questions to witnesses at the conclusion of their testimony. The Task Force hearing was open to all interested parties and a full transcript of the hearing was produced. The transcript is available on Rep. Capuano's website at http://www.house.gov/capuano/.

Members met again in executive session on April 24, 2007, to begin substantive discussion of Task Force proposals and recommendations.

Members continued to meet in executive session to expand on those internal discussions and deliberate matters further on the following dates: April 26, 2007; May 1, 2007; May 2, 2007; May 3, 2007; May 10, 2007; May 22, 2007; June 6, 2007; June 7, 2007; September 27, 2007; October 4, 2007; October 10, 2007; October 30, 2007; November 1, 2007; November 8, 2007; November 14, 2007; November 15, 2007; December 4, 2007; and December 19, 2007.

In addition, the Chair and Ranking Member of the Task Force held six meetings early in the process with many of those named above, as well as with Craig Holman, Legislative Representative for Public Citizen; Jack Maskell, Legislative Attorney for the Congressional Research Service; and R. Eric Petersen, Analyst in American National Government for the Congressional Research Service.

In June 2007, the Task Force developed a proposal for an independent entity that would accept submissions from the general public regarding alleged ethics violations and, after an initial inquiry, refer them (with recommendations) to the Committee on Standards of Official Conduct for final action. This proposal was crafted based on a number of discussions of historical concerns with the ethics process in the House, and incorporated many suggestions given to the Task Force over the course of its meetings. Two main elements of the initial plan became problematic due to opposing concerns of some Members of Congress and ethics reform groups: the acceptance of "outside" submissions from the general public, and the requirement that any group filing a submission (or significantly aiding in the filing of a submission) disclose financial donors over a certain threshold. In deference to the concerns of both Members and various ethics reform groups, the Task Force decided to withhold its proposal at that time and to develop a new proposal. Regardless, the Task Force has always maintained its focus on accountability and transparency in the ethics process.

## RECOMMENDATIONS

The following section contains the Special Task Force on Ethics Enforcement's recommendations based on months of study, meetings, and discussion among members. The entity described below is created within the House of Representatives, to be established through a House resolution. The proposed resolution is included as Attachment A in this report. The Task Force recommends that an Office of Congressional Ethics (OCE) supplement the House ethics process by providing an independent review of alleged violations of standards of conduct by Members, officers, and employees—thereby reassuring Members of Congress and the general public that a clear ethics system is in place and will respond to possible ethics violations. Among the goals the Task Force hopes to accomplish are to introduce an independent review element by non-Members and significantly increase transparency of the process. The formation, procedure, and ancillary details of the OCE are described below.

### *General overview*

The Task Force recommends that an entity named the Office of Congressional Ethics be established as an independent office within the House of Representatives to provide a review of alleged ethics violations. The OCE will be composed of six board members. The board will then appoint a staff to carry out the daily work of the office.

The new Office of Congressional Ethics will act as an origination point for independent review of possible violations of standards of conduct, but will not prevent the Standards Committee from accepting complaints filed by Members. Any two OCE board members will be able to initiate a preliminary review of any matter by the board in order to better assess its validity. The board will then vote to either terminate the preliminary review or proceed to a second-phase review of the matter. By the end of a mandated time period, the OCE must refer all matters under second-phase review to the House Committee on Standards of Official Conduct—with a recommendation for dismissal, for further inquiry, or as unresolved due to a tie vote—for official Committee action. The Standards Committee will then consider the referral according to current Committee rules, but, for the first time in history, will be required to make a public announcement of its disposition for most referrals within a specified time period. The Standards Committee may dismiss or further investigate a matter as it sees fit once it has received the referral from the OCE.

This new, independent office will open up the ethics process by allowing the OCE to self-initiate reviews of alleged violations, providing an avenue for both preliminary and second-phase reviews, and triggering a procedure by which official public comment is required within a specified time frame.

### *Entity*

The Office of Congressional Ethics is to be established by resolution as an independent office of the House of Representatives consisting of board members and a staff. Board members are to be appointed jointly by the Speaker and Minority Leader to ensure bi-

partisan balance. Vacancies on the board will be filled for the remainder of the unexpired term by the process delineated below. Once established, the board shall appoint a nonpartisan, professional staff to carry out the daily duties of the OCE. The staff members are to be employees of the House of Representatives and subject to all applicable rules and standards for such employees.

During Task Force meetings, some ethics reform groups suggested that the Task Force create an "outside" entity which would be separate from the House. Its staff would not be considered House employees, nor would its director (or board members) or rules operate under House control. Some proposals included provisions to allow this outside entity to receive complaints, dismiss complaints as appropriate, conduct its own investigations, and recommend sanctions of Members. The Task Force recognized that the establishment of this type of entity would require a vote of both the House and Senate, and the signature of the President, and could also run afoul of constitutional responsibilities. Many outside groups and scholars with whom the Task Force consulted agreed with this assessment and proposed models for an entity within the House that would act as an independent office much like the Office of the Inspector General or the Office of the Chief Administrative Officer. The Task Force approved of such an approach for an office within the Legislative Branch as the most feasible.

The OCE will be established by a resolution which must be readopted at the start of each new Congress to remain in effect. Given that the Rules of the House, which the resolution in part amends, are traditionally carried over from one Congress to the next, the Task Force anticipates that the continued existence and effectiveness of the OCE will be given due respect and consideration.

*Board*

The board members of the OCE will be charged with initiating reviews, assessing all matters under review, and referring second-phase reviews to the Standards Committee for action. They must make a decision whether to recommend (in the case of a second-phase review) that the Committee dismiss a matter or that the matter requires further inquiry. The board will be able to independently initiate ethics reviews and, for this reason, must be comprised of individuals of distinction and high qualification. As the OCE is to be an independent entity within the House, it is clear that no current Members of Congress may serve on its board. Rather, OCE board members shall be private citizens with extensive experience with one or more of the following fields: legislative, judicial, regulatory, professional ethics, business, legal, and academic. This list is not exhaustive and is meant to provide examples of the background and qualities the Speaker of the House and Minority Leader may take into account when considering individuals to appoint to the board. In addition, Task Force members believe it would be appropriate to consider former Members of Congress, former Congressional staff, former state legislators, former judges, etc. No current registered lobbyists may serve on the board. Former Members of Congress to be considered for the board must be out of office for at least one year prior to their appointment.

It is the intention of the Task Force that the OCE should run as smoothly as possible following its establishment within the House. Board members will each serve presumptive four year terms and may be reappointed for one additional term. The Speaker and Minority Leader will jointly appoint board members to ensure bipartisanship in the operation of the OCE. If, after 90 days, a board position has not been filled by joint appointment, then the position will be filled by either the Speaker or Minority Leader, as appropriate, acting alone. The Task Force encourages the two leaders to work cooperatively to appoint a full board; however, in the event that they are unable to agree on a full complement, the Task Force believes it is essential that the OCE proceed to conduct its business in a timely manner and should therefore have a system in place to account for such a possibility. In a practical sense, the Speaker and Minority Leader will most likely appoint two board members at a time, to guarantee that any slots remaining open after the 90-day period (mentioned above) exist in even numbers for potential partition along majority-minority lines.

To ensure continuity of OCE functions, the terms will be staggered so that the Speaker and Minority Leader will appoint or reappoint at least two board members at the start of a new Congress. At the establishment of the OCE, the Speaker and Minority Leader will appoint four board members to serve through the remainder of the 110th Congress and two board members presumed to serve through the 111th Congress. Accordingly, at the start of the 111th Congress, the leaders must make four new board appointments through the duration of the 112th Congress.

OCE board members shall be paid for their service on a per diem basis at a rate equal to the daily equivalent of the minimum rate of basic pay payable for GS–15 of the General Schedule. As of December 26, 2006, this rate equaled $93,063 per year. Board members shall also be reimbursed for reasonable and customary expenses associated with travel, lodging, and meals necessary to carry out their official duties. To provide for full participation, however, the Task Force anticipates that the board may, when necessary and appropriate, and pursuant to its rules, conduct meetings via telephone conference call. The board will draw up a code of conduct to which its members must adhere that addresses conflict of interest and other concerns. The Task Force expects that board members will be professional and responsible men and women who, though working part-time on a per diem basis, will account for their duties in a conscientious manner. Board members shall only be paid for days in which substantive OCE work is done. At no time shall board members engage in ex parte communications with any Member, officer, or employee of the House who is the subject of a review by the OCE, or any other interested party.

In order to ensure that the OCE is as protected as possible from politics and political campaigns, no board members shall be allowed to seek federal office and each must agree not to do so within three years of service. The Task Force looks unfavorably on any individual who would capitalize on a position with the OCE for personal political gain.

Removal of board members for cause at any point prior to the completion of their appointment will require the agreement of both

the Speaker and Minority Leader to ensure that such action is rare and taken only when necessary.

The Task Force would like to address one point that discussion with ethics reform groups yielded relative to the OCE board: the suggestion that a new ethics entity be created with its own professional staff and be overseen by one director rather than a board. It was argued that such an arrangement would provide for greater accountability within the entity and of the entity to the House.

This concept proved dubious for a number of reasons. The primary concern is the amount of power vested in one individual to oversee the process. While such a Director would no doubt be vetted by both parties and, by necessity, approved by both parties' leadership, the distinct potential exists for an individual in this position to overreach his or her authority. The Task Force encountered instances in the history of the ethics process where, for example, special counsel was hired, either by the Standards Committee or some other Congressional entity, who was widely seen as having overstepped the appropriate extent of his or her authority. Concerns were raised about investigations that stray from the original allegations of misconduct, and about individuals who use such unique positions of power to lay the foundation for their own future careers. The Task Force does not approve of the use of the ethics process for partisan or personal gain and believes the amount of power given to a sole director of the entity would pose significant potential for abuse.

In addition, a board composed of an equal number of members appointed jointly encourages bipartisan cooperation and reduces concerns of partisan prosecution or protection. Each party must take seriously its responsibility to act conscientiously with respect to the appointment and comity of board members.

*Staff*

The staff of the OCE will be hired and overseen by OCE board members, and will be full-time employees of the House of Representatives.

Staff members shall be hired by the board for the duration of a Congress and may be retained by a vote of the OCE board. A majority of the board (i.e. four members) must vote affirmatively to hire staff and, in such a case where it becomes necessary, to terminate staff prior to the end of a Congress.

It is essential that the Office of Congressional Ethics remain nonpartisan in design and function. All staff must be professional and conduct themselves in a strictly nonpartisan manner. Consequently, the Task Force recommends that restrictions similar to those placed on the political and outside activities of Standards Committee staff be implemented for OCE staff as well. These include requiring that no staff "engage in any partisan political activity directly affecting any congressional or presidential election" and that no staff "accept public speaking engagements or write for publication on any subject that is in any way related to his or her employment or duties."[4]

[4] See Standards Committee Rule 6(d) and (e).

*Prospective consideration*

Reviews undertaken by the OCE may only pertain to acts alleged to have occurred on or after the date of adoption of the resolution. The Task Force wishes to allow for a smooth establishment of the OCE in which it will not be overburdened by a backlog of matters from previous Congresses. The OCE is intended to supplement and open up the ethics process in the House by moving forward. The customary Standards Committee process will remain available to accept complaints—according to its existing rules as adopted on February 16th, 2007—for any conduct taking place in any of the three preceding Congresses. The Standards Committee shall retain such authority as granted under House rule XI.

In order to allow adequate time for appointments, hiring of staff, office placement, and other such matters, the OCE is given 120 days from the date of adoption of the resolution before it is expected to commence any review.

*Authority and duties of the OCE*

As the OCE is designed to enhance and supplement the House ethics process by allowing for independent initial consideration of possible ethics violations, it will exist to initiate and conduct reviews, gather information, and advise the Standards Committee as to board members' recommendations regarding alleged violations. Any final action to dismiss or establish an investigative subcommittee to further examine alleged violations must be taken by the Standards Committee itself, pursuant to its Committee rules.

The staff and board of the OCE are empowered to gather information regarding potential violations, as stated above. The purpose of this review of each allegation is to help board members decide which matters to refer, and how best to refer them, to the Standards Committee. Through fact-gathering, the board and staff should be able to establish which allegations lack merit or are de minimis and thus do not necessitate second-phase review by the OCE or referral to the Committee for consideration. The Task Force envisions certain circumstances under which the board may seek to interview individuals believed to have further information regarding an alleged violation and ask to see documents presumed to be connected to the case. However, should the board feel it has not been able to gather accurate information due to lack of cooperation with its initial inquiry or unavailability of requested information, it shall state so in its referral of a given matter to the Standards Committee. The Committee is encouraged to take such factors into consideration during deliberations.

At no time shall any board member or staff member of the OCE comment publicly on any matter within its jurisdiction, unless requested to do so by the Standards Committee in order to participate in a public proceeding of that Committee. To ensure confidentiality and responsibility in the opening steps of the ethics process, the OCE will conduct all its proceedings and deliberations in executive session.

The Task Force also recommends that the OCE produce a yearly statistical report detailing, without name or subject attribution, the work of the office. The report should give the public an understanding as to how many matters were reviewed both in the pre-

liminary and second-phase stages, along with the number of meetings of the board and other related activities.

The above section describes the authority and duties delegated to the OCE at this time. Current rules require Members and certain House staff to file financial disclosure forms and travel reports with the Office of the Clerk. The Clerk also receives Lobbying Disclosure Act filings. In the discourse of ethics reform, it was suggested to the Task Force that the independent entity be responsible for overseeing and receiving such filings as part of its mandate. It is, however, the desire of the Task Force that the entity be initially charged only with the responsibilities outlined in its recommendations. The creation of a new element within the system will require certain adjustments and a period of time to become fully operational. The entity should not be overloaded at its implementation. This speaks to one reason why the Task Force later recommends a continuing review of the ethics process while such changes are realized.

*Review process*

The Task Force feels strongly that part of any reform to the ethics process must include a more transparent system that contains recognizable and predictable timeframes, along with an independent review of alleged ethics violations by individuals who are not Members of Congress. The process detailed below adheres to strict timelines and guarantees public comment by the Standards Committee in most cases once a second-phase review is initiated. The public, as well as Members of Congress, have a right to know that the process is working and that pressing matters are being reviewed by the OCE and Standards Committee. It is with this goal in mind that the Task Force lays out the following review process for the OCE.

Once two board members of the OCE jointly initiate a preliminary review by notifying all other board members in writing, board members shall have 30 calendar days or 5 legislative days, whichever is later, to conduct the preliminary review. This phase is intended to provide an opportunity to explore any alleged ethics violations in order to establish whether further review is merited. Within 7 business days of the start of a preliminary review, the OCE must transmit notification to both the subject of the review and the Standards Committee, along with a statement of the nature of the review. The names of the board members initiating the preliminary review shall never be made public.

By the close of the preliminary review phase, the board must vote on whether to terminate the review or commence a second-phase review of the matter, though such a vote may occur at any point in the preliminary phase. The OCE must notify both the subject of the review and the Standards Committee of the vote's result, but not the names of board members indicating which member voted a particular way. A preliminary review may only be terminated by an affirmative vote of four or more board members. If the review is terminated, all OCE inquiries into the matter shall cease and it is considered closed. The OCE is not required to transmit any further information regarding a terminated matter to the

Standards Committee; however, the board may vote at its discretion to transmit any information it sees fit.

If the board does not terminate a preliminary review, then the OCE will proceed to a second-phase review of the matter. During the second phase, the board will have 45 calendar days or 5 legislative days, whichever is later, to gather information, obtain witness testimony, examine documents, and generally probe the alleged violation. The board may vote to grant a one-time extension of 14 calendar days in the second-phase review. At the close of the second-phase review process, the board of the OCE must refer the matter to the Standards Committee with its report and findings.

Any Member, officer, or employee of the House who is the subject of an OCE review has the right to present to the board, verbally or in writing (at the board's discretion), a statement responding to allegations prior to the board's referral and recommendations to the Standards Committee.

During the review (preliminary or second-phase) of a given matter, the OCE may collect relevant documents and interview individuals who may have knowledge of the alleged violation. In the course of such inquiries and interviews, the OCE shall make any individuals providing information verbally or in writing aware of federal criminal statutes concerning false statements made to Congress,[5] the penalty for violation of which carries a fine and/or imprisonment. Those individuals will be asked to sign a statement attesting that they understand the law and will comply with it. The OCE will be directed to develop its own set of rules to govern Office functions beyond what is set forth in the accompanying resolution. Among those rules will be one stating that all witnesses must sign the above statement. The Task Force expects the OCE, in addition, to develop guidelines for OCE action if a witness refuses to sign the statement, which should include, but not be limited to, incorporating information to that effect within the board's findings of fact.

If OCE staff and board members have reason to believe that statements made in the course of its reviews are false, or that requested information or documents have been withheld, the board may take this into consideration during its deliberations and note this among materials submitted as "backup documents" to the Standards Committee for its consideration. The Committee is expected and encouraged to make note of such information and take it into consideration during its deliberations.

The end product of the second-phase OCE process is to be the referral of a matter from the OCE to the Standards Committee. Each matter under second-phase review by the OCE must be referred to the Committee for a final decision by Standards Committee Members. Matters may be referred with a recommendation to dismiss (as de minimis, insignificantly substantiated, or for some other reason), a recommendation for further review, or as unresolved due to a tie vote. Board members, based on the information gathered by themselves and staff, shall issue materials to accompany each referral. These materials will include:

[5] 18 U.S.C. § 1001.

1. Report: A short written Report stating only that the board recommends the matter be dismissed, recommends that the matter requires further review, or refers the matter as unresolved; delineating the vote of board members (e.g. 6–0, 4–2, etc.), but no board member names; and including a statement of the nature of the review and the name of the individual who is the subject of the review.

2. Findings: Preliminary factual Findings based on the information available to the board at the time of its inquiry, if any. Such findings shall not contain any conclusory statements regarding the validity of the allegations upon which the review is based or the guilt or innocence of the individual who is the subject of the review. The findings may contain statements as to what necessary information was unavailable at the time, including, but not limited to, a list of potential witnesses the OCE was unable to interview or of requested documents it was unable to obtain. In addition, the board may include recommendations for the issuance of subpoenas where members feel it is appropriate. Finally, the Findings shall contain citations of any relevant laws, rules, regulations, or standards of conduct.

3. Other materials forwarded to the Committee may consist of "backup" or supporting documents such as records, testimony, research, staff notes, and commentary detailing either why a dismissal is recommended or why a matter is referred for further inquiry. Cooperative witnesses, who will not be named by the board within the Findings in order to preserve confidentiality, should be listed within the supporting documents for the Committee's information. These materials shall not be published unless the Standards Committee deems it necessary and appropriate.

Nothing in these recommendations shall preclude a second review by the board of the OCE of any given matter. The Task Force foresees certain uncommon circumstances in which the board may have terminated a preliminary review of a specific matter, or recommended dismissal of a matter to the Standards Committee, only to come across new evidence in the future which suggests the allegations merit another review. There will be no "double jeopardy" considerations preventing subsequent reviews.

Complaints offered by Members of Congress shall continue to be submitted directly to the Standards Committee for consideration under the existing process.

*Subpoena Power*

During the course of discussions amongst Members of the Task Force and with stakeholders outside Congress, it was suggested that the OCE be given either direct or "indirect" subpoena power ("indirect" meaning access through requests to the Standards Committee that subpoenas be issued returnable to the OCE). Task Force members discussed these options vigorously and debated their feasibility. The final decision to exclude subpoena power was based on a number of factors.

The professional opinions of the House Parliamentarian, General Counsel, and Congressional Research Service were sought so that the Task Force could better assess the legality of delegating such an authority through simple resolution. The overall consensus indi-

cated that while it might be possible to do so, a subpoena issued by such a method would almost certainly be subject to a court challenge unless it was backed by some statutory authority. Consequently, as a statute would require both passage by the Senate and the signature of the President, Task Force members decided against attempting to pass a bill that was likely to be held up in the legislative process. It is the hope of the Task Force that its recommendations be implemented through a swift legislative process and that the establishment of the OCE take place equally quickly, so as to commence the improvement of the ethics process as soon as possible.

Members of the Task Force believe that the timeline requirements instituted by the new process are critical: matters will spend at most three months under consideration by the board of the OCE before being referred to the Standards Committee for resolution. Due to the fast-paced nature of any OCE review, the Task Force feels subpoenas issued during that stage would not constitute successful leverage, as any court challenge to a subpoena would almost certainly carry on past the OCE deadline for referral to the Committee. In practice, subpoenas would not be able to be utilized effectively by the board and may unnecessarily complicate and delay the ethics process at that juncture.

Most importantly, the Task Force proposal envisions significant communication of information from the OCE to the Standards Committee, including explicit wording recommending the Committee issue a specific subpoena in its review of a matter referred by the OCE. The Task Force believes that this inclusion within the findings transmitted by the OCE to the Committee strikes at the heart of the issue of compelling testimony or documents—the threat of a subpoena is likely to compel a witness to cooperate almost as much as the subpoena itself. When this fact is considered in light of the long period of time it takes to issue and enforce a subpoena, and the desire to move the process along at a reasonable pace, the Task Force believes it becomes clear why there is no true value added by issuing subpoenas at this stage in the process. The Task Force encourages the OCE to make witnesses providing testimony or those asked to produce documents aware that the board may recommend a subpoena be issued by the Standards Committee later in the process.

The degree to which witnesses cooperate with the OCE in its reviews will play an important role in the decision of the board whether to recommend the Standards Committee issue a subpoena. Should the board feel that any witness asked to provide testimony or documents during the process has not been cooperative, it may reasonably determine that the Committee should obtain sworn testimony from that individual and recommend use of a subpoena to compel the sharing of pertinent information. The Committee is also expected to properly note such situations during its deliberations.

*Referral to the Committee on Standards of Official Conduct*

After completion of the OCE's second-phase review, and at or before the time limit specified above, the OCE will refer all matters to the Standards Committee for official disposition. The Committee must treat all matters referred by the OCE as properly received

and must, upon receipt, commence consideration according to Standards Committee rule 16, subsections (b), (c), (d), and (e). Under such provisions, the Committee shall determine what action is warranted, including, but not limited to: agreement with any recommendations transmitted from the OCE, dismissal of the matter, further investigation through the request for one extension of the time period for consideration, or establishment of an investigative subcommittee. Any referral received from the OCE will automatically bypass the provision outlined in Committee rule 16(a), which allows the Committee's Chairman and Ranking Member 14 calendar days or 5 legislative days to jointly determine whether information offered as a complaint constitutes a complaint according to Committee requirements.

In the case of referrals made by the OCE to the Standards Committee within the 60 days before an applicable election, the Committee may not accept referrals of matters in which the subject of the review is a candidate for election. The process will halt temporarily and proceed the day after the election. In addition, any reporting requirements placed on the Committee by this proposal that would occur within the 60-day blackout period shall be deferred unless the Committee votes otherwise. The Task Force expects that, in most cases, the Committee will choose not to disclose any information within the blackout period; however, should the Committee feel an announcement of any sort would be in the best interest of the institution and the public, it may publicize any information it wishes. Pursuant to its current rules, the Committee may publicize any information it sees fit within this window, though it has typically chosen to not to communicate with the public in the two months prior to an election.

The Standards Committee may request that a board or staff member of the OCE "present" a matter that has been referred to the Committee. In such circumstances, one member of the OCE shall be designated to present in person the report and findings of the board to the Committee and be available to answer any questions Committee members may have relative to the matter under consideration. No presentation of the board's disposition and findings may take place without a request from the Standards Committee.

Under existing Standards Committee rules, the Committee has a 45 calendar day or 5 legislative day period, whichever is later, in which to determine necessary action as outlined above. At the end of that period, or upon making a determination, whichever occurs first, the Committee must issue its own public statement regarding its action on the matter referred by the OCE and delineating the vote of the Standards Committee, and a copy of the OCE board's report and findings.

The exception to the above is a case where the board recommends dismissal of a matter and the Committee concurs, or where the board refers a matter as unresolved due to a tie vote and the Committee dismisses it. Under such circumstances, the Committee is not obligated to release the OCE report and findings, though it may vote to do so at its discretion.

The Committee may, either by joint decision of the Chair and Ranking Member or by vote of the Committee, extend the initial

period of consideration by one additional period of 45 calendar days or 5 legislative days. If the Committee so extends a matter referred by the board with a recommendation for further review, it must, on the day of such decision, make a public statement announcing the extension of the given matter. If the Committee extends a matter referred by the board with a recommendation to dismiss or as unresolved due to a tie board vote, the Committee is not required to publicly announce the extension.

If the Committee deadlocks on a matter, the Committee must publicly release the board's report and findings but may otherwise adhere to its existing rules. This action will allow the public some cognizance of the facts of the matter even if the Committee is unable to resolve it officially.

Should the Committee empanel an investigative subcommittee regarding a matter referred by the board, it must publicly announce that fact upon creation of the subcommittee, but otherwise shall not make public the report and findings of the board until the completion of the subcommittee process. If that process is not completed after one year from the date of referral, the Committee shall publicly release the report of the board. And if, at the close of the Congress in which the report was released, the investigative subcommittee has not completed its process, then the Committee shall publicly release the findings of the board.

The Standards Committee maintains its current ability to resolve matters with private or public letters as it so chooses. Any sanction it may currently impose according to Committee rules will not be precluded by the Task Force's recommended proposal. In fact, members of the Task Force anticipate matters that may be best dismissed by the Committee as a de minimis technical violation but may also necessitate a private letter to a Member outlining obligatory future compliance with rules. Such situations are certain to arise and should be dealt with in a manner appropriate to their scope and significance.

The Standards Committee, according to its current rules,[6] may defer action on a complaint when requested by appropriate law enforcement or regulatory authorities. The Committee may continue this practice with respect to matters referred by the OCE as well. If the Committee does defer action on a matter at the request of such authorities, it shall make a public statement to that effect within one day of agreeing to the deferral. In the case of a matter referred by the OCE for further review, the Committee must also release the report of the board. If, one year after the deferral to law enforcement or regulatory authorities, the Committee has not acted on the matter, the Committee must make a new public statement announcing that it is still deferring taking action on the matter and must renew this statement each year as applicable.

The Task Force recognizes that this addition to the ethics process may increase the workload of the Standards Committee beyond the capacity of its current staff. Task Force members encourage and expect the House to respond as necessary and appropriate to provide sufficient staff to allow the Committee to meet its new obligations under this resolution.

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[6] See Standards Committee rule 15(f).

The process outlined above guarantees a public statement on nearly every matter that is reviewed in the second phase by the OCE. While a few matters will necessitate further, more expansive investigation by an investigative subcommittee of the Standards Committee, it is the goal of the Task Force to ensure that the public is made aware of information concerning each significant alleged violation in a timely fashion. As such, Members of Congress and the general public can be assured that the OCE and Standards Committee are aware of certain allegations and that the process for consideration of those matters has been triggered.

The Task Force has included an attachment to this report which delineates the various steps associated with the OCE process and the possible outcomes (Attachment B).

*Cooperation with the Committee on Standards of Official Conduct*

The Task Force intends the OCE and the Standards Committee to work cooperatively to ensure that allegations of misconduct are dealt with properly. The Standards Committee will be notified early in the process of all matters under review by the OCE and will be kept abreast of the status at each subsequent step.

After receiving notification that the OCE is reviewing a given matter, the Standards Committee may, if it is already investigating that matter, request that the OCE cease its investigation and refer the matter directly to the Committee. The Task Force envisions certain cases where a matter may already be the subject of an undisclosed Standards Committee investigation in which the OCE may wish to avoid interference. In addition, it is possible that the Standards Committee may possess more complete information than the OCE regarding an alleged violation and may be better equipped to handle the matter.

The board of the OCE must cooperate with such requests from the Standards Committee at any point in the process. Along with the early referral of the matter at hand, the board must transmit a Report stating simply that the matter is referred to the Standards Committee at the request of that Committee. The board will not transmit any findings, as board members will not yet have reached that stage in the process regarding the relevant matter. Such a referral shall be treated as any other from the OCE to the Standards Committee and will commence the 45 calendar day or 5 legislative day period in which the Committee may consider the matter before releasing a statement on the committee's disposition, along with the board's report. The Committee must follow all reporting requirements in such cases, including a release of the board's report at the end of the applicable time period, even if the matter is dismissed or remains unresolved.

If the Committee has not reached a final resolution, or properly deferred its review at the request of an appropriate law enforcement entity, by the end of the applicable time period (either after the Committee's initial 45 calendar day or 5 legislative day period or after an extension), then the Committee must so notify the board of the OCE, which will then commence an automatic second-phase review of the matter (or recommence its suspended second-phase review, as applicable). For the purposes of this provision, final resolution shall include dismissal of the matter the Com-

mittee requested early from the OCE, establishment of an investigative subcommittee regarding the matter, or a conclusion or action which clearly indicates that the matter will no longer be considered by the Committee. In circumstances where the Committee notifies the board of the OCE that it has not reached a final resolution in such a matter, the OCE will follow its regular procedure from the second-phase review forward—by collecting evidence, interviewing witnesses, establishing a set of findings, and referring the matter to the Committee for its disposition. Once a matter that had been requested early by the Committee is returned to the OCE for an automatic second-phase review as detailed above, the Committee may not request another early referral. The matter must proceed through the regular process from that point forward.

Nothing in this proposal shall prohibit general communication between OCE board members and the Standards Committee not relating to specific matters under review by either entity. The Task Force believes that board members should be able to convey certain ideas and advice to the Committee regarding, for example, recommendations as to which policies it might be helpful to outline for Members in "pink sheets" or guidance memoranda. Such communication would be both acceptable and useful to the process.

The Task Force has been informed and believes that the accompanying resolution is joint and severable. Should any provision be found in the normal course of events to be invalid or unconstitutional, the remainder of the resolution will stand.

## OBSERVATIONS AND COMMENTS

This section details a number of issues that, while not directly within the purview of the Task Force, were discussed at multiple points in Task Force sessions and were consistently considered to be relevant to the work at hand. Task Force members formulated thoughts based on their observations of the Standards Committee process, and would like to offer the following informal commentary in addition to the formal recommendations detailed above.

### *General transparency of Standards Committee work*

During the course of Task Force meetings, it became clear that members, none of whom currently serve on the Standards Committee, did not feel they had sufficient quantitative information on the day-to-day work of that Committee. Members frequently commented that they did not know whether the Committee was investigating certain cases presently being highlighted in news reports. This lack of transparency, discernable even to current Members of Congress, presents barriers to comprehension of, and trust in, the Committee's execution of its duties.

The Task Force recognizes that the rules governing Standards Committee confidentiality and reporting were first created along with the establishment of the Committee in 1967, and have been refined by subsequent ethics reform efforts. As a consequence, many of the confidentiality provisions were put in place to protect Members' reputations from false claims in an age when such reputations could be protected. The media and public interest groups operated under a different set of standards than they do now, and information was not as readily available to the public as it is now

with the advent of weblogs (or "blogs"), which often operate with few or no standards. Constant allegations and press conferences announcing alleged unethical behavior were not de rigueur. Presently, however, it is common for allegations to appear in the media before an ethics investigation has concluded and often before it is known whether, in fact, a matter is being investigated. While the Committee may not comment publicly on any complaints it has accepted, the public is made aware of ethics allegations through other sources and can reasonably expect that the Standards Committee should consider or investigate those cases.

In addition, both Members of Congress and the general public should be presented with information evidencing the work of the Standards Committee, even if that work is confidential, so that they may know the ethics process has not broken down. The Task Force believes that increased transparency in the statements and reporting of the Standards Committee will not be unduly burdensome, and will instead serve to inform interested parties of successful application of the ethics process.

*Coordination with law enforcement and regulatory authorities*

Standards Committee rules provide for the ability to "defer action on a complaint . . . when . . . the Committee has reason to believe [it] is being reviewed by appropriate law enforcement or regulatory authorities. . . ."[7] This situation most commonly arises when an ethics complaint corresponds to alleged criminal conduct on the part of a Member, officer, or employee of the House. Frequently, authorities such as the U.S. Department of Justice will request that the Committee defer its review or investigation so as not to interfere with an ongoing criminal (or regulatory) investigation. The Committee usually abides by such requests to avoid jeopardizing the authorities' work.

The Task Force is comfortable allowing the Committee to decide whether to defer to other authorities when asked. However, Task Force members have observed general displeasure with the lack of transparency at this step in the ethics process. It is often unclear to Members and the public if the Committee has undertaken a review of well-known ethics charges when no public statement is made by the Committee.

Therefore, the Task Force believes that the Standards Committee should publicly state, as standard procedure, that a matter before the Committee is deferred at the request of law enforcement or regulatory authorities. This proposal recommends many actions to increase transparency. Nonetheless, the Task Force encourages the Standards Committee to review its own procedure and rules, regardless of the suggestions in this proposal, to shed as much light on their process and workings as possible in order to increase respect for its work and faith in Congressional processes in general.

*Reporting of Standards Committee activities*

After the close of each Congress, the Standards Committee publishes a "Summary of Activities" which provides information on Committee work from that Congress. Included in the report are

[7] Ibid.

lists of Committee publications, briefings offered, advisory opinion letters, markups of legislation, hearings, and some investigations. The material offered regarding investigations is only that which has been made public and pertains to a select number of cases. The committee does not include confidential information on investigations, nor does it include more general statistics on its work.

Task Force members, during the course of their meetings, expressed interest in obtaining further statistical information from the Standards Committee. For example, members asked to see reporting regarding the number of instances where information was offered as a complaint (from Members and non-Members), the number of accepted complaints, the number of complaints dismissed as frivolous or de minimis, the number of investigative subcommittees empanelled, and the number of complaints resulting in sanctions. The Task Force understands that much of the substance of the Standards Committee's proceedings is, by necessity, confidential. However, statistical reporting—furnished without identifying characteristics which would tie it to specific Members—would help to assure Members and the public of the continued diligence of the Committee in overseeing the ethics process.

The Task Force suggests that the Standards Committee work to increase the transparency of its work through greater disclosure of statistical information in its annual report.

*Transparency in the Standards Committee's investigative process*

The Task Force was not charged with studying and proposing changes to the Standards Committee's process, only with considering the creation of an independent enforcement entity to supplement the process. While Task Force members understand that such study of Committee process is not strictly within their purview, they did observe that some cases appear to linger for prolonged periods of time. Given that the duration of any investigation is difficult to predict at its outset, Committee rules do not specify a timeframe in which certain actions must be taken, benchmarks achieved, or reports be issued. During these prolonged periods, the House and general public may be left with the belief that nothing is happening and that the process has broken down. This situation feeds further public distrust in the House ethics process.

The Task Force suggests that issues of reporting, transparency, and finalization in the Standards Committee's process be considered during future ethics process deliberations.

*Attorneys' fees*

The Task Force discussed the issue of reimbursement for attorneys' fees for those individuals who are the subject of an OCE review that is ultimately dismissed by the Standards Committee. Members agree that in those instances where the matter is dismissed, the Member, officer or employee of the House named in the review should not be penalized for seeking legal counsel. It would be useful to have, within reason, a certain recourse through which reimbursement could be obtained. However, the Task Force decided against the inclusion of the concept in this proposal so as not to overload the OCE and the process from the outset.

The notion of granting reimbursement for attorneys' fees deserves further study to consider whether such an approach is feasible and capable of being implemented. Such a power would most likely require statutory authority and would perhaps best be vested in the Standards Committee. The Task Force finds that the concept has merit and believes that it should be considered in depth to supplement the ethics process in the future.

*Continuing review of ethics process*

The Task Force recommends that the House establish a panel of Members to conduct an ongoing review of the ethics process during the 110th Congress and perhaps beyond.

Since the start of the 110th Congress, significant changes to the Rules of the House were approved which aim to clarify acceptable conduct for Members in the exercise of official duties. These new provisions include a ban on gifts from lobbyists, a ban on travel provided for by entities that employ lobbyists, increased disclosure requirements, and strict prohibitions on Members' partisan influence in the employment decisions of private entities. These modifications were agreed to in broad, bipartisan fashion in order to ensure a more ethical Congress. However, it is both understandable and clear that implementation of those reforms leads to procedural difficulties. If the recommendations from this Task Force are adopted, it is certainly reasonable to expect that unforeseen adjustments will have to be made for the same reason. Furthermore, it is possible that the House may seek to expand the role of the OCE in the future to encompass duties such as overseeing Members' and staff's financial disclosure reports, travel forms, and lobbying disclosure forms.

In addition, as stated above, there are Standards Committee rules and processes that, while they may warrant improvement, were not within the scope of the Task Force. Standards Committee rules with respect to timelines for action and decision-making merit further study and possible revision, with the goal of ensuring a timely consideration and resolution of matters before the Committee. Such further consideration would benefit the process by allowing for discussion of outstanding issues the Task Force was not able to address.

It is for these reasons that the Task Force believes a continued presence in the review of ethics processes is desirable. Task Force members understand that they cannot foresee every potential scenario, and that they cannot account for every question that may be asked regarding the implementation of the above recommendations. In light of the evolving nature of the ethics process this historic session, it would be prudent to oversee implementation of all new rules and procedures with the goal of making further recommendations, if necessary, to ensure that the reforms intended are, in fact, achieved.

## CONCLUSION

The Special Task Force on Ethics Enforcement understands that continuous review and improvement of the House ethics process is necessary to ensure a high standard of ethical behavior for Members of Congress and its employees, and to guarantee a practical

and functional enforcement of that standard. Congress must constantly work to maintain public trust in the institution through oversight of the ethics process. The proposals outlined above will likely serve as the basis for improvements that the Task Force hopes will be ongoing, as Members learn to navigate an enhanced system that allows for increased transparency and accountability. The Task Force does not intend its recommendations to be punitive or unduly cumbersome. Modifications enumerated within this report endeavor to benefit both Members and the public by allowing for increased confidence in the process and measurable timeframes under which discernable action shall occur. The continued cooperation of all Members, regardless of party affiliation or partisanship, is essential in order to guarantee a successful and effective ethics process within the U.S. House of Representatives.

110TH CONGRESS
1ST SESSION

# H. RES. 895

Establishing within the House of Representatives an Office of Congressional Ethics, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 2007

Mr. CAPUANO submitted the following resolution; which was referred to the Committee on House Administration, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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# RESOLUTION

Establishing within the House of Representatives an Office of Congressional Ethics, and for other purposes.

1 *Resolved,*

2 **SECTION 1. ESTABLISHMENT OF THE OFFICE OF CONGRES-**
3 **SIONAL ETHICS.**

4 (a) ESTABLISHMENT.—For the purpose of assisting
5 the House in carrying out its responsibilities under article
6 I, section 5, clause 2 of the Constitution (commonly re-
7 ferred to as the "Discipline Clause"), there is established
8 in the House an independent office to be known as the

1 Office of Congressional Ethics (hereinafter in this section
2 referred to as the "Office").
3 (b) BOARD.—(1) The Office shall be governed by a
4 board consisting of six individuals of whom three shall be
5 designated as appointees of the Speaker and three as ap-
6 pointees of the minority leader. Each position shall be ap-
7 pointed jointly by the Speaker and the minority leader
8 within 90 days after the date of adoption of this resolution
9 or within 90 days after the expiration of their terms, as
10 applicable, except as otherwise provided herein. If any po-
11 sitions on the board remain vacant at the end of such time
12 period, then the appointments shall be made by the Speak-
13 er or minority leader, as applicable.
14 (2) The Speaker and the minority leader each shall
15 appoint individuals of exceptional public standing who are
16 specifically qualified to serve on the board by virtue of
17 their education, training, or experience in one or more of
18 the following fields: legislative, judicial, regulatory, profes-
19 sional ethics, business, legal, and academic.
20 (3) The Speaker shall designate one member of the
21 board as chairman. The minority leader shall designate
22 one member of the board as cochairman. The cochairman
23 shall act as chairman in the absence of the chairman.

1 (4)(A) Selection and appointment of members of the
2 board shall be without regard to political affiliation and
3 solely on the basis of fitness to perform their duties.
4 (B)(i) No individual shall be eligible for appointment
5 to, or service on, the board who—
6 (I) is a lobbyist registered under the Lobbying
7 Disclosure Act of 1995;
8 (II) has been so registered at any time during
9 the year before the date of appointment;
10 (III) engages in, or is otherwise employed in,
11 lobbying of the Congress;
12 (IV) is an agent of a foreign principal reg-
13 istered under the Foreign Agents Registration Act;
14 (V) is a Member; or
15 (VI) is an officer or employee of the Federal
16 Government.
17 (ii) No individual who has been a Member, officer,
18 or employee of the House may be appointed to the board
19 sooner than one year after ceasing to be a Member, officer,
20 or employee of the House.
21 (5) A vacancy on the board shall be filled for the un-
22 expired portion of the term, utilizing the process set forth
23 in paragraph (1).
24 (6)(A) Except as provided by subparagraph (B),
25 terms on the board shall be for two Congresses. A member

1 of the board may not serve during more than four consecu-
2 tive Congresses.
3 (B) Of the individuals appointed in the 110th Con-
4 gress to serve on the board, 4 shall be designated at the
5 time of appointment to serve only for the remainder of
6 that Congress. Any such individual may be reappointed
7 for an additional term of two Congresses.
8 (C) Any member of the board may be removed from
9 office for cause by the Speaker and the minority leader,
10 acting jointly, but not by either, acting alone.
11 (7) A member of the board shall not be considered
12 to be an officer or employee of the House, but shall receive
13 a per diem equal to the daily equivalent of the minimum
14 rate of basic pay payable for GS–15 of the General Sched-
15 ule for each day (including travel time) during which such
16 member is engaged in the performance of the duties of
17 the board.
18 (8) A majority of the members of the board shall con-
19 stitute a quorum.
20 (9) The board shall meet at the call of the chairman
21 or a majority of its members pursuant to its rules.
22 (c) POWERS.—The board is authorized and directed
23 to:
24 (1)(A) Within 7 calendar days (excluding Sat-
25 urdays, Sundays, and public holidays) after receipt

of a joint written request from any 2 members of the board to all board members to undertake a preliminary review of any alleged violation by a Member, officer, or employee of the House of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities, along with a brief description of the specific matter, notify in writing—

(i) the Committee on Standards of Official Conduct of that preliminary review and provide a statement of the nature of the review; and

(ii) any individual who is the subject of the preliminary review and provide such individual with a statement of the nature of the review.

(B) Within 30 calendar days or 5 legislative days, whichever is later, after receipt of a request under subparagraph (A), complete a preliminary review.

(C) Before the end of the applicable time period, vote on whether to terminate the preliminary review of the matter under consideration. If the board does not vote affirmatively to terminate the preliminary review before the end of the applicable time period (with not less than 4 members voting to

1 terminate), the board shall commence a second-
2 phase review of the matter under consideration. The
3 board shall notify, in writing, the individual who was
4 the subject of the preliminary review and the Com-
5 mittee on Standards of Official Conduct of its deci-
6 sion to either terminate the preliminary review or
7 commence a second-phase review of the matter. If
8 the board votes to terminate the preliminary review,
9 then it may send a report and any findings to such
10 committee.

11 (2)(A)(i) Except as provided by item (ii), com-
12 plete a second-phase review within 45 calendar days
13 or 5 legislative days, whichever is later, after the
14 board commences such review.

15 (ii) Extend the period described in subpara-
16 graph (A) for one additional period of 14 calendar
17 days upon the affirmative vote of a majority of its
18 members, a quorum being present.

19 (B) Transmit to the Committee on Standards
20 of Official Conduct a recommendation that a matter
21 requires further review only upon the affirmative
22 vote of not less than 4 members of the board.

23 (C) Upon the completion of any second-phase
24 review undertaken—

(i) transmit to the Committee on Standards of Official Conduct the following—

(I) a written report composed solely of—

(aa) a recommendation that the committee should dismiss the matter that was the subject of such review;

(bb) a statement that the matter requires further review; or

(cc) a statement that the matter is unresolved because of a tie vote; and

the number of members voting in the affirmative and in the negative and a statement of the nature of the review and the individual who is the subject of the review;

(II) its findings, if any, composed solely of—

(aa) any findings of fact;

(bb) a description of any relevant information that it was unable to obtain or witnesses whom it was unable to interview, and the reasons therefor;

(cc) a recommendation for the issuance of subpoenas where appropriate, if any; and

(dd) a citation of any relevant law, rule, regulation, or standard of conduct;

but not the names of any cooperative witnesses or any conclusions regarding the validity of the allegations upon which it is based or the guilt or innocence of the individual who is the subject of the review; and

(III) any supporting documentation; and

(ii) transmit to the individual who is the subject of the second-phase review the written report of the board described in clause (i).

(D) Hold such hearings as are necessary and sit and act only in executive session at such times and places and solicit such testimony and receive such relevant evidence as may be necessary to carry out its duties.

(E) Pay witnesses appearing before the Office in the same manner as prescribed by clause 5 of rule XI of the Rules of the House of Representatives.

1 (F) Adopt rules to carry out its duties, which
2 shall include each of the following:
3 (i) A rule requiring each member of the
4 board and of the staff of the Office, before un-
5 dertaking any work on behalf of the Office, to
6 execute the following oath (or affirmation) in
7 writing: "I do solemnly swear (or affirm) that
8 I will not disclose to any person or entity out-
9 side the Office of Congressional Ethics any in-
10 formation received in the course of my service
11 with the Office except as authorized by the Of-
12 fice or in accordance with its rules." Copies of
13 the executed oath shall be provided to the Clerk
14 as part of the records of the House.
15 (ii) A rule providing that—
16 (I) the board may vote to terminate a
17 preliminary review on any ground, includ-
18 ing that the matter under review is de
19 minimis in nature; and
20 (II) the board may vote to recommend
21 to the Committee on Standards of Official
22 Conduct that the committee should dismiss
23 a matter that was the subject of a second-
24 phase review on any ground, including that

1 the matter under review is de minimis in
2 nature.
3 (iii) A rule requiring that all witnesses sign
4 a statement acknowledging their understanding
5 that the text of section 1001 of title 18, United
6 States Code (popularly known as the False
7 Statements Act) applies to their testimony and
8 to any documents they provide.
9 (iv) A rule requiring that there be no ex
10 parte communications between any member of
11 the board and any individual who is the subject
12 of any review by the board or between any
13 member and any interested party.
14 (v) A rule that establishes a code of con-
15 duct to govern the behavior of its members and
16 staff, which shall include the avoidance of con-
17 flicts of interest.
18 (d) REQUESTS FROM COMMITTEE ON STANDARDS OF
19 OFFICIAL CONDUCT.—(1) Notwithstanding any other pro-
20 vision of this section, upon receipt of a written request
21 from the Committee on Standards of Official Conduct that
22 the board cease its review of any matter and refer such
23 matter to the committee because of the ongoing investiga-
24 tion of such matter by the committee, the board shall refer
25 such matter to the committee and cease its preliminary

1 or second-phase review, as applicable, of that matter and
2 so notify any individual who is the subject of the review.
3 In any such case, the board shall send a written report
4 to the committee containing a statement that, upon the
5 request of that committee, the matter is referred to it for
6 its consideration, but not any findings.

7 (2) If the Committee on Standards of Official Con-
8 duct notifies the board in writing that it is unable to re-
9 solve any matter described in paragraph (1), the board
10 shall immediately begin or continue, as the case may be,
11 a second-phase review of the matter.

12 (e) LIMITATIONS ON REVIEW.—No review shall be
13 undertaken by the board of any alleged violation of law,
14 rule, regulation or standard of conduct not in effect at
15 the time of the alleged violation; nor shall any review be
16 undertaken by the board of any alleged violation that oc-
17 curred before the date of adoption of this resolution.

18 (f) PROHIBITION ON PUBLIC DISCLOSURE.—(1) No
19 information or testimony received shall be publicly dis-
20 closed by any member of the board or staff of the Office.
21 Any breaches of confidentiality shall be investigated by the
22 Office and appropriate action shall be taken.

23 (2) Paragraph (1) shall not preclude presenting its
24 report or findings or testifying before the Committee on
25 Standards of Official Conduct by any member of the board

1 or staff of the Office if requested by such committee pur-
2 suant to its rules.

3 (3) Before the board transmits any report to the
4 Committee on Standards of Official Conduct relating to
5 official conduct of any Member, officer, or employee of the
6 House, it shall provide that individual the opportunity to
7 present, orally or in writing (at the discretion of the
8 board), a statement to the board.

9 (g) PRESENTATION OF REPORTS TO COMMITTEE ON
10 STANDARDS OF OFFICIAL CONDUCT.—Whenever the
11 board transmits any report to the Committee on Stand-
12 ards of Official Conduct relating to official conduct of any
13 Member, officer, or employee of the House, it shall des-
14 ignate a member of the board or staff to present the report
15 to such committee if requested by such committee.

16 (h) COMPENSATION OF STAFF.—Upon the affirma-
17 tive vote of at least 4 of its members, the board may ap-
18 point and fix the compensation of such professional, non-
19 partisan staff as it considers necessary to perform its du-
20 ties.

21 (i) TERMINATION OF STAFF.—Members of the staff
22 may be terminated during a Congress solely by the affirm-
23 ative vote of at least 4 members of the board.

24 (j) REIMBURSEMENTS.—The board may reimburse
25 its members and staff for travel, subsistence, and other

1 necessary expenses incurred by them in the performance
2 of their duties in the same manner as is permissible for
3 such expenses of other employees of the House.

4 (k) AGREEMENTS; RETENTION OF DOCUMENTS BY
5 THE CLERK.—(1) Before any individual who is appointed
6 to serve on the board may do so, the individual shall exe-
7 cute a signed document containing the following state-
8 ment: "I agree not to seek any Federal public office until
9 at least 3 years after I am no longer a member of the
10 board of the Office of Congressional Ethics."

11 (2) Copies of the signed and executed document shall
12 be retained by the Clerk as part of the records of the
13 House. The Clerk shall make the signatures a matter of
14 public record, causing the names of each individual who
15 has signed the document to be published in a portion of
16 the Congressional Record designed for that purpose, and
17 make cumulative lists of such names available on the web
18 site of the Clerk.

19 (l) FUNDING.—There shall be paid out of the applica-
20 ble accounts of the House such sums as may be necessary
21 for the expenses of the Office. Such payments shall be
22 made on vouchers signed by the chairman of the board
23 and approved in the manner directed by the Committee
24 on House Administration. Amounts made available under
25 this section shall be expended in accordance with regula-

1 tions prescribed by the Committee on House Administra-
2 tion.

3 (m) DEFINITION.—As used in this section, the term
4 "Member" means any Representative in, or Delegate or
5 Resident Commissioner to, the Congress.

6 **SEC. 2. FINANCIAL DISCLOSURE REPORTS.**

7 Rule XXVI of the Rules of the House of Representa-
8 tives is amended by adding at the end the following new
9 clause:

10 "3. Members of the board of the Office of Congres-
11 sional Ethics shall file annual financial disclosure reports
12 with the Clerk of the House on or before May 15 of each
13 calendar year after any year in which they perform the
14 duties of that position. Such reports shall be on a form
15 prepared by the Clerk that is substantially similar to form
16 450 of the Office of Government Ethics. The Clerk shall
17 send a copy of each such report filed with the Clerk within
18 the seven-day period beginning on the date on which the
19 report is filed to the Committee on Standards of Official
20 Conduct and shall have them printed as a House docu-
21 ment and made available to the public pursuant to clause
22 1.".

1 **SEC. 3. CONFORMING AMENDMENTS TO THE RULES OF**
2 **THE HOUSE.**

3 Clause 3 of rule XI of the Rules of the House of Rep-
4 resentatives is amended as follows:

5 (1) In paragraph (b)(2), strike "or" at the end
6 of subparagraph (A), strike the period and insert ";
7 or" at the end of subparagraph (B), and add at the
8 end the following new subparagraph:

9 "(C) upon receipt of a report regarding a refer-
10 ral from the board of the Office of Congressional
11 Ethics."

12 (2) At the end of paragraph (b), add the fol-
13 lowing new subparagraph:

14 "(8)(A) Except as provided by subdivisions (B), (C),
15 and (D), not later than 45 calendar days or 5 legislative
16 days, whichever is later, after receipt of a written report
17 and any findings and supporting documentation regarding
18 a referral from the board of the Office of Congressional
19 Ethics or of a referral of the matter from the board pursu-
20 ant to a request under paragraph (r), the chairman of the
21 Committee on Standards of Official Conduct shall make
22 public the written report and findings of the board unless
23 the chairman and ranking member, acting jointly, decide
24 or the committee votes to withhold such information for
25 not more than one additional period of the same duration,
26 in which case the chairman shall—

1 "(i) upon the termination of such additional pe-
2 riod, make public the written report and findings;
3 and
4 "(ii) upon the day of such decision or vote,
5 make a public statement that the committee has
6 voted to extend the matter relating to the referral
7 made by the board of the Office of Congressional
8 Ethics regarding the Member, officer, or employee of
9 the House who is the subject of the applicable refer-
10 ral.
11 At least one calendar day before the committee makes
12 public any written report and findings of the board, the
13 chairman shall notify such board and the applicable Mem-
14 ber, officer, or employee of that fact and transmit to such
15 individual a copy of the statement on the committee's dis-
16 position of, and any committee report on, the matter.
17 "(B)(i) Notwithstanding subdivision (A)(i), if the
18 committee votes to dismiss a matter which is the subject
19 of a referral from the board of the Office of Congressional
20 Ethics, the committee is not required to make public the
21 written report and findings described in such subdivision
22 unless the committee's vote is inconsistent with the rec-
23 ommendation of the board. For purposes of the previous
24 sentence, a vote by the committee to dismiss a matter is

1 not inconsistent with a report from the board respecting
2 the matter as unresolved due to a tie vote.
3 "(ii) Notwithstanding subdivision (A)(ii), if the board
4 transmits a report respecting any matter with a rec-
5 ommendation to dismiss or as unresolved due to a tie vote,
6 and the committee votes to extend the matter for an addi-
7 tional period as provided in subdivision (A), the committee
8 is not required to make a public statement that the com-
9 mittee has voted to extend the matter.
10 "(iii) Except as provided by subdivision (E), if the
11 committee establishes an investigative subcommittee re-
12 specting any such matter, then the report and findings
13 of the board shall not be made public until the conclusion
14 of the investigative subcommittee process and the com-
15 mittee shall issue a public statement of the establishment
16 of an investigative subcommittee, which statement shall
17 include the name of the applicable Member, officer, or em-
18 ployee, and shall set forth the alleged violation. If any such
19 investigative subcommittee does not conclude its review
20 within one year after the board transmits a report respect-
21 ing any matter, then the committee shall make public the
22 report and upon the expiration of the Congress in which
23 the report is made public, the committee shall make public
24 any findings.

1 "(C)(i) If, after receipt of a written report and any
2 findings and supporting documentation regarding a refer-
3 ral from the board of the Office of Congressional Ethics
4 or of a referral of the matter from the board pursuant
5 to a request under paragraph (r), the committee agrees
6 to a request from an appropriate law enforcement or regu-
7 latory authority to defer taking action on the matter—
8 "(I) notwithstanding subdivision (A)(i), the
9 committee is not required to make public the written
10 report and findings described in such subdivision,
11 except that if the recommendation of the board with
12 respect to the report is that the matter requires fur-
13 ther review, the committee shall make public the
14 written report but not the findings; and
15 "(II) before the end of the first day (excluding
16 Saturdays, Sundays, and public holidays) after the
17 day that the committee agrees to the request, the
18 committee shall make a public statement that it is
19 deferring taking action on the matter at the request
20 of such authority.
21 "(ii) If, upon the expiration of the one-year period
22 that begins on the date the committee makes the public
23 statement described in item (i)(II), the committee has not
24 acted on the matter, the committee shall make a new pub-
25 lic statement that it is still deferring taking action on the

1 matter, and shall make a new statement upon the expira-
2 tion of each succeeding one-year period during which the
3 committee has not acted on the matter.

4 "(D) The committee may not receive any referral
5 from the board of the Office of Congressional Ethics with-
6 in 60 days before an election in which the subject of the
7 referral is a candidate. The committee may delay any re-
8 porting requirement under this subparagraph that falls
9 within that 60-day period until the end of such period and
10 in that case, for purposes of subdivision (A), days within
11 the 60-day period shall not be counted.

12 "(E) If, at the close of any applicable period for a
13 reporting requirement under this subparagraph with re-
14 spect to a referral from the board of the Office of Congres-
15 sional Ethics, the vote of the committee is a tie or the
16 committee fails to act, the report and the findings of the
17 board shall be made public by the committee, along with
18 a public statement by the chairman explaining the status
19 of the matter.".

20 (3) At the end, add the following new para-
21 graph:

22 "(r) Upon receipt of any written notification from the
23 board of the Office of Congressional Ethics that the board
24 is undertaking a review of any alleged conduct of any
25 Member, officer, or employee of the House and if the com-

1 mittee is investigating such matter, the committee may at
2 any time so notify the board and request that the board
3 cease its review and refer the matter to the committee for
4 its consideration. If at the end of the applicable time pe-
5 riod (including any permissible extension) the committee
6 has not reached a final resolution of the matter or has
7 not referred the matter to the appropriate Federal or
8 State authorities, the committee shall so notify the board
9 of the Office of Congressional Ethics in writing. The com-
10 mittee may not request the same matter from the board
11 more than one time.".

12 **SEC. 4. EFFECTIVE DATE.**

13 This resolution and the amendments made by it shall
14 take effect on the date of its adoption, except that the
15 Office of Congressional Ethics shall not undertake any re-
16 view of any alleged violation by a Member, officer, or em-
17 ployee of the House of any law, rule, regulation, or other
18 standard of conduct applicable to the conduct of such
19 Member, officer, or employee in the performance of his
20 duties or the discharge of his responsibilities before 120
21 days after the date of adoption of this resolution.

○

The chart included below is intended to aid in comprehension of the OCE process as envisioned by the Task Force. The steps enumerate the many possible actions to be taken by both the OCE and the Standards Committee according to the Task Force's proposal and illustrate the associated outcomes at the end of the process.

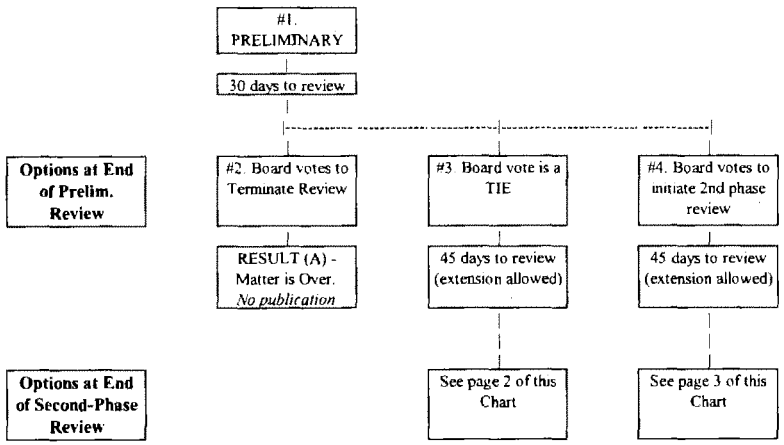
# ATTACHMENT B

## Office of Congressional Ethics

**Page 1**

**Options at conclusion of Preliminary Review by Board**
**and**
**Result of Board voting to Terminate their Review**

#s are merely to make it easier to follow the tree.
Results are labeled A - D merely to make comparison easier.

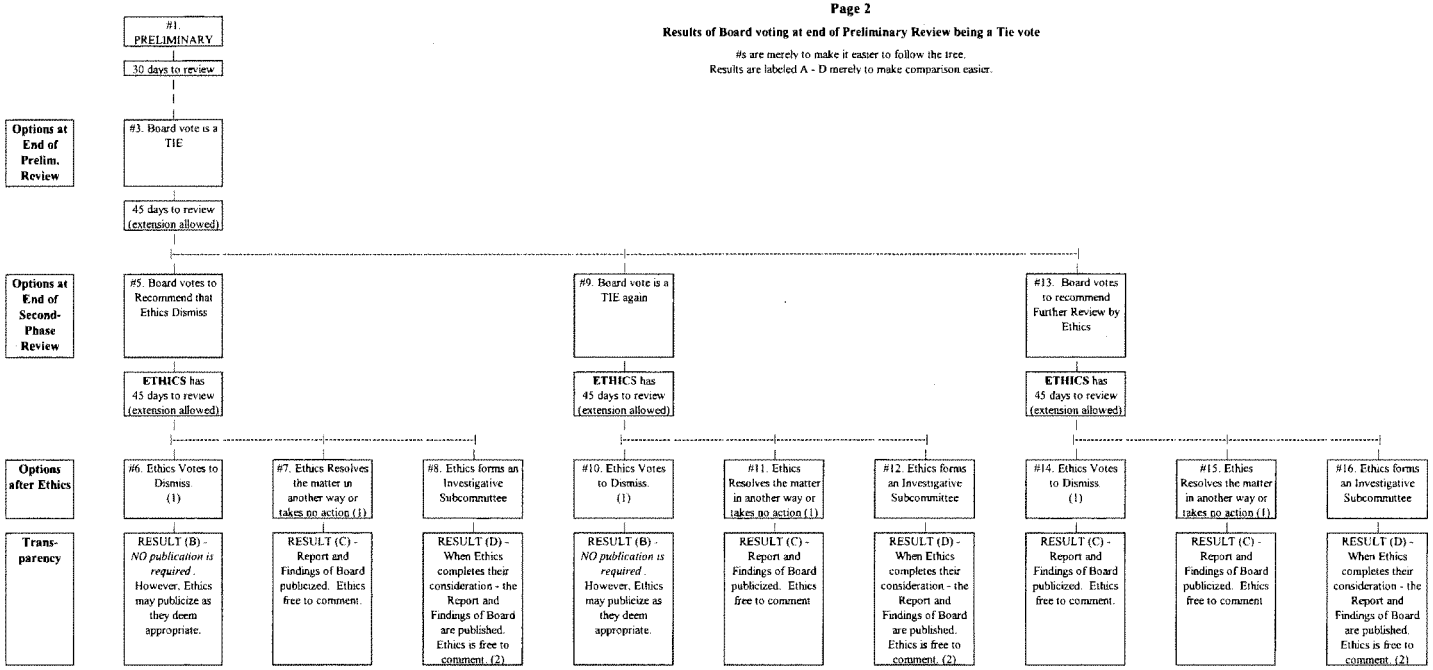


# Office of Congressional Ethics

**Page 2**

**Results of Board voting at end of Preliminary Review being a Tie vote**

#s are merely to make it easier to follow the tree.
Results are labeled A - D merely to make comparison easier.



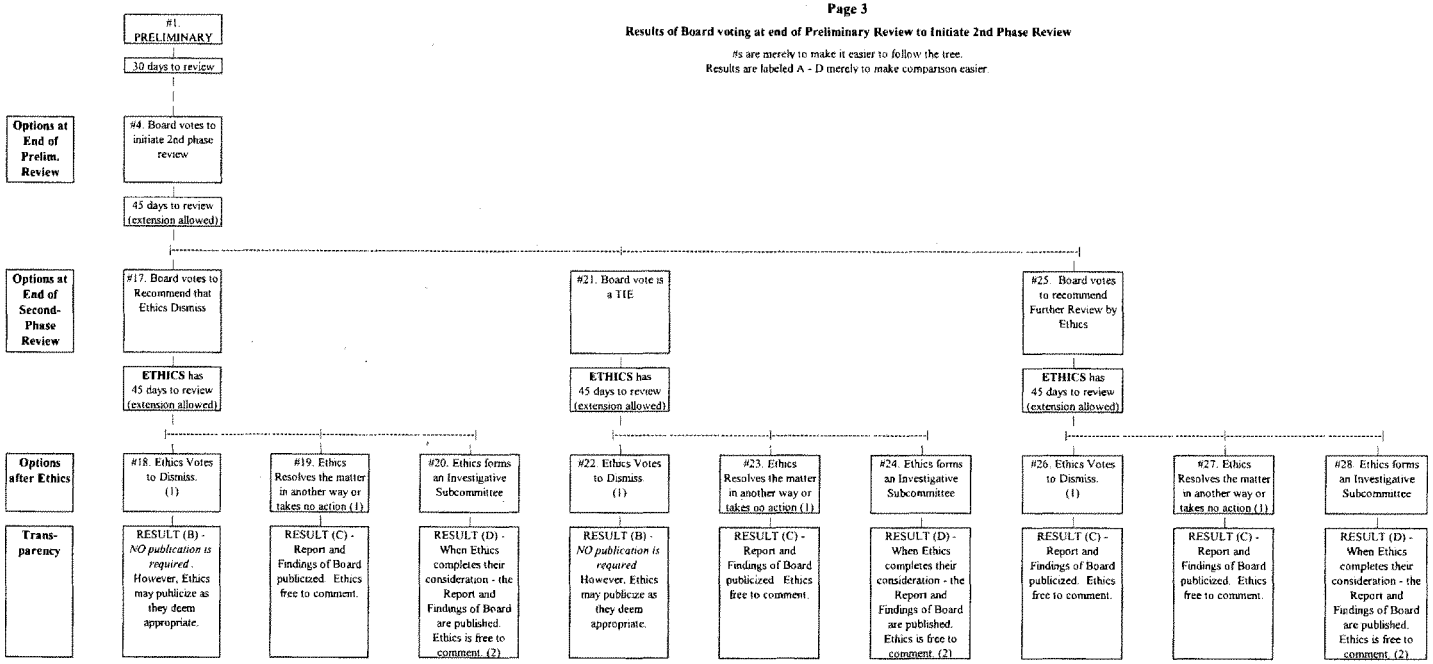

(1) - The Ethics Committee can still issue private or public letters or take any other action it deems appropriate.
(2) - If the Ethics Committee has not completed its consideration of a matter one year from the date of referral to Ethics, the Report of the Board is published.
- If the Ethics Committee has not completed its consideration of a matter by the end of the Congress during which the one year period has run, the Findings of the Board are published.

# Office of Congressional Ethics

**Page 3**

**Results of Board voting at end of Preliminary Review to Initiate 2nd Phase Review**

#s are merely to make it easier to follow the tree.
Results are labeled A - D merely to make comparison easier.




(1) - The Ethics Committee can still issue private or public letters or take any other action it deems appropriate.
(2) - If the Ethics Committee has not completed its consideration of a matter one year from the date of referral to Ethics, the Report of the Board is published.
- If the Ethics Committee has not completed its consideration of a matter by the end of the Congress during which the one year period has run, the Findings of the Board are published.

## ATTACHMENT C—ADDENDUM TO THE REPORT OF THE SPECIAL TASK FORCE ON ETHICS ENFORCEMENT

H. Res. 895 was introduced in the House of Representatives on December 19, 2007 in order to give Members an opportunity to review the Task Force proposal and offer feedback. The Task Force Report was issued the same day. In February 2008, the proposal was scheduled for consideration in the House Committee on Rules, with consideration on the floor of the House expected to follow. By that point, many Members had raised concerns about certain aspects of the Task Force's recommendations that they felt could jeopardize the intended bipartisan nature of the proposal.

Specifically, Members called attention to: the concern that the make up of the OCE board might encourage partisanship, the provision that would allow two OCE board members appointed by the same party leader to initiate a review in a potentially partisan manner, and the process by which only an affirmative vote of four OCE board members could terminate a preliminary review once begun. In addition, Members asked that provisions prohibiting disclosure of confidential information and requiring a strictly non-partisan OCE staff be strengthened. Task Force members wished to be responsive to the thoughtful concerns of their colleagues, and they thus amended the proposal to reflect a stronger call for bipartisanship and a professional process.

*Joint appointments*

As originally proposed, H. Res. 895 provided for OCE board appointments to be made jointly by the Speaker and Minority Leader for up to 90 days. If a full complement of board members was not appointed within that timeframe, the proposal then called for the Speaker and Minority leader to separately appoint board members to fill the remaining vacancies.

Members of Congress expressed concern that such an appointment process could lead to an unwanted element of partisanship on the OCE board. If any board members were appointed separately by either party leader, there could, in a worst case scenario, be an incentive to place those with partisan motivations on the board. The consensus among Members was that it would be preferable and result in a better functioning ethics process if board members were only appointed jointly by the Speaker and Minority Leader.

H. Res. 895 was therefore altered to reflect this change. All appointments to the OCE board must be made jointly with no time limit. The Speaker shall nominate three board members, subject to the concurrence of the Minority Leader. Likewise, the Minority Leader shall nominate three board members subject to the concurrence of the Speaker. This process will encourage both leaders to nominate responsible, professional, and judicious individuals who will readily be approved on the basis of strong professional credentials.

The Task Force recognizes that excessive partisanship could result in no joint appointments if one or both party leaders refuse to take their responsibilities seriously. Nonetheless, we also believe that such recalcitrance will be so obvious that the leader responsible for excessive partisanship will be known to the general public

and his/her party will be subjected to public scorn. If public pressure is not sufficient, then no power on earth can restore public confidence in our process. If this is the fate of this endeavor, it should be known early in the process.

In addition, the Speaker and Minority Leader shall each nominate at least one alternate member of the OCE board subject to the concurrence of the other leader. Alternate members are intended to ensure that the board functions smoothly during periods of transition. Any vacancy that occurs on the board shall be temporarily filled by the most senior alternate board member nominated by the same leader who nominated the person vacating the position. The alternate shall serve until a permanent replacement is selected. If no permanent appointment is made within 90 days, the alternate shall be deemed to have been appointed for the remainder of the term, and the appropriate leader shall nominate a new alternate subject to the concurrence of the other leader.

*Initiation of preliminary reviews*

H. Res. 895, as introduced, called for the initiation of preliminary reviews in the OCE at the written request of any two board members. This provision would have presented the possibility that two board members could initiate a review based on partisan motivations, targeting a Member or staff of the other party. Members of Congress considered that scenario harmful to the governance of the institution, and asked that it be changed to ensure that no partisan "witch hunts" could be undertaken by the OCE board.

The proposal was amended to require that any preliminary review be initiated only by a bipartisan request from two board members—one requesting member nominated by the Speaker, the other nominated by the Minority Leader. This change codifies the bipartisan working relationship that members of the board must adhere to in order to effectively execute their duties to the OCE. It also directly responds to concerns that partisan attacks could be launched within the OCE by blocking any potential for such action.

*Advancement from preliminary to second-phase review*

In addition, OCE procedures regarding the advancement of a review from the preliminary stage to the second-phase came under scrutiny. In the original proposal, a preliminary review could only be terminated by the affirmative vote of at least 4 board members. In effect, this meant that preliminary reviews, once initiated, could only be stopped from progressing to the second phase by a substantial effort of board members. All other reviews (not terminated) were to move forward automatically to the second-phase review, at which point their referral to the Standards Committee is compulsory.

In order to ensure that a certain threshold of credibility is met in each review, the proposal was altered to require 3 board members to vote affirmatively in favor of advancing a preliminary review to the second-phase. Essentially, the original two, jointly-appointed, bipartisan members must convince at least one more jointly-appointed member that more information is needed to in order to make a thoughtful decision on an allegation. This change effectively enforces that threshold while also making it impossible to

use partisan stonewalling to thwart a reasonable review once it has begun.

*Other amendments*

The Task Force wished to properly respond to a number of other general concerns that were raised regarding confidentiality of information and communications, as well as professionalism of OCE staff members. Language on these provisions was strengthened to reflect a commitment to the integrity and competence of the OCE and its processes.

H. Res. 895 was amended to clarify the following aspects:

• House Members and staff are prohibited from inappropriately communicating with OCE board members or staff about a case that may be before the OCE.

• The ban on ex parte communications applies to OCE staff as well as board members.

• Board members and staff of the OCE will be required to sign the same pledge of confidentiality as currently required for Standards Committee staff.

• Board members and staff of the OCE will be clearly prohibited from leaking information pursuant to the same limitations that apply to Standards Committee Members and staff.

• OCE staff, as well as OCE board members, are subject to the three-year pledge not to seek federal elective office.

• OCE staff are subject to the same restrictions as Ethics Committee staff relative to non-partisanship, prohibition on political activity, etc.

*Conclusion*

The redrafted version of H. Res. 895 is included in this report as Attachment D. It was adopted by the House on March 11, 2008, by a vote of 229–182 (see Roll Call 122 of 2008).

ATTACHMENT D—H. RES. 895 ADOPTED

# H. Res. 895

## *In the House of Representatives, U. S.,*

*March 11, 2008.*

*Resolved,*

**SECTION 1. ESTABLISHMENT OF THE OFFICE OF CONGRESSIONAL ETHICS.**

(a) ESTABLISHMENT.—For the purpose of assisting the House in carrying out its responsibilities under article I, section 5, clause 2 of the Constitution (commonly referred to as the "Discipline Clause"), there is established in the House an independent office to be known as the Office of Congressional Ethics (hereinafter in this section referred to as the "Office").

(b) BOARD.—(1) The Office shall be governed by a board consisting of six individuals of whom three shall be nominated by the Speaker subject to the concurrence of the minority leader and three shall be nominated by the minority leader subject to the concurrence of the Speaker. The Speaker shall nominate at least one alternate board member subject to the concurrence of the minority leader and the minority leader shall nominate at least one alternate board member

subject to the concurrence of the Speaker. If any vacancy occurs in the board, then the most senior alternate board member nominated by the same individual who nominated the member who left the board shall serve on the board until a permanent replacement is selected. If a permanent appointment is not made within 90 days, the alternate member shall be deemed to have been appointed for the remainder of the term of the member who left the board and the Speaker or the minority leader, as applicable, shall nominate a new alternate subject to the concurrence of the other leader.

(2) The Speaker and the minority leader each shall appoint individuals of exceptional public standing who are specifically qualified to serve on the board by virtue of their education, training, or experience in one or more of the following fields: legislative, judicial, regulatory, professional ethics, business, legal, and academic.

(3) The Speaker shall designate one member of the board as chairman. The minority leader shall designate one member of the board as cochairman. The cochairman shall act as chairman in the absence of the chairman.

(4)(A) Selection and appointment of members of the board shall be without regard to political affiliation and solely on the basis of fitness to perform their duties.

(B)(i) No individual shall be eligible for appointment to, or service on, the board who—

(I) is a lobbyist registered under the Lobbying Disclosure Act of 1995;

(II) has been so registered at any time during the year before the date of appointment;

(III) engages in, or is otherwise employed in, lobbying of the Congress;

(IV) is an agent of a foreign principal registered under the Foreign Agents Registration Act;

(V) is a Member; or

(VI) is an officer or employee of the Federal Government.

(ii) No individual who has been a Member, officer, or employee of the House may be appointed to the board sooner than one year after ceasing to be a Member, officer, or employee of the House.

(5) A vacancy on the board shall be filled for the unexpired portion of the term, utilizing the process set forth in paragraph (1).

(6)(A) Except as provided by subparagraph (B), terms on the board shall be for two Congresses. A member of the board may not serve during more than four consecutive Congresses.

(B) Of the individuals appointed in the 110th Congress to serve on the board, 4 shall be designated at the time of appointment to serve only for the remainder of that Con-

gress. Any such individual may be reappointed for an additional term of two Congresses.

(C) Any member of the board may be removed from office for cause by the Speaker and the minority leader, acting jointly, but not by either, acting alone.

(7) A member of the board shall not be considered to be an officer or employee of the House, but shall receive a per diem equal to the daily equivalent of the minimum rate of basic pay payable for GS–15 of the General Schedule for each day (including travel time) during which such member is engaged in the performance of the duties of the board.

(8) A majority of the members of the board shall constitute a quorum.

(9) The board shall meet at the call of the chairman or a majority of its members pursuant to its rules.

(e) POWERS.—The board is authorized and directed to:

(1)(A) Within 7 calendar days (excluding Saturdays, Sundays, and public holidays) after receipt of a joint written request from 2 members of the board (one of whom was nominated by the Speaker and one by the minority leader) to all board members to undertake a preliminary review of any alleged violation by a Member, officer, or employee of the House of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the per-

formance of his duties or the discharge of his responsibilities, along with a brief description of the specific matter, initiate a preliminary review and notify in writing—

(i) the Committee on Standards of Official Conduct of that preliminary review and provide a statement of the nature of the review; and

(ii) any individual who is the subject of the preliminary review and provide such individual with a statement of the nature of the review.

(B) Within 30 calendar days or 5 legislative days, whichever is later, after receipt of a request under subparagraph (A), complete a preliminary review.

(C) Before the end of the applicable time period, vote on whether to commence a second-phase review of the matter under consideration. An affirmative vote of at least 3 members of the board is required to commence a second-phase review. If no such vote to commence a second-phase review has succeeded by the end of the applicable time period, the matter is terminated. At any point before the end of the applicable time period, the board may vote to terminate a preliminary review by the affirmative vote of not less than 4 members. The board shall notify, in writing, the individual who was the subject of the preliminary review and the Committee on

Standards of Official Conduct of its decision to either terminate the preliminary review or commence a second-phase review of the matter. If the board votes to terminate the preliminary review, then it may send a report and any findings to such committee.

(2)(A)(i) Except as provided by item (ii), complete a second-phase review within 45 calendar days or 5 legislative days, whichever is later, after the board commences such review.

(ii) Extend the period described in subparagraph (A) for one additional period of 14 calendar days upon the affirmative vote of a majority of its members, a quorum being present.

(B) Transmit to the Committee on Standards of Official Conduct a recommendation that a matter requires further review only upon the affirmative vote of not less than 4 members of the board.

(C) Upon the completion of any second-phase review undertaken—

(i) transmit to the Committee on Standards of Official Conduct the following—

(I) a written report composed solely of—

(aa) a recommendation that the committee should dismiss the matter that was the subject of such review;

(bb) a statement that the matter requires further review; or

(cc) a statement that the matter is unresolved because of a tie vote; and

the number of members voting in the affirmative and in the negative and a statement of the nature of the review and the individual who is the subject of the review;

(II) its findings, if any, composed solely of—

(aa) any findings of fact;

(bb) a description of any relevant information that it was unable to obtain or witnesses whom it was unable to interview, and the reasons therefor;

(cc) a recommendation for the issuance of subpoenas where appropriate, if any; and

(dd) a citation of any relevant law, rule, regulation, or standard of conduct;

but not the names of any cooperative witnesses or any conclusions regarding the validity of the allegations upon which it is based or the guilt or innocence of the individual who is the subject of the review; and

(III) any supporting documentation; and

(ii) transmit to the individual who is the subject of the second-phase review the written report of the board described in clause (i).

(D) Hold such hearings as are necessary and sit and act only in executive session at such times and places and solicit such testimony and receive such relevant evidence as may be necessary to carry out its duties.

(E) Pay witnesses appearing before the Office in the same manner as prescribed by clause 5 of rule XI of the Rules of the House of Representatives.

(F) Adopt rules to carry out its duties, which shall include each of the following:

(i) A rule providing that—

(I) the board may vote to terminate a preliminary review on any ground, including that the matter under review is de minimis in nature; and

(II) the board may vote to recommend to the Committee on Standards of Official Conduct that the committee should dismiss a matter that was the subject of a second-phase review on any ground, including that the matter under review is de minimis in nature.

(ii) A rule requiring that all witnesses sign a statement acknowledging their understanding that the text of section 1001 of title 18, United States Code (popularly known as the False Statements Act) applies to their testimony and to any documents they provide.

(iii) A rule requiring that there be no ex parte communications between any member of the board or staff of the Office and any individual who is the subject of any review by the board or between any member and any interested party, and that no Member, officer, or employee of the House may communicate with any member of the board or staff of the Office regarding any matter under review by the board except as authorized by the board.

(iv) A rule that establishes a code of conduct to govern the behavior of its members and staff, which shall include the avoidance of conflicts of interest.

(d) REQUESTS FROM COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT.—(1) Notwithstanding any other provision of this section, upon receipt of a written request from the Committee on Standards of Official Conduct that the board cease its review of any matter and refer such matter to the committee because of the ongoing investigation of such

matter by the committee, the board shall refer such matter to the committee and cease its preliminary or second-phase review, as applicable, of that matter and so notify any individual who is the subject of the review. In any such case, the board shall send a written report to the committee containing a statement that, upon the request of that committee, the matter is referred to it for its consideration, but not any findings.

(2) If the Committee on Standards of Official Conduct notifies the board in writing that it is unable to resolve any matter described in paragraph (1), the board shall immediately begin or continue, as the case may be, a second-phase review of the matter.

(e) LIMITATIONS ON REVIEW.—No review shall be undertaken by the board of any alleged violation of law, rule, regulation or standard of conduct not in effect at the time of the alleged violation; nor shall any review be undertaken by the board of any alleged violation that occurred before the date of adoption of this resolution.

(f) PROHIBITION ON PUBLIC DISCLOSURE.—(1)(A) When an individual becomes a member of the board or staff of the Office, that individual shall execute the following oath or affirmation in writing: "I do solemnly swear (or affirm) that I will not disclose to any person or entity outside of the Office any information received in the course of my service

with the Office, except as authorized by the board as necessary to conduct official business or pursuant to its rules.". Copies of the executed oath shall be provided to the Clerk of the House as part of the records of the House.

(B) No testimony received or any other information obtained as a member of the board or staff of the Office shall be publicly disclosed by any such individual to any person or entity outside the Office. Any communication to any person or entity outside the Office may occur only as authorized by the board as necessary to conduct official business or pursuant to its rules.

(C) The Office shall establish procedures necessary to prevent the unauthorized disclosure of any information received by the Office. Any breaches of confidentiality shall be investigated by the board and appropriate action shall be taken.

(2) Paragraph (1) shall not preclude presenting its report or findings or testifying before the Committee on Standards of Official Conduct by any member of the board or staff of the Office if requested by such committee pursuant to its rules.

(3) Before the board votes on a recommendation or statement to be transmitted to the Committee on Standards of Official Conduct relating to official conduct of any Member, officer, or employee of the House, it shall provide that

individual the opportunity to present, orally or in writing (at the discretion of the board), a statement to the board.

(g) PRESENTATION OF REPORTS TO COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT.—Whenever the board transmits any report to the Committee on Standards of Official Conduct relating to official conduct of any Member, officer, or employee of the House, it shall designate a member of the board or staff to present the report to such committee if requested by such committee.

(h) COMPENSATION OF STAFF.—Upon the affirmative vote of at least 4 of its members, the board may appoint and fix the compensation of such professional, nonpartisan staff as it considers necessary to perform its duties.

(i) TERMINATION OF STAFF.—Members of the staff may be terminated during a Congress solely by the affirmative vote of at least 4 members of the board.

(j) REIMBURSEMENTS.—The board may reimburse its members and staff for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties in the same manner as is permissible for such expenses of other employees of the House.

(k) AGREEMENTS; RETENTION OF DOCUMENTS BY THE CLERK.—(1) Before any individual who is appointed to serve on the board (including an individual who is an alternate) or before any individual is hired to be a staff member of the Of-

fice may do so, the individual shall execute a signed document containing the following statement: "I agree not to be a candidate for the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress for purposes of the Federal Election Campaign Act of 1971 until at least 3 years after I am no longer a member of the board or staff of the Office of Congressional Ethics.".

(2) Copies of the signed and executed document shall be retained by the Clerk as part of the records of the House. The Clerk shall make the signatures a matter of public record, causing the names of each individual who has signed the document to be published in a portion of the Congressional Record designed for that purpose, and make cumulative lists of such names available on the web site of the Clerk.

(3) The following rules shall be applicable to the staff of the Office:

(A) The staff is to be assembled and retained as a professional, nonpartisan staff.

(B) Each member of the staff shall be professional and demonstrably qualified for the position for which he is hired.

(C) The staff as a whole and each member of the staff shall perform all official duties in a nonpartisan manner.

(D) No member of the staff shall engage in any partisan political activity directly affecting any congressional or presidential election.

(E) No member of the staff 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 Office without specific prior approval from the chairman and cochairman.

(l) FUNDING.—There shall be paid out of the applicable accounts of the House such sums as may be necessary for the expenses of the Office. Such payments shall be made on vouchers signed by the chairman of the board and approved in the manner directed by the Committee on House Administration. Amounts made available under this section shall be expended in accordance with regulations prescribed by the Committee on House Administration.

(m) DEFINITION.—As used in this section, the term "Member" means any Representative in, or Delegate or Resident Commissioner to, the Congress.

**SEC. 2. FINANCIAL DISCLOSURE REPORTS.**

Rule XXVI of the Rules of the House of Representatives is amended by adding at the end the following new clause:

"3. Members of the board of the Office of Congressional Ethics shall file annual financial disclosure reports with the Clerk of the House on or before May 15 of each calendar

year after any year in which they perform the duties of that position. Such reports shall be on a form prepared by the Clerk that is substantially similar to form 450 of the Office of Government Ethics. The Clerk shall send a copy of each such report filed with the Clerk within the seven-day period beginning on the date on which the report is filed to the Committee on Standards of Official Conduct and shall have them printed as a House document and made available to the public pursuant to clause 1.".

**SEC. 3. CONFORMING AMENDMENTS TO THE RULES OF THE HOUSE.**

Clause 3 of rule XI of the Rules of the House of Representatives is amended as follows:

(1) In paragraph (b)(2), strike "or" at the end of subparagraph (A), strike the period and insert "; or" at the end of subparagraph (B), and add at the end the following new subparagraph:

"(C) upon receipt of a report regarding a referral from the board of the Office of Congressional Ethics.".

(2) At the end of paragraph (b), add the following new subparagraph:

"(8)(A) Except as provided by subdivisions (B), (C), and (D), not later than 45 calendar days or 5 legislative days, whichever is later, after receipt of a written report and any findings and supporting documentation regarding a referral

from the board of the Office of Congressional Ethics or of a referral of the matter from the board pursuant to a request under paragraph (r), the chairman of the Committee on Standards of Official Conduct shall make public the written report and findings of the board unless the chairman and ranking member, acting jointly, decide or the committee votes to withhold such information for not more than one additional period of the same duration, in which case the chairman shall—

"(i) upon the termination of such additional period, make public the written report and findings; and

"(ii) upon the day of such decision or vote, make a public statement that the committee has voted to extend the matter relating to the referral made by the board of the Office of Congressional Ethics regarding the Member, officer, or employee of the House who is the subject of the applicable referral.

At least one calendar day before the committee makes public any written report and findings of the board, the chairman shall notify such board and the applicable Member, officer, or employee of that fact and transmit to such individual a copy of the statement on the committee's disposition of, and any committee report on, the matter.

"(B)(i) Notwithstanding subdivision (A)(i), if the committee votes to dismiss a matter which is the subject of a re-

ferral from the board of the Office of Congressional Ethics, the committee is not required to make public the written report and findings described in such subdivision unless the committee's vote is inconsistent with the recommendation of the board. For purposes of the previous sentence, a vote by the committee to dismiss a matter is not inconsistent with a report from the board respecting the matter as unresolved due to a tie vote.

"(ii) Notwithstanding subdivision (A)(ii), if the board transmits a report respecting any matter with a recommendation to dismiss or as unresolved due to a tie vote, and the committee votes to extend the matter for an additional period as provided in subdivision (A), the committee is not required to make a public statement that the committee has voted to extend the matter.

"(iii) Except as provided by subdivision (E), if the committee establishes an investigative subcommittee respecting any such matter, then the report and findings of the board shall not be made public until the conclusion of the investigative subcommittee process and the committee shall issue a public statement of the establishment of an investigative subcommittee, which statement shall include the name of the applicable Member, officer, or employee, and shall set forth the alleged violation. If any such investigative subcommittee does not conclude its review within one year after the board trans-

mits a report respecting any matter, then the committee shall make public the report and upon the expiration of the Congress in which the report is made public, the committee shall make public any findings.

"(C)(i) If, after receipt of a written report and any findings and supporting documentation regarding a referral from the board of the Office of Congressional Ethics or of a referral of the matter from the board pursuant to a request under paragraph (r), the committee agrees to a request from an appropriate law enforcement or regulatory authority to defer taking action on the matter—

"(I) notwithstanding subdivision (A)(i), the committee is not required to make public the written report and findings described in such subdivision, except that if the recommendation of the board with respect to the report is that the matter requires further review, the committee shall make public the written report but not the findings; and

"(II) before the end of the first day (excluding Saturdays, Sundays, and public holidays) after the day that the committee agrees to the request, the committee shall make a public statement that it is deferring taking action on the matter at the request of such authority.

"(ii) If, upon the expiration of the one-year period that begins on the date the committee makes the public statement

described in item (i)(II), the committee has not acted on the matter, the committee shall make a new public statement that it is still deferring taking action on the matter, and shall make a new statement upon the expiration of each succeeding one-year period during which the committee has not acted on the matter.

"(D) The committee may not receive any referral from the board of the Office of Congressional Ethics within 60 days before a Federal, State, or local election in which the subject of the referral is a candidate. The committee may delay any reporting requirement under this subparagraph that falls within that 60-day period until the end of such period and in that case, for purposes of subdivision (A), days within the 60-day period shall not be counted.

"(E) If, at the close of any applicable period for a reporting requirement under this subparagraph with respect to a referral from the board of the Office of Congressional Ethics, the vote of the committee is a tie or the committee fails to act, the report and the findings of the board shall be made public by the committee, along with a public statement by the chairman explaining the status of the matter.".

(3) At the end, add the following new paragraph:

"(r) Upon receipt of any written notification from the board of the Office of Congressional Ethics that the board is undertaking a review of any alleged conduct of any Member,

officer, or employee of the House and if the committee is investigating such matter, the committee may at any time so notify the board and request that the board cease its review and refer the matter to the committee for its consideration. If at the end of the applicable time period (including any permissible extension) the committee has not reached a final resolution of the matter or has not referred the matter to the appropriate Federal or State authorities, the committee shall so notify the board of the Office of Congressional Ethics in writing. The committee may not request the same matter from the board more than one time.".

**SEC. 4. EFFECTIVE DATE.**

This resolution and the amendments made by it shall take effect on the date of its adoption, except that the Office of Congressional Ethics shall not undertake any review of any alleged violation by a Member, officer, or employee of the House of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities before 120 days after the date of adoption of this resolution.

Attest:

*Clerk.*