

# CRS Report for Congress

## Enforcement of Congressional Rules of Conduct: An Historical Overview

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Mildred Amer  
Specialist on the Congress  
Government and Finance Division



Prepared for Members and  
Committees of Congress

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## Summary

The Constitution vests Congress with broad authority to discipline its Members. However, only in the past 40 years have both houses established formal rules of conduct and formal disciplinary procedures whereby allegations of illegal or unethical conduct may be investigated and punishment may be given.

In 1964, the Senate established its first permanent ethics committee, the Select Committee on Standards and Conduct, which was renamed the Select Committee on Ethics in 1977. The House first established a permanent ethics committee, the Committee on Standards of Official Conduct, in 1967. In 1968, each chamber adopted rules of conduct. Previously, Congress dealt with misconduct on a case-by-case basis and relied on the decisions of voters in elections as the ultimate authority in questions of wrongdoing.

In recent years, the effectiveness of the two congressional ethics committees has been debated. Numerous proposals made within and outside of Congress have suggested alternative means to enforce congressional rules of conduct, including the use of an outside, independent entity composed of non-Members.

On March 11, 2008, with the adoption of H.Res. 895, the House created the independent Office of Congressional Ethics (OCE) to review allegations of impropriety by Members, officers, and employees and, when appropriate, to refer allegations to the Committee on Standards of Official Conduct for final disposition. The resolution had been proposed by the Special Task Force on Ethics Enforcement. The office is composed of six board members. Current Members of the House, federal employees, and lobbyists will not be eligible to serve.

This report describes the evolution of congressional enforcement of congressional rules of conduct and summarizes the disciplinary action taken by the House Committee on Standards of Official Conduct and the Senate Select Committee on Ethics. It also discusses the recommendations of the House Special Task Force on Ethics Enforcement and related proposals as well as selected other recent changes.

For additional information, please refer to CRS Report RL30650, *The Senate Select Committee on Ethics: A Brief History of Its Evolution and Jurisdiction*, by Mildred Amer; CRS Report 98-15, *House Committee on Standards of Official Conduct: A Brief History of Its Evolution and Jurisdiction*, by Mildred Amer; and CRS Report RL31382, *Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives*, by Jack Maskell.

This report will be updated if there are changes in the enforcement of the congressional rules of conduct or if there are additional congressional disciplinary cases.

# Contents

Background .....	1
Creation of the Ethics Committees .....	1
Expulsion and Censure of Members of Congress .....	6
House Committee on Standards of Official Conduct .....	7
Investigations .....	8
Recent Major Procedural Changes .....	9
Senate Select Committee on Ethics .....	12
Investigations .....	13
Recent Major Procedural Changes .....	14
Proposals For Outside/Independent Enforcement of	
Congressional Rules of Conduct .....	15
Creation of the House Office of Congressional Ethics .....	17
Issues and Concerns .....	21
Constitutionality of Persons Not Members of Congress	
in the Ethics Process .....	21
The Use of Subpoena Power .....	22
Ethics Complaints from the Public .....	24
Conclusion .....	26

# Enforcement of the Congressional Rules of Conduct: An Historical Overview

## Background

The authority of Congress to discipline its Members is found in Article I, Section 5, clause 2 of the Constitution, which states in part, “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.” Through the years, disorderly behavior has become synonymous with improper conduct such as support of rebellion, disloyalty, corruption, and financial wrongdoing, particularly for personal gain. However, only within the past 40 years has Congress systematically undertaken self-discipline related to conduct.

The Constitution in Article I, Section 6, clause 1 also provides, “They [Members of Congress] shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same....” According to the *Constitution Annotated*, this clause “does not apply to service of process...in criminal cases. Nor does it apply to arrest in any criminal case. The phrase ‘treason, felony or breach of the peace’ is interpreted to withdraw all criminal offenses from the operation of the privilege.”<sup>1</sup> [Footnotes omitted.] In other words, Members of Congress are not exempt from prosecution while in office for violations of federal or state criminal law.

This report traces the evolution of enforcement of congressional rules of conduct against Members by the House and Senate. It also traces the evolution of the House and Senate Ethics Committees, and describes some of the recent changes, implemented or proposed, in congressional enforcement of rules of conduct. The report does not deal with changes to federal or state criminal law or with criminal prosecutions of Members of Congress.<sup>2</sup>

## Creation of the Ethics Committees

The House and Senate did not begin to consistently exercise disciplinary powers against Members until the mid-1960s. Prior to the creation of the Senate Select

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<sup>1</sup> U.S. Congress, Senate, *The Constitution of the United States of America: Analysis and Interpretation*, S.Doc. 108-17, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., prepared by the Congressional Research Service (Washington: GPO, 2004), p. 134.

<sup>2</sup> See, for example, CRS Report RL33229, *Status of a Member of the House Who Has Been Indicted for or Convicted of a Felony*, by Jack Maskell.

Committee on Standards and Conduct in 1964 and the House Committee on Standards of Official Conduct in 1967, there were no continuing mechanisms for congressional self-discipline. When allegations of misconduct were investigated, the investigation was often conducted by an ad hoc or select committee created for that purpose. Sometimes allegations were considered by the House or Senate without prior committee action. Publicity and the test of reelection were considered the major forms of redress for allegedly unethical behavior in Congress.<sup>3</sup>

According to Senate Historian Richard Baker, “For nearly two centuries, a simple and informal code of behavior existed. Prevailing norms of general decency served as the chief determinants of proper legislative conduct.”<sup>4</sup> Baker further asserted that for most of its history, “Congress has chosen to deal, on a case-by-case basis, only with the most obvious acts of wrongdoing, those clearly ‘inconsistent with the trust and duty of a member.’”<sup>5</sup>

Two books published in the early 1950s criticized the failure of Congress to investigate alleged misconduct by Members or to take disciplinary action when allegations were proven true.<sup>6</sup> Congress was accused in these books of avoiding responsibility by leaving the remedies for wrongdoing in the hands of the electorate. The authors cited public distrust of public officials and blamed Members of Congress, who, they said, never requested an investigation of colleagues’ alleged misconduct. The opposing view was argued by Representative Sam Rayburn, House Speaker (1940-1947, 1949-1953, and 1955-1961), who espoused the dominant view in Congress at that time — the ethics of a Member should be judged not by his peers, but by the voters.<sup>7</sup>

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<sup>3</sup> Through the nineteenth and early twentieth centuries, the House and Senate on occasion disciplined Members by censure, expulsion, or exclusion. See CRS Report 93-875, *Expulsion and Censure Actions Taken by the Full Senate Against Members*, by Jack Maskell. Today, the House and Senate may employ the disciplinary options of censure and expulsion as well as reprimand, letters of reproof or letters of admonition, and financial restitution. See CRS Report RL34716, *Status of a Senator Who Has Been Indicted for or Convicted of a Felony*, by Jack Maskell. The Supreme Court, in *Powell v. McCormack*, 395 U.S. 486 (1969), barred the House from excluding a Member who met the constitutionally stated qualifications for membership. This decision presumably would apply as well to the seating of a Senator-elect.

<sup>4</sup> Richard Baker, “The History of Congressional Ethics,” in Bruce Jennings and Daniel Callahan, eds., *Representation and Responsibility: Exploring Legislative Ethics* (New York: Plenum Press, 1985), p. 4. (Hereinafter cited as Baker, “The History of Congressional Ethics.”)

<sup>5</sup> *Ibid.*, p. 3

<sup>6</sup> George A. Graham, *Morality in American Politics* (New York: Random House, 1952); and H.H. Wilson, *Congress: Corruption and Compromise* (New York: Rinehart and Co., 1951). Wilson also cited 1944 and 1946 National Opinion Research Center Surveys indicating that the public believed politicians could not be honest.

<sup>7</sup> “Qualifications and Conduct,” in *Guide to Congress*, 5<sup>th</sup> ed., vol. II (Washington: CQ Press, 2000), p. 930.

As late as the 1960s, political scientist Robert Getz discussed the often-described “club spirit” that existed in Congress as well as congressional adherence to unwritten norms of conduct vis-à-vis its reluctance for self-discipline. He credited “the combination of historical precedent, the fear of partisan motivations, and the requirement of functioning in an atmosphere of mutual respect and cooperation as creating the view through the mid-1960s that Congress was not the forum before which the membership should be disciplined.”<sup>8</sup>

Through the years, perceptions of wrongdoing or conflicts of interest by Members of Congress have changed. What might be viewed today as blatant impropriety could have been an accepted norm or simply ignored years ago. For example, when Daniel Webster was chair of the Senate Finance Committee (1833-1837), he was also on the payroll of the Bank of the United States. However, very few colleagues criticized him for that or for his practice of going from the Senate to the Supreme Court, which was then housed in the Capitol, to argue cases in which he had a legislative or financial interest. According to Senate Historian Baker, Webster made no effort to keep his business ties a secret.<sup>9</sup> Senator Robert Kerr of Oklahoma (1949-1963), a gas and oil millionaire, was blunt about the correspondence of his interests and those of his constituents. He was reported to have said that these constituents would not send anyone to Washington who had no community of interest with them since that person “wouldn’t be worth a nickel.”<sup>10</sup>

In the mid-1940s, concerns were first heard in the contemporary era over the lack of specific standards of conduct and requirements for public financial disclosure in any of the three branches of government.<sup>11</sup> There was also criticism of some Members of Congress for supplementing their salaries with outside income.<sup>12</sup> In 1946, during the 79<sup>th</sup> Congress, Senator Wayne Morse of Oregon introduced S.Res. 306, the first public financial disclosure legislation. His resolution, which would have applied to Senators, was predicated on the “Caesar’s-wife principle” that Members’ behavior should be above suspicion.<sup>13</sup>

Senator Morse continued to introduce his measure into the 1960s, expanding it to include all three branches of government, and gaining support from Senators Paul

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<sup>8</sup> Robert S. Getz, *Congressional Ethics: The Conflict of Interest Issue* (Princeton, N.J.: Van Nostrand & Co., 1966), p. 113.

<sup>9</sup> Baker, “The History of Congressional Ethics,” p. 8.

<sup>10</sup> “Senator Kerr Talks about Conflict of Interest,” *U.S. News and World Report*, September 3, 1962, p. 86.

<sup>11</sup> “Ethics,” in *Congress and the Nation, 1945-1964* (Washington: Congressional Quarterly Inc, 1965), p. 1409.

<sup>12</sup> Sen. Wayne Morse, “Reports by Senators on Sources of Outside Income,” remarks in the Senate, *Congressional Record*, vol. 92, July 23, 1946, p. 9741; and Sen. Wayne Morse, “Disclosure of Assets by Members of Congress,” remarks in the Senate, *Congressional Record*, vol. 109, December 20, 1963, p. 25275.

<sup>13</sup> Sen. Wayne Morse, “Reports by Senators on Sources of Outside Income,” remarks in the Senate, *Congressional Record*, vol. 92, July 23, 1946, p. 9741.

Douglas and Clifford Case and others.<sup>14</sup> President Harry S Truman also sent a message to Congress in 1951 recommending public disclosure of personal finances by senior members of all three branches of government.<sup>15</sup>

In 1951, during the 82<sup>nd</sup> Congress, a subcommittee of the Senate Labor and Human Resources Committee, chaired by Senator Douglas, held hearings on S.Con.Res. 21, a proposal by Senator J. William Fulbright to create an ethics commission of private citizens appointed by the Speaker of the House and the President pro tempore of the Senate.<sup>16</sup> Though the Fulbright proposal was not adopted, it was endorsed by the Douglas subcommittee, which studied and made recommendations on a wide range of other governmental ethics issues, including financial disclosure, lobbying by former Members of Congress, the cost of campaigning, honoraria, and the practice of representing constituent concerns before executive agencies.<sup>17</sup>

During the 85<sup>th</sup> Congress in 1958, Congress for the first time adopted a general Code of Ethics for Government Service for officials and employees in the three branches of government. Although initially proposed in 1951 by Representative Charles Bennett, the impetus for adoption was a House investigation of presidential chief of staff Sherman Adams, who was alleged to have received valuable gifts from an industrialist being investigated by the Federal Trade Commission.<sup>18</sup> The standards in the 10-point code are still recognized as continuing ethical guidance in the House

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<sup>14</sup> Sen. Wayne Morse, "Disclosure of Assets by Members of Congress," remarks in the Senate, *Congressional Record*, vol. 109, December 20, 1963, pp. 25275-25278; "Clifford Philip Case" (editorial), *The Washington Post*, March 9, 1982, p. A18; and "Former Sen. Paul H. Douglas Dies; Liberal Illinois Democrat Was 84," *The New York Times*, September 25, 1976, p. 24.

<sup>15</sup> "Financial Disclosure Law Recommended by President Harry S Truman on September 27, 1951," *Congressional Record*, vol. 123, September 27, 1977, pp. 31313-31314.

<sup>16</sup> U.S. Congress, Senate Committee on Labor and Human Resources, Subcommittee to Study Senate Concurrent Resolution 21, *Establishment of a Commission on Ethics in Government*, hearings, 82<sup>nd</sup> Cong., 1<sup>st</sup> sess., June 19-22, June 25-29, July 2-3, July 5-6, and July 9-11, 1951 (Washington: GPO, 1951).

<sup>17</sup> U.S. Congress, Senate Committee on Labor and Public Welfare, *Ethical Standards in Government*, committee print, 82<sup>nd</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1951).

<sup>18</sup> "Senate Approves a Code of Ethics," *The New York Times*, July 12, 1968, pp. 1, 4. This Code of Ethics can be found at 72 Stat. B12, and at [<http://usgovinfo.about.com/blethics.htm>], visited January 25, 2008. In addition, see testimony of Rep. Bennett, in U.S. Congress, Senate Committee on Labor and Public Welfare, *Ethical Standards in Government*, committee print, 82<sup>nd</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1951), pp. 387-388; Rep. Bennett, "Code of Ethics for Government Service," remarks in the House, *Congressional Record*, vol. 97, June 26, 1951, pp. 7175-7178; and testimony of Rep. Bennett, in U.S. Congress, House Committee on Post Office and Civil Service, *Code of Ethics For Government Service*, hearings, 84<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 29, 1956 (Washington: GPO, 1956).

and Senate, although they were adopted by congressional resolution rather than law and therefore are not legally binding.<sup>19</sup>

In the 1960s, allegations of misconduct against Bobby Baker, who was secretary to the Senate majority, and Representative Adam Clayton Powell, Jr., and subsequent investigations, caused some Members of Congress to voice concerns over the lack of specific congressional standards of conduct and means of enforcing congressional self-discipline.<sup>20</sup> Subsequently, the Senate created the Select Committee on Standards and Conduct 1964 and the House established the Committee on Standards of Official Conduct in 1967.<sup>21</sup> In 1968, the House and the Senate each adopted, as part of their standing rules, the first conduct and financial disclosure regulations for Members, officers, and designated employees.<sup>22</sup>

House and Senate rules give the two ethics committees the authority to investigate allegations of wrongdoing by Members, officers, and employees; adjudicate (judge) evidence of misconduct; to mete in certain instances or to recommend penalties, when appropriate; and to provide advice on actions permissible under congressional rules and law.<sup>23</sup>

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<sup>19</sup> Examples include U.S. Congress, House Committee on Standards of Official Conduct, *Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, report, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 108-722 (Washington: GPO, 2004), p. 38; and U. S. Congress, Senate Select Committee on Ethics, *Korean Influence Investigation*, report, 95<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 95-1314 (Washington: GPO, 1975), pp. 5-6.

<sup>20</sup> “Ethics and Criminal Prosecutions,” in *Guide to Congress*, 5<sup>th</sup> ed., vol. II (Washington: CQ Press, 2000), pp. 943-988.

<sup>21</sup> “Proposed Amendment of Rule XXV of the Standing Rules of the Senate Relative to the Jurisdiction of the Committee on Rules and Administration,” *Congressional Record*, vol. 110, July 24, 1964, pp. 16929-16940; and “Committee on Standards of Official Conduct,” *Congressional Record*, vol. 113, April 13, 1967, pp. 9426-9448. The Senate Committee was renamed the Select Committee on Ethics in 1977. See U.S. Congress, Senate Rules and Administration Committee, *Committee System Reorganization Amendments of 1977*, report to accompany S.Res. 4, 95<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 95-1 (Washington: GPO, 1977), pp. 4-5; and *Congressional Record*, vol. 123, February 1, 1977, pp. 3660-3699.

<sup>22</sup> “Senate Standards and Conduct,” *Congressional Record*, vol. 114, March 22, 1968, pp. 7369-7383 and 7388-7408; and “Standards of Official Conduct,” *Congressional Record*, vol. 114, April 3, 1968, pp. 8776-8812. These rules of conduct, as amended by rules changes and law since 1968, are now found in House Rules XXIII-XXVI and Senate Rules XXXIV-XXXVIII.

<sup>23</sup> U.S. Congress, Senate, *Senate Manual Containing the Standing Rules, Orders, Laws, and Resolutions Affecting the Business of the United States Senate*, S. Doc. 107-1, 107<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington, GPO, 2002), pp. 108-118 (Standing Order 80); and U.S. Congress, House, *Constitution, Jefferson’s Manual and Rules of the House of Representatives of the United States, One Hundred Ninth Congress*, H.Doc. 108-241, 108<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Washington, GPO, 2005), pp. 561-585 (House Rule XI, cl. 3).



## Expulsion and Censure of Members of Congress

Expulsion is the only punishment expressly mentioned in the Constitution, but the Constitution gives each house authority to “punish its Members for disorderly Behaviour.”<sup>24</sup> Of 29 potential expulsion cases in the history of the Senate, 15 Senators have been expelled: one in 1797, and 14 during the Civil War for “support of rebellion.”<sup>25</sup> Of 29 potential House expulsion cases, five Representatives have been expelled: three Representatives were expelled during the Civil War; one Representative was expelled in 1980, following his conviction in the Federal Bureau of Investigation’s Abscam sting operation; and one Representative was expelled in 2002 following his conviction for bribery, racketeering, fraud, and tax evasion.<sup>26</sup>

Other punishments have been used to discipline Members, including censure, the most serious punishment short of expulsion. Nine Senators and 22 Representatives have been censured as a punishment for wrongdoing, ranging from assault to obstruction of the legislative process to financial misconduct. In addition, eight Representatives have been reprimanded by the House since 1976, when this punishment was first used as a sanction. One Senator has been reprimanded by the Senate Ethics Committee through a letter from the committee. Reprimand is considered a less severe punishment than censure.<sup>27</sup>

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<sup>24</sup> U.S. Constitution, art. I, §5, cl. 2.

<sup>25</sup> “Cases of Expulsion in the Senate,” in *Guide to Congress*, 5<sup>th</sup> ed., vol. II (Washington: CQ Press, 2000), p. 924. There have actually been 30 Senate expulsion attempts because the Senate twice considered expulsion resolutions against Sen. Louis Wigfall (D-TX) in 1861 for “support of the rebellion” during the Civil War. He ultimately was expelled from the Senate in 1861. The expulsion of Sen. William K. Sebastian (D-AR) for “support of the Confederate insurrection” in 1861 was revoked after his death. The most recent potential Senate expulsion cases were in 1982 and 1995. One involved a Senator who had been convicted of bribery in the Federal Bureau of Investigation’s Abscam sting operation. The other involved a Senator under investigation by the Select Committee on Ethics for sexual misconduct charges and alterations to subpoenaed documents. Both Senators resigned before a potential expulsion vote. See also CRS Report 93-875, *Expulsion and Censure Actions Taken by the Full Senate Against Members*, by Jack Maskell

<sup>26</sup> “Cases of Expulsion in the House,” in *Guide to Congress*, 5<sup>th</sup> ed., vol. II (Washington: CQ Press, 2000), p. 926.

<sup>27</sup> U.S. Congress, House Committee on Standards of Official Conduct, Historical Summary of Conduct Cases in the House of Representatives, November 9, 2004, [[http://www.house.gov/ethics/Historical\\_Chart\\_Final\\_Version.htm](http://www.house.gov/ethics/Historical_Chart_Final_Version.htm)], visited January 15, 2008; and “Seating and Disciplining Members,” in *Guide to Congress*, 5<sup>th</sup> ed., vol. II (Washington: CQ Press, 2000), pp. 915-942.

## House Committee on Standards of Official Conduct<sup>28</sup>

In the 110<sup>th</sup> Congress, the House Committee on Standards of Official Conduct is composed of 10 Members, five from each party. A substantial part of the committee's work is advisory and is performed by its Office of Advice and Education, which provides information and guidance to House Members, officers, and employees on House rules and standards of conduct applicable in their official capacities.<sup>29</sup>

Pursuant House Rule X, clause 5(a)(4)(A) and (B); Rule XI, clause 3; and the Ethics Reform Act of 1989 (P.L 101-194, §803(b), (c), and (e), 103 Stat. 1774), the committee's investigative and adjudicative functions are "bifurcated," or separated.<sup>30</sup> At the beginning of each Congress, the Speaker and the minority leader appoint a 20-person pool of Members (10 from each party) not serving on the House Standards of Official Conduct Committee, who are then to be available to serve on any investigative subcommittee formed during that Congress.

An investigative subcommittee is the initial phase in the bifurcation process. If such a subcommittee finds a violation of the House rules has occurred and transmits a Statement of Alleged Violations (formal charges) to the chair and ranking member of the House Standards Committee, the committee chair is then required to appoint an adjudicative subcommittee. The members of this subcommittee are those Standards of Official Conduct Committee members who were not members of the investigative subcommittee and also the chair and ranking member of the committee. This subcommittee judges the evidence in the Statement of Alleged Violations and recommends sanctions, if the subcommittee concludes they are warranted.

Complaints alleging House rules violations can only be filed with the committee by a Member of the House or the new Office of Congressional Ethics (OCE) discussed below. Complaints not filed by the OCE or Members of the House must have a current Representative certify in writing that the information is in good faith and warrants consideration by the committee. Prior to 1997, members of the public (under certain conditions) as well as Members of the House could file a complaint against a Member, officer, or employee of the House. That changed in September 1997 when the House amended the rule governing complaints filed by individuals who are not Members.<sup>31</sup>

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<sup>28</sup> For a history of the House Committee on Standards of Official Conduct, refer to CRS Report 98-15, *House Committee on Standards of Official Conduct: A Brief History of Its Evolution and Jurisdiction*, by Mildred Amer.

<sup>29</sup> This office was created by the Ethics Reform Act of 1989 (P.L 101-194, 103 Stat. 1775-1776).

<sup>30</sup> The bifurcation process has been used in 18 committee investigations.

<sup>31</sup> "Implementing the Recommendations of the Bipartisan Ethics Task Force," *Congressional Record*, vol. 143, September 18, 1997, pp. 19302-19340.

The House, by resolution, may direct the Standards of Official Conduct Committee to conduct a specific investigation. There is also a “statute of limitations” for investigations.<sup>32</sup>

## Investigations

The committee’s first publicly announced action was in 1968 at the request of the then-Speaker John McCormack.<sup>33</sup> This was an inquiry into roll-call voting irregularities that caused some Members who were out of town to be recorded as having voted. The committee concluded that problem was not deliberate and was the result of an overworked tally clerk. It also urged the House to install a modernized system of voting.<sup>34</sup>

The next announced committee action, in 1975, was its first investigation into allegations of misconduct by a Member, and resulted in a reprimand of the Member the following year.<sup>35</sup> Since then, seven other Members have been reprimanded by the House, and there has been public information on cases involving approximately 75 other Representatives.<sup>36</sup> The punishments ranged from the expulsion of two Members, to censure, admonishment, rebuke, and “Letters of Reproval” and “Letters of Admonition.”<sup>37</sup> Some 22 Members have left the House after court convictions,

<sup>32</sup> The committee is not permitted to investigate, under most circumstances, alleged violations that occurred before the third previous Congress.

<sup>33</sup> “Communication from the Committee on Standards of Official Conduct,” *Congressional Record*, vol. 115, June 19, 1969, p. 16629; and Richard Lyons, “House Set Probe on Ghost Vote,” *The Washington Post, Times Herald*, October 2, 1968, p. A7.

<sup>34</sup> *Ibid.*, and “House Group Urges Roll-Call Reform,” *The New York Times*, December 19, 1968, p. 33. For information on the House electronic voting system that was established after the roll-call voting irregularities, see CRS Report RL34366, *Electronic Voting System in the House of Representatives: History and Evolution*, by Jacob Straus.

<sup>35</sup> See [[http://www.house.gov/ethics/Historical\\_Chart\\_Final\\_Version.htm](http://www.house.gov/ethics/Historical_Chart_Final_Version.htm)] for a historical summary of cases; prepared by the House Committee on Standards of Official Conduct. There are a number of complaints that the committee considers, but does not investigate. The committee sometimes does not acknowledge such cases, even if they are reported in the press. Therefore, it is difficult to ascertain a precise number of “cases” considered by the committee.

<sup>36</sup> Included in this count is information released either by the committee or by Members of the House who were the subject of committee action.

<sup>37</sup> A public Letter of Reproval is a sanction created by the committee and first used in 1987. It is an administrative action authorized under the rules of the House and issued as part of a public report from the committee after a formal investigation. The Committee on Standards of Official Conduct has resolved several complaints by means of a letter to a respondent without a formal investigation. According to the committee, “In the past such letters have not been formally termed ‘letters of admonition,’ but this term accurately describes the substance of these letters.” Unlike a Letter of Reproval, a Letter of Admonishment is not specifically authorized under House rules. Such a letter was sent to a Member of the House in 2004. U.S. Congress, Committee on Standards of Official Conduct, *Summary of Activities One Hundred Eighth Congress*, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., pp.

after inquiries were initiated, or after charges were brought by the committee, but before House action could be completed. Departure from the House ends a case because the committee does not have jurisdiction over former Members. In some instances, no inquiry was conducted, or allegations were dismissed.

The committee has also conducted wide-ranging inquiries involving more than one Member. In the 102<sup>nd</sup> Congress (1991-1993), it considered allegations involving House post office operations as well the Member payroll-disbursing office and checking-account service known as the “House Bank.”<sup>38</sup> In the latter case, the committee found 325 current or former Members had overdrafts from the bank during the 39-month period of review, but no further action was taken by the House against Members. The committee formed a task force to review accusations about the post office, but took no additional action. Previously, it had deferred any action in the post office matter at the request of the Department of Justice, which prosecuted several sitting and former Members.

The committee has also investigated allegations involving House pages, so-called phantom voting by absent Members, improper alterations of House documents, and improper political solicitations.<sup>39</sup>

## Recent Major Procedural Changes<sup>40</sup>

On March 11, 2008, the House adopted H.Res. 895 and created the Office of Congressional Ethics (OCE).<sup>41</sup> This office, composed of six non-Members of the

<sup>37</sup> (...continued)  
62-68.

<sup>38</sup> U.S. Congress, House Committee on Standards of Official Conduct, *Summary of Activities One Hundred Second Congress*, 102<sup>nd</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 102-1081 (Washington: GPO, 1993), pp. 9-12.

<sup>39</sup> During the 97<sup>th</sup>, 98<sup>th</sup>, and 109<sup>th</sup> Congresses, the committee investigated accusations about the relationship between some Members and House pages. Two Members were disciplined as a result of the page investigation in the 98<sup>th</sup> Congress. The Members involved are included in the count of 83 Members who have been the subject of an inquiry/investigation and discipline by the committee and the House. See U.S. Congress, House Committee on Standards of Official Conduct, *Summary of Activities Ninety-Eighth Congress*, 98<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 98-1174 (Washington: GPO, 1984), pp. 3-4; and U.S. Congress, House Committee on Standards of Official Conduct, *Summary of Activities One Hundred Ninth Congress*, 109<sup>th</sup> Congress, 2<sup>nd</sup> sess., H.Rept. 109-744 (Washington: GPO, 2007), pp. 18-20.

<sup>40</sup> The provisions in ethics reform legislation enacted in the 110<sup>th</sup> Congress (H.Res. 6, House Rules for the 110<sup>th</sup> Congress, and P.L. 110-81, the Honest Leadership and Open Government Act of 2007) contained no provisions affecting enforcement procedures of the House Committee on Standards of Official Conduct.

<sup>41</sup> “Establishing An Office of Congressional Ethics,” *Congressional Record*, vol. 154, March 11, 2008, pp. H1515-H1536. The OCE is discussed in more detail later in this report. See also Rep. Michael E. Capuano, “Dear Colleague” letter, December 19, 2007, [<http://www.house.gov/capuano/news/2007/121907ethics/Dear%20Colleague%20Letter.pdf>], visited October 29, 2008; and U.S. House, Special Task Force on Ethics Enforcement,

(continued...)

House, is authorized to consider allegations of wrongdoing by Representatives and House staff; and when warranted, refer the allegations to the House Committee on Standards of Official Conduct for further review.<sup>42</sup>

Also during the 110<sup>th</sup> Congress, the House passed a resolution requiring the Committee on Standards of Official Conduct to act within 30 days when a Member of the House is indicted or otherwise formally charged with criminal conduct in a court of the United States.<sup>43</sup> If the committee does not empanel an investigative subcommittee to review the allegations, it must submit a report to the House describing why it has not done so and detailing what actions, if any, it has taken in response to the allegations. This provision has not been incorporated in House rules and will expire at the end of the 110<sup>th</sup> Congress.<sup>44</sup>

In the 109<sup>th</sup> Congress, the rules of the House adopted on January 4, 2005, included several new provisions affecting the Standards of Official Conduct Committee's investigative procedures.<sup>45</sup> The changes required the committee to notify any Member, officer, or employee whose conduct was referenced in a complaint against another Member, officer, or employee.<sup>46</sup> In addition, unless the chair or ranking member placed a complaint on the committee's agenda within 45 days of receipt, the committee was no longer required to act on such complaint.<sup>47</sup> The

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<sup>41</sup> (...continued)

[<http://www.house.gov/capuano/news/2007/121907ethics/Ethics%20Report.pdf>], visited October 29, 2008.

<sup>42</sup> Allegations can only be considered when presented in writing from two of the six OCE board Members. The House of Representatives and the Committee on Standards retain the ultimate authority for the discipline of House Members and staff.

<sup>43</sup> "Directing the Committee on Standards of Official Conduct to Respond to the Indictment of Any Member of the House," *Congressional Record*, daily edition, vol. 153, June 5, 2007, pp. H5971-H5976, and H5978-H5979.

<sup>44</sup> This information was verified on October 24, 2008, in a telephone call to the office of the House Parliamentarian.

<sup>45</sup> "Rules of the House," *Congressional Record*, daily edition, vol. 151, January 4, 2005, pp. H7-H31.

<sup>46</sup> If that complaint was to be disposed of in a letter not requiring House action, the Member, officer, or employee whose conduct the letter referred to would have had the options to review the content of the letter and accept it, contest it in writing (in which case, those views would have been part of the official public record), or contest it by requesting in writing that the committee establish an adjudicatory subcommittee to review the allegations. If an adjudicatory subcommittee had been established for the original complainant, the letter would not have been issued, since its issuance would have been considered "a statement of alleged violations" (formal charges).

<sup>47</sup> The chair and ranking member could have also requested the committee to extend the applicable 45-day period (or five legislative days, whichever is longer) by one additional 45-day period.

new provisions, however, were rescinded and the former ones reinstated on April 27, 2005.<sup>48</sup>

With the restoration of the original rule for action on a complaint, inaction by the chairman or ranking member on a properly filed complaint within 45 days automatically sends the complaint to an investigative subcommittee (House Rule XI, cl. 3(k)).

In February 1997, the House established the 10-member bipartisan Ethics Reform Task Force to review the existing House ethics process and recommend reforms.<sup>49</sup> Co-chaired by Representatives Robert Livingston and Benjamin Cardin, the task force held hearings and issued a report.<sup>50</sup> The House on September 18, 1997, adopted H.Res. 168, after amendment, incorporating recommendations of the Ethics Reform Task Force.<sup>51</sup>

The new rules that the House adopted:

- changed the way individuals who are not Members of the House file complaints with the committee by requiring them to have a Member of the House certify in writing that the information is submitted in good faith and warrants consideration by the Committee on Standards of Official Conduct;<sup>52</sup>
- decreased the size of the committee to 10 members from 14;
- established a 20-person pool of Members (10 from each party) to participate in the work of the committee as potential appointees to any investigative subcommittee that the committee might establish;<sup>53</sup>

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<sup>48</sup> “Amending the Rules of the House,” *Congressional Record*, daily edition, vol. 151, April 27, 2005, pp. H2616-H2626; and Carl Hulse, “House Overturns New Ethics Rule as G.O.P. Relents,” *The New York Times*, April 28, 2005, pp. A1, A21. See also CRS Report RS22034, *House Ethics Rules Changes in the 109<sup>th</sup> Congress*, by Mildred Amer.

<sup>49</sup> *Congressional Record*, vol. 143, February 12, 1997, pp. 2058-2059.

<sup>50</sup> U.S. Congress, House Ethics Reform Task Force, *Revisions to the Rules of the House and the Rules of the House Committee on Standards of Official Conduct*, hearings, 105<sup>th</sup> Cong., 1<sup>st</sup> sess., March 4 and June 20, 1997 (Washington, GPO, 1997); and U.S. Congress, House, *Report of the Ethics Reform Task Force on H. Res. 168*, committee print, 105<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1997).

<sup>51</sup> “Implementing the Recommendations of the Bipartisan House Ethics Task Force,” *Congressional Record*, vol. 143, September 18, 1997, pp. 19302-19340.

<sup>52</sup> This procedure superseded a process whereby individuals who were not Members of the House could file complaints with the Standards Committee only after they had submitted allegations to at least three House Members, who had refused in writing to transmit the complaint to the committee.

<sup>53</sup> The first pool of 20 Members selected to serve on investigative committees of the Standards of Official Conduct Committee was appointed on November 13, 1997. See (continued...)

- required the chair and ranking minority member of the committee to determine within 14 calendar days or 5 legislative days, whichever comes first, if the information offered as a complaint meets the committee's requirements;<sup>54</sup>
- allowed an affirmative vote of two-thirds of the members of the committee or approval of the full House to refer evidence of violations of law disclosed in a committee investigation to the appropriate state or federal law enforcement authorities;<sup>55</sup>
- provided for a nonpartisan, professional committee staff; and
- allowed the ranking minority member on the committee to place matters on the committee's agenda.

## Senate Select Committee on Ethics<sup>56</sup>

Like its House counterpart, the Senate Ethics Committee is bipartisan. It is composed of six Members in the 110<sup>th</sup> Congress, three from each party. It, too, has a disciplinary function as well as an advisory one, although it does not have a formal Office of Advice and Education. Unlike the House committee, the Senate Ethics Committee does not separate its investigative and adjudicatory functions, and it has no "statute of limitations" for investigations of alleged past violations.<sup>57</sup>

There are no restrictions on who can file a complaint or allegation with the committee. Once a sworn complaint has been received or the committee has initiated an inquiry into possible wrongdoing by a Senator or Senate officer or employee, committee rules establish a multi-stage process.<sup>58</sup> The committee first begins a preliminary inquiry. If there is substantial evidence of a violation, charges are brought, and the committee begins an adjudicative process to determine the merits of the charges and appropriate sanctions.

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<sup>53</sup> (...continued)

*Congressional Record*, vol. 143, November 13, 1997, p. 26569. House leaders have appointed a 20-person pool of Members in each Congress since then.

<sup>54</sup> Previously, there was no specific time limit for this determination.

<sup>55</sup> With the exception of a brief period in 1966, only a vote by the full House previously permitted referrals of possible violations of law to the appropriate authorities.

<sup>56</sup> For a history of the Senate Select Committee on Ethics, refer to CRS Report RL30650, *Senate Select Committee on Ethics: A Brief History of Its Evolution and Jurisdiction*, by Mildred Amer.

<sup>57</sup> The Senate Select Committee on Ethics website [<http://ethics.senate.gov/>] displays the most recent *Senate Ethics Manual* as well as financial disclosure and travel forms, press statements, and other useful information.

<sup>58</sup> Senate Standing Order No. 80, sec. 2(d).

## Investigations

Since its creation in 1964, the Senate Select Committee on Ethics has considered allegations involving approximately 39 Senators. This number comes from information released by the committee through press releases and committee documents, or from information released by those Senators who were under investigation. All but three of the committee's actions occurred after 1977.<sup>59</sup> As a consequence of committee investigations, two Senators resigned before expected expulsion (one for a bribery conviction and the other following charges of sexual misconduct and allegations of alterations to subpoenaed documents); one Senator was censured by the full Senate; and two Senators were denounced by the full Senate (a form of censure) for financial misconduct. One Senator was rebuked by the Senate Ethics Committee for improper acceptance of gifts; one Senator was "severely admonished" by the committee for the acceptance of and failure to disclose prohibited gifts; and one Senator was "admonished" by the committee for "conduct reflecting discreditably on the Senate," including using campaign funds for legal expenses without the required prior approval of the Senate Select Committee on Ethics.<sup>60</sup> These latter actions were accomplished through letters to the Senators from the committee and through press releases. One Senator, involved in the case known as "Keating Five," was reprimanded by the Ethics Committee. The other four Senators in the Keating Five case were criticized in written statements from the committee for showing poor judgment and giving the appearance of acting improperly.<sup>61</sup> In some of the 38 cases acknowledged by the Ethics Committee or by Senators who were the subject of some form of an ethics inquiry, complaints were dismissed or no disciplinary or official action was taken by the committee or the Senate.<sup>62</sup>

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<sup>59</sup> The committee sometimes acts on complaints that do not reach a formal investigation stage. The committee usually does not acknowledge such cases even if they are reported by the press. Therefore, it is difficult to obtain a precise number of "cases" considered by the committee. U.S. Senate, Select Committee on Ethics, "Statement By Senators Boxer and Cornyn, the Chair and Vice Chair of the Senate Ethics Committee," press release, March 5, 2007, [<http://ethics.senate.gov/downloads/pdffiles/pr030507.pdf>], visited January 23, 2008.

<sup>60</sup> See, for example, U.S. Senate, Select Committee on Ethics, "Public Letter of Admonition," press release, February 13, 2008, [<http://ethics.senate.gov/>], visited February 20, 2008.

<sup>61</sup> This case, which lasted from 1989-1991, involved the actions of the five Senators in connection with the Lincoln Savings and Loan Association. See "Ethics and Criminal Prosecutions," in *Guide to Congress*, 5<sup>th</sup> ed., vol. II (Washington: Congressional Quarterly, 2000), pp. 962-963.

<sup>62</sup> The number of cases includes those Senators who acknowledged publicly that they were the subject of some form of Senate Ethics Committee action, including notification that the committee found allegations against them to be unfounded. Sometimes such a notification has only been released by the Senator involved and not the committee. There is no single comprehensive official source for documenting all of the cases considered by the Senate Select Committee on Ethics. Good resources include "Congressional Ethics Cases, 1976-1980," in *Congressional Ethics*, 2<sup>nd</sup> ed. (Washington: Congressional Quarterly, 1980), pp. 21-47; "Ethics and Criminal Prosecutions," in *Guide to Congress*, 5<sup>th</sup> ed., vol. II (continued...)



Wide-ranging inquiries/investigations involving more than one Senator and announced by the Ethics Committee dealt with special car-leasing arrangements for Senators, the introduction of legislation favorable to Chinese seamen, alleged illegal campaign contributions from the Gulf Oil Company, alleged Korean influence peddling, the unauthorized disclosure of classified information about the Senate's consideration of the Panama Canal Treaty, and several discrimination issues.<sup>63</sup> No disciplinary action was taken in any of those cases.

## Recent Major Procedural Changes<sup>64</sup>

In 1993, the Senate established the bipartisan Senate Ethics Study Commission to study the procedures of the Select Committee on Ethics.<sup>65</sup> In March 1994, the commission issued its final report and recommendations.<sup>66</sup> The recommendations languished, however, until the Senate adopted S.Res. 222 on November 5, 1999.<sup>67</sup> S.Res. 222 streamlined the Senate's ethics enforcement process and required the committee to educate Members, officers, and employees about the laws, rules, and regulations applicable in their official duties. The major provisions/changes are summarized here:

- The previous multi-stage process of an “initial review” before a “preliminary inquiry” was replaced by the single-phase “preliminary inquiry.” If there is substantial evidence of a violation, charges are issued and an “adjudicative review” is conducted to determine the merits of charges and appropriate punishment. This phase may include a hearing. The changes did not affect the ability of outside

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<sup>62</sup> (...continued)

(Washington: Congressional Quarterly, 2000), pp. 915-988, supplemented by various editions of *Congress and the Nation*, published quadrennially by Congressional Quarterly Inc.; and Mary Ann Noyer, *Catalogue of Congressional Ethics Cases, 1796-1992* (Washington: The Brookings Institution, 1995).

<sup>63</sup> “Congressional Ethics Cases, 1976-1980,” in *Congressional Ethics*, 2<sup>nd</sup> ed. (Washington: Congressional Quarterly, 1980), pp. 21-47.

<sup>64</sup> Note that provisions in P.L. 110-81, the Honest Leadership and Open Government Act of 2007, contained no provisions affecting enforcement procedures of the Senate Select Committee on Ethics.

<sup>65</sup> S.Res. 111, agreed to in the Senate May 21, 1993; “Authorizing the Senates Ethics Study Commission,” *Congressional Record*, vol. 139, May 21, 1993, pp. 10787-10788. See also Helen Dewar, “Bipartisan Panel to Study Senate’s Ethics Procedures,” *The Washington Post*, March 4, 1993, p. A8.

<sup>66</sup> U.S. Congress, Senate, Ethics Study Commission, *Recommending Revisions to the Procedures of the Senate Select Committee on Ethics, Report to the Senate Leadership Pursuant to S.Res. 111*, 103<sup>rd</sup> Cong., 2<sup>nd</sup> sess., S.Prt. 103-71 (Washington: GPO, 1994); and Stephen Gettinger, “Senate Ethics Revision Process,” *Congressional Quarterly Weekly Report*, vol. 54, March 5, 1994, pp. 522-523.

<sup>67</sup> “Senate Ethics Procedure Reform Resolution of 1999,” *Congressional Record*, vol. 145, November 5, 1999, pp. 28834-28843.

groups to file allegations against a Member, officer, or employee of the Senate.

- The changes provided a uniform set of potential sanctions for rules violations, to be used alone or in combination.<sup>68</sup> These sanctions include financial restitution, referral to a party conference (regarding seniority or positions of responsibility), censure, and expulsion. The Ethics Committee retained the flexibility to propose other penalties and was authorized to issue a reprimand to an individual without his or her consent (as had been required previously) after the opportunity for a hearing and with the right of appeal to the Senate.
- The changes provided for public or private “Letters of Admonition” from the Ethics Committee. These letters, which previously had been used by the committee, are not considered a form of discipline.
- The reforms added financial restitution to the possible sanctions (in addition to suspension and dismissal) that might be made against a Senate officer or employee.<sup>69</sup>

## Proposals For Outside/Independent Enforcement of Congressional Rules of Conduct

In seeking to be fair to Members, and not to pre-judge them or prejudice the consideration of an allegation, the House and Senate ethics committees have operated quietly over the years. However, they often have been perceived to be slow or reluctant to investigate and discipline colleagues, and have been criticized on the basis of that perception.<sup>70</sup>

As noted earlier, Senator Fulbright’s 1951 resolution called for creation of an ethics commission of private citizens appointed by the Speaker and the President pro tem. The idea of an outside entity involved in oversight of congressional ethics existed long before the ethics committees were created in the 1960s.

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<sup>68</sup> These sanctions were similar to ones already contained in committee rules, but provided for the payment of restitution as a penalty and emphasized consistency in the wording of the various types of punishment.

<sup>69</sup> The Senate has previously imposed monetary sanctions to remedy financial wrongdoing only by Senators.

<sup>70</sup> The committees have throughout their existence been criticized as “watchdogs without teeth.” See, for example, Robert Sherrill, “We Can’t Depend on Congress to Keep Congress Honest,” *The New York Times Magazine*, July 19, 1970, pp. 5-7, 13-14; Jerry Landauer, “Senate Ethics: Hear No Evil, See No Evil,” *The Washington Star*, September 19, 1976, p. E3; “Got Ethics?” (editorial), *Roll Call*, June 25, 2001, p. 4; Helen Dewar, “Ethics: Can the Senate Police Its Own?” *The Washington Post*, February 5, 2002, p. A2; Norman Ornstein, “The Senate Is Unable to Police Itself,” *Roll Call*, March 8, 2006, p. 6; and “Weak Reforms” (editorial), *Roll Call*, March 20, 2006, p. 4.

Since the creation of the House and Senate ethics committees, there have been numerous proposals for investigative and enforcement mechanisms to supplement or replace the ethics committees.<sup>71</sup> Some proposals have included an Office of Public Integrity or independent ethics commissions or offices, within the legislative branch, composed of incumbent or former Members of Congress, retired judges, private citizens, or a combination of these.<sup>72</sup>

During the 103<sup>rd</sup> Congress, in February 1993, the Joint Committee on the Organization of Congress held hearings on the congressional ethics process.<sup>73</sup> Sitting and former Members of Congress as well as congressional scholars discussed the pros and cons of entities outside Congress assisting the ethics committees in the enforcement of congressional rules of conduct. Subsequently, the House Members on the committee recommended that “the Committee on Standards of Official Conduct should be authorized to use, on a discretionary basis, a panel of non-Members in ethics cases.”<sup>74</sup> No further action was taken.

During the 105<sup>th</sup> Congress, the House Ethics Reform Task Force, co-chaired by Representatives Livingston and Cardin, considered the use of “distinguished private citizens” (including former Members of the House and judges) in the ethics process.<sup>75</sup> Some witnesses before the task force had suggested the participation of “outsiders” would enhance public trust and confidence and minimize partisanship.<sup>76</sup>

However, task force members expressed concern that the use of private citizens would interfere with the constitutional responsibility of each House to discipline its Members. A majority of the task force also believed that incumbent House Members

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<sup>71</sup> For a discussion of creating such entities, as well as the constitutional issues, see CRS Report RL33790, “*Independent Legislative Commission or Office for Ethics and/or Lobbying*,” by Jack Maskell and R. Eric Petersen.

<sup>72</sup> See, for example, John Gregg, “Independent Board to Police Members?” *Roll Call*, August 21, 1988, pp. 3, 18; Glenn Simpson, “Non-Senators Proposed to Be Ethics Panelists,” *Roll Call*, October 8, 1991, pp. 1, 27; Dennis Thompson, “Why Congressional Ethics Committees Are Unethical,” *The Brookings Review*, vol. 13, no. 4, Fall 1995, pp. 44-48; Norman Ornstein, “Put Congressmen *Emeriti* on Ethics Panels,” *Wall Street Journal*, May 28, 1991, p. A22; Juliet Eilperin, “Debate Joined Over Outside Ethics Panel for House,” *Roll Call*, February 10, 1997, p. 10; Norman Ornstein, “Use Former Members, Staff to Filter Ethics Complaints,” *Roll Call*, February 4, 2004, p. 6; and “Locking Up the Ghost of Congress Past” (editorial), *The New York Times*, March 3, 2007, p. A26.

<sup>73</sup> U.S. Congress, Joint Committee on the Organization of Congress, *Ethics Process*, hearings, 103<sup>rd</sup> Cong., 1<sup>st</sup> sess., February 16 and February 23, 1993 (Washington: GPO, 1993).

<sup>74</sup> U.S. Congress, Joint Committee on the Organization of Congress, *Organization of Congress*, final report, 103<sup>rd</sup> Cong., 1<sup>st</sup> sess., H.Rept. 103-413 (Washington: GPO, 1993), pp. 12-13.

<sup>75</sup> U.S. Congress, House, *Report of the Ethics Reform Task Force on H. Res. 168*, committee print, 105<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1997), p. 6.

<sup>76</sup> *Ibid.*

better understand the practices of the House, and that Members accused of misconduct should be judged by their peers.<sup>77</sup>

Accordingly, the task force recommended, and the House adopted, the proposal for the appointment of a bipartisan reserve “pool” of House Members each Congress to serve on any House Standards of Official Conduct Committee investigative subcommittee when needed.<sup>78</sup> That is still the practice in the House.

There was a high level of interest in an independent ethics authority in the 109<sup>th</sup> Congress (2005–2007) when numerous bills were introduced.<sup>79</sup> Nonetheless, in March 2006, the Senate Committee on Homeland Security and Governmental Affairs voted against a proposal to establish an independent office to enforce congressional ethics and lobbying laws. Subsequently, the Senate defeated a similar amendment to a pending gift and lobbying reform measure (S. 2349).<sup>80</sup>

Before and after the convening of the 110<sup>th</sup> Congress, discussions continued about “ethics reform” and enforcement.<sup>81</sup> On January 18, 2007, during consideration of the Legislative Transparency and Accountability Act of 2007 (S. 1), the Senate again rejected an amendment to establish a Senate Office of Public Integrity.<sup>82</sup>

## **Creation of the House Office of Congressional Ethics<sup>83</sup>**

On March 11, 2008, the House created the Office of Congressional Ethics (OCE), an independent House office to review and submit formal complaints of wrongdoing by Members and officers of the House to the Committee on Standards

<sup>77</sup> Ibid.

<sup>78</sup> “Implementing the Recommendations of the Bipartisan House Ethics Task Force,” *Congressional Record*, vol. 143, September 18, 1997, pp. 19302–19340.

<sup>79</sup> See for example, H.R. 97, H.R. 4799, H.R. 4948, H.R. 5677, S. 2259, and S.Con.Res. 82. Some of the bills contained only an independent ethics authority; others contained an authority but additionally proposed wider changes, such as gift and lobbying reform.

<sup>80</sup> “Legislative Transparency and Accountability Act of 2006,” *Congressional Record*, daily edition, vol. 152, March 28, 2006, pp. S2440–S2254 and S2459; and Jeffrey Birnbaum, “Ethics Office for Hill Rejected,” *The Washington Post*, March 3, 2006, pp. A1, A8.

<sup>81</sup> “Most Ethical Congress” (editorial), *Roll Call*, November 27, 2006, p. 4; Elana Schor, “Ethics Reformers in House Push For Independent Panel,” *The Hill*, December 6, 2006; Carl Hulse, “Democrats in Congress Consider Outside Ethics Panel,” *The New York Times*, December 13, 2006, p. A19; and Sen. Barack Obama, “A Chance to Change the Game,” *The Washington Post*, January 4, 2007, p. A17.

<sup>82</sup> “Legislative Transparency and Accountability Act of 2007,” *Congressional Record*, daily edition, vol. 153, January 18, 2007, pp. S743–S744.

<sup>83</sup> According to a press report, “government reform advocates” may push for the creation of a similar ethics office in the Senate. See Jennifer Yachim, “Stevens Case Prompts New Ethics Push,” *Roll Call*, October 30, 2008, pp. 3, 21. See also [[http://www.democracy21.org/index.asp?Type=B\\_PR&SEC={AC81D4FF-0476-4E28-B9B1-7619D271A334}&DE={A041FBE1-5797-4F7A-80EE-806336BBF26A}](http://www.democracy21.org/index.asp?Type=B_PR&SEC={AC81D4FF-0476-4E28-B9B1-7619D271A334}&DE={A041FBE1-5797-4F7A-80EE-806336BBF26A})], visited October 30, 2008.

of Official Conduct.<sup>84</sup> The adoption of H.Res. 895 followed the recommendations of the Special Task Force on Ethics Enforcement, established by Speaker of the House Nancy Pelosi and Republican Leader John Boehner in January 2007 to consider whether the House should create an “outside” ethics enforcement entity.<sup>85</sup>

Chaired by Representative Michael Capuano, the task force held a number of executive briefings and, on April 19, 2007, a public hearing.<sup>86</sup> During the course of its deliberations, there were numerous editorials, opinion pieces, and articles about its work.<sup>87</sup>

“Congressional ethics” experts and witnesses from public interest groups testified at the public hearing on the pros and cons of an independent ethics mechanism in the House as well as the constitutionality of such an entity.<sup>88</sup> Some witnesses urged that individuals outside Congress should be allowed to file

<sup>84</sup> U.S. Congress, House, Committee on Rules, *Providing for the Adoption of the Resolution (H.Res. 895), Establishing Within the House of Representatives An Office of Congressional Ethics and For Other Purposes*, report to accompany H.Res. 1031, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 110-547 (Washington: GPO, 2008); “Establishing An Office of Congressional Ethics,” *Congressional Record*, vol. 154, March 11, 2008, pp. H1515-H1536; and Carl Hulse, “House Creates A Panel to Watch Over Lawmakers’ Behavior,” *The New York Times*, March 12, 2008, p. 1.

<sup>85</sup> Rep. Michael E. Capuano, “Dear Colleague” letter, December 19, 2007, [<http://www.house.gov/capuano/news/2007/121907ethics/Dear%20Colleague%20Letter.pdf>] visited October 29, 2008; U.S. House, Special Task Force on Ethics Enforcement, [<http://www.house.gov/capuano/news/2007/121907ethics/Ethics%20Report.pdf>], visited October 29, 2008; and Susan Davis, “Pelosi, Boehner Name Eight Members to Ethics Task Force,” *Roll Call*, February 1, 2007, pp. 3, 22. The other Members on the task force were Reps. Robert Scott, Betty McCollum, David Price, Lamar Smith (ranking member), Dave Camp, David Hobson, and Todd Tiahrt. This is the third House ethics task force created since the House Committee on Standards of Official Conduct was established in 1967.

<sup>86</sup> U.S. House, Special Task Force on Ethics Enforcement, *Public Hearing on Ethics Process*, 110<sup>th</sup> Cong, 1<sup>st</sup> sess., April 19, 2007 (unpublished), [<http://www.house.gov/capuano/news/2007/121907ethics/Hearing%20Transcript%20-%20working.pdf>], visited January 15, 2008.

<sup>87</sup> See, for example, Susan Davis, “No Consensus Yet for Ethics Task Force,” *Roll Call*, June 3, 2007, pp. 1, 32; Susan Davis and Jennifer Yachnin, “Ethics Heads Trade Jabs: Jones, Hastings Spar Over Jefferson Probe,” *Roll Call*, June 7, 2007, pp. 1, 27; Meredith McGehee, “Will Ethics Suggestions Be Real or Cosmetic?” (guest observer), *Roll Call*, June 14, 2007, p. 4; Susan Crabtree, “Capuano Bemoans ‘Thankless’ Ethics Job,” *The Hill*, July 3, 2007, p. 5; Bob Edgar, “Open Ethics Process Would Be a Good Step” (guest observer), *Roll Call*, July 9, 2007; Meredith McGehee, “Ethics Reform Still Has a Long Way to Go,” (guest observer), *Roll Call*, September 10, 2007, p. 4; David Laufman, “Outside Panel Won’t Resolve Core Ethics Problems” (guest observer), *Roll Call*, September 26, 2007, p. 8; Tory Newmyer and Jennifer Yachnin, “New Ethics Plan Already Under Fire,” *Roll Call*, November 8, 2007, pp. 1, 26; and Norman Ornstein, “New Ethics Proposal Isn’t Perfect, but It’s a Solid Step Forward,” *Roll Call*, December 5, 2007, p. 6.

<sup>88</sup> *Ibid.* See also Mark Wegner, “Task Force Studying Outside Ethics Regulator Begins Work,” *CongressDaily AM*, April 20, 2007, p. 11.

complaints, that there be a regular, timely investigative process for complaints, and that reporting on the disposition of all complaints should be mandatory.<sup>89</sup>

On December 19, 2007, Chairman Capuano released a report on behalf of several task force members and introduced H.Res. 895 to amend House rules and create an independent Office of Congressional Ethics (OCE), composed of six board members jointly appointed by House leaders.<sup>90</sup> On March 3, 2008, Chairman Capuano released proposed amendments to H.Res. 895.<sup>91</sup> On March 11, 2008, the measure was considered under a closed, self-executing rule (H.Res. 1031) that the House agreed to, thereby agreeing to H.Res. 895.<sup>92</sup>

Current House Members, federal employees, and lobbyists are not eligible to serve on the board, composed of private citizens with a wide range of professional experience. The board's responsibility is to review allegations of misconduct by Members, officers, and employees of the House and then, if appropriate, to make recommendations to the Committee on Standards of Official Conduct for its consideration.<sup>93</sup>

Allegations meriting referral to the Committee on Standards of Official Conduct are to be acted on in accordance with its current rules.<sup>94</sup> The committee would then be required to make a public announcement of its disposition of certain referrals within specific time frames. H.Res. 895 amended the procedural rules of the committee (House Rule XI, clause 3).

<sup>89</sup> *Public Hearings on Ethics Process*, [<http://www.house.gov/capuano/news/2007/121907ethics/Hearing%20Transcript%20-%20working.pdf>].

<sup>90</sup> U.S. House, Special Task Force on Ethics Enforcement, [<http://www.house.gov/capuano/news/2007/121907ethics/Ethics%20Report.pdf>], visited Oct. 29, 2008; Subsequently, on February 27, 2008, ranking member Rep. Lamar Smith and the other Republican Members of the task force introduced H.Res. 1003 to provide increased accountability and transparency in the Committee on Standards of Official Conduct. See also Lamar Smith, "A Recipe for Partisan Games" (editorial), *USA Today*, February 28, 2008, p. 10A.

<sup>91</sup> Rep. Michael E. Capuano, "Dear Colleague" letter, March 4, 2008 (copy available from the author of this report); and Jennifer Yachim, "Revised Ethics Plan Unveiled," *Roll Call*, March 4, 2008, pp. 1, 23.

<sup>92</sup> U.S. Congress, House, Committee on Rules, *Providing for the Adoption of the Resolution (H.Res. 895), Establishing Within the House of Representatives An Office of Congressional Ethics and For Other Purposes*, report to accompany H.Res. 1031, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 110-547 (Washington: GPO, 2008); "Establishing An Office of Congressional Ethics," *Congressional Record*, vol. 154, March 11, 2008, pp. H1515-H1536; and Carl Hulse, "House Creates A Panel to Watch Over Lawmakers' Behavior," *The New York Times*, March 12, 2008, p. 19.

<sup>93</sup> Former Members and staff of the House could not serve on the board sooner than one year after leaving office.

<sup>94</sup> Referrals to the Committee on Standards of Official Conduct from the OCE must be without any conclusions on the validity of any allegations.

Other highlights of H.Res. 895 include the following:

- board members will be appointed jointly by the Speaker and the minority leader;
- board members will serve staggered two-Congress terms and can be removed only by the Speaker and minority leader acting jointly;
- only one board member from each party may initiate a review by notifying the other board members in writing;
- a review will be terminated unless at least three board members vote to advance it;
- there is no new process to allow individuals outside Congress to file a complaint;<sup>95</sup>
- a specific timetable and two-phased procedure is established for the board to consider complaints;
- no cases may be considered until 120 days after enactment of H.Res. 895 and no cases may be referred to the House Committee on Standards of Official Conduct within 60 days of an election in which the subject of a referral is a candidate;
- on all matters, the board will act in secrecy and communicate solely with the House Committee on Standards of Official Conduct;
- the Standards of Official Conduct Committee will consider recommendations from the board under time limits;
- all final authority to either dismiss a case referred to it or to empanel an investigative subcommittee will continue to be the responsibility of the Standards of Official Conduct Committee, thus keeping responsibility for any investigation and proposed discipline of a Member or staff under the control of Members of the House;
- no public announcements will be required when neither the board nor the Standards of Official Conduct Committee find wrongdoing; and
- the new Office of Congressional Ethics (OCE) will not have subpoena power.

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<sup>95</sup> Currently, individuals outside Congress may submit a complaint or allegation by having a Member of the House certify in writing that the information is submitted in good faith and warrants consideration by the Committee on Standards of Official Conduct.

The first members of the OCE were appointed in July 2008.<sup>96</sup>

## Issues and Concerns

Both before and after release of the report by Chairman Capuano, public interest groups, former Members and House staff, and congressional scholars expressed opinions about the work of the task force. There were three principal areas of discussion articulated by one or more of these groups: (1) the constitutionality of involvement of persons not Members of Congress in the ethics process, (2) the lack of subpoena power for the proposed OCE, and (3) lack of a means for someone other than a Member or an OCE board member to file an ethics complaint.

**Constitutionality of Persons Not Members of Congress in the Ethics Process.** Over time, some observers argued that any involvement of persons not Members of Congress in the ethics process is an abdication of Congress's constitutional authority. Objections and concerns have been raised under both the clause authorizing each house to discipline its Members and under the Speech and Debate Clause.<sup>97</sup> One often-heard opinion is that this would be "straying from the spirit, if not the letter of the Constitution."<sup>98</sup> One witness indicated that any discipline, including a letter of admonition, should be subject to review by the full House and not delegated elsewhere.<sup>99</sup>

According to Chairman Capuano and the other members of the task force who issued the report, "Task Force Members were cognizant of these [constitutional] issues ... and were careful to ensure that any proposal strictly adheres to

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<sup>96</sup> Speaker of the House, "Pelosi, Boehner Announce Appointments to New Office of Congressional Ethics," press release, July 24, 2008, [<http://speaker.house.gov/newsroom/pressreleases?id=0762>], visited Oct. 29, 2008; and Molly Hooper, "House Leaders Make Selection for Six-Member Outside Ethics Board," *CQ Today*, July 25, 2009, p. 7. The members are former Representatives David Skaggs (chair), Porter Goss (vice chair), Karan English, and Yvonne Braithwaite Burke, former House CAO Jay Eagen, and former professor and chief of staff of the Federal Election Commission Allison Hayward. The alternates are former Representative and federal judge Abner Mikva and former Representative Bill Frenzel.

<sup>97</sup> U.S. Constitution, art. I, §5, cl. 2, and art. I, §6, cl. 1, respectively. For a discussion of the constitutional issues relating to outside ethics enforcement, refer to CRS Report RL33790, "*Independent Legislative Commission or Office for Ethics and/or Lobbying*," by Jack Maskell and R. Eric Petersen; and Don Wolfensberger, "Congress Should Police Itself on Ethics Violations" (guest observer), *Roll Call*, January 16, 2007, p. 10. See also, unpublished testimony of Don Wolfensberger before the Special Task for on Congressional Ethics Enforcement, [<http://www.house.gov/capuano/news/2007/121907ethics/Hearing%20Transcript%20-%20working.pdf>], visited January 15, 2008; Thomas Spulak, "Outside Panel to Probe Ethics May Run Afoul of the Constitution," *The Hill*, December 12, 2007, p. 26; and David Laufman, "Outside Panel Won't Resolve Core Ethics Problems" (guest observer), *Roll Call*, September 26, 2007, p. 8.

<sup>98</sup> See, for example, Don Wolfensberger, "Congress Should Police Itself on Ethics Violations" (guest observer), *Roll Call*, January 16, 2007, p. 10.

<sup>99</sup> Wolfensberger testimony, pp. 30-31.



constitutional precepts.”<sup>100</sup> Harvard professor and congressional ethics expert Dennis Thompson argued that

refusing to delegate some authority is actually irresponsible. It reveals a failure to face up to the fundamental conflict of interest of any process that has Members acting as prosecutor, judge and jury in cases involving their own colleagues.<sup>101</sup>

A legal analysis in CRS Report RL33790, *“Independent” Legislative Commission or Office for Ethics and/or Lobbying*, by Jack Maskell and R. Eric Petersen, concluded that independent investigative or oversight bodies may not be empowered to “punish” or discipline but might be the repository for filings concerning Members of Congress and apparently could investigate and report allegations of misconduct to the congressional committees.<sup>102</sup> Making findings and recommendations subject to disposition by the Standards of Official Conduct Committee, as in H.Res. 895, appears not to be a meting of punishment but a fact-finding or screening exercise.<sup>103</sup> The Standards of Official Conduct Committee will retain authority to investigate alleged wrongdoing and recommend punishment, and the House will retain the authority to discipline a Member.

**The Use of Subpoena Power.** According to press accounts, giving the new OCE the power to issue subpoenas was a prominent matter of discussion.<sup>104</sup> Chairman Capuano stated that the task force sought the professional opinion of numerous experts (including the House parliamentarian, House general counsel, and the Congressional Research Service), and considered giving the OCE direct or “indirect” subpoena power.<sup>105</sup> H.Res. 895 does not include this authority.<sup>106</sup>

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<sup>100</sup> U.S. House, Special Task Force on Ethics Enforcement, [<http://www.house.gov/capuano/news/2007/121907ethics/Ethics%20Report.pdf>], p. 6.

<sup>101</sup> Dennis F. Thompson, “Congressional Ethics System Creates Conflict of Interest” (guest observer), *Roll Call*, January 17, 2007, p. 8.

<sup>102</sup> CRS Report RL33790, *“Independent” Legislative Commission or Office for Ethics and/or Lobbying*, by Jack Maskell and R. Eric Petersen.

<sup>103</sup> *Ibid.*

<sup>104</sup> See, for example, “An Office for Ethics” (editorial), *The Washington Post*, December 31, 2007, p. A14; “Help for House Cleaning” (editorial), *The New York Times*, December 29, 2007, p. A30; Stanley Brand, “New Ethics Office Doesn’t Need Subpoena Power” (guest observer), *Roll Call*, December 11, 2007, p. 4; Meredith McGehee, “House Must Give Outside Ethics Panel Some Teeth” (guest observer), *Roll Call*, October 25, 2007, p. 4; Norman Ornstein, “New Ethics Proposal Isn’t Perfect, But It’s a Solid Step Forward” (guest editorial), *Roll Call*, December 5, 2007, pp. 6, 30; and Susan Crabtree, “Clash Brews on Ethics,” *The Hill*, January 9, 2008, pp. 1, 7.

<sup>105</sup> U.S. House, Special Task Force on Ethics Enforcement, [<http://www.house.gov/capuano/news/2007/121907ethics/Ethics%20Report.pdf>], p. 17. “Indirect” subpoena power refers to a subpoena issued by the House Committee on Standards of Official Conduct on behalf of the OCE.

<sup>106</sup> Several measures have been introduced in the House in the 110<sup>th</sup> Congress calling for  
(continued...)

The decision not to include this power was based on various factors, such as timeliness. Challenges and other delays challenging a subpoena could hinder and complicate the ethics process contained in H.Res. 895, which envisions prompt results. If, as expected by the task force, there is ongoing communication between the board and the House Committee on Standards of Official Conduct, the OCE can recommend to the committee that it issue a subpoena later in the process, if necessary.<sup>107</sup> The House has already delegated subpoena authority to the Committee on Standards.

***Other Arguments Against the Need for Subpoena Power for OCE.***

- The threat of a subpoena from the House Committee on Standards of Official Conduct later in the process is likely to compel a witness to cooperate earlier in the process.<sup>108</sup>
- Failure to cooperate with the OCE will carry strong consequences for Members and staff, such as possible referral of their case to the House Committee on Standards of Official Conduct for charges of false statements, perjury, and obstruction of justice.<sup>109</sup>
- The OCE is not intended to replace the House Standards of Official Conduct Committee. It is designed to help move cases forward in the House ethics process.<sup>110</sup>
- The Justice Department often begins inquiries into public corruption without the use of subpoenas, and the OCE could work in much the same way.<sup>111</sup>
- The resolution of past ethics cases has been achieved without the use of subpoenas.<sup>112</sup>
- Even without subpoena power, the creation of the OCE would be a significant improvement to the House ethics process.<sup>113</sup>

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<sup>106</sup> (...continued)

some form of an independent ethics commission with subpoena power. See, for example, H.R. 1136, H.R. 1754, H.R. 2544, H.R. 2822, H.R. 4239, and H.Res. 1018.

<sup>107</sup> U.S. House, Special Task Force on Ethics Enforcement, [<http://www.house.gov/capuno/news/2007/121907ethics/Ethics%20Report.pdf>], pp. 17-18.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Stanley Brand, “New Ethics Office Doesn’t Need Subpoena Power” (guest observer), *Roll Call*, December 11, 2007, p. 4.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Norman Ornstein, “New Ethics Proposal Isn’t Perfect, But It Is a Solid Step Forward,” (continued...)

***Other Arguments In Favor of Subpoena Power for OCE.***

- Without this power, the OCE would lack an essential tool. The subpoena power is provided to every congressional committee and is an essential element of any serious investigation to determine facts.<sup>114</sup>
- The subpoena power is vital for credible independence.<sup>115</sup>
- Members and staff might not respond to the OCE in a timely manner without a subpoena and the office could be ignored in its efforts to conduct interviews and obtain documents.<sup>116</sup>
- Subpoenas produce the hard facts needed to determine if rules and laws have been broken.<sup>117</sup>
- Without this power, witnesses with knowledge of misbehavior may be unwilling to share information out of friendship or, as staffers, the fear of potential job loss.<sup>118</sup>

**Ethics Complaints from the Public.** Pursuant to H.Res. 895, the trigger for the OCE to undertake an investigation would be a written request from two members of its board, one from each party. The ethics task force considered allowing complaints from the public by requiring a group making a complaint to disclose financial donors meeting a certain threshold.<sup>119</sup> However, the task force viewed this

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<sup>113</sup> (...continued)  
pp. 6, 30.

<sup>114</sup> This opinion was posted on the website of Democracy 21, [[http://www.democracy21.org/index.asp?Type=B\\_PR&SEC={9B2564D1-6473-4AB8-822D-95C21046972E}](http://www.democracy21.org/index.asp?Type=B_PR&SEC={9B2564D1-6473-4AB8-822D-95C21046972E})], visited January 17, 2008. Democracy 21 is one in a consortium of groups, including the Campaign Legal Center, Common Cause, the League of Women Voters, Public Citizen, and U.S. PIRG, lobbying for changes in congressional ethics rules and processes. On January 16, 2008, Democracy 21 also posted on its website a letter it had sent to Speaker Nancy Pelosi on behalf of the Campaign Legal Center, the League of Women Voters, and Public Citizen calling on the House to provide the proposed OCE with subpoena power.

<sup>115</sup> “Help for House Cleaning” (editorial), *The New York Times*, December 29, 2007, p. A30.

<sup>116</sup> Meredith McGhee, “Why Subpoena Power is the Key to Real Ethics Reform” (guest editorial), *Roll Call*, December 6, 2007, p. 4.

<sup>117</sup> *Ibid.*

<sup>118</sup> Norman Ornstein, “New Ethics Proposal Isn’t Perfect, But It’s a Solid Step Forward,” pp. 6, 30.

<sup>119</sup> U.S. House, Special Task Force on Ethics Enforcement, [<http://www.house.gov/capuano/news/2007/121907ethics/Ethics%20Report.pdf>], p. 9; Susan Ferrechio, “Pelosi Expected to Back Proposal to Allow Outsiders to File Ethics Complaints,” *CQ Today*, June 5, 2007, p. 9; and Susan Davis, “Task Force Mulling How to Handle Outside Complaints,” *Roll Call*, June 13, 2007, pp. 3, 32.

idea as problematic and dropped it because of the concerns expressed by some Members of the House and some outside Congress.<sup>120</sup>

Allowing groups outside Congress to file an allegation of misconduct has been debated intermittently. According to press accounts, some groups advocate that such filing should not require the involvement of a Member of Congress.<sup>121</sup> Currently, in the House, individuals outside Congress may file a complaint with the Standards Committee only if a Member of the House certifies in writing that the information submitted is in good faith and warrants consideration by the committee. There are no similar restrictions in the Senate.

In 1997, the House Ethics Reform Task Force, created during the 105<sup>th</sup> Congress, considered changing the then-limited procedures for non-Members to file ethics complaints and reported,

By opening up the procedures for submitting information offered as a complaint ... it will engender greater public confidence in the process and ameliorate the perception that the standards process is designed to insulate House Members from legitimate allegations of misconduct from outsiders.<sup>122</sup>

The task force recommended a system of direct filing by non-Members of the House who could satisfy a “personal knowledge test.”<sup>123</sup> Ultimately, the House rejected this recommendation because of a concern of “frivolous complaints by outside groups,” and worries that “each Member will be subject to complaints filed for political purposes.”<sup>124</sup> Instead, the House adopted the current rule requiring all non-Members filing a complaint to have a House Member sponsor the complaint.<sup>125</sup>

Indeed, one of the most often-heard arguments against the practice is the potential for a “flood” of complaints, some frivolous. There has been no documentation to support this conclusion based on the experience of the Senate and the limited prior experience of the House, although congressional ethics cases have mostly originated in the two ethics committees because of public pressure, information provided to the committees, or media coverage.

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<sup>120</sup> U.S. House, Special Task Force on Ethics Enforcement, [<http://www.house.gov/capitano/news/2007/121907ethics/Ethics%20Report.pdf>], p. 9.

<sup>121</sup> Juliet Eilperin, “Ethics Amendments Could Spark Partisan Tug of War,” *Roll Call*, June 26, 1997, p. 3; and “Ethics Reform a Mixed Bag” (editorial), *The Hill*, June 25, 1997, p. 6. Prior to 1997, with some restrictions, a non-Member could file a complaint against a Member.

<sup>122</sup> U.S. Congress, House, *Report of the Ethics Reform Task Force on H. Res. 168*, committee print, 105<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1997), p. 13.

<sup>123</sup> Ibid. See also Juliet Eilperin, “Ethics Plan Gets Mixed Reviews at Hearing,” *Roll Call*, June 23, 1997, pp. 3, 26; and Norman Ornstein, “Ethics Task Force Plan Offers Modest Reform To a Broken Process,” *Roll Call*, July 21, 1997, p. 6.

<sup>124</sup> “Implementing the Recommendations of the Bipartisan House Ethics Task Force,” *Congressional Record*, vol. 143, September 18, 1997, pp. 19321-19326.

<sup>125</sup> Ibid. See also Meredith McGehee, “House of Hubris Shuts Down Public Access to Ethics Process” (guest observer), *Roll Call*, October 9, 1995, p. 5.

The Capuano task force was concerned with the possibility of frivolous complaints and designed the OCE to dispose of such allegations efficiently. It did not, however, specify its reasons for not providing a process to receive complaints directly from the public or elaborate on concerns it encountered over the disclosure of donors to groups filing complaints with the OCE.<sup>126</sup>

## Conclusion

Over the past 40 years, since the creation of the two congressional ethics committees, there have been periodic evaluations of the committees' work, occurring both inside and outside of Congress. What may have seemed acceptable enforcement of congressional conduct rules in one period of time has not necessarily been viewed this way at other times. Thus, the episodic debate continues over whether Members of Congress are doing a good job in following the mandate of the Constitution for self-discipline.

Moreover, congressional ethics enforcement has often been linked to an evolving appearance-of-impropriety test<sup>127</sup> as well as to changing perceptions of what constitutes a "conflict of interest."<sup>128</sup> What ethicist Michael Josephson wrote some 16 years ago seems still relevant today:

The core concept of this ... ethical consciousness is the demand that public servants perceive and avoid both actual and apparent wrongdoing.... it is no defense that an act is legal or that there is no actual impropriety. It is enough that the conduct creates an inference of wrongdoing in the mind of a reasonable observer. More than ever, the public demands that its elected officials avoid both actual and apparent wrongdoing. While more standards of conduct for all government officials have been enacted to increase public confidence, each new law creates a new offense.<sup>129</sup>

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<sup>126</sup> U.S. House, Special Task Force on Ethics Enforcement, [<http://www.house.gov/capuano/news/2007/121907ethics/Ethics%20Report.pdf>], p. 9; and Alexander Bolton, "Groups Balk At Disclosure," *The Hill*, June 21, 2007, pp. 1, 10.

<sup>127</sup> See, for example, "How to Judge the Keating Five" (editorial), *The New York Times*, November 29, 1990, p. A28; Phil Kuntz, "Senators Ponder How to Treat Appearance of Wrongdoing," *Congressional Quarterly Weekly Report*, vol. 49, January 26, 1991, pp. 228-230; Glenn R. Simpson, "'Appearance Standard' Is it Unfair to Senators?" *Roll Call*, March 4, 1991, pp. 1, 19; Peter W. Morgan, "The Appearance of Propriety: Ethics Reform and the Blifil Paradoxes," in *Stanford Law Review*, vol. 45, February 1992, pp. 593-621; and U.S. Congress, House Committee on Standards of Official Conduct, *Summary of Activities One Hundred Eighth Congress, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 108-806* (Washington: GPO, 2005), pp. 62-68.

<sup>128</sup> One practical characterization of term "conflict of interest" has been the "gray area" between activities that are unmistakably appropriate and those that are obviously improper and illegal. See Ralph Eisenberg, "Conflict of Interest Situations and Remedies," *Rutgers Law Review*, vol. 13, 1958-1959, p. 666.

<sup>129</sup> Michael Josephson, "The Best of Times, the Worst of Times," *Spectrum, The Journal of State Government*, Fall 1992, vol. 65 (Lexington, KY: Council of State Governments), (continued...)

Evaluations often coincide with or follow periods when numerous or notorious ethics questions involving Members arise. Many Members, experts, and the public then seek to define evolving standards and create new enforcement mechanisms. Sometimes the House or Senate or both chambers act, sometimes they do not act, and sometimes they act only after a period of prolonged discussion or delay. Nonetheless, over the past 40 years, Congress has developed more elaborate ethical standards and more stringent means of self-discipline.