

Omar Ashmawy  
Chief Counsel  
Office of Congressional Ethics  
U.S. House of Representatives  
425 3rd Street, S.W. Suite 1110  
Washington, DC 20024

Dear Mr. Ashmawy,

We respectfully request that the Office of Congressional Ethics (“OCE”) investigate whether Representative Jerry Nadler has intentionally structured payments to his staffer in an effort to evade House outside earned income limits and financial disclosure requirements in violation of federal law and House rules. These apparent violations include, but are not limited to, the criminal provision 18 U.S.C. § 1001, which prohibits members from knowingly and willfully falsifying, concealing, or covering up by any trick, scheme, or device a material fact. Representative Nadler’s evasion of the requirements for a political operative in his official office is troubling behavior for any member of Congress, let alone the Chairman of the House Judiciary Committee.

### I. Background

Representative Jerry Nadler represents New York’s 10th Congressional District.<sup>1</sup> Representative Nadler’s District Director is Robert Gottheim.<sup>2</sup>

In 2017, Mr. Gottheim received congressional compensation in excess of the senior staff threshold which would have required him to file a personal financial disclosure.<sup>3</sup> Mr. Gottheim failed to file the required financial disclosure for 2017. Individuals who exceed the congressional compensation threshold are also subject to a cap on outside earned income.<sup>4</sup> In the same year, Mr. Gottheim was also compensated by Representative Nadler’s campaign in an amount that exceeded the outside earned income cap imposed on senior staff.<sup>5</sup> Any other income earned by Mr. Gottheim in 2017 is unknown as a result of his failure to file a financial disclosure.

Again, in 2018, Mr. Gottheim received total compensation in excess of the senior staff threshold.<sup>6</sup> He then failed to file a financial disclosure, and additionally, was paid by Nadler for

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<sup>1</sup> Representative Jerry Nadler, About Jerry, <https://nadler.house.gov/about-jerry/>.

<sup>2</sup> Robert Gottheim, LinkedIn Profile, <https://www.linkedin.com/in/robert-gottheim-3a196510/>.

<sup>3</sup> 5 U.S.C. app. 4 § 101(d); [H.R. Doc. No. 115-31](#), at 1650 (2017); [H.R. Doc. No. 115-52](#), at 1543 (2017); [H.R. Doc. No. 115-70](#), at 1503 (2017); [H.R. Doc. No. 115-82](#), at 1439 (2018); [H.R. Doc. No. 115-112](#), at 1780 (2018) (Mr. Gottheim was paid \$121,099.92 in a base congressional salary in addition to “other compensation” in the amount of \$6,100).

<sup>4</sup> 5 U.S.C. app. 4 § 501(a)(1).

<sup>5</sup> Federal Election Commission, Disbursements, <https://www.fec.gov/data/disbursements/> (search for recipient “Robert Gottheim” and report time period, “2017-2018”) (Mr. Gottheim was paid \$33,000 by Representative Nadler’s campaign committee, Nadler for Congress, including \$30,000 for salary and consulting fees).

<sup>6</sup> [H.R. Doc. No. 115-112](#), at 1777 (2018); [H.R. Doc. No. 115-138](#), at 1532 (2018); [H.R. Doc. No. 115-161](#), at 1479 (2018); [H.R. Doc. No. 116-6](#), at 1467 (2019); [H.R. Doc. No. 116-26](#), at 1768 (2019) (Mr. Gottheim was paid \$122,499.96 in a base congressional salary in addition to “other compensation” in the amount of \$7,500).

Congress and Representative Nadler’s leadership PAC, Jerry’s PAC, in excess of the outside earned income limit.<sup>7</sup> The extent of any other compensation is obscured by his repeated failure to file a financial disclosure.

In 2019, Mr. Gottheim received congressional compensation in excess of the senior staff threshold.<sup>8</sup> However, Representative Nadler paid Mr. Gottheim \$28,440 from his campaign committee, Nadler for Congress and his leadership PAC, the very amount established by the House for the outside earned income limit.<sup>9</sup>

## II. Law

18 U.S.C. § 1001 prohibits members from knowingly and willfully falsifying, concealing, or covering up by any trick, scheme, or device a material fact.

House employees with salaries equal to or greater than \$124,406 for 2017, \$126,148 for 2018, and \$127,914 for 2019 are subject to limits on outside earned income.<sup>10</sup>

House Rule 25, clause 1(a)(1) sets the limit for outside earned income for those paid above the senior staff threshold, which was \$27,765 for 2017, \$28,050 for 2018, and \$28,440 for 2019.<sup>11</sup>

Pursuant to 5 U.S.C. app. 4 § 101(d), the Ethics in Government Act of 1978 requires employees paid at the senior staff threshold to file a personal financial disclosure report.<sup>12</sup>

The House Ethics Manual cautions against the use of repetitive payments and states that “an intent to evade may be inferred when an employee’s regular salary rate is below the applicable thresholds, but that employee is regularly given a lump sum payment in an amount that, if it had been paid in the form of regular salary instead, would have subjected the employee to one or more of these requirements or restrictions.”<sup>13</sup>

Additionally, “[m]embers must regularly certify that all official funds have been properly spent. A false certification may bring criminal penalties, and the government may recover any amount improperly paid.”<sup>14</sup>

The House Code of Official Conduct holds that members must adhere to the spirit as well as the letter of the law and must conduct themselves in a manner that reflects creditably on the House.<sup>15</sup>

## III. Analysis

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<sup>7</sup> Federal Election Commission, *supra* note 5 (Mr. Gottheim was paid \$39,500 by Nadler for Congress and Representative Nadler’s leadership PAC, Jerry’s PAC, including \$36,500 for salary and consulting fees).

<sup>8</sup> [H.R. Doc. No. 116-26](#), at 1766 (2019); [H.R. Doc. No. 116-47](#), at 1818 (2019); [H.R. Doc. No. 116-72](#), at 1785 (2019); [H.R. Doc. No. 116-93](#), at 1820 (2020). (Mr. Gottheim was paid \$140,929.59 in a congressional salary).

<sup>9</sup> Federal Election Commission, Disbursements, <https://www.fec.gov/data/disbursements/> (search for recipient “Robert Gottheim” and report time period, “2019-2020”) (Mr. Gottheim was paid \$28,440 by Representative Nadler’s campaign committees Nadler for Congress and Jerry’s PAC).

<sup>10</sup> 5 U.S.C. app. 4 § 501(a)(1); Committee on Standards of Official Conduct, U.S. House of Representatives, House Ethics Manual, 228 (2008); Committee on Ethics, U.S. House of Representatives, [FAQs About Outside Employment](#).

<sup>11</sup> *Supra* note 10.

<sup>12</sup> Committee on Standards of Official Conduct, *supra* note 10, at 252.

<sup>13</sup> Committee on Standards of Official Conduct, *supra* note 10, at 284.

<sup>14</sup> Committee on Standards of Official Conduct, *supra* note 10, at 126.

<sup>15</sup> 116<sup>th</sup> Congress, Rules of the House of Representatives, Rule 23, Cl. 1-2 (2019).

For 2017, Robert Gottheim's congressional salary as Representative Jerry Nadler's District Director was \$121,099.92, approximately \$3,000 less than the senior staff threshold for that year. However, a lump sum payment of \$6,100 in addition to his regular salary put Mr. Gottheim's total compensation from the office of Representative Nadler above the senior staff threshold.<sup>16</sup> As a result of Mr. Gottheim's failure to file a financial disclosure, it is unknown how much additional outside income he earned in 2017.

For 2018, Mr. Gottheim's congressional salary was \$122,499.96, again almost \$3,000 less than the senior staff threshold for that year. Mirroring the year before, a lump sum payment put Mr. Gottheim's total compensation from the office of Representative Nadler above the senior staff threshold.<sup>17</sup>

While federal law and House rules have established a threshold to trigger the outside earned income limits, the House Ethics Committee explicitly cautions that members may not use lump sum payments to evade any requirements for any income restrictions or disclosures. The Committee goes on to caution that the use of repetitive payments may be inferred as an intent to evade applicable House rules.<sup>18</sup> In this instance, Representative Nadler is avoiding the senior staff threshold by paying Mr. Gottheim a salary of only a few thousand dollars less than the threshold amount and later giving him a lump sum payment. Given that Representative Nadler had made that same payment arrangement in consecutive years, these payments fall squarely within the prohibited repetitive conduct established by the House Ethics Committee.<sup>19</sup>

By evading the earned income limits, Representative Nadler's campaign was then able to pay Mr. Gottheim \$30,000 in 2017 and \$36,500 in 2018.<sup>20</sup> These amounts exceed the outside earned income cap. This cap on outside income exists to ensure that those receiving a significant taxpayer-funded salary are devoting their time to the people's business. In flouting these limits, Representative Nadler ensured that public resources were paid to an employee who is a political operative.

In addition to limits on outside earned income, those House employees paid at the senior staff threshold must also file a financial disclosure report annually.<sup>21</sup> The purpose of these reports is to increase public confidence in the integrity of government and to deter conflicts of interest.<sup>22</sup> Mr. Gottheim did not file a report for 2017 or 2018. Representative Nadler has structured Mr. Gottheim's salary in a way that avoids this public transparency. This is a violation of the letter as well as the spirit of House rules. Members cannot do indirectly what they would otherwise be prohibited from doing directly.<sup>23</sup> By structuring Mr. Gottheim's pay just below the senior staff threshold, then providing repeated lump sum payments, it is clear that not only is Representative Nadler familiar with the law, he has taken steps to evade it. Further, Mr. Gottheim's payment structure in 2019 demonstrates that Representative Nadler is aware of the rules and capable of following of them.<sup>24</sup>

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<sup>16</sup> *Supra* note 3; 5 U.S.C. app. 4 § 501(a)(1).

<sup>17</sup> *Supra* note 6; 5 U.S.C. app. 4 § 501(a)(1).

<sup>18</sup> Committee on Standards of Official Conduct, *supra* note 10, at 284.

<sup>19</sup> *Id.*

<sup>20</sup> Federal Election Commission, *supra* note 5.

<sup>21</sup> 5 U.S.C. app. 4 § 101(d); Committee on Standards of Official Conduct, *supra* note 10, at 252.

<sup>22</sup> Committee on Standards of Official Conduct, *supra* note 10, at 251.

<sup>23</sup> Committee on Standards of Official Conduct, *supra* note 10, at 122.

<sup>24</sup> *Supra* note 8.

Members are required to certify that funds for their offices have been properly spent, and any false certification creates criminal liability for the member under 18 U.S.C. § 1001.<sup>25</sup> Further, this makes criminal any activity that covers up by trick or scheme a material fact. In paying Mr. Gottheim from official House resources, Representative Nadler has attested to the propriety of these salary payments. Additionally, courts have held that members were subject to criminal penalties for falsifying payroll authorization forms by concealing the true nature and purpose of a payment.<sup>26</sup> Thus, Representative Nadler's use of lump sum payments to evade House outside earned income limits and financial disclosure requirements would place him in violation.

#### IV. Request for Action

Having served for nearly 30 years, Representative Jerry Nadler is well aware of the laws governing the House as well as the importance of upholding public trust. As Chairman of the House Judiciary Committee, Representative Nadler preaches the importance of adherence to the law, yet he has acted as though he is above it. Representative Nadler appears to have violated House rules and federal law through intentionally structuring payments to his staff to evade the requirements for public transparency. These actions are emblematic of the perils of unchecked power to which Representative Nadler has grown accustomed; therefore, we respectfully request an investigation by OCE into this matter.

Sincerely,

A handwritten signature in cursive script that reads "Caitlin Sutherland".

Caitlin Sutherland  
Executive Director

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<sup>25</sup> Committee on Standards of Official Conduct, *supra* note 10, at 126.

<sup>26</sup> *United States v. Diggs*, 613 F.2d 988, 999 (1979).