

INTERNAL MEMORANDUM



Date: June 14, 2017

To: Compact Administrator

From: Mead Treadwell - Chair

Re: Advisory Memorandum regarding the Congressional Resolution in the new Congress

CC: Commissioners Rakestraw and Snowden

SUMMARY: This memorandum is intended to provide guidance to the Compact for America Educational Foundation, Inc., in its role as Compact Administrator (the "Foundation" or the "Administrator"), in the performance of its duties at the direction of the Compact Commission to implement and monitor the Compact for a Balanced Budget Commission's ("Compact Commission") program to have the activating Congressional Resolution for the Compact for a Balanced Budget sponsored, filed and adopted by the current Congress without delay. Such guidance and counsel shall also apply to all individuals and entities that are formally associated with the Foundation in its capacity as Compact Administrator, including volunteers, independent contractors, and employees that are engaged by the Foundation, members of the Foundation's Council of Scholars, members of any other of the Foundation's Advisory Councils, and members of any of the Compact Commission's Advisory Councils. All such individuals and entities are deemed by the Compact Commission and shall be regarded as "Public Officials" of the Compact Administrator when acting in such capacity on behalf of the Compact Commission. When acting in such capacity, they are exempt from the federal Lobbying Disclosure Act. Further, provided that a call to action is avoided in any related communication, their actions will not be subject to limitations on lobbying otherwise imposed by the Internal Revenue Code on the Foundation. Furthermore, to ensure that no appearance of impropriety could possibly result, no Commissioner or Foundation associate should request any special favor from any public official who may have a family relationship with any Commissioner or Foundation associate; this prohibition includes making requests to such family-related third party public official or his/her staff to exert influence or to perform official acts in support of the Compact Commission's mission that would raise questions as to whether the Commissioner, the Administrator associate, or the public official is improperly benefiting as a result of a close family relationship, or that could be construed as directly or indirectly aiding any family member of that third party public official in obtaining compensation.

BACKGROUND AND REQUESTED COMMUNICATIONS:

During the 114th Congress (January 2015 – January 2017), Rep. Paul Gosar, along with 14 original co-sponsors and 10 subsequent co-sponsors, filed H.Con.Res. 26 in the U.S. House of Representatives on March 15, 2015. This is the required activating resolution for the Compact for a Balanced Budget. The resolution was referred to the House Committee on the Judiciary, and subsequently to the Subcommittee on the Constitution and Civil Justice. No companion legislation was filed in the U.S. Senate. Unfortunately, no further action was taken on H.Con. Res. 26, and the legislation died upon the adjournment of the 114th Congress.

It is the desire of the Compact Commission to have similar legislation filed in both the House and the Senate in the current 115th Congress (January 2017 – January 2019). Accordingly, the following actions will be necessary for the Foundation and Commissioners to undertake in their capacities as public officials:

1. Identify key legislators in the House and the Senate that would be willing to consider primary sponsorship in their respective chambers
2. Educate the key legislators on the Compact for a Balanced Budget and the required activating Congressional Resolution
3. Reach agreement with the key legislators as to who will be the primary sponsors in both chambers
4. Work with both primary sponsors to have legislative counsel draft the required legislation in acceptable format
5. Identify legislators in both chambers that would be willing to co-sponsor the legislation
6. Educate the legislators that would be willing to co-sponsor the legislation on the Compact for a Balanced Budget and the required Congressional Resolution
7. Make educational presentations to key Congressional leaders
 - a. House Republican Conference
 - b. House Democratic Conference
 - c. Senate Republican Conference
 - d. Senate Democratic Caucus
8. Make presentations to key Congressional caucuses, including, but not limited to:
 - a. House Republican Conference
 - i. House Republican Policy Committee
 - b. House Republican Study Committee
 - c. House Freedom Caucus
 - d. House Liberty Caucus
 - e. House Tuesday Group
 - f. House Tea Party Caucus
 - g. House Congressional Progressive Caucus

- h. House Blue Dog Coalition
 - i. Senate Republican Policy Committee
 - j. Senate Democratic Policy and Communications Committee
 - k. Congressional Budget Office
9. Make educational presentations to key think tank and policy organizations, including, but not limited to:
 - a. Republican Main Street Partnership
 - b. Americans for Tax Reform
 - c. Cato Institute
 - d. Heritage Foundation
 - e. The Heartland Institute
 - f. Center for Budget and Policy Priorities
 - g. R Street
 - h. Competitive Enterprise Institute
10. Make educational presentations to the executive branch, including, but not limited to:
 - a. Key Whitehouse personnel
 - b. Office of Management and Budget
11. Testify before Congressional committees as the legislation moves forward, including, but not limited to:
 - a. House Budget Committee
 - b. House Judiciary Committee
 - c. Senate Budget Committee
 - d. Senate Judiciary Committee
12. Assist with research on the assertion that the Congressional Resolution is an administrative procedure that is not subject to the Senate filibuster / cloture rule
13. Assist with necessary press releases and educational publicity associated with the Congressional Resolution
14. Provide press interviews as requested by the Commission
15. Provide educational materials via the internet, social media, electronic media, print media, and broadcast media
16. Provide fundraising assistance to allow the above-described activities to occur

GUIDANCE

It is the sense of the Compact Commission that the federal Lobbying Disclosure Act does not to apply to the Compact Commission or the Compact Commissioners, nor to the Foundation or any individual or entity acting on behalf of the Foundation at the direction of the Compact Commission in its capacity as Compact Administrator. This is because there is a specific exemption from the definition of "lobbying contacts" under the Act for communications made by a "public official" acting in his or her "official capacity" under 2 U.S.C. § 1602(8)(B)(i). On January 13, 2015, pursuant to its express statutory and contractual authority under Article

IV, section 1(a), of the Compact for a Balanced Budget, the Compact Commission appointed, retained and requested the Foundation, including all individuals and entities formally associated with the Foundation, in writing and by way of a technical services contract to serve as Compact Administrator. In such capacity, the Foundation was directed by the Compact Commission to fulfill its responsibilities as Compact Administrator under Article IV, section 6, of the Compact for a Balanced Budget by communicating on behalf of the Compact Commission in regard to its authority under Article IV, section 1, subsection (b), to encourage States to join the Compact and Congress to call the Convention in accordance with the Balanced Budget Compact. In fact, at the Compact Commission's request, the Foundation agreed to assist the Commission in such capacity by providing technical advice and assistance in (a) formulating and transmitting and assisting the Compact Commission members in formulating and transmitting nonpartisan communications, which offer educational policy analysis, technical advice and expert testimony concerning the Compact for a Balanced Budget, to Congress, Member States and non-member States; (b) assisting the Compact Commission members in encouraging states to join the Compact for a Balanced Budget and Congress to call the Convention in accordance with the Compact; and (c) assisting the Compact Commission members in cooperating with any entity that shares a common interest with the Compact Commission and engages in policy research, public interest litigation or lobbying in support of the purposes of the Compact.

Accordingly, the Compact Commission, the Compact Commissioners, as well as the Foundation and any individual or entity acting on behalf of the Foundation in its capacity as Compact Administrator all appear to meet the definition of public official under 2 U.S.C. § 1602(15) (A) (an appointed official of a state) or (C) (an appointed official of an organization of State appointed officials). All of the foregoing contemplated communications of Compact Commission, the Compact Commissioners, as well as the Foundation and any individual or entity acting on behalf of the Foundation in its capacity as Compact Administrator are specifically authorized as part of their official duties by the Compact for a Balanced Budget. Moreover, by coordinating with the Compact Commission to host an official public meeting within the halls of Congress on May 25, 2016 without questioning the Commission's status, during which testimony was elicited from the Foundation in its capacity as Compact Administrator, the Leadership of the House of Representatives appears to have recognized the public official status of the Compact Commission, the Compact Commissioners, as well as the Foundation and any individual or entity acting on behalf of the Foundation in its capacity as Compact Administrator.

Further, the advice and assistance of the Foundation or any individual or entity acting on behalf of the Foundation in its capacity as Compact Administrator falls within the specific exemption from the Internal Revenue Code's definition of "lobbying" under 26 C.F.R. § 56.4911-2(c)(3) and 53.4945-2(d)(2), which excludes from that definition preparation work and communications stemming from written requests from a governmental body for technical

advice and assistance. Furthermore, it is the Commission's understanding that the Foundation has secured a subchapter (h) election and has never exceeded the limits on permissible lobbying expenditures. Finally, it is the Commission's understanding that the Foundation specifically sought its 501(c)(3) exemption in light of its anticipated purpose of assisting in broad educational efforts related to the Compact for a Balanced Budget, the balanced budget amendment contained therein, and the required congressional activating resolution as directed by the Compact Commission. The Internal Revenue Service reportedly granted the Foundation's exemption in light of such operational purposes. Thus, notwithstanding any lobbying limitations that may otherwise generally apply because of the Foundation's status as a I.R.C. 501(c)(3) organization, the Foundation is fully authorized to undertake the foregoing broad educational efforts related to the Compact for a Balanced Budget, the balanced budget amendment contained therein, and the required congressional activating resolution as directed by the Compact Commission.

General Communications Guidance. The following are best practices that should generally be followed in any communication with any legislative or executive official regarding the Compact for a Balanced Budget:

- Include a statement in your email signature block or elsewhere prominently: "This communication is sent at the specific written request of the Compact for a Balanced Budget Commission, an interstate governmental body representing Alaska, Arizona, Georgia, Mississippi and North Dakota, pursuant to a pro bono technical advisory services contract between the Commission and Compact for America Educational Foundation, Inc. as Compact Administrator;"
- Provide educational information from a position of special knowledge or expertise, without propagandizing or making a call to action to support or oppose specific legislation;
- Make the communication contemporaneously available to all members of the Compact for a Balanced Budget Commission (mead.treadwell@balancedbudgetcompact.org; paulette.rakestraw@balancedbudgetcompact.org; greg.snowden@balancedbudgetcompact.org) by:
 - giving them advance notice of your intent to engage in such communication and offering to brief them on what you intend to say;
 - cc'ing them on your email; and
 - retaining the email, writing or recording of the communication and notifying them that the email, writing or recording is available to them for their review.

Call to Action Guidance. The use of a call to action in any official communication should be the rare exception and not the rule. It is especially important for the Administrator to avoid making "grassroots lobbying communications." Under the Internal Revenue Code, a

“grassroots lobbying communication” is an attempt to influence specific legislation by encouraging the public (or a segment of the public) to contact legislators about that legislation. In order to constitute grassroots lobbying, a communication must do **all** of the following:

- refer to specific legislation;
- express or reflect a view on that specific legislation; and
- includes “call to action” to the grassroots to influence legislators with respect to the specific legislation.

For grassroots lobbying purposes, the Internal Revenue Service may deem a communication a “call to action” if it includes **any** of the following:

- a statement that the recipient should contact a legislator or other relevant government official;
- the address, telephone number, web address, or similar information regarding a legislator or legislative body employee;
- a petition, post card or similar means for the recipient to contact a legislator or legislative body employee; **or**
- identification of specific legislators who are opposed to or undecided about the organization’s view on the legislation.

However, from time to time, the Commission may wish to communicate a specific call to action to policy makers or the grassroots in support of its mission. Although such a communication would not constitute lobbying for purposes of the federal Lobbying Disclosure Act (and most likely will not happen often enough to threaten the Administrator’s 501(c)(3) tax status under its election), best practices require segregating such actions from the activities of the Administrator as much as possible.

Accordingly, any call to action communication should be either made by or in the name of the Commissioner who requests the call to action, from an email account attributed to that Commissioner, **or**, if the expenditure of quantifiable Administrator resources is not directly involved, any Administrator associate should consider serving as a volunteer for Compact for America, Inc. for such purpose. If the latter choice is made, the Administrator associate should obtain a Compact for America Action (joe.blow@compactforamerica-action.org) email address and use his or her Action titling (“Volunteer, Advisory Council Member, Board Member, etc.”) in the communication. If you do not have an existing Action email or title, notify Chip DeMoss, CEO of Compact for America, Inc., that you wish to volunteer for Compact for America Action and obtain a Compact for America Action email address and affiliation. *When in doubt (and if a Commissioner is not available for attribution), use your Action email and affiliation exclusively.*

Ethics Guidance. If you have reason to believe that any legislative, judicial or executive official with whom you are communicating is related by family to any Commissioner or Administrator associate, it is important to be sensitive in your communications and interactions. To ensure that no appearance of impropriety could possibly result, no Commissioner or Foundation associate should request any special favor from any such public official; this prohibition includes, but is not limited to making requests to such family-related public official **or** his/her staff:

- to exert influence in support of the Compact Commission's mission in a way that would raise questions as to whether the Commissioner, the Administrator associate, or the public official is improperly benefiting as a result of a close family relationship;
- to perform any official acts in support of the Compact Commission's mission that would raise questions as to whether the Commissioner, the Administrator associate, or the public official is improperly benefiting as a result of a close family relationship; or
- to engage in any action that could be construed as directly or indirectly aiding any family member of that third party public official in obtaining compensation.

Any Commissioner or Administrator associate who is a registered lobbyist, or is employed or retained by a registered lobbyist to influence legislation, should contact Chip DeMoss for further specific ethics guidance related to family associations with public officials.

Electioneering Guidance. Commissioners and Administrator associates should refrain from all electioneering. All educational efforts shall be conducted in a strictly nonpartisan manner. If identifying a candidate is necessary to communicate bonafide educational content during any election season, please make sure that all correspondence, communications, and publicity associated with this initiative simply refers the particular candidate in their current capacity without reference to party affiliation, candidacy status, or any upcoming election or election campaign. Any communication in violation of this cautionary note is subject to disavowal by the Compact Commission.

If asked or questioned about potential lobbying activities, please let them know of and share with them this memorandum.

If you have any questions, please contact me directly and I will be happy to issue further guidance as necessary.