
Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

REPORT

Review No. 13-2392

The Board of the Office of Congressional Ethics (the “Board”), by a vote of no less than four members, on December 12, 2013, adopted the following report and ordered it to be transmitted to the Committee on Ethics of the United States House of Representatives.

SUBJECT: Representative Markwayne Mullin

NATURE OF THE ALLEGED VIOLATIONS: In 2013, Representative Markwayne Mullin regularly hosted a weekly radio talk show and appeared in numerous radio, television, and internet commercials for Mullin Plumbing, Inc. and affiliated companies. He also served as an officer or board member for the companies. He received income from the companies totaling more than \$600,000 in 2013.

If Representative Mullin received more than \$26,955 of outside earned income in 2013, he may have violated House rules and federal law.

If Representative Mullin was personally involved in endorsing any services pursuant to outside employment, he may have violated House rules and standards of conduct.

If Representative Mullin served for compensation as an officer or as a member of the board of directors, or both, of one or more of the companies, he may have violated House rules.

RECOMMENDATION: The Board recommends that the Committee on Ethics further review the allegations concerning outside earned income because there is substantial reason to believe that the income Representative Mullin received exceeded the outside earned income limit.

The Board recommends that the Committee on Ethics further review the allegation concerning Representative Mullin endorsing services because there is substantial reason to believe that Representative Mullin appeared in commercials for an outside employer while serving as a Member of Congress.

The Board recommends that the Committee on Ethics further review the allegation concerning Representative Mullin serving as a compensated officer or board member because there is substantial reason to believe that Representative Mullin received compensation for the services he provided as an officer or board member of the companies.

VOTES IN THE AFFIRMATIVE: 6

VOTES IN THE NEGATIVE: 0

ABSTENTIONS: 0

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MEMBER OF THE BOARD OR STAFF DESIGNATED TO PRESENT THIS REPORT TO THE COMMITTEE ON ETHICS: Omar S. Ashmawy, Staff Director and Chief Counsel.

FINDINGS OF FACT AND CITATIONS TO LAW

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FINDINGS OF FACT AND CITATIONS TO LAW

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On December 12, 2013, the Board of the Office of Congressional Ethics (the “Board”) adopted the following findings of fact and accompanying citations to law, regulations, rules, and standards of conduct (*in italics*).

The Board notes that these findings do not constitute a determination that a violation actually occurred.

I. INTRODUCTION

1. Representative Mullin maintains a personal services business comprised of five companies: Mullin Plumbing, Inc.; Mullin Plumbing West Division, Inc.; Mullin Plumbing New Construction, Inc.; Mullin Services, Inc.; and Mullin Environmental, Inc. (collectively, the “plumbing companies”).
2. He personally advertises for the plumbing companies and serves as an officer or board member.
3. He received income totaling more than \$600,000 from the plumbing companies in 2013. A portion of the income he received includes payments characterized as “distributions” from a company that he does not own, but rather is owned by his wife.
4. Based on the facts before the OCE, there is substantial reason to believe that the income he received is earned income because: (1) his share of the profits from the plumbing companies are, at least in significant part, for attracting or retaining clients; and (2) his “distributions” from the company his wife wholly owns are not a return on any equity that he holds.

A. Summary of Allegations

5. Representative Mullin may have violated House rules and federal law by receiving more than \$26,955 of outside earned income in 2013.
6. Representative Mullin may have violated House rules and standards of conduct by being personally involved in endorsing services pursuant to outside employment.
7. Representative Mullin may have violated House rules by receiving compensation for his service as an officer or as a board member of the plumbing companies.

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8. The Board recommends that the Committee on Ethics further review the allegations concerning the outside earned income because there is substantial reason to believe that the income Representative Mullin received exceeded the outside earned income limit.
9. The Board recommends that the Committee on Ethics further review the allegation concerning Representative Mullin endorsing services because there is substantial reason to believe that Representative Mullin appeared in commercials for an outside employer while serving as a Member of Congress.
10. The Board recommends that the Committee on Ethics further review the allegation concerning Representative Mullin serving as a compensated officer or board member because there is substantial reason to believe that Representative Mullin received compensation for the services he provided as an officer or board member of the plumbing companies.

B. Jurisdictional Statement

11. The allegations that are the subject of this review concern Representative Markwayne Mullin, a Member of the United States House of Representatives for the 2nd District of Oklahoma. The Resolution the United States House of Representatives adopted creating the Office of Congressional Ethics (“OCE”) directs that, “[n]o review shall be undertaken . . . by the board of any alleged violation that occurred before the date of adoption of this resolution.”¹ The House adopted this Resolution on March 11, 2008. Because the conduct under review occurred after March 11, 2008, the OCE has jurisdiction in this matter.

C. Procedural History

12. The OCE received a written request for a preliminary review in this matter signed by at least two members of the Board on August 27, 2013. The preliminary review commenced on August 28, 2013.² The preliminary review was scheduled to end on September 26, 2013.
13. At least three members of the Board voted to initiate a second-phase review in this matter on September 26, 2013. The second-phase review commenced on September 27, 2013.³ The second-phase review ended on November 10, 2013.
14. The Board voted to refer this matter to the Committee on Ethics and adopted these findings on December 12, 2013.

¹ H. Res. 895, 110th Cong. §1(e), as amended (the “Resolution”).

² A preliminary review is “requested” in writing by members of the Board of the OCE. The request for a preliminary review is “received” by the OCE on a date certain. According to the Resolution, the time frame for conducting a preliminary review is thirty days from the date of receipt of the Board’s request.

³ According to the Resolution, the Board must vote on whether to conduct a second-phase review in a matter before the expiration of the thirty-day preliminary review. If the Board votes for a second-phase, the second-phase begins when the preliminary review ends. The second-phase review does not begin on the date of the Board vote.

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15. This report and findings were transmitted to the Committee on Ethics on December 23, 2013.

D. Summary of Investigative Activity

16. The OCE requested and received testimonial and, in some cases, documentary information from the following sources:
 - (1) Representative Markwayne Mullin;
 - (2) Mullin Plumbing Accountant; and
 - (3) Mullin Plumbing Chief Financial Officer (“Mullin Plumbing CFO”).

II. REPRESENTATIVE MULLIN APPEARED IN COMMERCIALS FOR PLUMBING COMPANIES AND RECEIVED INCOME FROM THOSE COMPANIES

A. Laws, Regulations, Rules, and Standards of Conduct

Outside Earned Income Limit

17. *The Ethics in Government Act provides that “a Member . . . may not in any calendar year have outside earned income attributable to such calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year.”⁴*
18. *Pursuant to House Rule 25, clause 1(a)(1), “a Member, Delegate, Resident Commissioner, officer, or employee of the House may not . . . (1) have outside earned income attributable to a calendar year that exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of that calendar year.”*
19. *“[T]he outside earned income limit for House Members, officers, and employees paid at or above the senior staff rate for CY 2013 remains \$26,955.”⁵*
20. *The House Ethics Manual states that “[t]he annual limitation applies to compensation for personal services (termed ‘earned income’), but not to moneys received from ownership or other investments of equity (so-called ‘unearned income’). In this regard, Advisory Opinion No. 13 emphasizes that the ‘real facts’ of a particular case would control as to whether moneys received would be deemed earned income:*

⁴ 5 U.S.C. app. 4 § 501(a)(1).

⁵ Memorandum from Committee on Ethics for All Members, Officers, and Employees Regarding the 2013 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees, dated January 24, 2013 (“2013 Outside Earned Income Memo”) (Exhibit 1 at 13-2392_0002-0006).

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[T]he label or characterization placed on a transaction, arrangement or payment by the parties may be disregarded for purposes of the Rule. Thus, if amounts received or to be received by a Member, officer, or employee are in fact attributable to any significant extent to services rendered by the Member, officer, or employee the characterization of such amounts as partnership distributive share, dividends, rent, interest, payment for a capital asset, or the like, will not serve to prevent the application of Rule 25 to such amounts

*For purposes of this Opinion, there are two types of income – earned and unearned. **If the compensation received is essentially a return on equity, then it would generally not be considered to be earned income. If the income is not a return on equity, then such income would generally be considered to be earned income and subject to the limitation.***⁶

21. *“[T]he definition of earned income in Rule 25, which excludes amounts received by a Member from a family controlled business ‘so long as the personal services actually rendered by the individual . . . do not generate a significant amount of income,’ was simply intended to assure Members, officers, and employees that they could **continue to make decisions and take actions necessary to manage or protect their equity in a family trade or business**, and would not be forced to divest themselves of their family business interests. As with any business, a Member, officer, or employee would not be required to allocate a share of the profits of the business as outside earned income when the facts and circumstances show that the income is **in reality a return on investment.**”*⁷
22. *“**Personal Service Businesses.** In businesses for which capital is not a material income-producing factor, the Advisory Opinion states that the entire share of profits is generally considered earned income, unless it can be shown that some income actually derives from a return on investment. **Even when the Member performs no personal services, it is presumed, lacking a strong showing to the contrary, that the Member’s share of profits from a service business is for attracting or retaining clients and thus is considered earned income.**”*⁸
23. *“**Close Corporations, Partnerships, and Unincorporated Businesses.** When a Member has an ownership interest and also performs some services, as in a close corporation, partnership, or unincorporated business, some of the profits might result from the personal services of the Member and therefore would be considered earned income. Advisory Opinion No. 13 (included in the appendices) states, ‘the determining factor is whether the Member’s personal services generate significant income for the business.’ The Member may protect his or her interest and investments in the business through general oversight and management of investments without generating earned income. However, fees, compensation, or salaries from such a business are earned income. **When the Member’s principal***

⁶ House Ethics Manual (2008) at 231 (emphasis added).

⁷ *Id.* at 369 (emphasis added).

⁸ *Id.* at 231 (second emphasis added).

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function is to refer or to help retain clients, then ‘the Member would be deemed to be rendering income-producing services, even though the actual time involved might be minimal.’”⁹

Compensated Officer and Board Member

24. *House Rule 25, clause 2(d) states that “[a] Member, Delegate, Resident Commissioner, officer, or employee of the House may not . . . serve for compensation as an officer or member of the board of an association, corporation, or other entity”*

Personal Endorsement of Services for Outside Employment

25. *Pursuant to House Rule 23, clause 3, a Member “may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress.”*
26. *According to the House Ethics Manual, “[a]t times a Member or staff person wishes to engage in outside employment that involves the selling of goods or services. On the basis of the rules and standards of conduct . . . a Member should not undertake any outside employment that would involve the Member personally in the selling or endorsement of any goods or services.”¹⁰*

B. Representative Mullin is Affiliated with Five Plumbing Companies

27. Representative Mullin is affiliated with five companies that provide plumbing services in Oklahoma.
28. Based on the statements of Representative Mullin and Mullin Plumbing Accountant, the plumbing companies are organized as subchapter S corporations and appear to provide personal services.¹¹
29. Specifically, the companies and services provided are as follows:
- a. **Mullin Plumbing, Inc.** - provides residential and commercial plumbing services.¹²
 - b. **Mullin Plumbing West Division, Inc.** - provides residential and commercial plumbing services similar to Mullin Plumbing, Inc., but operates in the Oklahoma City region of the state.¹³

⁹ *Id.* at 232 (emphasis added).

¹⁰ *Id.* at 188.

¹¹ Memorandum of Interview of Representative Markwayne Mullin, October 10, 2013 (“Mullin MOI”) (Exhibit 2 at 13-2392_0008); Memorandum of Interview of Mullin Plumbing Accountant, October 4, 2013 (“Accountant MOI”) (Exhibit 3 at 13-2392_0016).

¹² Mullin MOI (Exhibit 2 at 13-2392_0008).

¹³ Accountant MOI (Exhibit 3 at 13-2392_0017).

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- c. **Mullin Plumbing New Construction, Inc.** - provides construction services for residential and commercial plumbing purposes.¹⁴
 - d. **Mullin Services, Inc.** - provides residential and commercial heating and air conditioning repair services.¹⁵
 - e. **Mullin Environmental, Inc.** - provides water and waste treatment services.¹⁶
30. Representative Mullin wholly owns four of the five companies listed above.¹⁷
31. Mullin Plumbing West Division, Inc. is wholly owned by Representative Mullin's wife.¹⁸
32. According to Representative Mullin, the plumbing companies are a family business founded by his father, but when his father became ill years ago, Representative Mullin became responsible for operations.¹⁹ Currently, the companies operate statewide and have more than 120 employees.²⁰
33. Representative Mullin has less involvement in the day-to-day operations of the plumbing companies since his election to Congress in 2012, according to Representative Mullin, Mullin Plumbing CFO, and Mullin Plumbing Accountant.²¹
34. However, as explained below, since becoming a Member of Congress, Representative Mullin continues to (1) advertise for the companies; and (2) serve as an officer or board member for the companies.

C. Representative Mullin Personally Advertises for the Plumbing Companies

35. Representative Mullin has been the self-described "face and voice" of the plumbing companies for more than ten years.²² Since the time that he became a Member of Congress in 2013, Representative Mullin has continued to personally advertise for the

¹⁴ Mullin MOI (Exhibit 2 at 13-2392_0011).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*; Accountant MOI (Exhibit 3 at 13-2392_0016-0019); Memorandum of Interview of Mullin Plumbing Chief Financial Officer ("CFO MOI") (Exhibit 4 at 13-2392_0022). Representative Mullin also owns the following companies that do not provide plumbing services: Mullin Properties LLC; Mullin Properties West Division, LLC; and Mullin Farms. See Mullin MOI (Exhibit 2 at 13-2392_0011-0012).

¹⁸ Mullin MOI (Exhibit 2 at 13-2392_0008, 13-2392_0010); CFO MOI (Exhibit 4 at 13-2392_0022); Accountant MOI (Exhibit 3 at 13-2392_0017); Assignment of Mullin Plumbing West Division, Inc. to Christie Renee Mullin, December 31, 2012 (Exhibit 5 at 13-2392_0025).

¹⁹ Letter from Representative Mullin to Chairman Goss and Co-Chair Skaggs, dated November 8, 2013 (Exhibit 6 at 13-2392_0027-0028).

²⁰ *Id.*

²¹ CFO MOI (Exhibit 4 at 13-2392_0021-0022); Accountant MOI (Exhibit 3 at 13-2392_0016); Mullin MOI (Exhibit 2 at 13-2392_0008).

²² Mullin MOI (Exhibit 2 at 13-2392_0009).

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companies via: (1) a weekly radio talk show; (2) radio commercials; (3) television commercials; and (4) internet video advertisements.

Weekly Radio Talk Show

36. Representative Mullin hosts a weekly hour-long radio show in Oklahoma promoting the plumbing companies called “House Talk with Markwayne Mullin.”²³

House Talk with Markwayne Mullin

House Talk with Markwayne Mullin

Saturday 8am-9am

Save big bucks by doing home improvement projects yourself or by finding the right contractor for your job. Join Markwayne Mullin of Mullin Plumbing and other contracting experts as they answer your home repair and remodeling questions.

About Markwayne Mullin

Markwayne Mullin is the president and owner of Mullin Plumbing, Mullin Pumping, Morris Plumbing, The Red Rooter, Mullin Properties, and Oklahoma Fight Club. These enterprises provide plumbing services to the better part of northeast Oklahoma, from Tulsa to Oklahoma City, and the surrounding areas.

Markwayne is also involved in many organizations and leadership programs including both the Chamber of Commerce and Better Business Bureau for Broken Arrow as well as Oklahoma City.

37. The show is advertised as a way to “[s]ave big bucks by doing home improvement projects yourself or by finding the right contractor for your job.”²⁴ Listeners are asked to “[j]oin Markwayne Mullin of Mullin Plumbing and other contracting experts as they answer your home repair and remodeling questions.”²⁵

Radio Commercials

38. Representative Mullin told the OCE that he has recorded radio commercials for the plumbing companies since becoming a Member of Congress and he plans to record additional commercials.²⁶
39. The OCE requested that Representative Mullin provide all radio commercials in which he appeared for the companies that were broadcast in 2013.
40. According to the information that Representative Mullin provided to the OCE, he appeared in sixteen separate radio commercials broadcast between January and

²³ *Id.*; KRMG Radio Website, <http://www.krmg.com/news/entertainment/house-talk-markwayne-mullin/n8Ys/>; Mullin Plumbing Website, <http://mullinplumbing.com/icalrepeat.detail/2013/12/07/1051/house-talk-radio>.

²⁴ KRMG Radio Website, <http://www.krmg.com/news/entertainment/house-talk-markwayne-mullin/n8Ys/>; Mullin Plumbing Website, <http://mullinplumbing.com/icalrepeat.detail/2013/12/07/1051/house-talk-radio>.

²⁵ KRMG Radio Website, <http://www.krmg.com/news/entertainment/house-talk-markwayne-mullin/n8Ys/>; Mullin Plumbing Website, <http://mullinplumbing.com/icalrepeat.detail/2013/12/07/1051/house-talk-radio>.

²⁶ Mullin MOI (Exhibit 2 at 13-2392_0009).

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September of 2013.²⁷ Twelve of the commercials were recorded in 2013 based on the dates provided.²⁸

Television Commercials

41. Representative Mullin told the OCE that he is not certain whether he has filmed any television commercials for the plumbing companies in 2013, but he recalled filming a commercial in November 2012.²⁹
42. The OCE requested that Representative Mullin provide all television commercials in which he appeared for the plumbing companies that were broadcast in 2013.
43. Representative Mullin provided the OCE with more than thirty commercials in which he appeared for the plumbing companies, but the filming date of most of the commercials is unclear.³⁰ Three of the television commercials may have been filmed in April 2013, based on the 2013 dates included in the titles of the recordings.³¹

²⁷ Email from Karl Ahlgren to Kedric Payne, dated September 24, 2013 (Exhibit 7 at 13-2392_0030).

²⁸ *Id.*

²⁹ Mullin MOI (Exhibit 2 at 13-2392_0009).

³⁰ Collection of Mullin Plumbing Television Commercials Broadcast in 2013 (on file with OCE).

³¹ *Id.* The following videos appear to have been filmed in 2013: Video MP-AC-Cleaning-4_13.mp4 (stating “spring is here”); MP-RHEEM-4_2013.mp4; and MP-WATER-4_2013.mp4.

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Internet Video Advertisements

44. The plumbing companies share one website that, as of November 2013, featured thirteen videos of Representative Mullin advertising the companies' services.³²



45. Based on the information before the OCE, it is unclear whether the internet videos were created since Representative Mullin became a Member of Congress. However, as stated above, Representative Mullin told the OCE that he continues to be “the face” of the plumbing companies, indicating that it is possible that the videos were filmed after he began his term in Congress.
46. Representative Mullin’s commercials on radio, television, and the internet include his personal endorsement of the services of the plumbing companies. The endorsements appear to be an effort to attract or retain clients for the plumbing companies.

D. Representative Mullin Received Income from the Plumbing Companies

47. In 2013, Representative Mullin received income from three of the plumbing companies, which he characterizes as “dividends” or “distributions.”³³ He does not own one of the companies that provided a “distribution.”

³² See Mullin Plumbing Website, <http://mullinplumbing.com/>.

³³ Letter from Mullin Plumbing CFO, dated September 23, 2013 (“CFO Letter”) (Exhibit 8 at 13-2392_0032); Mullin MOI (Exhibit 2 at 13-2392_0032).

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Income from Companies Representative Mullin Owns

48. From January 1, 2013 to September 2013, Representative Mullin received the following payments from companies of which he is the sole owner:³⁴
- | | |
|-------------------------------|--------------|
| a. Mullin Plumbing, Inc. | \$302,212.71 |
| b. Mullin Environmental, Inc. | \$3,542.91 |
49. Specifically, Representative Mullin receives monthly and quarterly payments from Mullin Plumbing, Inc. Mullin Plumbing Accountant stated that the purpose of the “distributions” is for Representative Mullin to have money for living expenses, tax payments, and for payments to his father to purchase the business.³⁵
50. Mullin Plumbing Accountant described the monthly disbursements of \$6,500 from Mullin Plumbing, Inc. to Representative Mullin as being “in lieu of a salary.”³⁶ He told the OCE that he did not recall whether the monthly payments also occurred prior to 2013.³⁷ He said that prior to 2013, Representative Mullin received a paycheck from Mullin Plumbing for his role as owner, manager, and Chief Executive Officer.³⁸
51. Representative Mullin reported receiving a salary of \$91,731 from “Mullin Plumbing Inc.” in calendar year 2012.³⁹
52. When asked why the salary arrangement changed, Mullin Plumbing Accountant said that Representative Mullin did not believe that a salary was proper because he was not working the same as he had in the past.⁴⁰
53. Representative Mullin told the OCE that Mullin Plumbing CFO determines the amount that he receives from Mullin Plumbing, Inc. and that he is paid based on a percentage of the company’s funds and the quarterly taxes of the company.⁴¹
54. Regarding the income from Mullin Environmental, Inc., Representative Mullin, Mullin Plumbing CFO, and Mullin Plumbing Accountant did not know how the amount of the distribution was determined or why it was given to Representative Mullin.⁴²

³⁴ CFO Letter (Exhibit 8 at 13-2392_0032).

³⁵ Accountant MOI (Exhibit 3 at 13-2392_0016).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Calendar Year 2012 Financial Disclosure Statement of Representative Markwayne Mullin, dated May 14, 2013 (Exhibit 9 at 13-2392_0034-0040).

⁴⁰ *Id.*

⁴¹ Mullin MOI (Exhibit 2 at 13-2392_0009).

⁴² *Id.* at 13-2392_0011; CFO MOI (Exhibit 4 at 13-2392_0022-0023); Accountant MOI (Exhibit 3 at 13-2392_0018).

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Income from Company that Representative Mullin Does Not Own

55. From January 1, 2013 to September 2013, Representative Mullin received income totaling \$300,167.84 from Mullin Plumbing West Division, Inc.⁴³
56. Although Mullin Plumbing West is wholly owned by Representative Mullin's wife, he characterized the payments to him as "distributions" from the company.⁴⁴ He received the payments in checks payable to him.⁴⁵
57. When the OCE asked Representative Mullin why he received a distribution from a company that he does not own, he stated that he is married and "everything is joint."⁴⁶
58. He told the OCE that ownership of the company was transferred to his wife based on advice that he received from the Committee on Ethics in November 2012 after he became a member-elect.⁴⁷ He stated that the Committee on Ethics told him that there was a potential conflict of interest associated with his ownership of Mullin Plumbing West Division, Inc. because the company provides plumbing services to Tinker Air Force Base. He said that the company is occasionally a subcontractor on the base.⁴⁸
59. Based on the information before the OCE, Representative Mullin received over \$600,000 of income from the plumbing companies in 2013.⁴⁹

E. Representative Mullin Serves as an Officer or Board Member for the Plumbing Companies

60. In addition to advertising for the plumbing companies, Representative Mullin provides various services in his capacity as an officer or board member.
61. Representative Mullin told the OCE that he is a board member of the companies and that he has not been President and Chief Executive Officer of the companies since December 2012.⁵⁰ However, Mullin Plumbing CFO and Mullin Plumbing Accountant told the OCE that Representative Mullin is currently the President.⁵¹ Mullin Plumbing Accountant produced Oklahoma Annual Business Activity Tax Returns for calendar year 2012 that list Representative Mullin as President.⁵² The OCE was unable to confirm whether Representative Mullin changed his title in 2013.

⁴³ CFO Letter (Exhibit 8 at 13-2392_0032).

⁴⁴ Mullin MOI (Exhibit 2 at 13-2392_0010).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ CFO Letter (Exhibit 8 at 13-2392_0032).

⁵⁰ Mullin MOI (Exhibit 2 at 13-2392_0008).

⁵¹ CFO MOI (Exhibit 4 at 13-2392_0022).

⁵² 2012 Oklahoma Annual Business Activity Tax Return for Mullin Plumbing West Division, Inc.; 2012 Oklahoma Annual Business Activity Tax Return for Mullin Services, Inc.; 2012 Oklahoma Annual Business Activity Tax

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62. Representative Mullin described his duties as a board member as communicating with his management team whenever they need him.⁵³ He said that as a small business owner, he is involved in every aspect of the business.⁵⁴
63. Specifically, Representative Mullin estimated that he communicates with Mullin Plumbing CFO at least once per week.⁵⁵ Mullin Plumbing CFO also estimated that she communicates with Representative Mullin approximately once per week by text message or telephone call.⁵⁶ Mullin Plumbing CFO estimated that she communicates with Representative Mullin in person once per month in the office in Tulsa, Oklahoma.
64. The communications between Representative Mullin and Mullin Plumbing CFO generally concern the finances of the company, including monthly finances, bank account status, and insurance renewals.⁵⁷
65. Representative Mullin's Accountant described Representative Mullin's role with the Mullin Plumbing companies as being overseer and manager.⁵⁸
66. Based on the information before the OCE, Representative Mullin may have received earned income for his service as an officer and as a board member. Specifically, the income that Representative Mullin receives from the plumbing companies may be earned income because of services he provides to attract and retain clients. Also, the income from Mullin Plumbing West Division, Inc. may be earned income because the "distribution" is from a company that he does not own.⁵⁹

F. Representative Mullin Received Advice from the Committee on Ethics

67. Soon after Representative Mullin was elected in November 2012, he requested advice from the Committee on Ethics concerning his advertisements for the plumbing companies, but he may not have provided the Committee on Ethics a complete and accurate statement of all material facts related to: (1) advertisements produced after he became a Member of Congress; and (2) income he received from his wife's company.

Return for Mullin Environmental, Inc.; 2012 Oklahoma Annual Business Activity Tax Return for Mullin Plumbing, Inc. (Exhibit 10 at 13-2392_0042-0046).

⁵³ Mullin MOI (Exhibit 2 at 13-2392_0010); CFO MOI (Exhibit 4 at 13-2392_0022).

⁵⁴ Mullin MOI (Exhibit 2 at 13-2392_0009).

⁵⁵ *Id.*

⁵⁶ CFO MOI (Exhibit 4 at 13-2392_0022).

⁵⁷ *Id.*

⁵⁸ Accountant MOI (Exhibit 3 at 13-2392_0017-0018).

⁵⁹ We note that given the substantial services rendered by Representative Mullin for the plumbing companies, federal tax law may require that a portion of the payments received by Representative Mullin be treated as wages as opposed to distributions for federal tax law purposes. See 26 U.S.C. §§ 3111, 3121, 3301, and 3306; 26 C.F.R. §§ 31.3101-1 *et seq.*, and 31.3301-1 *et seq.* We also note that wages are considered *per se* outside earned income pursuant to House Rule 25, cl. 4(d)(1).

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68. On November 26, 2012, then-Representative-elect Mullin met with staff of the Committee on Ethics to discuss his business interests and advertisements for the plumbing companies.⁶⁰
69. The Committee's "informal, staff-level guidance regarding the advertisements was that the advertisements did not need to be removed from circulation provided that: (1) the business was not one that offered fiduciary services, (2) **the advertisements in question were filmed prior to then-Representative-elect Mullin winning election to the U.S. House of Representatives**, and (3) the advertisements made no reference to then-Representative-elect Mullin's position as a Member of Congress."⁶¹
70. Although the advice states that advertisements filmed prior to Representative Mullin's election could continue to be circulated, the Committee on Ethics noted that "our guidance did not address the question of whether then-Representative-elect Mullin could make new advertisements for the company."⁶²
71. When the OCE asked Representative Mullin whether he had any discussions with the Committee on Ethics concerning whether he could film new commercials, he said that he did not recall any such discussions.⁶³ He then stated that if the Committee on Ethics would have told him that he could not film new commercials for the companies he would have told them that was impossible.⁶⁴
72. Representative Mullin told the OCE that he transferred the ownership of Mullin Plumbing West Division, Inc. to his wife based on advice from the Committee on Ethics that a conflict of interest may arise if he maintained ownership.⁶⁵ Specifically, he was told that a conflict of interest could arise because Mullin Plumbing West Division, Inc. is a subcontractor for a military base and he is a Member of Congress.⁶⁶ Assuming that he accurately described to the OCE the advice he was given, it is unlikely that the Committee on Ethics knew that he would transfer ownership of the company to his wife yet continue to receive payments from the company, because any potential conflict of interest would presumably still exist due to his direct receipt of company profits.
73. The Board notes that "[a]nyone who acts in good faith in accordance with a written advisory opinion from the Committee may not then be investigated by the Committee

⁶⁰ Email from Tom Rust to Karl Ahlgren, dated September 19, 2013 (Exhibit 11 at 13-2392_0048-0049).

⁶¹ *Id.* (emphasis added).

⁶² *Id.*

⁶³ Mullin MOI (Exhibit 2 at 13-2392_0012).

⁶⁴ *Id.*

⁶⁵ *Id.* at 13-2392_0010.

⁶⁶ *Id.*

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based on the conduct addressed in the opinion”⁶⁷ However, in this matter, Representative Mullin received informal, oral guidance, and that guidance may have been based on his incomplete statement of material facts.

74. As a result, there is substantial reason to believe that Representative Mullin’s income from the plumbing companies and his advertisements for the companies were not conducted in compliance with formal advice from the Committee on Ethics.

III. CONCLUSION

75. Representative Mullin owns and continues to be significantly involved in various plumbing companies, serving as a board member, and possibly an officer, while personally advertising on the radio, television, and the internet for those companies.
76. He received income totaling more than \$600,000 from these plumbing companies in 2013. A portion of the income he received was characterized as a “distribution” from a company that he does not own, but for which he serves as possibly an officer and as a board member.
77. Based on the facts before the OCE, there is substantial reason to believe that the income he received is earned income because: (1) his share of the profits from the plumbing companies are, at least in significant part, for attracting or retaining clients; and (2) his “distributions” from the company his wife owns are not a return on any equity that he holds.
78. The Board recommends that the Committee on Ethics further review the allegations concerning the outside earned income because there is substantial reason to believe that the income Representative Mullin received exceeded the outside earned income limit in 2013.
79. The Board recommends that the Committee on Ethics further review the allegation concerning Representative Mullin endorsing services because there is substantial reason to believe that Representative Mullin appeared in commercials for an outside employer while serving as a Member of Congress.
80. The Board recommends that the Committee on Ethics further review the allegation concerning Representative Mullin serving as a compensated officer and board member because there is substantial reason to believe that Representative Mullin received compensation for the services he provided as an officer or board member of the plumbing companies.

⁶⁷ House Ethics Manual at 21.