



# A Matter of Trust

**HOW THE REVOLVING DOOR UNDERMINES  
PUBLIC CONFIDENCE IN GOVERNMENT—  
AND WHAT TO DO ABOUT IT**

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**Revolving Door Working Group** October 2005

[www.revolvingdoor.info](http://www.revolvingdoor.info)

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“The aim of every political Constitution is or ought to be first to obtain for rulers, men who possess most wisdom to discern, and most virtue to pursue the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous, whilst they continue to hold their public trust.”

— James Madison, *Federalist Paper* No. 57

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## **The Revolving Door Working Group** ([www.revolvingdoor.info](http://www.revolvingdoor.info))

... committed to increasing public confidence in government

This paper was conceived and distributed by the Revolving Door Working Group, a network founded in 2005 to promote ethics in public service and an arm's length relationship between the federal government and the private sector. The Revolving Door Working Group investigates, exposes and seeks remedies for conflict-of-interest problems such as loopholes in revolving door laws, inadequate disclosure and other issues associated with the improper influence of the regulated community over the regulatory process.

Members of the Revolving Door Working Group have different ideas about how best to counter disproportionate industry influence on the formulation of public policy, and therefore on what measures will most effectively address the concerns raised in this paper about problems with the revolving door. However, the group endorses this paper's recommendations as necessary initial steps toward closing loopholes and tightening ethics laws so as to ensure integrity and fairness in federal government policymaking.

The authors of this paper wish to thank the following individuals who commented on draft versions: Beth Burrows, Charlie Cray, Sarah Diehl, George Draffan, Jane Rissler and Jeff Ruch. The final version, however, does not necessarily reflect all of their suggestions.

### **Members of the Revolving Door Working Group include:**

- American Corn Growers Association
- Center for Corporate Policy
- Center for Environmental Health
- Center for Science in the Public Interest
- Center of Concern/Agribusiness Accountability Initiative
- Common Cause
- Corporate Research Project of Good Jobs First
- Edmonds Institute
- Government Accountability Project
- Institute for Agriculture and Trade Policy
- Organization for Competitive Markets
- Project On Government Oversight
- Public Citizen
- Public Employees for Environmental Responsibility
- Revolt of the Elders

For the names of additional members that signed on after the publication of this report, see [www.revolvingdoor.info](http://www.revolvingdoor.info).

# Executive Summary

**PUBLIC CONFIDENCE IN THE INTEGRITY OF THE FEDERAL GOVERNMENT** is alarmingly low. While numerous factors contribute to this phenomenon, one of the most potent is the widespread belief that government has been taken over by powerful special interests. Such a belief is not unfounded. Special interests—which these days mainly mean large corporations and their trade associations—spend huge sums on campaign contributions and lobbying.

Yet money is not the only way business exercises its influence; it also relies on the movement of certain people into and out of key policymaking posts in the executive and legislative branches. This movement, known as the *revolving door*, increases the likelihood that those making policies are sympathetic to the needs of business—either because they come from that world or they plan to move to the private sector after finishing a stint with government.

The revolving door is not new, but it seems to have become much more common. Recent administrations have appointed unprecedented numbers of key officials from the ranks of corporate executives and business lobbyists. At the same time, record numbers of members of Congress are becoming corporate lobbyists after they leave office, and it has become routine for top executive-branch officials to leave government and go to work for companies they used to regulate. As more and more officials are making policies affecting companies for which they used to work or will soon do so, actual and potential conflicts of interest are proliferating.

It is to address this problem that the Revolving Door Working Group was created and that this report was written. Our aim is twofold: to educate the public about the workings of the revolving door and the inadequacies of the current regulatory framework that governs it; and to propose a set of new measures to strengthen that framework.

This report first sets out to fill the need for a systematic overview of the various forms of the revolving door. These include:

- **THE INDUSTRY-TO-GOVERNMENT REVOLVING DOOR**, through which the appointment of corporate executives and business lobbyists to key posts in federal agencies establishes a pro-business bias in policy formulation and regulatory enforcement. We give some historical background on this practice (sometimes known as the “reverse revolving door”) and then detail the growing extent to which it has occurred in recent years in agencies such as the Occupational Safety and Health Administration, the Environment Protection Agency and the Departments of Agriculture, Energy and Defense.

- **THE GOVERNMENT-TO-INDUSTRY REVOLVING DOOR**, through which public officials move to lucrative private-sector positions in which they may use their government experience to unfairly benefit their new employer in matters of federal procurement and regulatory policy. We include brief profiles of some of the most egregious cases of recent years, including that of Darleen Druyun, who was found guilty of manipulating Defense Department procurement decisions to benefit Boeing while she was negotiating a job with the company.
- **THE GOVERNMENT-TO-LOBBYIST REVOLVING DOOR**, through which former lawmakers and executive-branch officials become well-paid advocates and use their inside connections to advance the interests of corporate clients. We look at the statistics on the rush to K Street while also profiling some brazen examples, such as Rep. James Greenwood, who apparently lost interest in a planned investigation of the pharmaceutical industry after he received an offer to head the leading biotechnology trade association.

This paper argues that there are at least six important reasons why the public should pay more attention to the revolving door:

- It can provide a vehicle for public servants to use their office for personal or private gain at the expense of the American taxpayer;
- The revolving door casts grave doubts on the integrity of official actions and legislation. A Member of Congress or a government employee could well be influenced in his or her official actions by promises of a future high-paying job from a business that has a pecuniary interest in the official's actions while in government. Even if the official is not unduly influenced by promises of future employment, the *appearance* of undue influence itself casts aspersions on the integrity of the federal government;
- It can provide some government contractors with unfair advantages over their competitors, due to insider knowledge that can be used to the benefit of the contractor, and potentially to the detriment of the public interest;
- The former employee may have privileged access to government officials. Tapping into a closed network friends and colleagues built while in office, a government employee-turned-lobbyist may well have access to power brokers not available to others. In some cases, these networks could involve prior obligations and favors. Former Members of Congress even retain privileged access to the Congressional gym, dining hall and floors of Congress.
- It has resulted in a highly complex but ultimately ineffective framework of ethics and conflict-of-interest regulations. Enforcing those regulations has become a virtual industry within the government, costing significant resources but rarely resulting in sanctions or convictions of those accused of violating the rules. As a result, ethics rules offer little or no deterrent to those who might violate the public trust; and
- The appearance of impropriety exacerbates public distrust in government, ultimately causing a decline in civic participation. It also demoralizes honest government workers who do not use their government jobs as a stepping stone to lucrative employment government contractors or lobbying firms.



After describing the various types of revolving-door conflicts of interest and pointing out the weaknesses in the existing rules framework, the paper proposes a set of policy reforms. These remedies seek to enhance transparency, increase vigilance, and establish mechanisms to reduce impropriety (whether perceived or actual) by establishing appropriate boundaries between public service and the pursuit of private interests. Among the specific proposals are:

- consolidation of ethics oversight entities in the executive branch and in Congress;
- granting the consolidated entities greater oversight and enforcement powers;
- standardization of conflict-of-interest rules throughout the federal government;
- adoption of procedures that would allow the Office of Government Ethics to rule a person ineligible for a certain post if that person's employment background would tend to create frequent conflicts with the rule requiring impartiality on the part of federal employees;
- strengthening of recusal rules that bar appointees from handling matters involving their former employers in the private sector, including mandatory recusal on matters directly involving one's employers and clients during the 24-month period prior to taking office;
- monitoring of recusal agreements by the Office of Government Ethics;
- prohibiting, for a period of time, senior officials from seeking employment with contractors that may have significantly benefited from policies formulated by those officials;
- restricting the granting of waivers that allow public officials to negotiate future employment in the private sector while still in office;
- extending the period during which officials cannot engage in lobbying after leaving office and expanding the scope of prohibited activities;
- requiring federal officials to enter into a binding ethics "exit plan" when leaving the public sector to clarify what activities will be prohibited;
- revoking the special privileges granted to former members of Congress while they are serving as lobbyists; and
- improving the reporting and disclosure of recusal agreements, waivers, lobbyist reports and other ethics filings.

The paper's recommendations do not seek to disqualify all private-sector veterans from government service, nor do we suggest that federal officials be completely barred from moving to the business world. Yet there is clearly a need to strengthen the existing regulatory framework covering revolving-door activity and to tighten its enforcement. Doing so will go a long way toward restoring integrity to the federal government.

## Introduction:

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# The Revolving Door and Industry Influence On Public Policy

by **PETER O'DRISCOLL**, Center of Concern & **SCOTT AMEY**, Project On Government Oversight

**PUBLIC CONFIDENCE IN THE INTEGRITY OF THE FEDERAL GOVERNMENT** is alarmingly low, which raises fundamental questions about the effectiveness of our democratic process. According to a CBS News/*New York Times* poll in July 2004, 56 percent of the American people trust the government to do what is right only some of the time.<sup>1</sup> While many factors contribute to this mistrust, the same poll found that 64 percent of respondents believe “government is pretty much run by a few big interests looking out for themselves.” Public concerns about corporate influence on public policy pre-date the parade of accounting scandals that have brought down huge companies over the past four years. In September 2000, well before the Enron case broke, *Business Week* reported that nearly three quarters of the American people believed that corporations had too much control over their lives.<sup>2</sup>

These survey results strongly suggest that the success of efforts to restore public trust in government will hinge on reducing the disproportionate degree to which the private sector (also referenced in this paper as “corporations,” “business,” “industry” or “trade associations”) is able to influence the formulation and implementation of public policy. To this point, debate about breaking the grip of “special interests” on government has focused mostly on the corrosive influence of money on politics, leading to legislation to reform campaign finance. Yet, important as campaign contributions have been in increasing corporate influence on policy, it is now time to address other ways in which companies promote their own interests at the expense of the common good.

This paper explores various forms of a key mechanism by which corporate interests influence federal decision-making, especially with regard to regulatory policy and procurement choices. The mechanism is the revolving door—the movement of individuals back and forth between the private sector and the public sector. The revolving door takes three forms:

**THE INDUSTRY-TO-GOVERNMENT REVOLVING DOOR**, through which the appointment of corporate executives and business lobbyists to key posts in federal agencies establishes a pro-business bias in policy formulation and regulatory enforcement;

**THE GOVERNMENT-TO-INDUSTRY REVOLVING DOOR**, through which public officials move to lucrative private sector positions in which they may use their government experience and contacts to unfairly benefit their new employer in matters of federal procurement and regulatory policy; and

**THE GOVERNMENT-TO-LOBBYIST REVOLVING DOOR**, through which former lawmakers and executive-branch officials become well-paid advocates and use their inside connections to advance the interests of corporate clients.

All three forms of revolving-door industry access have become so common in recent years that it is often hard to determine where government ends and the private sector begins. This was illustrated several months ago in the case of Philip A. Cooney, a former lawyer and lobbyist for the American Petroleum Institute who went to work for the George W. Bush Administration. First, there was an uproar over the revelation that, while serving as chief of staff of the White House Council on Environmental Quality, Cooney repeatedly revised government scientific reports to obscure the connection between greenhouse-gas emissions and global warming. Cooney soon resigned from the federal government. It came as no surprise that his next position was with Exxon Mobil. This prompted the *New York Times* to editorialize that “it is surely a cause for dismay that the Bush administration has seen fit to embed so many former lobbyists in key policy or regulatory jobs where they can carry out their industry’s agenda from within.”<sup>3</sup>

This paper argues that there are at least six important reasons why the public should pay more attention to the revolving door:

- It can provide a vehicle for public servants to use their office for personal or private gain at the expense of the American taxpayer;
- The revolving door casts grave doubts on the integrity of official actions and legislation. A Member of Congress or a government employee could well be influenced in his or her official actions by promises of a future high-paying job from a business that has a pecuniary interest in the official’s actions while in government. Even if the official is not unduly influenced by promises of future employment, the *appearance* of undue influence itself casts aspersions on the integrity of the federal government;
- It can provide some government contractors with unfair advantages over their competitors, due to insider knowledge that can be used to the benefit of the contractor, and potentially to the detriment of the public interest;<sup>4</sup>



**According to a CBS News/New York Times poll in July 2004, 56 percent of the American people trust the government to do what is right only some of the time. While many factors contribute to this mistrust, the same poll found that 64 percent of respondents believe "government is pretty much run by a few big interests looking out for themselves."**

- The former employee may have privileged access to government officials. Tapping into a closed network of friends and colleagues established while serving in office, a government employee-turned-lobbyist may well have access to power-brokers not available to others. In some cases, these networks could involve prior obligations and favors. Former Members of Congress even retain privileged access to the Congressional gym, dining hall and floors of Congress.
- It has resulted in a highly complex but ultimately ineffective framework of ethics and conflict-of-interest regulations. Enforcing those regulations has become a virtual industry within the government, costing significant resources but rarely resulting in sanctions or convictions of those accused of violating the rules. As a result, ethics rules offer little or no deterrent to those who might violate the public trust; and
- The appearance of impropriety exacerbates public distrust in government, ultimately causing a decline in civic participation. It also demoralizes honest government workers who do not use their government jobs as a stepping stone to lucrative employment with government contractors or lobbying firms.

After describing the various types of revolving-door conflicts of interest and pointing out the weaknesses in the existing rules framework, the paper proposes a set of policy reforms. These remedies seek to enhance transparency, increase vigilance and establish mechanisms to reduce impropriety (whether perceived or actual) by establishing appropriate boundaries between public service and the pursuit of private interests. Among the specific proposals are:

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- improving the reporting and disclosure of recusal agreements, waivers, lobbyist reports and other ethics filings.

The paper’s recommendations do not seek to disqualify all private sector veterans from government service, nor do we suggest that federal officials be completely barred from moving to the business world. Yet there is a need to strengthen the existing regulatory framework covering revolving-door activity and to tighten its enforcement.

Given the strength of industry lobby groups and the continued influence of money on policy formulation, it will take great political courage for lawmakers and policymakers to follow the recommendations proposed in this paper. Those who champion public-interest reforms will risk losing access to corporate money. Over the coming months, the Revolving Door Working Group will be calling on legislators and the executive branch to implement the measures proposed below. The Group’s hope is that legislators and policymakers will recognize that the revitalization of public trust in elected, appointed, or career officials and the integrity of government are cornerstones upon which the maintenance of our democratic system depend. For that reason, now is the time to set aside personal and political calculations, and to act instead in the best interests of citizens, taxpayers and the country itself.



**This prompted the New York Times to editorialize that "it is surely a cause for dismay that the Bush administration has seen fit to embed so many former lobbyists in key policy or regulatory jobs where they can carry out their industry's agenda from within."**

**NOTE:** *The inclusion of specific names of individuals in this report is by no means an implicit allegation of illegal behavior on their part (except in those instances, which are noted, where guilt has been determined by legal proceedings). We believe, however, that these examples illustrate the extent to which there are at least potential conflicts of interest throughout the federal government. The aim of the Revolving Door Working Group is to make such conflicts rarities rather than the norm.*

## Chapter 1:

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# The Industry-to-Government Revolving Door

**How the appointment of industry veterans to key posts in federal agencies tends to create a pro-business bias in policy formulation and regulatory enforcement.**

**by PHILIP MATTERA, Corporate Research Project**

**THE REVOLVING DOOR**—the movement of individuals back and forth between positions in the private sector and in the federal government—takes a variety of forms. We begin with the practice of appointing corporate executives and business lobbyists to positions in the executive branch, where they may be inclined to mold federal policy in ways that benefit their former (and probably future) employers in the private sector. This phenomenon, which has not been widely studied, is usually called the *reverse revolving door*<sup>5</sup> to distinguish it from the more extensively analyzed movement of individuals from the executive branch and Congress into the private sector (addressed in Chapters 2 and 3).

The reverse revolving door raises serious concerns about excessive business influence over broad federal policymaking, especially in Cabinet departments and independent regulatory agencies responsible for corporate oversight. When a federal official is looking forward to a new position in the private sector, he or she may manipulate a contract or regulatory process to benefit a specific future employer. By contrast, a corporate executive or lobbyist joining the government might not only tend to favor a previous private-sector employer but might also be ideologically inclined to shape policy to benefit business in general, as opposed to the broader public interest. This is why the scant literature that does exist on the reverse revolving door is not primarily concerned with matters of individual conflicts of interest or ethics. Instead, the issue tends to be seen in terms of business influence over public policy.<sup>6</sup>

From another perspective, of course, the presence of business veterans in government posts is viewed as a reasonable outcome of the public sector's need to recruit individuals with relevant knowledge and real-world experience. Defenders of the reverse revolving door argue that it would be impossible to



staff specialized agencies such as the Nuclear Regulatory Commission if everyone who had worked for industry were disqualified. That may be so for certain technical jobs, but our concern is with high-level policymaking positions for which business experience is not necessarily a prerequisite.

This paper acknowledges that it may not be feasible to ban all appointments of businesspeople to executive branch posts, but it does raise two important concerns. The first is that the current preponderance of industry veterans (to the exclusion of other qualified candidates) in key positions is giving overall regulatory policy too much of a pro-business tilt. The second is that existing ethics rules (described in the Regulation section below) are not strong enough to guard against conflicts of interest that may arise when individual federal officials make policy that affects their former private-sector employers.

To set the stage for discussion, this chapter begins with some historical background on the reverse revolving door and an examination of its use during the current administration. This is followed by a review of the limited regulations currently on the books and by analysis of how those rules may be strengthened.

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## Historical Background

Business and commercial interests have exercised substantial influence over the federal government since the beginning of the Republic. The Founding Fathers, after all, were generally of the propertied class. While the top elected positions in the country—the Presidency and Vice Presidency—have been filled by individuals whose professional background tended to be more in the public than in the private sector, those officials have not hesitated, especially in the past hundred years, to appoint individuals with experience in the business world to various key positions in the executive branch. This practice can be traced most easily by looking at the history of Presidential Cabinets.

Examples of Cabinet appointments from the world of big business date back to the late 19th Century. In 1897, for instance, President McKinley named Lyman Gage, an executive of the First National Bank of Chicago, to be Secretary of the Treasury. Two decades later, that same position was given by President Harding to wealthy financier Andrew Mellon. He held the post for more than a decade (serving during the Coolidge and Hoover Administrations as well) and used the position to promote reductions in taxes on business.

Over the past 50 years, the Treasury Secretary has continued to be a post frequently awarded to members of the financial and corporate elite, during both Democratic and Republican administrations. Eisenhower, for example, gave the post to George Humphrey of the steel company M.A. Hanna. Kennedy chose C. Douglas Dillon, who had been with the Wall Street firm Dillon, Read. Reagan's first Treasury Secretary was Donald Regan, head of Merrill Lynch. More recently, George W. Bush twice turned to the corporate sector, first choosing Paul O'Neill of Alcoa and later replacing him with the current Treasury Secretary, John Snow, former chief executive of the railroad company CSX.

In keeping with the notion of a “military-industrial complex,” the position of Secretary of Defense is another top Cabinet post that has often been filled by corporate nominees rather than career military candidates. Eisenhower’s Secretary of Defense was Charles E. Wilson, the former General Motors president who in his confirmation hearing famously said: “For years I thought what was good for our country was good for General Motors, and vice versa. The difference did not exist.” Kennedy’s choice for the Defense post was Robert McNamara, who had just been named president of the Ford Motor Co. Reagan’s first Defense Secretary was Caspar Weinberger, who had joined the engineering giant Bechtel Corp. a few years earlier after a career in the public sector. Clinton’s second Defense Secretary, William Perry, had served as managing director of investment banking firm Hambrecht & Quist in addition to holding posts in the Pentagon. The current Defense Secretary, Donald Rumsfeld, also had spent time in the corporate sector—including stints as chief executive of G.D. Searle and later General Instrument—in addition to his work in previous administrations.

Among other Cabinet positions, the one that has probably been filled most frequently with a business person is, of course, Secretary of Commerce. The latest occupant of that post, Carlos Gutierrez, was previously chief executive of cereal giant Kellogg Co.

Looking at Cabinets as a whole, it was during the Reagan Administration that the overall business presence first became quite pronounced. In addition to Regan and Weinberger, the corporate veterans in Reagan’s Cabinet included Secretary of State Alexander Haig, who had become president of United Technologies after his military career. After Haig resigned in 1982, Reagan replaced him with George Shultz, who had headed Bechtel Corp. during the 1970s after two decades as an academic and federal official. Attorney General William French Smith had represented corporate clients at a major Los Angeles law firm. Commerce Secretary Malcolm Baldrige had been chairman of Scovill Inc. Secretary of Transportation Drew Lewis had been a management consultant as well as a major investor in real estate and energy properties. Even the Secretary of Labor, Raymond Donovan, had a business background as an executive of a New Jersey construction company.

The Reagan Administration’s recruitment of corporate figures was not limited to the Cabinet level. Key sub-Cabinet positions also went to business veterans.<sup>7</sup> For example, W. Kenneth Davis, who had been an executive at Bechtel, was named Deputy Secretary of Energy. Deputy Agriculture Secretary Richard Lyng had been president of the American Meat Institute trade association, and C.W. McMillan, USDA’s Assistant Secretary for Marketing and Inspection Services, had previously been employed as an executive of the National Cattlemen’s Association, a beef industry trade group and a precursor to today’s National Cattlemen’s Beef Association.

Reagan also put people from the business world in charge of the independent agencies specifically charged to regulate business.<sup>8</sup> The pattern was so clear that, in March 1981, investigative reporter Jeff Gerth of the *New York Times* published a piece headlined “Is Business Regulation Now in Friendly Hands?”<sup>9</sup> Gerth noted examples such as John Shad, vice chairman of brokerage house E.F. Hutton, who was named chairman of the Securities and Exchange Commission; Richard Pratt, a lobbyist for the thrift industry, who was named to head the Federal Home Loan Bank Board; Mark Fowler, a corporate lawyer representing broadcasting companies, who was named to head the Federal Communications Commission; and Philip Johnson, a corporate lawyer whose clients included the Chicago Board of Trade, who was named to head the Commodity Futures Trading Commission.



Appointments such as these set the stage for the Reagan Administration's campaign to weaken federal regulation of business. It must be said, however, that this campaign was also advanced by officials who did not come directly from the business world, including Environmental Protection Agency administrator Anne Gorsuch, who had previously been a state legislator in Colorado.

During the George H.W. Bush Administration, the presence of business figures in key regulatory positions was less pronounced. Efforts to weaken regulation were led by Vice President Quayle (who at one time was an executive of his family's publishing company). Quayle used an entity called the White House Council on Competitiveness to spearhead the campaign. In 1991 the Council's executive director, Allan Hubbard, was accused of a conflict of interest because of his financial holdings in corporations that stood to benefit from a deregulatory agenda. One of those companies was an Indiana chemical producer of which Hubbard was a half-owner.<sup>10</sup>

The Clinton Administration took a less antagonistic approach to regulation, and the people it appointed to key positions, including the heads of OSHA and the EPA, mostly had a public sector background. The person named to the top EPA post, Carol Browner, also had experience working for a public-interest organization.

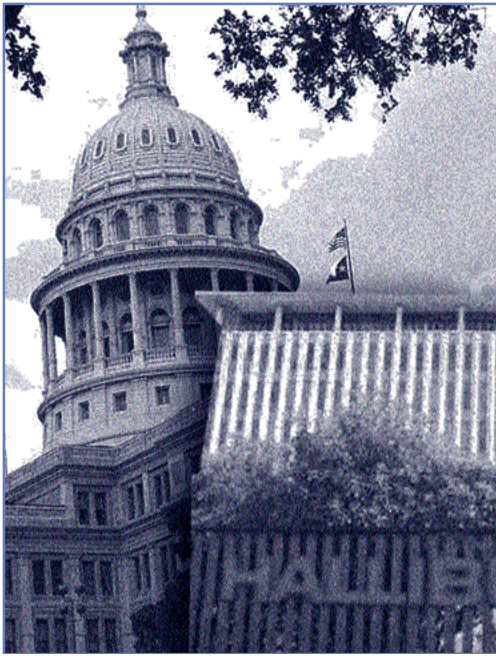
Yet Clinton's White House and Cabinet were not free from reverse-revolving-door appointments. The first chief of staff, Thomas McLarty, had been an executive with a natural-gas company in Arkansas. Commerce Secretary Ronald Brown had been a lobbyist with a firm that represented many corporate clients, as did the law firm where U.S. Trade Representative Mickey Kantor worked. Robert Rubin of Goldman Sachs was named economic advisor, and Roger Altman of the investment firm Blackstone Group was chosen to be Deputy Treasury Secretary. In 1995 Rubin took over as Treasury Secretary and continued to promote economic policies seen by many as overly favorable to the bond market. Veterans Affairs Secretary Togo West had worked for Northrop Corporation, and Clinton's last Commerce Secretary, Norman Mineta, had worked for Lockheed Martin.



**Eisenhower's Secretary of Defense was Charles E. Wilson, the former General Motors president who in his confirmation hearing famously said: "For years I thought what was good for our country was good for General Motors, and vice versa. The difference did not exist."**

## **Bush II: Business Veterans Reach New Levels of Dominance**

The practice of reverse-revolving-door appointments has become more frequent during the George W. Bush Administration. The elevation of George W. Bush and Dick Cheney to the two highest posts in the land could itself be seen as a significant case of the reverse revolving door. Bush, after all, spent much of his career as a businessman in the oil & gas industry and then as a part-owner of the Texas Rangers baseball team. He had an M.B.A., to boot. Bush had not risen to great heights in the corporate world before running for governor of Texas, but he had clearly been shaped by that world.



**The elevation of George W. Bush and Dick Cheney to the two highest posts in the land could itself be seen as a significant case of the reverse revolving door...Bush had not risen to great heights in the corporate world before running for governor of Texas, but he had clearly been shaped by that world. Cheney had spent five years as the chief executive of the controversial Halliburton Co. before being chosen as Bush's running mate in 2000**

Cheney, of course, had spent five years as the chief executive of the controversial Halliburton Co. before being chosen as Bush's running mate in 2000. Before that he had held positions with the Nixon and Ford administrations, had represented Wyoming in the House (during which time he was an aggressive advocate of business interests) and had served as the first President Bush's Secretary of Defense. Cheney continued to receive deferred compensation from Halliburton after taking office as Vice President.

It thus came as no surprise that the Bush-Cheney Administration came to be populated by many business veterans. Bush chose as his chief of staff Andrew Card, who had been a vice president of General Motors and a lobbyist for the auto industry (as well as the first President Bush's Transportation Secretary). In addition to selecting Alcoa CEO Paul O'Neill to head Treasury and one-time corporate executive Donald Rumsfeld to run Defense, Bush chose oil & gas executive Donald Evans as Secretary of Commerce and Anthony Principi, an executive with a medical services company, to be Secretary of Veterans Affairs. Secretary of Labor Elaine Chao had been employed by several large banks in addition to her work in the public sector. National Security Advisor (and now Secretary of State) Condoleezza Rice was not a corporate executive but she was on the boards of Chevron (which had named an oil tanker after her) and Charles Schwab.

The same pattern of appointments began to emerge in key regulatory spots. Harvey Pitt, a corporate lawyer with close ties to the securities industry, was named chairman of the Securities and Exchange Commission. J. Howard Beales III, an economist who served as a consultant to R.J. Reynolds Tobacco when its advertising practices were being scrutinized, was appointed the consumer-protection chief of the Federal Trade Commission. Bush chose as his regulation czar (i.e., head of the Office of Information and Regulatory Affairs) John Graham, an academic whose think tank, the Harvard Center for Risk Analysis, has received generous contributions from blue-chip corporations and industry groups because of its critical approach to regulatory policy.

Almost exactly twenty years after the Jeff Gerth article cited above, the New York Times published a similar piece by Katharine Seelye titled "Bush is Choosing Industry Insiders to Fill Several Environmental Positions."<sup>11</sup> This would prove to be the first of several articles and reports issued during the remainder of George W. Bush's first term highlighting business influence over regulatory process brought about, in part, by the reverse revolving door—or what an analysis by the Center for American Progress and OMB Watch labeled "Foxes in the Henhouse."<sup>12</sup>

On Valentine's Day 2003, Rep. George Miller of California issued a report called *A Sweetheart Deal: How the Republicans have Turned the Government Over to Special Interests*. "In case after case," the report stated, "the former lobbyists who work at the Bush Administration continue to court their friends and former employers while jilting the interests of the public."<sup>13</sup> A May 2004 investigation by the *Denver Post* found more than 100 examples of high-level officials in the Bush Administration who were involved in regulating industries they formerly represented as lobbyists, lawyers or company advocates.<sup>14</sup>

Some of the more egregious examples of this phenomenon are the following:

- **DAVID LAURISKI**, chosen as the Labor Department's Assistant Secretary of Mine Safety and Health, previously spent 30 years in the mining industry, during which time he advocated loosening of coal dust standards. Once in office, he issued controversial rules (later blocked by the Senate) that would have reduced coal-dust testing in mines.<sup>15</sup> Lauriski resigned from his position in late 2004 and took a job with a mine-industry consulting company.<sup>16</sup> The *Charleston Gazette* later reported that Lauriski had been negotiating for private-sector jobs as early as six months before leaving office.<sup>17</sup>
- **J. STEVEN GRILES**, named Deputy Secretary of the Interior, was previously a lobbyist for major oil and mining companies and for the National Mining Association. Although Griles signed a recusal agreement in 2001, he reportedly continued to be involved in controversial issues involving former clients such as Yates Petroleum. An Interior Department Inspector General's report cleared Griles of formal ethical violations but suggested that he was operating in an "ethical quagmire."<sup>18</sup> Griles submitted his resignation in December 2004 and later formed a lobbying firm together with former U.S. Representative George Nethercutt and former White House energy advisor Andrew Lundquist.<sup>19</sup>
- **JACQUELINE GLASSMAN**, appointed chief counsel of the National Highway Traffic Safety Administration, previously worked in the general counsel's office of DaimlerChrysler, where among other things she helped defend against charges brought by California officials that the company had recycled defective cars to consumers. At NHTSA she played a key role in the decision to block disclosure of "early warning" information such as detailed model-specific crash data.<sup>20</sup> In 2005 she was named deputy administrator of the agency.<sup>21</sup>

## A Closer Look at the Reverse Revolving Door in Five Federal Agencies

### DEPARTMENT OF AGRICULTURE

During the George W. Bush Administration, so many industry people moved into key policymaking positions that an agency once known as the “People’s Department” could now better be considered “USDA Inc.”<sup>22</sup> Reverse-revolving-door appointments extended as high as Secretary Ann Veneman (since replaced), whose prior career was generally in the public sector but who also once served on the board of biotech company Calgene. Here are other examples of key appointees with industry ties (though some, like Veneman, are no longer in office):

- Secretary Veneman’s chief of staff Dale Moore had been executive director for legislative affairs of the National Cattlemen’s Beef Association (NCBA), a trade association heavily supported by and aligned with the interests of the big meatpacking companies.
- Veneman’s Deputy Chief of Staff, Michael Torrey, had been a vice president at the International Dairy Foods Association.
- Director of Communications Alisa Harrison was formerly executive director of public relations at NCBA.
- Deputy Secretary James Moseley was a partner in Infinity Pork LLC, a factory farm in Indiana.
- Under Secretary J.B. Penn had been an executive of Sparks Companies, an agribusiness consulting firm.
- Under Secretary Joseph Jen had been director of research at Campbell Soup Company’s Campbell Institute of Research and Technology.
- Under Secretary for Natural Resources and the Environment Mark Rey, whose post involved oversight of the Forest Service, was previously a vice president of the American Forest and Paper Association.
- Deputy Under Secretary Floyd D. Gaibler had been executive director of the National Cheese Institute and the American Butter Institute, which are funded by the dairy industry.
- Deputy Under Secretary Kate Coler had been director of government relations for the Food Marketing Institute.
- Deputy Under Secretary Charles Lambert had spent 15 years working for NCBA.
- Assistant Secretary for Congressional Relations Mary Waters had been a senior director and legislative counsel for ConAgra Foods.

Veneman’s successor, Mike Johanns, retained Dale Moore as his chief of staff and made Beth Johnson, a former staffer at NCBA, one of Moore’s deputies. The post of Deputy Secretary was given to Charles F. Conner, former president of the Corn Refiners Association.<sup>23</sup>



The widespread presence of meat industry veterans has undoubtedly played in role in the business-friendly/anti-consumer policies followed by the Department on issues such as “mad cow disease” testing, sanitation standards in slaughterhouses and regulation of factory farms. The Clinton Administration’s record on food safety was hardly flawless, but the adherence to industry positions on these matters became much more egregious under Bush.

#### DEPARTMENT OF ENERGY

In the first George W. Bush Administration, the Energy Department was a leading proponent of the industry-friendly energy policy that had been formulated in 2001 by Vice President Cheney in secret meetings with business representatives. Although the Department was led by a former U.S. Senator, Spencer Abraham, it had its share of industry veterans on staff. These included:

- **FRANCIS S. BLAKE**, the Bush Administration’s initial choice for Deputy Secretary of Energy, had been serving as senior vice president of corporate business development at General Electric. He played a key role in formulating the administration’s controversial Clear Skies pollution initiative.<sup>24</sup> He left the federal government a year later and returned to the private sector as an executive at Home Depot.<sup>25</sup>
- **DAN BROUILLETTE**, named as Assistant Secretary for Congressional & Intergovernmental Affairs, had been employed as a lobbyist for mining and oil companies and as a Congressional aide.<sup>26</sup> In 2004 he left the Department and later resumed his work as a lobbyist by joining the Washington government affairs office of Ford Motor Co.<sup>27</sup>
- **VICKY BAILEY**, chosen as Assistant Secretary of Policy and International Affairs, was previously president of PSI Energy Inc., the Indiana electric-utility operating unit of Cinergy Corp. Once in office, Bailey helped to formulate the administration’s energy plan, which proposed weakening emissions standards on companies such as her former employer.<sup>28</sup> She later became a lobbyist for the firm of Johnston & Associates, whose clients include the Edison Electric Institute.<sup>29</sup>
- **CARL MICHAEL SMITH**, selected as Assistant Secretary for Fossil Energy, had built a career as an independent oil and gas operator, as Oklahoma’s secretary of energy and then as a lawyer for energy companies. He had also been a director of the Oklahoma Independent Petroleum Association from 1981 to 1995. In 2004 he left the Department and resumed work as a corporate lawyer, joining an Oklahoma City firm.<sup>30</sup>



**The widespread presence of meat industry veterans has undoubtedly played in role in the business-friendly/anti-consumer policies followed by the Department on issues such as "mad cow disease" testing, sanitation standards in slaughterhouses and regulation of factory farms. The Clinton Administration's record on food safety was hardly flawless, but the adherence to industry positions on these matters became much more egregious under Bush.**

## ENVIRONMENTAL PROTECTION AGENCY

In an apparent attempt to dispel charges that it would back away from environmental protection, the Bush Administration originally chose Christie Whitman, a moderate Republican who had been governor of New Jersey, to head the EPA. Some of the people appointed to work with her in key positions were, however, from a distinctly pro-business background. Among these were the following:

- **LINDA FISHER**, chosen to be Deputy Administrator (the agency's second highest position), previously spent five years as an executive at pesticide producer Monsanto Co. and had also practiced law at the firm of Latham & Watkins, known for fighting tougher regulatory standards on behalf of powerful industry clients.<sup>31</sup> Fisher left the EPA in 2003 and later took a job with DuPont.<sup>32</sup>
- **JEFFREY HOLMSTEAD**, Assistant Administrator for Air and Radiation, had not been a corporate executive or lobbyist, but he also worked as an attorney at Latham & Watkins. In addition to companies such as Cinergy and American Electric Power, his clients included an industry front group, the Alliance for Constructive Air Policy, which has worked to weaken air pollution rules.<sup>33</sup> In 2004 the *Washington Post* noted that parts of new rules proposed by the Bush Administration on power-plant mercury pollution were lifted verbatim from memos prepared by Latham & Watkins.<sup>34</sup>
- **MARIANNE HORINKO**, chosen as Assistant Administrator for the Office of Solid Waste and Emergency Response, was previously president of Clay Associates, a consulting firm where her clients included the Chemical Manufacturers Association and the Koch Petroleum Group. Earlier in her career, which also included a stint at the EPA during the George H.W. Bush Administration, she was an attorney at the corporate law firm Morgan, Lewis & Bockius, where she counseled companies on matters involving pesticides and hazardous waste.<sup>35</sup> In 2003, after Christie Whitman announced her resignation, Horinko served briefly as the EPA's Acting Administrator. Horinko left the EPA in 2004, reportedly to spend more time with her young children.<sup>36</sup>

Early in Bush's second term, he named Stephen Johnson, a respected scientist and career agency employee, to head the EPA. This move, which elicited praise from environmentalists and surprise on the part of many observers, was one of the few exceptions that prove the rule: it is very unusual to see someone rise to a key position in a regulatory agency without having come through the reverse revolving door.

## OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

OSHA, like EPA, is one of the agencies frequently cited by business critics of regulation. In 2001 the Bush Administration announced that its choice to head the safety agency was John Henshaw, who had been safety director at Astaris LLC, a joint venture between chemical producers Solutia Inc. (a spinoff of Monsanto Co.) and FMC Corporation. Before that he worked for many years at Solutia and Monsanto.

In November 2001 Henshaw announced that the position of Deputy OSHA administrator was being given to Gary Visscher, former vice president of employee relations for the American Iron and Steel Institute, the trade association for the metals industry.

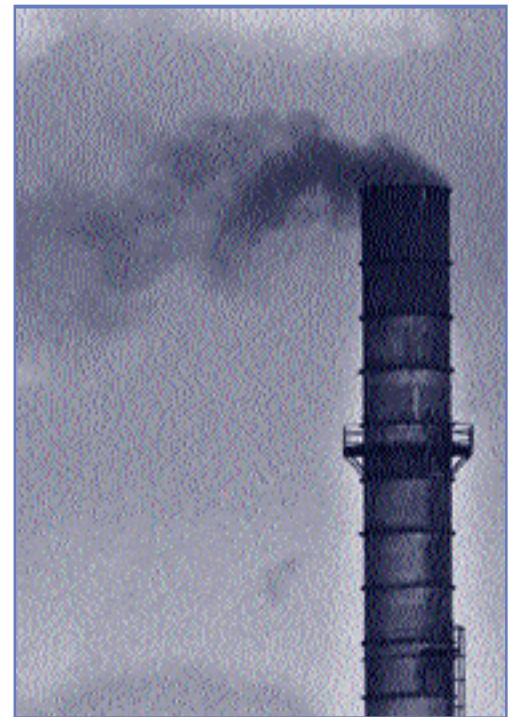
According to a detailed analysis published by the *Washington Post* in August 2004, Henshaw's tenure was marked by a reduction in the number of staffers devoted to developing new safety standards and by a narrower, more business-friendly approach in those rules that were proposed.<sup>37</sup> Henshaw resigned in December 2004 and later became an advisor to C2 Facility Solutions, which calls itself a "critical asset management software firm."<sup>38</sup> Visscher left around the same time to join the U.S. Chemical Safety and Hazard Investigation Board.<sup>39</sup>

#### DEPARTMENT OF DEFENSE

The foregoing examples certainly suggest that the reverse revolving door affects regulatory policy, but the presence of industry veterans in public office can also influence contracting decisions, with major implications for taxpayers. While Defense Department procurement issues are discussed more fully in the next chapter, several reverse-revolving-door examples are worth noting here:

- **EDWARD C. "PETE" ALDRIDGE JR.** was confirmed as Under Secretary of Defense for Acquisition, Technology, and Logistics in May 2001. In addition to many years at the Pentagon, his prior positions included the presidency of McDonnell Douglas Electronic Systems Co. (now part of Boeing). In 2003 Aldridge approved the contract for Lockheed Martin's controversial F-22 fighter jet. A short time later he retired from the government and was soon named to the board of directors of none other than Lockheed Martin.<sup>40</sup> (For more on Aldridge, see Chapter 2.)
- **MICHAEL W. WYNNE** was made Acting Under Secretary for Acquisition, Technology, and Logistics after Aldridge left the post. Wynne, who had been the Principal Under Secretary under Aldridge, previously served as senior vice president of defense contractor General Dynamics. In August 2005 President Bush nominated Wynne to be Secretary of the Air Force.

Other recent secretaries of the three military departments have also been examples of the reverse revolving door. The man who preceded Wynne as Air Force Secretary, James Roche, was previously an executive with Northrop Grumman and other military contractors. Army Secretary Francis Harvey was previously an executive with Westinghouse Corp. and other companies. Gordon England, who served as Navy Secretary until he was made Acting Deputy Secretary of Defense earlier this year, was previously an executive at General Dynamics. In August 2005 President Bush nominated Donald C. Winter, president of Northrop Grumman Mission Systems, to succeed England.



**Jeffrey Holmstead, Assistant Administrator for Air and Radiation, had not been a corporate executive or lobbyist, but he also worked as an attorney at Latham & Watkins. In 2004 the *Washington Post* noted that parts of new rules proposed by the Bush Administration on power-plant mercury pollution were lifted verbatim from memos prepared by Latham & Watkins.**

## Regulation

The movement of lobbyists and business executives into positions with Cabinet departments and regulatory agencies is largely free from federal regulation. Employment restrictions focus mostly on the forms of the revolving door that involve movement from the public to the private sector.

The section of the Code of Federal Regulations dealing with Standards of Ethical Conduct for Employees of the Executive Branch (Title 5, Chapter XVI, Part 2635) does, however, have a section on Impartiality in Performing Official Duties that touches partly on the reverse revolving door. Section 2635.501 says that a federal employee must avoid “an appearance of a loss of impartiality in the performance of his official duties.” One of the situations in which such an apparent loss of impartiality is said to be possible is the handling of a matter involving a person for whom the federal employee served, within the last year, as “officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.”

There are no provisions in federal law or regulations that would prevent someone from accepting employment with the government because of the possibility that he or she would be called on to handle a matter with a former employer. Instead, the question is whether the federal employee, once in office, should be allowed to handle specific matters relating to the former employer or be disqualified from doing so.

When such situations arise, it is up to the federal employee to determine if there is a potential problem. Having done so, the employee is supposed to consult the ethics official of the agency (or other designated official), who is to decide whether the employee should be disqualified from handling the matter. In doing so, the ethics official is allowed to take into consideration issues such as “the difficulty of reassigning the matter to another employee” (§2635.502). A stricter rule applies when a federal employee received an “extraordinary payment” of more than \$10,000 from a former employer prior to entering government service. In that case, the employee is automatically disqualified from handling any matter involving the former employer for a period of two years, though the rule can be waived under certain conditions (§2635.503).

Although industry veterans are not greatly impeded in their eligibility for federal posts, they, like other appointees, are subject to disclosure requirements. Persons appointed to senior positions in the executive branch are required to disclose information about their finances and affiliations on Standard Form 278, which is available to the public upon written request. It is filed after the person takes office, annually while in office and one last time after leaving office. Similar information is required of certain lower-level employees, who are required to file OGE Form 450. However, such filings are not available to the public.

Where the disclosure indicates a financial holding that could result in a conflict of interest, the most common way of handling the matter is for the employee to enter into a written disqualification agreement on the matter, otherwise known as a *recusal*. This addresses the prohibition in 18 U.S.C. § 208 barring a federal employee from handling a matter in which the employee or certain relatives have a financial interest. The Office of Government Ethics exercises some degree of oversight of *recusal* agreements.



## Conclusion

The preceding pages constitute a brief overview of the evolution of the reverse revolving door—a phenomenon that seems to have reached unprecedented proportions in recent years. In addition to looking more systemically at the extent to which key appointed officials previously worked as corporate executives and lobbyists, a more thorough analysis would also have to look at the large number of individuals who entered government office after serving as lawyers, consultants and scientists. It is likely that many of those individuals were working for corporate clients or were performing corporate-financed research, suggesting that they would have a pro-business bias. In other words, the magnitude of business influence on policy formulation and industry regulation through reverse-revolving-door appointments is probably much larger than this chapter has described.

Determining the extent to which the reverse revolving door has actually had a distorting effect on public policy is an arduous task. Once a person has assumed public office, it is difficult to prove that a particular decision that benefits business was made out of loyalty to a previous employer or to ingratiate oneself with a potential future employer. What if the decision was based on the official's general view of the world, which happened to have been shaped by time spent working in the corporate sector? If so, is it an ethics issue or simply an ideological one?

While it may not be possible to answer these questions with any certainty, it is clear that a growing number of officials with an industry background have been participating in the formulation of policies that unduly benefit the corporate sector. There is no guarantee that appointees of a different background would have done things differently, but putting some limits on the reverse revolving door would help thwart what seems to be the corporate takeover of regulatory policy and restore greater integrity to the contracting process. After examining two other forms of revolving door industry influence, this paper will offer specific recommendations on how to end these conflicts of interest.



**There are no provisions in federal law or regulations that would prevent someone from accepting employment with the government because of the possibility that he or she would be called on to handle a matter with a former employer. Instead, the question is whether the federal employee, once in office, should be allowed to handle specific matters relating to the former employer or be disqualified from doing so.**

## Chapter 2:

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# The Government-to-Industry Revolving Door

**How the movement of public officials into lucrative private sector roles can compromise government procurement, regulatory policy and the public interest.**

**by SCOTT AMEY, Project On Government Oversight**

**LARGE CORPORATIONS FREQUENTLY FIND THEMSELVES** dealing with the federal government, especially when it comes to procurement contracts and regulatory compliance. In doing so, they are always looking for ways to influence federal decision making—hence their huge spending on lobbyists and campaign contributions. Yet money and influence are not the only ways companies seek to tilt the playing field in their favor. Business also knows the power of information.

One way to get information is to hire the people who have it. Thus we come to the next form of the revolving door: the movement of public officials into lucrative private sector positions in which they put their inside knowledge of government to work for their new employer. It has become common practice for members of the executive branch to leave their government posts and immediately go to work for companies that have ongoing business with federal agencies.

Defenders of the revolving door hasten to point out that there is nothing inherently improper or illegal when the private sector hires former government officials. Indeed, they argue that the country is better off because those former officials help companies produce goods and services more effectively.

The question, however, is whether the revolving door has a detrimental impact on the effectiveness of federal functions such as contract administration and regulation of business. The concern is that the inside knowledge public officials bring with them when they join the private sector will be used in a way that is contrary to the public interest. Even more serious is the possibility that officials still in office will distort their decision-making to the advantage of prospective employers in the private sector. These are the issues explored in this chapter.

## Policy Background

“Each [executive branch] employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.”<sup>41</sup>

This statement of the “basic obligation of public service” in federal law may be straightforward enough for individuals who spend their entire career in the public sector, but it becomes more complicated for those who go through the revolving door to the world of business. The recognition that the federal government needed to address this issue goes back at least to 1965, when President Johnson issued Executive Order (E.O.) 11222, which instructed agencies to establish “standards of ethical conduct for government officers and employees.” The purpose of this and other conflict-of-interest and ethics laws was to protect the integrity of the government’s system of buying goods and services from contractors. President Johnson stated that “every citizen is entitled to have complete confidence in the integrity of his [or her] government.”<sup>42</sup>

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**It has become common practice for members of the executive branch to leave their government posts and immediately go to work for companies that have ongoing business with federal agencies.**

Some changes in revolving door policies arrive with each new administration. One of the most dramatic shifts came in 1993, when President Clinton strengthened conflict-of-interest laws the very same day he took office.<sup>43</sup> By signing E.O. 12834, also known as the “Senior Appointee Pledge,” Clinton placed numerous post-employment restrictions on senior executive agency appointees. Specifically, the order extended the one-year ban to five years, prohibiting former employees from lobbying their former agencies after they left office. Additionally, former employees of the Executive Office of the President (EOP) were prohibited from lobbying any other executive agency for which that employee had “personal and substantial responsibility as a senior appointee in the EOP.”

What seemed like a noble idea upon taking office was apparently viewed differently by Clinton when his Administration was coming to an end. On December 28, 2000 Clinton revoked the “Senior Appointee Pledge.”<sup>44</sup> In protest, Senator Charles Grassley (R-IA) stated: “I hope that President Clinton acts in the remaining days of his presidency to reverse the mistake made by revoking the order against the revolving door....Using the power of the presidency to reverse a policy he put in place to help ensure integrity in government service undermines the public’s confidence in political leadership.”<sup>45</sup>

The George W. Bush Administration did not pay much attention to the revolving door until the Darleen Druyun-Boeing scandal (see further discussion below) brought the issue to the fore. In January 2004 the White House issued a Memorandum for the Heads of Executive Departments and Agencies, establishing “a new Administration policy concerning waivers for senior Administration appointees who intend to negotiate for outside employment.”<sup>46</sup>

The memorandum noted that when high-level Presidential appointees begin to negotiate for a new job outside government, “serious Administration policy interests arise.” It stated:

*To ensure these policy interests are completely considered, effective immediately, agency personnel are prohibited from granting waivers under 18 U.S.C. 208(b)(1) to Senate-confirmed Presidential appointees for the purpose of negotiating for outside employment unless agency personnel have first consulted with the Office of the Counsel to the President [emphasis in original].*

The purpose of this consultation seemed to be mainly for the benefit of the appointee. The memo went on to say:

Our most senior Presidential appointees deserve the protection afforded by consultation with the White House. White House officials have an administration-wide perspective and often know relevant facts unavailable to agency personnel; thus, they can be of tangible assistance when consulted.

As for the question of how White House lawyers would view the request for a waiver, the memo said:

The decision to grant a waiver also involves a balancing test. The fulcrum of that balance is a determination of whether or not the appointee's financial interest is "so substantial as to affect the integrity of the appointee's services to the Government" See 5 C.F.R. § 2640.301(a). Because a senior Presidential appointee may be called upon to advise the White House, it is appropriate that White House personnel have the opportunity to assess the substantiality of the senior appointee's financial interest and how it affects the integrity of the appointee's service to the President.

The Bush Administration's policy, however, applies to political appointees only. Many civil service employees are not affected by the administration's new policy and will remain off the radar if they receive an agency conflict-of-interest waiver for post-government employment.<sup>47</sup> Days after the Administration's policy shift, Defense Secretary Donald Rumsfeld ordered the Department of Defense (DoD) to investigate whether senior government officials are complying with agency regulations when they seek contractor jobs.

On October 25, 2004, Deputy Secretary of Defense Paul Wolfowitz issued a memorandum which described three minor changes to DoD conflict-of-interest and ethics regulations, including:

- Annual Certification – requiring certain DoD employees to certify annually that they are aware of the conflict-of-interest and ethics restrictions and that they have not violated those restrictions.
- Annual Ethics Briefing – requiring DoD offices to include training on relevant federal and DoD disqualification and employment restrictions in annual ethics briefings.
- Guidance for Departing Personnel – requiring DoD offices to provide guidance on relevant post-government employment restrictions as part of out-processing procedures for personnel who leave the government.<sup>48</sup>

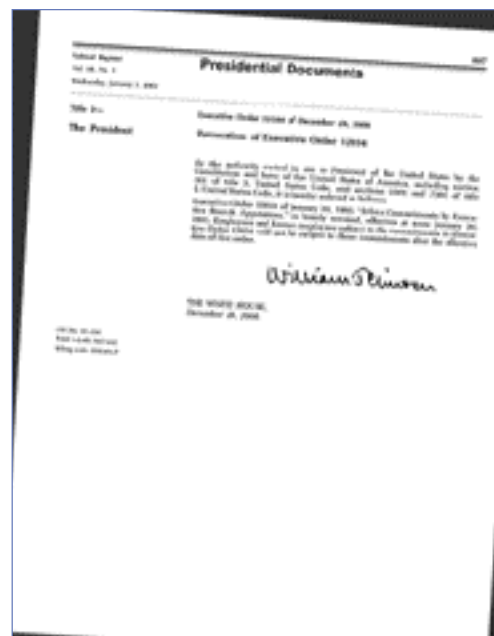
Recently, the Defense Criminal Investigative Service has stated that it will investigate former senior military and civilian defense managers who now work for defense contractors. Moreover, on February 18, 2005, Paul McNulty, U.S. District Attorney for the Eastern District of Virginia, announced the creation of the Procurement Fraud Working Group to investigate defense contractors for conflict-of-interest violations and procurement fraud.<sup>49</sup> McNulty testified before a Senate Armed Services subcommittee that "more procurement means more opportunity for fraud."<sup>50</sup>

Congress has also shown new interest in the revolving door. Senators John McCain (R-AZ), Robert C. Byrd (D-WV) and Russell Feingold (D-WI) have been investigating the issue. Senator McCain played an integral role in obtaining and exposing e-mail that implicated Darleen Druyun. Senators Byrd and Feingold took a step further when they drafted an amendment to the National Defense Authorization Act for Fiscal Year 2005 that would have closed a few of the loopholes in the current revolving door system.<sup>51</sup> Unfortunately, the Byrd-Feingold amendment was not included in the final bill.

However, members of the House Armed Service Committee requested a Government Accountability Office review of the revolving door. The April 2005 report found that:

- DoD has delegated responsibility for training and counseling employees on conflict-of-interest and procurement integrity rules to more than 2,000 ethics counselors in DoD's military services and agencies;
- Those counselors were unable to say if people subject to procurement integrity rules were trained;
- DoD's knowledge of defense contractor efforts to promote ethical standards is limited; and
- A review of one of DoD's largest contractors showed that the company lacked controls to ensure an effective ethics program and the company relied excessively on employees to self-monitor their compliance with post-government employment restrictions.<sup>52</sup>

GAO's review illustrates the problems with the integrity of the procurement process and the impact that the revolving door has on the way government spends hundreds of billions of taxpayer dollars.



**What seemed like a noble idea upon taking office was apparently viewed differently by Clinton when his Administration was coming to an end.**

## Revolving Door Laws, Regulations and Loopholes

Federal laws concerning conflicts of interest have been implemented piecemeal over the past fifty years, and they have become a tangled mess of statutes and regulations as well as exemptions and waivers (See Appendix A). For instance, some of the statutes and regulations governing executive branch officials are based on the employee's pre- and post-government jobs and salaries. Some agencies place additional limitations on their own employees. In some cases, Presidential orders and agency directives may also govern post-government employment as well.<sup>53</sup> In general, government employees must struggle with a decentralized, multi-layered system of ethics laws and regulations so convoluted that even ethics officers and specially-trained lawyers find it difficult to fathom. Former government employees who try to do the right thing may appear to be as dishonest as those who knowingly violate the law.





**"The net result of the accretion of these five statutes subjects DoD officials to a complex, multi-tiered system of incomprehensible and seemingly inconsistent statutory restrictions that are counter-productive to an effective and meaningful ethics training and counseling program."**

Major Kathryn Stone, a former Army ethics attorney, reached the following conclusions about the DoD's ethics system back in 1993:

In recent years, defense contractors and DoD officials have criticized the multiplicity of DoD ethics laws as a labyrinth of confusing and overlapping requirements. Former DoD officials are subject to upwards of five different post-government employment conflict-of-interest laws, each of which applies to different subclasses of persons, restricts different activities, and imposes different administrative procedures.

No reason exists to have different standards for executive branch officers and employees as a whole, DoD procurement officials (who differ depending on the particular statute at issue), retired military officers, and retired regular military officers. *The net result of the accretion of these five statutes subjects DoD officials to a complex, multi-tiered system of incomprehensible and seemingly inconsistent statutory restrictions that are counter-productive to an effective and meaningful ethics training and counseling program.*<sup>54</sup> (Emphasis added).

Conflict-of-interest and ethics laws and regulations are based on a government employee's involvement with specific transactions (e.g., contracts),<sup>55</sup> representation before an employee's former office,<sup>56</sup> and financial conflicts of interest.<sup>57</sup> Yet there are still several significant loopholes in the system.

The first loophole involves high-ranking government officials who are employed in policy positions in which they develop rules and determine requirements. These policymakers are not restricted from accepting employment with contractors which may have benefited from the policies that these employees helped to formulate. This is especially problematic because senior procurement policymakers,

whose decisions can affect many different contracts, are in a better position to influence a contractor's bottom line than an official whose work is limited to a specific contract.

The second loophole is the provision that allows a procurement official to accept compensation from a "division or affiliate" of the contractor as long as that entity "does not produce the same or similar products or services" as the barred contracting division.<sup>58</sup> In other words, a government official can, for example, work for a contractor's missile division if he or she handled contracts with its aircraft division—and therefore avoid the one-year ban on accepting compensation from a contractor during post-government employment pursuant to 41 U.S.C. § 423. The current system does little to stop a contractor from rewarding a government employee for favorable treatment with post-government employment in a different division of the same company. The company in such a circumstance would be doubly rewarded, possibly receiving favorable treatment or insider advice because of the ex-official's ties to his or her former peers. It also creates the opportunity for the former government employee to do work behind the scenes for the other divisions of the company.

A third loophole involves the lack of executive branch rules requiring the reporting and public disclosure of disqualifications or recusal. Executive branch regulations obligate an employee to disqualify him or herself from conflicted matters.<sup>59</sup> The prohibition on prospective employment (18 U.S.C. § 208), however, does not require an employee to file a disclosure or recusal statement when a conflict arises.<sup>60</sup> It is only after multiple layers of regulations that certain agencies mandate that notice of a conflict must be provided to a government employee's supervisor.<sup>61</sup>

## Revolving Door Case Studies

**DARLEEN DRUYUN AND BOEING.** Darleen Druyun has become the poster child for the conflicts of interest created by the revolving door. Druyun supervised, directed and oversaw the management of the Air Force's weapons acquisition program before she moved through the revolving door to become Boeing's Deputy General Manager for Missile Defense Systems. Specifically, Druyun was in charge of overseeing some of the government's largest purchases, including the C-17 cargo plane and the proposal to lease refueling aircraft (also known as tankers)—a proposal that was more costly than actually purchasing the tankers.

E-mail exchanges between Druyun's daughter and Boeing officials revealed how all parties violated the conflict-of-interest and ethics system. On January 6, 2003, when Druyun left the government to work for Boeing, the Project On Government Oversight issued a press release, stating that "Ms. Druyun is now officially an employee of the company whose interests she so ardently championed while she was supposedly representing the interests of the taxpayers."<sup>62</sup> Subsequent disclosures showed that she was negotiating the terms of her Boeing employment while she was handling the Boeing tanker lease, estimated to be worth over \$20 billion.<sup>63</sup> On November 24, 2003, Boeing fired Druyun and Chief Financial Officer Michael Sears in connection with potentially illegal discussions of matters involving Boeing that had taken place during the time Druyun was a government employee.

On April 20, 2004, Druyun pleaded guilty to charges of conspiracy to defraud the United States. In her plea, Druyun acknowledged that she had favored Boeing in certain negotiations as a result of her employment negotiations and that other favors had been provided by Boeing to her. Druyun also admitted that Boeing's hiring, at her request, of her future son-in-law and her daughter in 2000, along with her own desire to be employed by Boeing, influenced her decisions—as a government employee—in several matters affecting Boeing. These included: the Boeing tanker deal (which she stated was a "parting gift to Boeing"), Boeing's \$100 million payment to restructure the NATO AWACS program, the selection of Boeing to upgrade the avionics of C-130 aircraft, and the agreement "to a payment of approximately 412 million dollars to Boeing" in connection with the C-17.<sup>64</sup> In October 2004, Druyun was sentenced to nine months in prison, a \$5,000 fine, three years of supervised release, and 150 hours of community service.<sup>65</sup>

The Associated Press reported on February 2005, that the Pentagon was investigating eight Air Force contracts handled by Druyun.<sup>66</sup> Those contracts ranged in value from \$42 million to \$1.5 billion each, with a total value of about \$3 billion.<sup>67</sup> That same month, the GAO released two Comptroller General opinions in which it found that Druyun had tainted the process in which Boeing was awarded contracts for the production of the Small Diameter Bomb and for various activities related to the avionics modernization upgrade program for C-130 aircraft.<sup>68</sup> The GAO recommended that both contracts, or the tainted portions therein, be put out for new competition.<sup>69</sup>



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**PETE ALDRIDGE AND LOCKHEED MARTIN.** Edward C. “Pete” Aldridge formerly served as Undersecretary of Defense for Acquisition, Technology, and Logistics. He was also head of a DoD review board which made the decision to pursue procurement of the Lockheed Martin F/A-22 fighter jet. In January 2003, Aldridge approved the contract for the F/A-22 program.<sup>70</sup> Two months later, he secured a position on the board of directors of Lockheed Martin, the federal government’s top contractor and maker of the F/A-22. On March 15, 2004, the General Accounting Office (GAO) released a report documenting that the cost for the F/A-22 program continues to skyrocket, though DoD has failed to justify the need for this aircraft, given current and projected threats.<sup>71</sup>

Adding to the appearance of conflict of interest on Aldridge’s resume, President Bush signed an Executive Order on January 27, 2004 establishing the Commission on Implementation of United States Space Exploration Policy and then announced that Aldridge would chair the nine-member Commission. Senator John McCain (R-AZ) spoke out against Aldridge’s appointment, asserting that the former top weapons buyer and current Lockheed board member had too many conflicts of interest to serve as a Commission member. Because Lockheed is one of NASA’s largest contractors, Aldridge was placed in a position to influence public policies that could benefit the company he served.

**DAVID HEEBNER AND GENERAL DYNAMICS.** Army Lt. General David K. Heebner was a top assistant to the Army Chief of Staff, Gen. Eric Shinseki, and played a significant role in drumming up

support and funding for Shinseki’s plan to transform the Army. One of the key elements in Shinseki’s transformation “vision” was a plan to move the Army away from tracked armored vehicles toward wheeled light armored vehicles. In October 1999, only three months before Heebner retired, Shinseki’s “Army Vision” statement called for an interim armored brigade: “We are prepared to move to an all wheel formation as soon as technology permits.” General Dynamics, which manufactures the wheeled Stryker, was the beneficiary of this new vision, essentially putting United Defense, which produced tracked vehicles, out of the running.

General Dynamics formally announced the hiring of Heebner, as Senior Vice President of Planning and Development, on November 20, 1999. That was just one month after Shinseki announced his “vision” and more than a month prior to Heebner’s official retirement date of December 31, 1999. The \$4 billion Stryker contract was awarded to General Dynamics in November 2000. Heebner was present in Alabama for the April 2002 rollout of the first Stryker and was recognized by Shinseki for his work in the Army on the Stryker project.

**BOBBY FLOYD AND LOCKHEED MARTIN.** In 1997, Air Force General Bobby O. Floyd led the government’s investigation into a fatal HC-130P Hercules plane crash. According to press reports, in October 1998, Floyd was contacted by the plane’s manufacturer, Lockheed Martin.<sup>72</sup> He filed a let-



ter of recusal, which disqualified him from taking any official actions involving Lockheed, in November 1998. Despite that recusal, Floyd continued to investigate the crash until March 1999,<sup>73</sup> concluding that his new employer was free from blame.<sup>74</sup> Despite that appearance of impropriety, the Air Force concluded that Floyd did not violate conflict-of-interest or ethics laws.<sup>75</sup> Floyd then joined Lockheed Martin Aircraft & Logistics Centers in May 1999 as Deputy General Manager of the Greenville Aircraft Center. He was promoted to Vice President and General Manager in May 2000, then to President and General Manager of Logistics for the Centers in November 2001.

**RICHARD PERLE AND BOEING.** Perle served as Assistant Secretary of Defense in the Reagan Administration and was a member of the Defense Policy Board from 1987 to 2004, serving as its Chair from 2001 to 2003. He resigned as Chairman in March 2003, after a conflict-of-interest controversy involving a consulting job he took with the bankrupt telecommunications firm Global Crossing Ltd. During the summer of 2003, Perle expressed his support for the Boeing tanker deal—a deal that would direct billions of dollars to Boeing. His support for the tankers came just 16 months after Boeing committed to invest \$20 million with Perle’s venture capital firm, Trireme Partners.<sup>76</sup>

A *Washington Post* article described Perle as the “ultimate insider” and discussed his use of the revolving door and the access that it provides.<sup>77</sup> William Happer, a former Energy Department official stated that the revolving door is “an old American tradition, and Richard Perle I think is doing it in an honest way. He’s one of hundreds and hundreds who do it.”<sup>78</sup> Perle denied that he was hired by any company because of his connection to policymakers. Subsequently, Perle seemed to contradict himself when recounting his role in assisting a company to obtain a foreign contract: “Was [his contact with foreign ambassadors] a result of my influence? Yeah, it was. It was a result of the fact that they, the people I went to, knew me so they took my phone call.”<sup>79</sup>

## Examples of the Revolving Door in Various Federal Agencies

Former federal officials can be found in key executive and board positions at many of the country’s largest corporations and trade associations. Here are some examples involving veterans of several Cabinet departments—Agriculture, Defense and Energy—as well as the EPA.<sup>80</sup>

- **FRANCIS S. BLAKE**, Executive Vice President of Business Development and Corporate Operations for Home Depot and a director of The Southern Company (a “super-regional” energy company), formerly served as Deputy Secretary of Energy.<sup>81</sup>
- **LINDA FISHER**, Vice President and Chief Sustainability Officer for chemical giant DuPont, formerly served in various positions at the EPA, including Deputy Administrator, Assistant Administrator and Chief of Staff.<sup>82</sup>
- **L. VAL GIDDINGS**, Vice President for Food and Agriculture of the Biotechnology Industry Organization, formerly served as the Senior Staff Geneticist, International Team Leader, and Branch Chief for Science and Policy Coordination with the biotechnology products regulatory division of the Animal and Plant Health Inspection Service of the Department of Agriculture.<sup>83</sup>

- **JAMIE S. GORELICK**, a director of defense contractor United Technologies, was formerly Deputy Attorney General and General Counsel of the Department of Defense (as well as a member of the 9-11 Commission and the Defense Science Board).<sup>84</sup>
- **PAUL LONGSWORTH**, who recently joined Fluor Corp. as executive director of environmental/nuclear business development, was formerly deputy administrator at the Energy Department's National Nuclear Security Administration.<sup>85</sup>
- **CHARLES J. (JOE) O'MARA**, President of O'Mara & Associates, an international trade consulting firm, formerly served as Counsel for International Affairs to the Secretary of Agriculture and as Special Trade Negotiator for the agency.<sup>86</sup>
- **DR. JAMES G. ROCHE**, a director of Orbital Sciences Corp., a leading space and rocket company, and a consultant for his former employer, Northrop Grumman, was formerly Secretary of the Air Force.<sup>87</sup>
- **JAMES SCHLESINGER**, a director of British Nuclear Fuel, formerly served as Secretary of Defense, Secretary of Energy, and Director of the Central Intelligence Agency.<sup>88</sup>
- **CHRISTINE TODD WHITMAN**, a director of United Technologies, which aside from being a military contractor is deeply involved in global warming because of its ownership of the air-conditioning company Carrier Corp., formerly served as Administrator of the Environmental Protection Agency.<sup>89</sup>
- **JOHN WILCYNski**, Vice President of Corporate Development at British Nuclear Fuels, formerly served as the Department of Energy's Director of the Office of Field Management.<sup>90</sup>

## Conclusion

Each of the five foregoing examples illustrates how decisions involving billions of taxpayer dollars have been shaped by those with revolving-door conflicts of interest. In some cases, such as the Druyun affair, it became clear that corruption was involved and laws were broken. In other cases, the culpability is less apparent.

Whether the prospect of lucrative private sector employment actually causes an official to violate his or her public trust or whether there is simply the appearance of a conflict, the revolving door does tend to create problems for integrity in government. The existing laws and regulations that address this problem are complex but ultimately inadequate. In the conclusion of this paper we offer some recommendations for restoring a greater degree of public confidence in the operations of the public sector.

## Chapter 3:

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# The Government-to-Lobbyist Revolving Door

**How former lawmakers and politicians use their inside connections to advance the policy and regulatory interests of their industry clients.**

**by CRAIG HOLMAN, Public Citizen**

**THE REVOLVING DOOR FROM THE WHITE HOUSE AND CAPITOL HILL** to well-paid lobbying firms (many of which are conveniently housed in the same neighborhood along K Street) has been spinning out of control in recent years. Senior-level staff in the executive and Congressional branches of government and even Members of Congress have shown an increasing inclination to leave public service and then continue to try to shape public policy—as lobbyists acting on behalf of special interests in the private sector.<sup>91</sup> Some of them pass through the revolving door as the result of an election defeat or a change in Administration, but most are enticed by the prospect of collecting a fat paycheck while continuing to play insider politics on Capitol Hill.

Rep. James Greenwood (R-Pa.) made no bones about the reason for his career switch from chair of the House Energy and Commerce Committee’s subcommittee on oversight and investigations to head the Biotechnology Industry Organization (BIO), a lobbying association. BIO agreed to pay Greenwood \$650,000 a year (plus as much as \$200,000 in bonuses) to serve as its chief lobbyist. “This is bittersweet,” Greenwood said of his unexpected retirement from Congress. “But at this point in my life, it’s more sweet by far.”<sup>92</sup>

What was sweet for Greenwood left a sour taste for many others. BIO had first contacted him about a job in early 2004, only a month or so after he announced his intention to investigate the pharmaceutical industry. The fact that Greenwood, a social worker before he entered politics 24 years earlier, had no background in biotechnology or related fields seemed to make little difference to the trade association.<sup>93</sup> He was sought for his political connections. The public was finally made aware of Greenwood’s new career choice in July 2004, when he abruptly canceled an oversight hearing concerning the drug Zolofit,

produced by Pfizer, one of whose executives was serving on the BIO board at the time. “I understand how this could raise an eyebrow,” Greenwood said with regard to the Pfizer connection, but he denied there was any conflict of interest: “B following A does not mean that A caused B.”<sup>94</sup>

Once comfortably ensconced in the K Street community, Greenwood began expanding the staff of BIO by hiring other refugees from the public sector. As one newspaper account put it: “In the last several months, BIO has raided the offices of Congress, the U.S. Department of Health and Human Services and the Food and Drug Administration to build an executive staff with inside-the-beltway savvy and connections.”<sup>95</sup>

## **Current Government-to-Lobbyist Revolving Door Restrictions**

Former government officials who have become lobbyists are subject to limited statutory requirements and ethics regulations. Two different sets of ethics codes apply to the revolving door movement of government officials into private-sector lobbying. The two general categories of ethics restrictions that govern the government-to-lobbyist revolving door include:

- The conflict-of-interest restrictions on the ability of government officials to negotiate future employment while serving in public office.
- The “cooling off period” on lobbying activities by former officials for a specified period of time after leaving public service.

Both principles comprise the overall revolving-door policy, and both are designed to prevent a conflict between the duty of public servants to provide for the common good and the obligation of private lobbyists to promote a special interest. These ethics restrictions are laid out in a web of statutory limits, which apply to all branches of government, and ethics regulations, which are different for the executive branch, the Senate, the House and different salary levels of their respective staff. As such, there is no single revolving-door code that applies to all government officials and employees.

## **Negotiation of Future Employment**

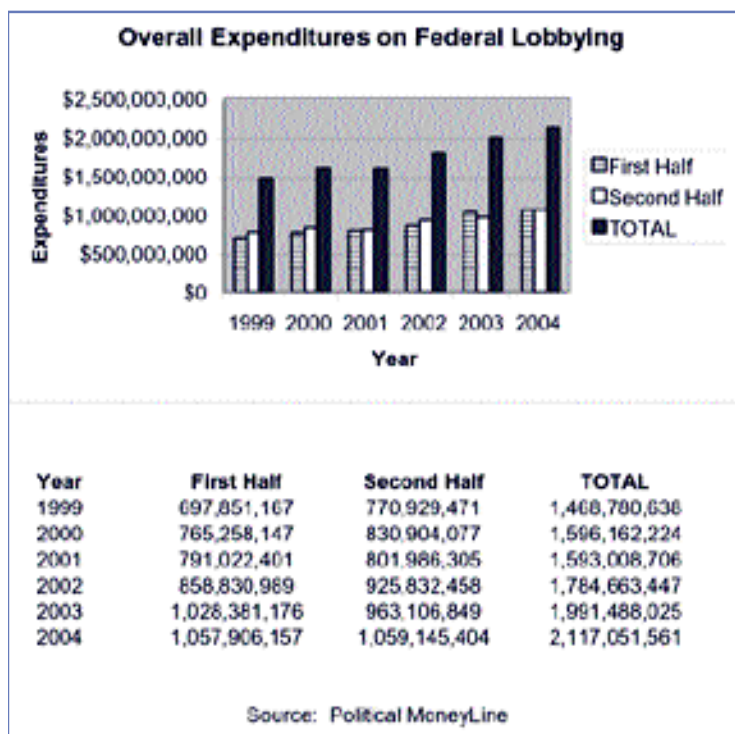
Federal criminal conflict of interest statutes (18 U.S.C. §201) prohibit any public official from soliciting or accepting a “thing of value” in exchange for a legislative favor or other official action—i.e., a bribe. Within this legal framework, the Senate and House, and the Office of Government Ethics for the executive branch, have promulgated ethics regulations to guide their respective officers and employees away from crossing this line.

Ethics rules go a step beyond actual quid pro quo corruption, which is very difficult to prove short of an FBI sting operation, and rely instead upon the standard of the appearance of corruption. Ethics rules prescribe that public officials and employees generally are not to act in such a way as to create the appearance of impropriety in official actions. Each institution fashions its own ethics guidelines to prevent the appearance of conflict of interest that would impugn the integrity of the office.

For officers and employees in the executive branch, federal law (18 U.S.C. §208) generally prohibits government staff from seeking future employment and working on official acts simultaneously, if the official actions may be of significant benefit to the potential employer. Waivers may be granted to this prohibition for a number of reasons, such as when the employee's self-interest is "not so substantial" as to affect the integrity of services provided by the employee, or if the need for the employee's services outweighs the potential for a conflict of interest. The issuance of waivers had routinely been the prerogative of the head of the agency or division for which the employee works. Following several conflict-of-interest controversies, President Bush issued a Memorandum on January 6, 2004, requiring that all such waivers be cleared by the White House General Counsel.

Ethics rules on negotiating future employment are not as strict for members and staff of the Senate, and even less so for the House. Both the Senate and House codes of ethics prohibit members and staff from receiving compensation "by virtue of influence improperly exerted" from their official positions. To this end, the Senate and House rules advise members and staff to recuse themselves from official actions of interest to a prospective employer while job negotiations are underway. But the ethics codes differ from that point on.

Senate rules detail recusal guidelines. Under normal circumstances, a Senate employee who delivers his or her resume to a group of fifty prospective employers would not, at this early stage, need to recuse him or herself. Whether recusal would be necessary after the employee met with ten of those prospective employers would depend, of course, upon the results of each meeting. On the other hand, once the employee has directed his or her attention on two or three of the prospective employers for further discussions, recusal is likely necessary. A Senate employee, however, with the supervising Senator's approval, may continue to be involved with issues that may be of interest to the prospective employer during the limited period that the employee remains with the Senate. Generally, each Member must decide for himself or herself, as well as for his or her staff members, what steps would be necessary to avoid not only the conflict which may arise from negotiating or accepting prospective employment, but the appearance of such a conflict as well.<sup>96</sup>



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**Ethics rules go a step beyond actual quid pro quo corruption, which is very difficult to prove short of an FBI sting operation, and rely instead upon the standard of the appearance of corruption.**

employee may accept a position as a lobbyist immediately after leaving the public sector, there are some specific constraints on their activities, depending on the nature of their previous public service. These constraints include:

- **ONE YEAR “COOLING-OFF PERIOD” ON LOBBYING.** Generally, former Members of Congress and senior level staff of both the executive and legislative branches are prohibited from making direct lobbying contacts with former colleagues for one year after leaving public service. Specifically, for one year after leaving government office:
  - Former members of the Senate and the House may not directly communicate with any member, officer or employee of either house of Congress with the intent to influence official action.
  - Senior Congressional staff (having made at least 75 percent of a member’s salary) may not make direct lobbying contacts to Members of Congress they served, or the members and staff of legislative committees or offices in which they served.
  - Former Members of Congress and senior staff also may not represent, aid or advise a

House rules are far more general. Members and staff of the House are advised to be particularly careful in how they go about negotiating for future employment, especially when negotiating with someone who could be substantially affected by the performance of official duties. It would be improper to permit the prospect of future employment to influence official actions. Therefore, while it is not specifically required, one should consider recusing oneself from any official activities affecting an outside party with whom job negotiations are under way.<sup>97</sup>

In the Executive branch, Senate and House, negotiations for future employment are commonplace and allegations of impropriety are frequent. No government employee will admit that employment negotiations influenced his or her official actions, and most will deny that they negotiated employment while working on an official action of interest to the prospective employer. Nevertheless, the timing and nature of many recent job changes by public officials—some of which are discussed below—have raised valid suspicions that conflict-of-interest rules are routinely violated through the revolving door.

## **Post-Government Employment Lobbying Restrictions**

Under the Ethics Reform Act of 1989 (18 U.S.C. §207), members and staff of both the executive and legislative branches of the federal government are subject to restrictions on post-government lobbying activities. While any former government official or

foreign government or foreign political party with the intent to influence a decision by any federal official in the executive or legislative branches.

- “Very senior” staff of the executive branch, those previously classified within Executive Schedules I and II salary ranges, are prohibited from making direct lobbying contacts with any political employee in the executive branch.
  - “Senior” staff of the executive branch, those previously paid at Executive Schedule V and up, are prohibited from making direct lobbying contacts to their former agency or on behalf of a foreign government or foreign political party.
  - Any former government employee, regardless of previous salary, may not use confidential information obtained by means of personal and substantial participation in trade or treaty negotiations in representing, aiding or advising anyone other than the United States regarding those negotiations.
- **TWO-YEAR BAN ON “SWITCHING SIDES” BY SUPERVISORY STAFF OF THE EXECUTIVE BRANCH.** Senior staff in the executive branch who served in a supervisory role over an official matter that involved a specific party, such as a government contract, may not make lobbying contacts on the same matter with executive agencies for two years after leaving public service.
- **LIFE-TIME BAN ON “SWITCHING SIDES” BY EXECUTIVE BRANCH PERSONNEL SUBSTANTIALY AND PERSONALLY INVOLVED IN THE MATTER.** Senior staffers in the executive branch who were substantially and personally involved in an official matter that involved a specific party, such as a government contract, are permanently prohibited from making lobbying contacts on the same matter with executive agencies.

The cooling-off period applies only to making “any communication to or appearance before” the restricted government agencies or personnel. As a result, former public officials may conduct all the research, preparation, planning and supervision for lobbying their former agencies or personnel immediately upon leaving public office, so long as they do not make the actual lobbying contact during the cooling-off period. The former official may simply direct other lobbyists to make the contact.

While these revolving door restrictions may appear fairly stringent at first glance, many of the restrictions are easily and routinely sidestepped. Negotiations of future employment while serving as a government official are commonplace, and the potential for conflicts of interest are largely left unmonitored. The post-government cooling-off period is brief and applies only to making lobbying contacts with former government colleagues.

In negotiating future employment as a lobbyist while still serving in an official capacity in government, Members of Congress and senior staff are warned not to be unduly influenced by the prospects of lucrative job offers, but they may nonetheless go ahead and negotiate salaries and employment. Though recusal from participating in official actions where a conflict of interest occurs is suggested in both the Senate and the House, it is not mandated. While recusals by Members of Congress or senior staff members are rare, the hiring of Congressional officials as corporate lobbyists is not.

No one is keeping tabs on who in Congress is negotiating for what employment and, as a result, no one is enforcing the recusal guidelines in any systematic fashion. For the most part, the Senate and House ethics committees are completely in the dark as to who is negotiating future employment and who should recuse themselves from official business, unless of course a scandal is uncovered in the press.

## **Case Study on Negotiating Future Employment by Executive and Congressional Staff: the Revolving Door Windfall from the Medicare Drug Prescription Bill**

In the executive branch, waivers often required for negotiating future employment are routinely granted and rarely, if ever, denied. A freedom of information request by Public Citizen to the Department of Health and Human Services (HHS) found that from January 1, 2000 through November 17, 2004, 37 formal requests for waivers from the conflict-of-interest statutes were made in that department alone. All 37 requests were granted and none denied.<sup>98</sup>

One of the granted waivers sheds light on the Thomas Scully scandal. On May 12, 2003, Scully, chief administrator for the Centers for Medicare and Medicaid Services (CMS), secretly obtained an ethics waiver from Health and Human Services (HHS) Secretary Tommy Thompson, allowing Scully to ignore ethics laws that barred him from negotiating employment with anyone financially affected by his official duties or authority. The waiver allowed Scully to represent the Bush Administration in negotiations with Congress over the recently-enacted Medicare prescription drug legislation while Scully simultaneously negotiated possible employment with three lobbying firms and two investment firms that had a major stakes in the legislation.

A Public Citizen investigation has revealed that these firms own or represent dozens of health care companies, trade associations, and physicians' organizations with billions of dollars at stake in the new law.<sup>99</sup> The three lobby firms with which Scully negotiated possible employment lobby for at least 30 companies or associations that are affected by the new Medicare law. The two investment firms own substantial stakes in at least 11 companies that are affected by the Medicare changes.

Scully resigned from the CMS on December 16, 2003. Two days later, he announced that he had accepted lucrative contracts with two of the five firms he had been negotiating with while CMS administrator: Alston & Bird, a firm with many health care industry clients, and Welsh, Carson, Anderson & Stowe, an investment firm with investments in health care companies.

Scully is not alone. A slew of senior executive and Congressional staffers cashed in on the Medicare prescription drug law that they helped write and promote. Another study by Public Citizen documented many of the key staff who profited on the prescription drug bill through the revolving door.<sup>100</sup> These included:

- **THOMAS GRISSOM**, director of the Center for Medicare Management, who just a day after the Medicare bill was signed into law, jumped ship to become the top lobbyist for medical device maker Boston Scientific. As a top official at CMS, Grissom was in charge of developing reimbursement policies and regulations for the Medicare fee-for-service program and overseeing Medicare's \$240 billion contractor budget.



- **DALLAS “ROB” SWEETZ**, director of public and inter-governmental affairs at CMS, who in January 2004 joined National Media Inc., the advertising firm hired by the Bush administration to produce television ads touting the new Medicare law. In May, Sweetz moved over to the lobbying firm Loeffler Jonas and Tuggey, which represents Bristol-Myers Squibb, Purdue Pharma, First Health and PacifiCare.
- **JAMES C. CAPRETTA**, the top official on Medicare policy development at the Office of Management and Budget (OMB), who left the White House in mid-June 2004 to join Wexler & Walker Public Policy Associates. Pharmaceutical companies Amgen, Hoffman-LaRoche and Wyeth are among the firm’s clients.
- **JACK HOWARD**, a former deputy director of legislative affairs for President Bush, who now works at Wexler & Walker Public Policy Associates. From 2001 to 2003, Howard promoted the president’s agenda in Congress as the second-ranking member of the White House legislative affairs operation. Howard’s current clients include Amgen, PacifiCare and Wyeth.
- **DIRKSEN LEHMAN**, who served as the chief White House liaison to the Senate for Medicare, Medicaid and other health care regulations, became a lobbyist for Clark & Weinstock in May 2003. During the Medicare debate, he focused on key Senate committees on behalf of clients such as Aventis Pharmaceuticals, Novartis and the Pharmaceutical Research and Manufacturers of America (PhRMA).
- **ROBERT MARSH**, another White House legislative affairs staffer, who has been connected to White House Chief of Staff Andrew Card since George H.W. Bush’s first presidential run in 1979. Marsh left the White House in 2003 to join the OB-C Group, where he has represented the Blue Cross Blue Shield Association and WellPoint.
- **KIRK BLALOCK**, who as deputy director of the White House Office of Public Liaison, regularly strategized with Karl Rove and rallied business support for the president’s tax cuts and other issues. Among his clients at Fierce, Isakowitz & Blalock (the firm he joined in 2002) are the Generic Pharmaceutical Association and the Health Insurance Association of America. Blalock is also a leading fundraiser for President Bush.

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- **ROBERT WOOD**, former chief of staff for HHS Secretary Tommy Thompson, who was hired by Barbour, Griffith & Rogers in June 2003. Wood directs state affairs at Barbour Griffith, but lobbied Congress on behalf of Bristol-Myers Squibb, GlaxoSmithKline, Pfizer, PhRMA and the United Health Group.
- **LINDA FISHMAN**, who served as the lead Senate staff member for the Medicare conference committee.<sup>101</sup> She since has joined Hogan & Hartson, whose clients include GlaxoSmithKline and PhRMA, as a health policy adviser.<sup>102</sup>
- **COLIN ROSKEY**, who just three days after the signing of the Medicare law, for which he was one of the lead Senate negotiators, left his job as health policy adviser and counsel for the Senate Finance Committee to take a position with Alston & Bird – the same firm that hired former Medicare chief Tom Scully.<sup>103</sup>
- **SARAH WALTER**, who left her position as legislative director and chief health policy adviser for Sen. John Breaux (D-La.), one of the two Democrats who participated in negotiations over the Medicare bill, to take a position with Venn Strategies.<sup>104</sup>
- **JOHN MCMANUS**, who as staff director of the House Ways and Means Committee’s health subcommittee, was one of the key architects of the Medicare legislation. However, just two months after the Medicare bill became law, McManus left the House to start his own health care consulting firm, the McManus Group. McManus—who worked as a lobbyist for Eli Lilly from 1994 to 1998—already has lined up an impressive number of big-name clients from throughout the healthcare industry, including PhRMA and Genentech.<sup>105</sup>
- **PATRICK MORRISEY**, who served as the deputy staff director and chief health counsel for the House Energy and Commerce Committee, chaired by Rep. W.J. “Billy” Tauzin (R-La.), was hired in March 2004 by Sidley Austin Brown & Wood, a lobbying firm that represents PhRMA, Genentech and the Biotechnology Industry Organization (BIO).<sup>106</sup>
- Morrissey’s colleague **JAMES WHITE** left his position as Tauzin’s legislative director to join Abbott Laboratories as director of federal government affairs in January 2004.<sup>107</sup> Abbott, the Chicago-based manufacturer of Prevacid, Norvir and other brand-name drugs, spent \$3.7 million to lobby the federal government last year.

These new arrivals on K Street joined at least three dozen former Congressional chiefs of staff already lobbying for the drug and managed care industries in 2003. The list includes Cathy Abernathy, former chief of staff for Rep. Bill Thomas (R-CA); Alex Albert, who worked for Sen. Zell Miller (D-GA); Edwin Buckham and Susan B. Hirshmann, two former top staffers for House Majority Whip Tom DeLay (R-TX); David Castagnetti, who headed the office of Sen. Max Baucus (D-MT), the ranking Democrat on the Senate Finance Committee; Dave Gribbin, a former chief of staff for Sen. Dan Coats (R-IN) who worked for Dick Cheney when he was a Wyoming congressman; Kevin McGuiness, who left the office of Sen. Orrin Hatch (R-UT) to open up a lobbying shop with the senator’s son; and Daniel Meyer, the ex-chief of staff for former House Speaker Newt Gingrich (R-GA.).

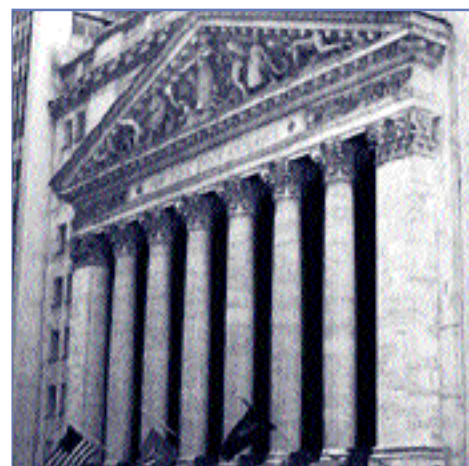
The Medicare prescription drug episode highlights the opportunities granted to government staff who have worked on a major piece of legislation dear to the hearts of wealthy special interests. But the

revolving door from government service to private sector lobbyist extends far beyond any single piece of legislation. It appears to be an increasingly common job transition in recent years.

The Center for Public Integrity surveyed how often the revolving door has turned for the top 100 officers of the executive branch at the end of the Clinton Administration.<sup>108</sup> Tracking the movement of administration secretaries and under-secretaries for each major executive agency, the Center concluded that about a quarter of senior-level administrators left public service for lobbying careers. Another quarter of the administrators accepted positions as directors of private businesses they had once regulated.

At least 17 top Clinton staffers have taken lobbying jobs on behalf of corporate or individual clients, including former Deputy Secretary of Treasury Stuart Eizenstat and former Director of White House Legislative Affairs Charles Brain. Another ten joined law firms that actively lobby the federal government, including three former Cabinet members: Agriculture Secretary Dan Glickman, Interior Chief Bruce Babbitt, and Transportation Secretary Rodney Slater.

Most of these officials flew through the revolving door into private sector lobbying immediately upon leaving public service. Clearly, the cooling-off period that prohibits officials from making direct lobbying contacts with their former colleagues has not slowed the revolving door. Businesses and special interest groups find plenty of value in hiring former government officials right out the door, despite the one-year prohibition on making lobbying contacts. The offer of a lucrative salary to these officials while still in public service can influence their actions. Just as importantly, their connections and insider knowledge does not go to waste during the cooling-off period. That knowledge becomes invaluable in crafting a lobbying strategy, knowing who in government needs to be contacted and what appeals may gain their support. During that one-year cooling off period, Members of Congress and committee compositions will generally stay the same, and there is very little turnover in congressional and executive agency staff. Those who passed through the revolving door need only direct others in the lobbying team to make the lobbying contacts—and in doing so convey warm regards from the former officials to their government colleagues.



**The Medicare prescription drug episode highlights the opportunities granted to government staff who have worked on a major piece of legislation dear to the hearts of wealthy special interests.**

### **Making a Living**

The revolving door functions even during natural disasters. As billions of federal dollars flow to the Gulf Coast to repair the damage caused by Hurricane Katrina, lobbyists are making sure their corporate clients get a share of the loot. One of the more active of those lobbyists is Joe Allbaugh, former director of the much maligned Federal Emergency Management Agency (and prior to that, George W. Bush's campaign manager during the 2000 election).<sup>109</sup> Before Katrina, Allbaugh was helping clients get reconstruction contracts in Iraq. In 2004 the *National Journal* asked Allbaugh about charges that he was cashing in on his service to the Bush Administration. He responded: "I don't buy the 'revolving door' argument. This is America. We all have a right to make a living."<sup>110</sup> Allbaugh, whose clients include Halliburton Co. (which has already gotten its first Katrina-related contract), appears to be making a very good living these days—so much so that an article in the online magazine *Slate* labeled him a "disaster pimp."<sup>111</sup>



**Clearly, the cooling-off period that prohibits officials from making direct lobbying contacts with their former colleagues has not slowed the revolving door. Businesses and special interest groups find plenty of value in hiring former government officials right out the door, despite the one-year prohibition on making lobbying contacts.**

## The Revolving Door for Members of Congress

Judging from their newly-won salaries in the private sector, perhaps the biggest prize for special interest groups with official business pending before the federal government is to secure the lobbying services of a recently retired Member of Congress. It is not an entirely new phenomenon to see a retiring Member of Congress accept a lobbying job with a firm or special interest group. But this revolving door appears to be turning with much more frequency these days.

Though it is difficult to produce reliable figures for the number of Congressional members-turned-lobbyists prior to the stringent reporting requirements of the Lobbying Disclosure Act (LDA) of 1995, one study cited by Common Cause found that only about 3 percent of Members of Congress left government service in the decade of the 1970s to become lobbyists.<sup>112</sup> A study by Public Citizen that is limited to the election cycles of 1976 and 1978 suggests the figure may be somewhat higher, with about 9 percent of Members of Congress who had retired in that decade still registered to lobby when the reliable reporting requirements of LDA became effective in 1998.<sup>113</sup> The bottom line is that the revolving door for Members of Congress was not as common a means of career change as it is now.

The rate at which members of Congress spin through the revolving door has skyrocketed since then. According to an analysis by Public Citizen, the road from Congress to K Street is now very well traveled, and is the most common career path for Members of Congress. As of July 2005, about 215 former Members of Congress have registered as active lobbyists with the Clerk of the

House and the Secretary of the Senate under the requirements of the Lobbying Disclosure Act of 1996. These lobbyists have served in Congress at some point between 1976 and 2004 (most of them having served fairly recently) and have filed lobbyist financial records showing lobbying activity in 2004-05.<sup>114</sup>

The percentage of Members of Congress retiring from public service for reasons other than death, conviction or election to other office and stepping into lobbying has fluctuated each Congressional session in the decade of the 2000s, never dipping below a third and reaching a high of almost half (46 percent) of the retiring Members of Congress in a single election cycle. This marks a dramatic increase over the 1970s.

Significantly, Public Citizen's analysis reveals that the K Street Project is working to the advantage of Republicans. The K Street Project was first developed in 1994 by Republican activist Grover Norquist, Rep. Newt Gingrich (R-GA.) and Rep. Tom DeLay (R-TX) to pressure major lobbying firms to hire Republicans rather than Democrats, thus helping to solidify Republican control over all

aspects of the legislative process in Washington.<sup>115</sup> The revolving-door figures for Members of Congress suggest that the Project has had an impact on Capitol Hill in the most recent decade. The rate of Democrats retiring from Congress and becoming lobbyists has fluctuated over the last few years, ranging from 15.4 percent in 2000, 16.7 percent in 2002 and 38.5 percent in 2004. The rate of Republicans retiring from Congress and becoming lobbyists over the same time period has been substantially higher, from 56.8 percent in 2000, 46.7 percent in 2002 and 47.6 percent in 2004.<sup>116</sup>

Though Republicans currently are enjoying an advantage when it comes to the revolving door, Members of Congress from both parties now have a greater inclination to pursue lobbying careers than in earlier decades. Today's greater propensity for retiring Members of Congress from both parties to join the ranks of K Street comes from a number of new incentives. First of all, despite partisan claims to roll back government outlays, federal government spending today is at an all-time high. More government contracts and federal grants are being awarded than ever before, and spending on social services and infrastructure development has risen dramatically.

Secondly, government regulations—or lack thereof—touch nearly every sector of business and social life, which is why the amount spent on lobbying the federal government is also at an all-time high. Last but not least, special interest groups today see so much at stake in the legislative and regulatory dealings of the federal government that most lobbyists are paid very handsomely. The closer a lobbyist is to the networks of Congressional power, the more a special interest group is willing to pay. And no one is more intimately involved in these networks than recently retired Members of Congress. As a result, several recent Congressional retirees have attracted multi-million dollar job offers with lobbying firms and associations.

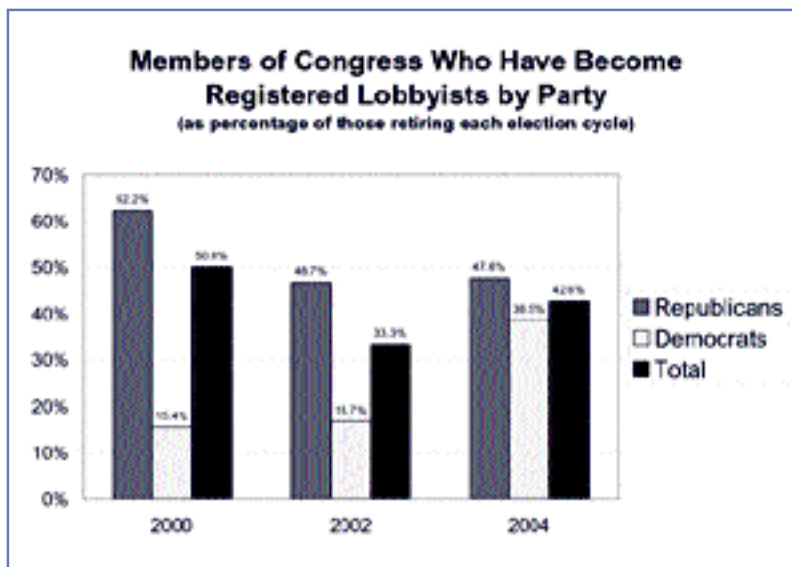
Former Rep. W.J. “Billy” Tauzin (R-La.) is but one example. Once again the Medicare prescription drug bill has come into play. Rep. Tauzin played a central role in drafting and negotiating the legislation. PhRMA, the pharmaceutical industry's premier lobbying association, made the prescription drug bill its top legislative priority. Massive campaign contributions, lobbying expenditures, advertising and public relations efforts were spearheaded by PhRMA to shape the prescription drug bill in ways the industry liked and to stave off measures it didn't. Rep. Tauzin worked closely with PhRMA, the White House, and Republican leaders of Congress to craft the final legislation.

During that period of intense lobbying activity by PhRMA, Rep. Tauzin was considering retiring from Congress and moving into private employment. Less than two months after final passage of the Medicare prescription drug bill, PhRMA offered Rep. Tauzin a contract deal rumored to be worth \$2 million to become president of the lobbying association, the largest compensation package for anyone at a trade association. Tauzin decided to take the offer after retiring from Congress in 2004.

The deal raises serious questions as to whether Rep. Tauzin's official actions were tainted by self-interest. The Medicare prescription drug legislation contains key provisions beneficial to the drug industry. It subsidizes private insurers to provide prescription drug coverage to seniors (thereby increasing demand for drugs), bars the Medicare administrator from bargaining for lower drug prices, and effectively prohibits the re-importation of lower-priced drugs from Canada – all key provisions sought by PhRMA.

Fellow Louisianan Sen. John Breaux (D-La.) followed Tauzin into the lucrative lobbying market. Breaux, who had not been expected to retire from the Senate, surprised many by announcing that he would be joining the lobbying firm of Patton Boggs at the end of 2004. In addition to the Patton





**With more than a third of today's retiring Members of Congress (except those who have retired due to death or conviction or election to another office), and about half of retiring senior-level officers of the executive branch moving directly from government service into lobbying on behalf of private special interest groups, the revolving door is spinning out of control.**

Boggs work (for which Breaux is expected to receive \$1 million a year), the former senator also will join a New York investment fund and become senior manager for a New York fund that handles energy projects. These two combined new salaries should put the 32-year veteran of Congress in Tauzin's income bracket.

## **The Government-to-Lobbyist Revolving Door Is Spinning Out of Control**

With more than a third of today's retiring Members of Congress (except those who have retired due to death or conviction or election to another office), and about half of retiring senior-level officers of the executive branch moving directly from government service into lobbying on behalf of private special interest groups, the revolving door is spinning out of control. The number of former government officials

serving as private sector lobbyists dwarfs previous trends.

Not only are the ranks of government employees-turned-lobbyists growing, but so are their salaries and benefits. Those with insider knowledge and privileged access to government officials are increasingly valuable to the business community attempting to secure added leverage over the course of public policy. This degree of industry influence on the formulation of policies supposedly designed to protect the common good is not good news for democracy.

Official actions in the name of the public good are often the casualty. Government officials tempted by the prospects of future private sector employment may compromise the public policies upon which they work. And post-government employees working as private sector lobbyists may abuse their insider knowledge or privileged networks of colleagues built while given the trust of public service.

Without a doubt, today's revolving door restrictions designed to protect the integrity of government are not working. Our conclusion lays out some of the changes that are required to protect the integrity of public policy from the special interests that benefit from the government-to-lobbyist revolving door. Before that we take a look at the limitations of the existing regulatory framework.



## Chapter 4:

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# The Existing System For Implementing Lobbying Rules and Revolving Door Policies

by **CRAIG HOLMAN**, Public Citizen

**CURRENTLY, ETHICS LAWS AND REGULATIONS** that address the problem of the revolving door are implemented and enforced through a loose confederation of federal offices, each with different levels of jurisdiction. The reason for this arrangement is that the federal ethics system has evolved both through piecemeal legislation that applies throughout the government and through rules and procedures that individual agencies and other parts of government have adopted on their own.<sup>117</sup>

For instance, ethical standards for the House of Representatives are implemented and enforced primarily by the Committee on Standards of Official Conduct.<sup>118</sup> Senate ethics standards fall under the authority of the U.S. Senate Select Committee on Ethics.<sup>119</sup> Overall ethics guidelines for executive-branch employees are developed by the Office of Government Ethics (OGE), but that agency does little in the way of implementation and enforcement, leaving that to individual agencies or even to the individual officials covered by the rules.<sup>120</sup> If legal action is deemed appropriate against violators of the ethics laws and rules in either the legislative or executive branch, the cases are assumed by the Department of Justice's Public Integrity Section.

The resulting hodgepodge makes it difficult for government officials to comply with the current regulatory regime and does not inspire confidence among the public that rigorous ethical standards are being upheld. The conclusion of this paper offers a series of recommendations for fixing the system. In order to put those proposals in context, this chapter describes some of the main problems with the existing state of affairs.

### Implementation of the Lobbying Disclosure Act

Section 6 of the Lobbying Disclosure Act (LDA) reads: The Clerk of the House and the Secretary of the Senate shall develop a “computerized systems designed to minimize the burden of filing and max-

imize public access to materials filed under this Act.”<sup>121</sup> Yet those offices have so far failed to comply, justifying their position by raising questionable arguments about ambiguities in the law or the absence of necessary authority.

Fortunately, Pam Gavin, Director of Public Records in the Secretary of the Senate’s office, has single-handedly managed to work around the stonewalling to create a partial system for electronic dissemination of lobbyist filings. Despite the absence of specific budgetary allocation, Gavin has devoted the user fees collected for copying of paper records to pay for the posting of PDF (image) files of the lobbyist reports on the Senate’s Web site at [www.sopr.gov](http://www.sopr.gov).<sup>122</sup>

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However, these PDF postings lack most of the benefits of a full electronic reporting system. They are not searchable or sortable by bill number, issue area or any category for that matter, other than a most rudimentary search by exact name of the lobbying entity as filed. For example, a search for the lobbying records of the “National Rifle Association” or “NRA” will produce no records at all. The NRA has decided to file its lobbying records under the name “Natl Rifle Association” and only a search for “Natl” will produce the association’s records. Apart from abbreviations, if a group misspells its own name in its lobbying filings, its records will only show up on the Senate’s Web site under the misspelled name.

The system does not tally information from different reports filed by the same lobbyist, making it impossible to answer questions such as: “How much money has Microsoft spent on lobbying since 1996, and how has this money been divided between the firm and its outside lobbyists?” Nor is it possible to download the data from the various reports into a spreadsheet so that one might do the calculation manually. Instead, a user has to print out each report, enter the data and only then do the calculations. In essence, the lobbying disclosure system on the Senate’s Web site is little more than an old-fashioned card catalogue available on the Internet.<sup>123</sup>

The situation is even worse on the House side. The Clerk of the House has made no effort whatsoever to implement the disclosure requirement of Section 6 of the LDA. In fact, Jeff Trandahl, the House Clerk, has even declined to discuss the matter when approached by Public Citizen.<sup>124</sup>

Just as importantly to the integrity, or lack thereof, of the LDA is the presumption by both the Clerk of the House and the Secretary of the Senate that they have no enforcement authority to ensure compliance with the Act. The Senate Office of Public Records and the House Legislative Resource Center oversee the lobbying disclosure filings. The two offices may send “correction” letters to scofflaws who have failed to follow the law. They can refer any violation that is not fixed within 60 days to the Department of Justice, which can issue civil penalties up to \$50,000. Until very recently, however, there have been no referrals by the congressional offices to the Department of Justice for noncompliance with the LDA, and the Department of Justice has not pursued a single LDA enforcement case until this year.<sup>125</sup> Bowing to a FOIA request by a reporter, the Department of Justice has acknowledged that it settled three enforcement cases, all in 2005.<sup>126</sup> The number of enforcement cases may grow as public pressure mounts for enforcement of the LDA.

Essentially, compliance with the Lobbying Disclosure Act is voluntary, so there are many scofflaws. In one study, the Center for Public Integrity found that 20 percent of lobbying disclosure records were filed at least three months late; 3,000 reports were filed six months late and 1,700 reports were at least a year overdue.<sup>127</sup>

## Enforcement of Lobbying Ethics Rules

In addition to the disclosure requirements under the LDA, lobbyists are also subject to a loosely-knit set of ethics laws and rules on their behavior. Many of these laws and regulations are discussed throughout the chapters of this report and compiled in Appendix B. Monitoring and enforcement of these laws and regulations covering conduct rather than disclosure rest with the ethics committees of the House and the Senate for members of Congress, the Office of Government Ethics for the executive branch, and ultimately the Department of Justice.

### House and Senate Ethics Committees

Each House of Congress has its own ethics committee charged with, among other things, enforcement of conflict-of-interest rules and revolving door restrictions for their own members. The Senate in 1964<sup>128</sup> and the House in 1967<sup>129</sup> established, for the first time, standing committees on ethics, designed to enforce conflict-of-interest rules, gift restrictions and codes of conduct governing how members relate to lobbyists.

In the House, the ethics committee is formally known as the Committee on Standards of Official Conduct. In the Senate, it is known as the Select Committee on Ethics. Both committees are evenly divided between Republican and Democratic members. The ethics committees have the authority to investigate alleged violations of ethics rules, issue reprimands or fines for violations, recommend expulsion to the full House or Senate, and refer serious criminal violations to the Department of Justice for prosecution.

By their very structure and composition, the congressional ethics committees are designed primarily to provide advice and education about ethics rules rather than enforcement against violations. First of all, the committees are run exclusively by members of Congress and staffed by congressional staffers. Secondly, committee membership is done at the pleasure of party leaders in the House and the Senate. Finally, the ethics rules themselves are formulated by the congressional leadership and ratified, sometimes without knowing what the proposed rules are, by the majority members of Congress.

### Office of Government Ethics

The Office of Government Ethics was established by the Ethics in Government Act of 1978. It was created as an independent agency to monitor and enforce the new ethics laws for the executive branch and to promulgate implementing regulations. Even though OGE assumed stewardship over the ethics laws, the Act preserved a considerable level of independence among each executive branch agency to create its own ethics code and to interpret and administer ethics laws



Finally, the attitude of “partnership” with the various executive branch offices on which OGE is based has created a culture of “insider relations” with other executive branch offices. OGE tends to view itself as an ally of the other executive offices whose purpose often is to do the bidding for the executive branch. This culture can have profound consequences for the integrity of federal ethics laws. For example, at the request of the White House and congressional leaders, OGE has proposed radically scaling back personal financial disclosures for public officers, despite objections from several public interest groups.<sup>133</sup>

At the request of executive branch officials, OGE has also reclassified what constitutes an “office” to narrow the application of the revolving door restriction. Instead of a former officer of HHS being subject to the one-year cooling off period for lobbying HHS, that officer is now only precluded from lobbying the particular entity within HHS in which he or she had served.<sup>134</sup>

For the most part, the Office of Government Ethics appears to be serving the interests of executive branch officials, not the public and not the Ethics in Government Act. It has no interest in centralizing records and disclosing information to the public, and the agency has developed a too-cozy relationship with executive branch officials.

## **Ethics and Lobbying Laws Are Implemented and Enforced by a Disparate Range of Offices in Both the Congressional and Executive Branches**

Not only are ethics and lobbying laws and rules a loose patchwork of disparate and inconsistent regulations between and within the branches of government, but they are also very poorly enforced. Congressional lobbying rules are implemented and enforced by at least four different agencies: the Clerk of the House, the Secretary of the Senate, the House Ethics Committee and the Senate Ethics Committee. Lobbying rules for executive branch officials, though overseen by a single agency, are in fact interpreted, implemented and enforced by dozens of executive offices with little or no coordination and recordkeeping among them.

With no standardization and little public disclosure, regulating the conduct and disclosure of lobbying activities—especially abuses of the revolving door between public service and private interests—becomes a Herculean task. Violations of the law often are interpreted away or the rules are simply changed to suit government officials.

If we are to address the grave problems of the revolving door and other ethics issues, not only must the laws and regulations be amended, but we must also change the mechanisms for implementation and enforcement of these standards of law. These matters are taken up in the concluding chapter of this paper.

## Conclusion:

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# Recommendations for Reducing Revolving Door Conflicts of Interest

**How to better enforce existing rules and eliminate loopholes.**

**by SCOTT AMEY, Project On Government Oversight; CRAIG HOLMAN, Public Citizen; and PHILIP MATTERA, Corporate Research Project**

**THROUGH CASE STUDIES AND ANALYSIS**, this report set out to illustrate the degree to which revolving-door appointments throughout the federal government create the appearance of impropriety and conflict of interest as well as actual ethical problems.

The reforms required to root out this problem will not be easy to implement, given the influence of wealthy corporations and trade associations that resist the disclosure and transparency requirements that underpin all of the report's recommendations. But public pressure, skillfully applied, could force the executive and legislative branches of government to act for the common good by simplifying ethics rules and increasing transparency through disclosure requirements. In this concluding chapter, the report lays out a set of reforms to address the problem of the revolving door.

The first of the proposals covers the revolving door problem in general, and the others address the particular forms of the phenomenon described in the preceding chapters.

## **Standardization of Revolving Door and Conflict-of-Interest Laws and Regulations**

A lack of regulatory consistency across the federal government is a key reason for lax enforcement of the conflict-of-interest laws and regulations that are already on the books. Ethics issues should be overseen by a single independent agency that not only implements the laws passed by Congress but



also enforces them diligently. For separation-of-power reasons, there would probably have to be different agencies for Congress and the executive branch, but each one should be:

- staffed by career professionals;
- vested with the authority to promulgate implementing rules and regulations, conduct investigations, subpoena witnesses, and issue civil penalties for violations;
- provided reasonable independence from the immediate control of those whom they regulate; and
- empowered as the central agency for implementation, monitoring, enforcement and public disclosure of its charges.

The congressional entity should take over the responsibilities of the Senate and House ethics committees as well as the lobbying disclosure responsibilities of the Clerk of the House and the Secretary of the Senate. It should be staffed and directed by career officials who are not Members of Congress. The agency should also be afforded a budget that is approved once every two sessions of Congress in order to better insulate the agency from congressional retaliation.

At the executive level, the OGE should continue to serve as the principle agency overseeing the executive branch, but it should be strengthened in order to ensure that conflict-of-interest standards are consistently applied. OGE must be granted some enforcement authority, particularly over civil violations, and should not be viewed as a “partner” sharing ethics responsibilities with other executive branch agencies. It must be empowered as the central ethics agency for the entire executive branch, responsible for the promulgation of rules and regulations, monitoring their implementation, and enforcing compliance. It should also serve as the central repository for all rules and compliance actions, and function as the executive branch’s public outreach clearinghouse for ethics. This would also include the new rules proposed below.

Several states provide models for implementation and enforcement of lobbying and ethics laws through independent ethics agencies, selected on a non-partisan and rotating basis, with multiple-year budget authorizations to protect against retaliations by a hostile legislature or governor. See Appendix B for more details.

**To summarize: The functions of the Congressional ethics committees and the offices handling lobbyist disclosure should be combined in a single, independent agency covering the legislative branch. At the same time, the Office of Government Ethics should be given greater oversight and enforcement responsibilities and should be responsible for standardizing ethics procedures throughout the executive branch.**

## **Proposed Reforms Covering the Industry-to-Government Revolving Door**

The appointment of corporate executives and industry lobbyists to policymaking posts in the federal government poses two different issues. First, there are the individual conflict-of-interest considerations. Such appointees may continue to have a financial interest in a former employer or may intend

to return to that firm (or another company in the same industry) after leaving government service. In either case, there is the risk that the appointee, once in office, will attempt to shape federal policy in a way that benefits his or her specific former employer or that industry in general.

Second, there is the broader question of whether the appointment of many individuals from the corporate sector to key regulatory or contract oversight positions will give policy too much of a pro-business tilt. This has been a growing problem in recent years, given the larger number of corporate veterans appointed by the Bush Administration to important posts throughout the executive branch.

As tempting as it may be to propose an outright ban on the appointment of corporate executives and industry lobbyists to policymaking posts in regulatory agencies, we recognize that a blanket prohibition is not politically feasible. Also, it would prevent the appointment of desirable corporate candidates, such as an executive who did a good job overseeing environmental remediation. Instead, we propose to strengthen existing safeguards meant to prevent specific conflicts of interest.

### Employment eligibility standards

There are currently no government-wide restrictions on the appointment of corporate lobbyists or executives to positions in which they might oversee contracts, regulations and other policies that significantly affect the interests of a former employer. Existing federal rules focus instead on the obligations of such persons to divest themselves of investments that might create a financial conflict of interest (or place such investments in a blind trust) and to refrain from participating in an official capacity in any matter in which “any person whose interests are imputed to [them]” has a financial interest that will be affected.<sup>134</sup>

In addition, there are rules saying that federal employees must avoid “an appearance of a loss of impartiality in the performance of his official duties.” One of the situations in which such an apparent loss of impartiality is said to be possible is the handling of a matter involving a person for whom the federal employee served, within the last year, as “officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.”

An appointee is supposed to deal with such situations mainly by recusing him- or herself from specific matters.<sup>136</sup> That is suitable when the potential conflicts are an occasional matter, but it becomes more problematic when an appointee must frequently handle matters involving a former employer—which is more likely to happen, for example, when an executive is appointed to a policymaking post in an agency that regulates the company where that official used to work. Repeated recusals (also known as disqualifications) may address the conflict-of-interest issue, yet like repeated absenteeism they can interfere with job performance.

In theory, persons expected to frequently disqualify themselves from matters that come before the government should not be considered as candidates in the first place, though the White House officials choosing the appointees do not appear to apply this standard.

What is needed is a system of screening under which OGE would review the extent to which a proposed appointee would likely face potential conflicts involving his or her private-sector activity. In that screening process, OGE should have the power to block appointments of individuals—at least

among those senior officials currently required to file financial disclosure reports—who would be expected to engage in frequent recusals because of an apparent loss of impartiality related to a recent (within two years) former employer.

**To summarize: OGE should review all senior-level appointees to determine whether a prior position in the private sector would make that person ineligible because of the likelihood of frequent conflicts with the impartiality rule.**

## Strengthening recusal requirements

An appointee who passes the pre-employment screening (by virtue of not having excessive possibilities for conflicts involving prior employment) may still face some situations in which recusal will be necessary. The current system for handling those recusals is too lax. It is left to the appointee (or his or her immediate boss) to make a subjective determination as to whether the potential for a violation of the impartiality rule exists. We recommend a stricter standard:

**Recusal should be mandatory for all matters directly involving an appointee's former employers and clients during the 24-month period prior to taking office.**

Recordkeeping for recusals also needs to be improved. Currently, in most cases, appointees need not file a report of their recusals outside their own agency. We recommend that:

**The employment histories and financial disclosure records of all political appointees and Senior Executive Service employees, as well as any recusal reports or waivers, should be filed with OGE and made publicly available on OGE's web site.**

Finally, there is the question of enforcement of recusal agreements. Currently, OGE does not actively enforce recusals, either itself or by referral to the Department of Justice. OGE should review the agreements on a regular basis and should routinely refer instances of possible violation to the Justice Department.

**Recusal agreements should be monitored by OGE on a regular basis, and violations should be referred to the Department of Justice.**

## Ethics Certification

Adherence to the rules regarding recusals and related matters should be ongoing during an appointee's term of office.

**All Senior Executive Service Employees should be required to certify each year that they have read and are aware of conflict-of-interest and ethics restrictions appropriate to their position and that they have not violated those restrictions with respect to their official duties in the previous year.**

## Proposed Reforms Covering the Government-to-Industry Revolving Door

Government employees are often unaware of or are confused by post-government employment restrictions. Both public trust in government and the private sector's ability to effectively deal with government officials would be enhanced by clearer standards concerning restrictions on post-government employment. The rules should be more stringent as well.

First, senior officials should be held to a high standard to avoid the possibility that their decision-making is influenced by future employment possibilities. For this reason, they should be barred for a period of time for taking a job with companies that significantly benefit from policies formulated by those officials. While it may be impractical to apply this to all companies (given the wide impact of certain economic policies, for example), it can be enforced with regard to specific contractors.

There is also a need to close the loophole that allows officials to take a job with a company they had authority over, as long as the post is with another part of the corporation. It is naïve to think that the official's inside knowledge and contacts will not somehow be exploited by the company. At the same time, the widespread use of waivers, which undermine the limited restrictions that already exist, has to be brought under control.

We also recommend that officials leaving government be required to sign binding "exit plans" that would remove any ambiguity about what they can and cannot do once they are back in the private sector.

In sum, the key recommendations are as follows:

- **Prohibit, for a specified period of time, political appointees and Senior Executive Service policymakers from being able to seek employment from contractors that may have significantly benefited from the policies they formulated;**
- **Close the loophole in the current law that allows government employees to take a job with a department or division of a corporation or contractor that is connected (financially or through a corporate parent or other business relationship) to the division or department of a business that they regulated or otherwise had authority over; and**
- **Create a system to better regulate Members of Congress as well as their senior staff. Currently, Members of Congress and senior staff are merely warned against improprieties and advised to recuse themselves from issues of concern to prospective employers.**
- **Restrict the granting of waivers relating to the rules on negotiating post-government employment to exceptional situations—and make those few waivers available to the public in electronic form.**
- **Require government officials to enter into a binding revolving-door exit plan that sets forth the programs and projects from which the former employee is banned from working. Like financial disclosure statements, these reports should be filed with the Office of Government Ethics and available to the public.**

- **Require recently retired government officials and their new private sector employers to file revolving-door reports attesting that the former government employee has complied with his or her revolving door exit plan.**

## **Proposed Reforms Covering the Government-to-Lobbyist Revolving Door**

Currently, all former members of Congress, their senior staff and senior employees of the executive branch are subject to a one-year cooling-off period during which they must refrain from making lobbying contacts. However, these same officials may immediately conduct all other lobbying activities in most instances upon retirement from public service, including the research, preparation, strategizing and supervising of lobbying activities for a business, as long as the former public servant does not actually pick up the phone and make contact with covered government officials.

The cooling-off period needs to be longer, lasting at least a full two-year Congressional cycle. In addition, the scope of prohibited lobbying activities should be expanded. It is not enough to prohibit direct lobbying contacts. Former officials should also be prohibited from planning and preparing lobbying strategies and supervising other lobbyists involved in attempting to influence legislation or public policy among covered government officials. Nor should officials who leave government be free to lobby another part of the federal government during that same cooling-off period.

Former Members of Congress presently retain special Congressional privileges, such as special access to the floor of Congress and the Congressional gym. Such privileges not available to the general public should be suspended for any former Member of Congress; at the very least, such privileges should be suspended while the former Member serves as a lobbyist.

To summarize: restrictions on lobbying by former Members of Congress and their staff should be strengthened by:

- **extending the cooling-off period for at least one full Congressional session (two years);**
- **expanding the scope of prohibited activities to include the preparation, strategizing and supervision of lobbying activity designed to facilitate making a lobbying contact; and**
- **revoking the special privileges given to former Members of Congress if they are serving as lobbyists.**

Similar enhancements to revolving-door rules are needed for executive branch officials who become lobbyists, including the extended cooling-off period and the widening of the scope of prohibited activities. In addition, the executive-branch rules should create a special category of “procurement lobbying” relating to efforts by businesses and special-interest groups to influence federal purchasing decisions. Given that contracting is such an important function of the executive branch—and given the strong potential for corruption in this area—it makes sense that this form of lobbying should be highlighted for disclosure purposes.

To summarize: restrictions on lobbying by former senior officials in the executive branch should be strengthened by:

- extending the “cooling off” period for at least one full Congressional session (two years);
- expanding the scope of prohibited activities to include the preparation, strategizing and supervision of lobbying activity designed to facilitate making a lobbying contact; and
- creating a special category of “procurement lobbying,” which includes any attempt to influence procurement decisions, subject to reporting and disclosure.

## **Increase transparency by establishing fully searchable, sortable and downloadable internet databases for disclosure of lobbying activity**

This report strongly recommends that both existing and future ethics filings throughout the federal government be made available to the public at no cost through internet-based, searchable, sortable and downloadable on-line databases. The maintenance of such databases is key to establishing government accountability. As discussed in Chapter 4, the current Congressional system for disseminating lobbyist data is a case study in how not to handle public disclosure.

The following is a compilation of the various datasets that should be included in a comprehensive federal revolving-door database:

### **Existing data collection**

- Lobbyist disclosure data submitted to the House and the Senate
- Financial disclosures made by those appointees required to file Standard Form 278

### **Proposed data collection**

- Recusals/disqualifications filed by federal officials on matters involving former employers
- Annual ethics certifications by Senior Executive Service Employees
- Waivers granted to federal employees to negotiate future employment in the private sector
- Revolving-door exit plans for federal officials leaving government for the private sector
- Compliance reports on revolving-door regulations by former federal officials now in the private sector and by their new employers.

**THE REVOLVING DOOR WORKING GROUP** calls on lawmakers and federal officials to take immediate steps to implement this combination of reforms to address the three types of revolving-door conflicts of interest and to strengthen oversight and enforcement of ethics rules. While such measures will require significant political courage, they will go a long way toward restoring public confidence in the federal government. And as any politician knows, good government is essentially a matter of trust.



## Appendix A:

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# Federal Revolving Door & Ethics Restrictions

Source: SCOTT AMEY, Project On Government Oversight

## STATUTES

### **5 U.S.C. §§ 7321-7326 — THE HATCH ACT**

Prohibits federal executive branch employees, including special government employees (i.e., advisory committee members) who are working on federal government business, from engaging in unauthorized political activity while on duty. Government employees in violation of the Hatch Act can be removed or suspended from federal employment.

### **18 U.S.C. § 201 — BRIBERY OF PUBLIC OFFICIALS AND WITNESSES**

Bans bribery of government officials and witnesses who appear before either House of Congress, or any agency, commission, or officer authorized by the laws of the United States.

### **18 U.S.C. § 202 — DEFINITIONS**

Defines “special Government employee,” “official responsibility,” “officer,” “employee,” “Member of Congress,” “executive branch,” “judicial branch,” and “legislative branch.”

### **18 U.S.C. § 203 — COMPENSATION TO MEMBERS OF CONGRESS, OFFICERS, AND OTHERS IN MATTERS AFFECTING THE GOVERNMENT**

Prohibits federal employees, including special government employees from acting as a compensated representative for private entities before an agency or court of the executive or judicial branches of government. Violations are subject to the penalties under 18 U.S.C. § 216.

### **18 U.S.C. § 204 — PRACTICE IN UNITED STATES COURT OF FEDERAL CLAIMS OR THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT BY MEMBERS OF CONGRESS**

Provides that the penalties of 18 U.S.C. § 216 apply to a Member of Congress or Member of Congress Elect who, practices in the United States Court of Federal Claims or the United States Court of Appeals for the Federal Circuit.

**18 U.S.C. § 205 — ACTIVITIES OF OFFICERS AND EMPLOYEES IN CLAIMS AGAINST AND OTHER MATTERS AFFECTING THE GOVERNMENT**

Prohibits federal employees, including special government employees, from acting as a representative for private entities before an agency or court of the executive or judicial branches of government other than in the proper discharge of his or her official duties. Violations are subject to the penalties under 18 U.S.C. § 216.

**18 U.S.C. § 206 — EXEMPTION OF RETIRED OFFICERS OF THE UNIFORMED SERVICES**

“Sections 203 and 205 of this title shall not apply to a retired officer of the uniformed services of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress.”

**18 U.S.C. § 207 — RESTRICTIONS ON FORMER OFFICERS, EMPLOYEES, AND ELECTED OFFICIALS OF THE EXECUTIVE AND LEGISLATIVE BRANCHES**

Provides a permanent, two-year, or one-year “cooling off” period from “representational activities” by former Executive Branch officials, Members of Congress, senior Congressional staffers, and others. Former government officials are not limited in going to work for a private contractor, but are limited in the type of work they can perform for them. Violations are subject to the penalties under 18 U.S.C. § 216.

**18 U.S.C. § 208 — ACTS AFFECTING A PERSONAL FINANCIAL INTEREST**

Generally, an executive branch or independent agency employee cannot participate in matters that affect his/her financial interests, as well as the financial interests of his/her spouse, minor children, partnerships, any organization in which he/she serves as an officer, director, trustee, or employee, or an entity that he/she is negotiating or with which he/she has an arrangement concerning prospective employment. Violations are subject to the penalties under 18 U.S.C. § 216.

**18 U.S.C. § 209 — SALARY OF GOVERNMENT OFFICIALS AND EMPLOYEES PAYABLE ONLY BY UNITED STATES**

Prohibits government employees from receiving and anyone from supplementing salary, or any contribution to or supplementation of salary, as compensation for his services as a government employee. Violations are subject to the penalties under 18 U.S.C. § 216.

**18 U.S.C. § 210 — OFFER TO PROCURE APPOINTIVE PUBLIC OFFICE**

Bans offering anything of value in consideration for the use or promise of use of influence to procure appointive office. Penalties include a fine, imprisoned not more than one year, or both.

**18 U.S.C. § 211 — ACCEPTANCE OR SOLICITATION TO OBTAIN APPOINTIVE PUBLIC OFFICE**

Bars accepting anything of value to obtain public office for another. Penalties include a fine, imprisoned not more than one year, or both.

**18 U.S.C. § 212 — OFFER OF LOAN OR GRATUITY TO FINANCIAL INSTITUTION EXAMINER**

Disallows loans or gratuities paid to any examiner or assistant examiner who examines or has authority to examine specified banks, branches, agencies, organizations, corporations, or institutions. Penalties include a fine, imprisoned not more than one year, or both.

**18 U.S.C. § 213 — ACCEPTANCE OF LOAN OR GRATUITY BY FINANCIAL INSTITUTION EXAMINER**

Forbids the acceptance of loans or gratuities offered pursuant to 18 U.S.C. § 212. Penalties include a fine, imprisoned not more than one year, or both.

**18 U.S.C. § 214 — OFFER FOR PROCUREMENT OF FEDERAL RESERVE BANK LOAN AND DISCOUNT OF COMMERCIAL PAPER**

Prohibits offering or paying anything of value to receive certain bank loans. Penalties include a fine, imprisoned not more than one year, or both.

**18 U.S.C. § 215 — RECEIPT OF COMMISSIONS OR GIFTS FOR PROCURING LOANS**

Bans persons from corruptly giving or soliciting anything of value for procuring loans. Penalties include up to a \$1 million fine, imprisoned not more than thirty years, or both.

**18 U.S.C. § 216 — PENALTIES AND INJUNCTIONS**

Provides the criminal and civil penalties for violations of 18 U.S.C. §§ 203, 204, 205, 207, 208, or 209.

**18 U.S.C. § 218 — VOIDING TRANSACTIONS IN VIOLATION OF CHAPTER; RECOVERY BY THE UNITED STATES**

The government may void or rescind any transactions resulting in a conviction under 18 U.S.C. §§ 201-225. The government may also recover, in addition to any penalty prescribed by law or in a contract, the amount expended, the thing transferred or delivered on its behalf, or the reasonable value thereof.

**18 U.S.C. § 219 — OFFICERS AND EMPLOYEES ACTING AS AGENTS OF FOREIGN PRINCIPALS**

Bans federal employees from acting as an agent or lobbyist of a foreign principal required to register under the Foreign Agents Registration Act or the Lobbying Disclosure Act of 1995, unless certified by OMB.

**18 U.S.C. § 1905 — DISCLOSURE OF CONFIDENTIAL INFORMATION (TRADE SECRETS ACT)**

Criminalizes the disclosure of confidential information.

**18 U.S.C. § 1913 — LOBBYING WITH APPROPRIATED FUNDS**

Prohibits executive branch officials from using appropriated funds to directly or indirectly encourage or direct any person or organization to lobby one or more Members of Congress on any legislation or appropriation. See also P.L. 108-447, Div. F, Title V., § 503 (2005) (prohibiting the use of federal money for propaganda).

**41 U.S.C. § 423 — RESTRICTIONS ON DISCLOSING AND OBTAINING CONTRACTOR BID OR PROPOSAL INFORMATION OR SOURCE SELECTION INFORMATION**

Also known as the Procurement Integrity Act (PIA), this statute regulates federal employees who are involved in buying goods and services in excess of \$100,000 as well as a federal employee contacts or is contacted by a government contractor about post-government employment.

**ADDITIONAL LAWS:** 5 U.S.C. § 3110 Employment of relatives — restrictions; 5 U.S.C. § 3326 Appointments of retired members of the armed forces to positions in the Department of Defense; 5 U.S.C. § 4111 Acceptance of contributions, awards, and other payments; 5 U.S.C. § 7351 Gifts to superiors; 5 U.S.C. § 7353 Gifts to Federal employees; 10 U.S.C. § 1033 Participation in management of specified non-Federal entities — authorized activities; 10 U.S.C. § 1060 Military service of retired members with newly democratic nations — consent of Congress; 10 U.S.C. § 1588 Authority to accept certain voluntary services; 10 U.S.C. § 1589 Participation in management of specified non-Federal entities — authorized activities; 10 U.S.C. § 10212 Gratuitous services of officers: authority to accept; 31 U.S.C. § 1342 Limitation on voluntary services; 31 U.S.C. §§ 1344, 1349 Use of government vehicles and adverse actions; 31 U.S.C. § 1348 Telephone installation and charges; 31 U.S.C. § 1353 Acceptance of travel and related expenses from non-Federal sources; 37 U.S.C. § 908 Employment of reserves and retired members by foreign governments.

## Regulations

(The following Parts include additional subparts and sections)

**5 C.F.R. PART 2634** — Executive branch financial disclosure, qualified trusts, and certificates of divestiture

**5 C.F.R. PART 2635** — Standards of ethical conduct for employees of the executive branch

**5 C.F.R. PART 2636** — Limitations on outside earned income, employment and affiliations for certain non-career employees

**5 C.F.R. PART 2637** — Regulations concerning post employment conflict of interest (apply to employees who left federal service before January 1, 1991)

**5 C.F.R. PART 2638** — Office of Government Ethics and executive agency ethics program responsibilities

**5 C.F.R. PART 2640** — Interpretation, exemptions and waiver guidance concerning 18 U.S.C. § 208 (Acts affecting a personal financial interest)

**5 C.F.R. PART 2641** — Post-employment conflict of interest restrictions

**48 C.F.R. PART 3** — Federal Acquisition Regulation: Improper Business Practices and Personal Conflicts of Interest

## Agency Supplemental Regulations

Department of the Treasury — 5 C.F.R. Part 3101

Federal Deposit Insurance Corporation — 5 C.F.R. Part 3201

Department of Energy — 5 C.F.R. Part 3301

Federal Energy Regulatory Commission — 5 C.F.R. Part 3401

Department of the Interior — 5 C.F.R. Part 3501

Department of Defense — 5 C.F.R. Part 3601; see also DoD 5500.7-R

Department of Justice — 5 C.F.R. Part 3801

Federal Communications Commission — 5 C.F.R. Parts 3901 & 3902

Farm Credit System Insurance Corporation — 5 C.F.R. Part 4001

Farm Credit Administration — 5 C.F.R. Part 4101

Overseas Private Investment Corporation — C.F.R. Part 4301

Office of Personnel Management — 5 C.F.R. Part 4501

Interstate Commerce Commission — 5 C.F.R. Part 5001

Commodity Futures Trading Commission — 5 C.F.R. Part 5101

Department of Labor — 5 C.F.R. Part 5201

National Science Foundation — 5 C.F.R. Part 5301

Department of Health and Human Services — 5 C.F.R. Part 5501

Postal Rate Commission — 5 C.F.R. Part 5601

Federal Trade Commission — 5 C.F.R. Part 5701

Nuclear Regulatory Commission — 5 C.F.R. Part 5801

Department of Transportation — 5 C.F.R. Part 6001

Export-Import Bank of the United States — 5 C.F.R. Part 6201

Department of Education — 5 C.F.R. Part 6301

Environmental Protection Agency — 5 C.F.R. Part 6401

National Endowment for the Arts — 5 C.F.R. Part 6501

National Endowment for the Humanities — 5 C.F.R. Part 6601

General Services Administration — 5 C.F.R. Part 6701

Board of Governors of the Federal Reserve System — 5 C.F.R. Part 6801

National Aeronautics and Space Administration — 5 C.F.R. Part 6901  
United States Postal Service — 5 C.F.R. Part 7001  
National Labor Relations Board — 5 C.F.R. Part 7101  
Equal Employment Opportunity Commission — 5 C.F.R. Part 7201  
Inter-American Foundation — 5 C.F.R. Part 7301  
Department of Housing and Urban Development — 5 C.F.R. Part 7501  
National Archives and Records Administration — 5 C.F.R. Part 7601  
Institute of Museum and Library Services — 5 C.F.R. Part 7701  
Tennessee Valley Authority — 5 C.F.R. Part 7901  
Consumer Product Safety Commission — 5 C.F.R. Part 8101  
Department of Agriculture — 5 C.F.R. Part 8301  
Federal Mine Safety and Health Review Commission — 5 C.F.R. Part 8401  
Federal Retirement Thrift Investment Board — 5 C.F.R. Part 8601  
Office of Management and Budget — 5 C.F.R. Part 8701

## **Executive Orders**

### **EXECUTIVE ORDER 13184 OF DECEMBER 28, 2000 - REVOCATION OF EXECUTIVE ORDER 12834**

Signed by President Clinton therein revoking the commitments under E.O. 12834 placed on employees and former employees.

### **EXECUTIVE ORDER 12834 OF JANUARY 20, 1993 - ETHICS COMMITMENTS BY EXECUTIVE BRANCH APPOINTEES**

Signed by President Clinton and known as the “Senior Appointee Pledge.” This order extended the one-year ban to five-years, prohibiting former employees from lobbying their former agencies after they left office. Additional restrictions were placed on employees of the Executive Office of the President (EOP) and trade negotiators.

### **EXECUTIVE ORDER 12731 OF OCTOBER 17, 1990 - PRINCIPLES OF ETHICAL CONDUCT FOR GOVERNMENT OFFICERS AND EMPLOYEES**

Signed by President Bush ordering the restated many of the principles in E.O. 12674

### **EXECUTIVE ORDER 12674 OF APRIL 12, 1989 - PRINCIPLES OF ETHICAL CONDUCT FOR GOVERNMENT OFFICERS AND EMPLOYEES**

Signed by President Bush to establish fair and exacting standards of ethical conduct for all executive branch employees. This order established standard of ethical conduct, placed limitations on outside earned income, granted authority to the Office of Government Ethics, and permitted agencies to supplement executive branch-wide regulations of the Office of Government Ethics.

### **EXECUTIVE ORDER 11222 OF MAY 8, 1965 - PRESCRIBING STANDARDS OF ETHICAL CONDUCT FOR GOVERNMENT OFFICERS AND EMPLOYEES**

Signed by President Johnson to restore citizens’ right to have complete confidence in the integrity of the federal government. Prohibited bribery, nepotism, using one’s office for private gain, conflicts of interest, misuse of federal property, and provided restrictions for special government employees.

## Other White House Action

Andrew H. Card, Jr., Assistant to the President and Chief of Staff, Memorandum for the Heads of Executive Departments and Agencies, Policy on Section 208(b)(1) Waivers with Respect to Negotiations for Post-Government Employment, Jan. 6, 2004.

## Major Legislation

### **OFFICE OF GOVERNMENT ETHICS AUTHORIZATION ACT OF 1996, PUB. L. 104-179, 110 STAT. 1566 (AUG. 6, 1996)**

Amended the Ethics in Government Act of 1978, thereby modifying post-employment restrictions on certain senior and very senior personnel the level of pay applicable with respect to certain senior personnel of the executive branch and independent agencies.

### **PUB. L. 104-106, DIV. D, TITLE XLIII, § 4304(B)(1), 110 STAT. 664 (FEB. 10, 1996)**

Repealed 10 U.S.C. §§ 2397-2397c, which forced DoD to keep statistics of former civilian and military employees hired by private contractors and thereby ending any transparency of DoD's revolving door.

### **ETHICS REFORM ACT OF 1989, PUB. L. 101-194, 202, 103 STAT. 1716, AT 1724 (NOV. 30, 1989)**

Amended the federal criminal code to revise provisions regarding former officers or employees of the executive branch or the District of Columbia attempting to influence the federal government or the District.

### **OGE RE-AUTHORIZATION ACT OF 1988, PUB. L. 100-598, 102 STAT. 3031 (NOV. 3, 1988)**

Amended the Ethics in Government Act of 1978 to authorize appropriations for OGE for FY 1989 and the five fiscal years thereafter, created OGE as an independent agency within the executive branch rather than under the jurisdiction of OPM, among other procedural requirements.

### **ETHICS IN GOVERNMENT ACT OF 1978, PUB. L. 95-521, 92 STAT. 1824 (OCT. 26, 1978)**

Established the appointment of a special prosecutor to investigate and prosecute violations of criminal laws by high-level officials of the executive branch and specified presidential campaign officials. Created, within the Department of Justice, an Office of Government Crimes to have jurisdiction over crimes committed by Federal officials, lobbying, and conflict of interests.

### **PUB. L. 87-849, 76 STAT. 1119 (OCT. 23, 1962)**

Strengthened criminal laws related to bribery, corruption in government, and conflicts of interest.



## Appendix B:

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# Revolving Door Restrictions by State

**Source: Craig Holman, Legislative Representative, Public Citizen (February 2005)**

Generally, a revolving door policy prohibits a former officeholder or government employee from lobbying the same agency or the same official actions for a reasonable cooling-off period after leaving public office. Many states (21) have some form of revolving-door policy that restricts lobbying activity for one year or less. Nine states impose a two-year ban on lobbying by some or all of its officials. A few states, such as California and New Mexico, impose a permanent ban for working on identical official actions or contracts that the government officer was personally and substantially involved in while in public service.

Some states (4) apply revolving door restrictions only to the legislative branch, some (4) apply the restrictions only to the executive branch, but most (21) apply the restrictions to both branches of government. More than half the states (26 in all) also apply some form of revolving door restrictions to senior-level government employees. Texas applies its revolving door policy only to executive directors of agencies rather than elected officials. Another 20 states have no revolving door policy at all.

### **PROHIBITION APPLIES TO LEGISLATIVE OFFICEHOLDERS ONLY (4 STATES)**

Alaska (1 year restriction) [§24-45-121(c)]  
Hawaii (1 year restriction) [§84-18]<sup>137</sup>  
Kansas (1 year restriction) [§46-233(b)(c)]  
Maryland (through next legislative session) [§15-504]

### **PROHIBITION APPLIES TO EXECUTIVE OFFICEHOLDERS ONLY (4 STATES)**

Nevada (1 year restriction) [§281.236]  
North Carolina (6 month restriction) [to be codified]  
West Virginia (6 month restriction) [§6B-2-5]  
Wisconsin (1 year restriction) [§19.45(8)(b)]

### **PROHIBITION APPLIES TO BOTH LEGISLATIVE AND EXECUTIVE OFFICEHOLDERS (21 STATES)**

Alabama (2 year restriction) [§36-25-13]

Arizona (1 year restriction) [§38-504(a)(b)]  
 California (1 year restriction) [§87406]  
 Connecticut (1 year restriction) [§§2-16a, 1-84b]  
 Florida (2 year restriction) [§112.313(9)]  
 Iowa (2 year restriction) [§§68B.5A, 68B.7]  
 Kentucky (1 year for executive official, 2 years for legislator) [§§6.757, 11A.040]  
 Louisiana (2 year restriction) [§15:1121]  
 Massachusetts (1 year restriction) [§268A]<sup>138</sup>  
 Mississippi (1 year restriction) [§25-4-105]<sup>139</sup>  
 Missouri (1 year restriction) [§105.454(5)]  
 New Jersey (2 year restriction) [§§52:13d-17, 52:13d-17.2]<sup>140</sup>  
 New Mexico (1 year restriction) [§10-16-8]  
 New York (2 year restriction) [§73(8)(a)]  
 Ohio (1 year restriction) [§102.03(A)]<sup>141</sup>  
 Pennsylvania (1 year restriction) [§1103(g)]  
 Rhode Island (1 year restriction) [§36-14-5]  
 South Carolina (1 year restriction) [§8-13-755]<sup>142</sup>  
 South Dakota (1 year restriction) [§2-12-8.2]  
 Virginia (1 year restriction) [§2.2-3104]<sup>143</sup>  
 Washington (1 year restriction) [§42.50.090, 42.52.080]<sup>144</sup>

#### **PROHIBITION ALSO APPLIES TO STAFF IN A DECISION-MAKING CAPACITY (26 STATES)**

Alabama (2 year restriction) [§36-25-13]  
 Arizona (1 year restriction) [§38-504(a)(b)]  
 California (1 year restriction) [§87406]  
 Connecticut (1 year restriction) [§§2-16a, 1-84b]  
 Florida (2 year restriction) [§112.313(9)]  
 Hawaii (1 year restriction for legislative official only) [§84-18]  
 Iowa (2 year restriction) [§§68B.5A, 68B.7]  
 Kentucky (1 year restriction for executive official only) [§11A.040]  
 Louisiana (2 year restriction) [§15:1121]  
 Massachusetts (1 year restriction) [§268A]<sup>145</sup>  
 Mississippi (1 year restriction) [§25-4-105]<sup>146</sup>  
 Missouri (1 year restriction) [§105.454(5)]  
 Nevada (1 year restriction for executive official only) [§281.236]  
 New Jersey (2 year restriction) [§§52:13d-17, 52:13d-17.2]<sup>147</sup>  
 New Mexico (1 year restriction) [§10-16-8]  
 New York (2 year restriction) [§73(8)(a)]  
 Ohio (1 year restriction) [§102.03(A)]<sup>148</sup>  
 Pennsylvania (1 year restriction) [§1103(g)]  
 Rhode Island (1 year restriction) [§36-14-5]  
 South Carolina (1 year restriction) [§8-13-755]<sup>149</sup>  
 South Dakota (1 year restriction) [§2-12-8.2]  
 Texas (2 year restriction for executive directors only) [§572.051]  
 Virginia (1 year restriction) [§2.2-3104]<sup>150</sup>  
 Washington (1 year restriction) [§42.50.090, 42.52.080]<sup>151</sup>  
 West Virginia (6 month restriction for executive official only) [§6B-2-5]  
 Wisconsin (1 year restriction for executive official only) [§19.45(8)(b)]

#### **NO REVOLVING DOOR POLICY (20 STATES)**

Arkansas, Colorado, Delaware, Georgia, Idaho, Illinois, Indiana, Maine, Michigan, Minnesota, Montana,<sup>152</sup> Nebraska, New Hampshire, North Dakota, Oklahoma, Oregon, Tennessee, Utah, Vermont, and Wyoming.

# Endnotes

## Introduction: The Revolving Door and Industry Influence on Public Policy

- 1 CBS News/*New York Times* Poll, July 11-15, 2004; online at <http://www.pollingreport.com/institut.htm>.
- 2 Aaron Bernstein, “Too Much Corporate Power?” *Business Week*, September 11, 2000, p.145.
- 3 “Lobbying From Within” (editorial), *New York Times*, June 17, 2005, p.A26.
- 4 An unfair advantage can extend beyond the narrow legal definition in 48 C.F.R. § 9.505(b) (2004), which states: “[A]n unfair competitive advantage exists where a contractor competing for award for any Federal contract possesses: 1. Proprietary information that was obtained from a Government official without proper authorization; or 2. Source selection information (as defined in 2.101) that is relevant to the contract but is not available to all competitors, and such information would assist the contractor in obtaining the contract.”

## Chapter 1: The Industry-to-Government Revolving Door

- 5 In theory, the election of a corporate executive or lobbyist to Congress—for example, Jon Corzine’s move from Goldman Sachs to the Senate—could also be considered a case of the reverse revolving door. This chapter, however, will focus on appointed officials in the executive branch, rather than elected officials. We are also not addressing the issue of an appointee’s holdings of corporate securities, which might make even an official who had not been a business executive or lobbyist more inclined to promote corporate-friendly policies.
- 6 The presence in government posts not only of corporate executives but also other members of a broader “power elite” was the focus of power-restructure researchers such as G. William Domhoff, author of the 1967 book *Who Rules America?*
- 7 For an exhaustive look at both Cabinet and sub-Cabinet appointments in the Reagan Administration, see: Ronald Brownstein and Nina Easton, *Reagan’s Ruling Class: Portraits of the President’s Top 100 Officials*. Washington, DC: Presidential Accountability Group, 1982.
- 8 Even by the early 1970s there was evidence that industry veterans were occupying many posts in key regulatory agencies. See: Common Cause, *Serving Two Masters: A Common Cause Study of Conflicts of Interest in the Executive Branch*. Washington, DC: October 1976. This report found, for example, that nearly two-thirds of senior personnel in the Nuclear Regulatory Commission had previously been employed by private entities holding licenses, permits or contracts from the Commission (pp.26-27).
- 9 Jeff Gerth, “Is Business Regulation Now in Friendly Hands?” *New York Times*, March 30, 1981.
- 10 See Philip Hilts, “Competitive Council’s Director Defended,” *New York Times*, December 10, 1991 and Christine Triano and Nancy Waltzman, *All the Vice President’s Men: How the Quayle Council on Competitiveness Secretly Undermines Health, Safety, and Environmental Programs*, OMB Watch and Public Citizen’s Congress Watch, September 1991.
- 11 Katharine Q. Seelye, “Bush is Choosing Industry Insiders to Fill Several Environmental Positions,” *New York Times*, May 12, 2001, p.A1.
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- 13 Democratic Policy Committee, *A Sweetheart Deal: How the Republicans have Turned the Government Over to Special Interests*, February 14, 2003; online at <http://www.house.gov/georgemiller/bushinsiders.pdf>.
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- 15 Paul J. Nyden, "Storm Over Coal Dust," *Charleston Gazette*, May 9, 2003, p.1D and Christopher Drew and Richard A. Oppel Jr., "Friends in the White House Come to Coal's Aid," *New York Times*, August 9, 2004, p.A1.
- 16 Ken Ward Jr., "MSHA's Lauriski Gets Job in Mining Industry," *Charleston Gazette*, November 18, 2004.
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- 18 Dan Berman, "Interior: Griles Cleared of Ethics Charges," *Greenwire*, March 17, 2004.
- 19 Anne C. Mulkern, "Controversial Interior Deputy Leaving Post," *Denver Post*, December 8, 2004, p.A-2 and "They Lost, But Landed on Their Feet," *National Journal's CongressDaily*, April 4, 2005.
- 20 "Glassman is New Chief Counsel for NHTSA," *Public Roads*, May 1, 2002; Center for American Progress and OMB Watch, op. cit., p.88. See also Christopher H. Schmitt and Edward T. Pound, "Keeping Secrets," *U.S. News & World Report*, December 22, 2003, p.18.
- 21 "New NHTSA Deputy," *Traffic World*, August 5, 2005.
- 22 This section is based heavily on *Philip Mattera, USDA Inc.: How Agribusiness has Hijacked Regulatory Policy at the U.S. Department of Agriculture*, produced by the Corporate Research Project for the Agribusiness Accountability Initiative, July 2004; online at <http://www.agribusinessaccountability.org/page/325/1>. See also: Oliver Prichard, "Critics: Agency Too Cozy with Those it Regulates," *Philadelphia Inquirer*, May 18, 2003, p. A18.
- 23 Lois Romano, "Johanns Hits the Ground Running with Seasoned Team," *Washington Post*, June 6, 2005, p.A17.
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- 29 "The Bottom Line," *The Hill*, February 23, 2005, p.12.
- 30 Center for American Progress and OMB Watch, op. cit., p.13 and "Carl Michael Smith Joins OKC-based Law Firm Dunlap Coddling & Rogers," *Oklahoma City Journal Record*, November 1, 2004.
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## Chapter 2: The Government-to-Industry Revolving Door

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- 57 18 U.S.C. § 208 (2004).
- 58 41 U.S.C. § 423(d)(2); see 48 C.F.R. § 3.104-3(d)(3) (2004) (allowing former government officials to work for a “division or affiliate” different from that which the official worked with during their government service).
- 59 5 C.F.R. § 2635.604(a) (2004) (“Obligation to disqualify”).
- 60 18 U.S.C. § 208; see 5 C.F.R. §§ 2635.402(c)(1)-(2), 2635.502(e)(1)-(2), 2635.604(b)-(c) (2004) (all providing that employees with conflicts “**should notify** the person responsible for his assignment.... an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.”). (Emphasis added).
- 61 5 C.F.R. §§ 3601.105(a)-(c) (2004) (providing that disqualifying financial interests, disqualification to ensure impartiality, and disqualification from matter effecting prospective employees, employees “**shall** [despite provisions in 5 C.F.R. §§ 2635.402, 502, 604] **provide written notice** of disqualification to his supervisor upon determining that he will not participate in the matter”). (Emphasis added).

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- 64 Supplemental Statement of Facts, *United States v. Druyun*, No. 04-150-A (E.D. Va.); online at <http://www.pogo.org/m/cp/cp-druyun-postpleaadmission-2004.pdf>.
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- 67 *Ibid.*
- 68 GAO, "Decision in Matter of: Lockheed Martin Corporation," File: B-295402, Feb. 18, 2005; online at <http://www.gao.gov/decisions/bidpro/295402.pdf> and GAO, "Decision in Matter of: Lockheed Martin Aeronautics Company; L-3 Communications Integrated Systems L.P.; BAE Systems Integrated Defense Solutions, Inc.," File: B-295401, B-293401.2, B-295401.3, B-295401.4, B-295401.5, B-295401.6, B-295401.7, B-295401.8, Feb. 24, 2005; online at <http://www.gao.gov/decisions/bidpro/295401.pdf>. See also GAO, *Air Force Procurement: Protests Challenging Role of Biased Official Sustained*, GAO-05-436T, April 14, 2005; online at <http://www.gao.gov/new.items/d05436t.pdf>.
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- 79 *Ibid.*
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- 81 See <http://investor.southerncompany.com/governance/directors.cfm>.
- 82 See [http://www1.dupont.com/NASApp/dupontglobal/corp/index.jsp?page=/content/US/en\\_US/overview/executives/fisher.html](http://www1.dupont.com/NASApp/dupontglobal/corp/index.jsp?page=/content/US/en_US/overview/executives/fisher.html).
- 83 See <http://www.bio.org/aboutbio/vp/vgiddings.asp>.
- 84 See <http://investors.utc.com/bios-detail.cfm?ID=2191>.
- 85 *Energy Daily*, September 2, 2005, p.3.
- 86 See <http://www.agritrade.org/Membership/O'Mara.htm>.
- 87 See <http://www.orbital.com/Template.php?Section=News&NavMenuID=32&template=PressReleaseDisplay.php&PressReleaseID=508>. See also Bill Gertz and Rowan Scarborough, "Inside the Ring: Roche is Back," *Washington Times*, September 2, 2005.
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### Chapter 3: The Government-to-Lobbyist Revolving Door

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## Chapter 4: The Existing System for Implementing Lobbying Rules and Revolving Door Policies

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- 118 <http://www.house.gov/ethics/>
- 119 <http://ethics.senate.gov/>
- 120 <http://www.usoge.gov/>
- 121 2 U.S.C. 1605.
- 122 Telephone interview with Pamela Gavin, Superintendent of Public Records, Office of the Secretary of the Senate, March 28, 2005.
- 123 During congressional hearings on LDA when the law was being considered, Congress understood the significance of the public disclosure requirements of Section 6. Congress was debating the issue of which governmental agency should be responsible for carrying out the disclosure requirements, including the mandate for a modern computerized disclosure system. Neither the Office of Governmental Ethics nor the Justice Department wanted the task of serving as the lobbyist filing and disclosure agency for LDA. As Stephen Potts, Director of the Office of Governmental Ethics testified in 1993: “We do not currently have the experience or equipment contemplated in the legislation for computer services necessary to handle this volume of lobbyists’ reports, nor to service the volume of requests for information likely to result because of the high visibility of the issue of lobbyists’ registrations.” The Federal Election Commission (FEC), however, was willing to carry out the mandate of public disclosure of lobbyist financial reports.
- Scott Thomas, Chair of the FEC, testified that the elections agency was quite prepared to take over the filing and disclosure responsibilities of the Act. Thomas observed that: “All these functional activities (disclosure requirements) are requirements for regulating campaign finance, and we already have developed the type of staff expertise, procedures, physical plant, and information technology necessary to meet these core elements of the bill.... This parallel is recognized in the bill in section 6 which requires the proposed Department of Justice Office of Lobbying Registration and Public Disclosure to set up computer systems ‘compatible with computer systems developed and maintained by the Federal Election Commission ... [so] that information filed in the two systems can be readily cross-referenced.’ It strikes us easier for all parties concerned if all interested parties can deal with one agency with familiar faces and consistent rules and procedures.”
- In the end, the filing and disclosure responsibilities were given to the House Clerk and the Senate Secretary. Since that time, the FEC has developed a stellar electronic reporting system of campaign finance reports that is searchable, sortable and downloadable, which minimizes the burden on filers and maximizes public access to the records. See Craig Holman, “Origins, Evolution and Structure of the Lobbying Disclosure Act”; online at [www.citizen.org](http://www.citizen.org) (May 4, 2005).
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- 127 Eliza Newlin Carney, “Lobbyists in the Crossfire,” *Congress Daily*, May 16, 2005.
- 128 S.Res. 338, approved in the 88th Congress, July 24, 1964.
- 129 H.Res. 418, adopted by the 90th Congress, April 13, 1967.
- 130 5 U.S.C. app. 402 (1993).
- 131 *Ibid.* at 402(b).
- 132 Andrew Card, “Memorandum for the Heads of Executive Departments and Agencies re: Policy on Section 208(b)(1) Waivers with Respect to Negotiations for Post-Government Employment,” January 6, 2004; online at <http://www.hqda.army.mil/ogc/EthicsForArmyLeaders—WhiteHouseMemoPostEmploy.htm>

- 133 Testimony of Public Citizen, Common Cause, Center for Responsive Politics, Democracy 21, Citizens for Responsibility and Ethics in Washington, Center for Corporate Policy, Public Campaign, OMB Watch, Judicial Watch and the Campaign Legal Center, to Ira Kaye, Associate General Counsel, Office of Government Ethics (February 11, 2005); online at [http://www.citizen.org/congress/govt\\_reform/ethics/articles.cfm?ID=12964](http://www.citizen.org/congress/govt_reform/ethics/articles.cfm?ID=12964).
- 134 Dana Milbank and Jim VandeHei, "Lobbying Prohibitions Eased For Former Top Officials," *Washington Post*, December 5, 2004.

## Conclusion

- 135 See 5 CFR 2635.402, "Standards of Ethical Conduct for Employees of the Federal Branch"; online at [http://a257.g.akamaitech.net/7/257/2422/12feb20041500/edocket.access.gpo.gov/cfr\\_2004/janqtr/5cfr2635.402.htm](http://a257.g.akamaitech.net/7/257/2422/12feb20041500/edocket.access.gpo.gov/cfr_2004/janqtr/5cfr2635.402.htm)
- 136 A stricter rule applies when a federal employee received an "extraordinary payment" of more than \$10,000 from a former employer prior to entering public service. In that case, the employee is automatically disqualified from handling any matter involving the former employer for a period of two years, though the rule can be waived under certain conditions.

## Appendix B

- 137 Hawaii – restriction applies only to involvement in any contract funded while serving in office.
- 138 Massachusetts – restriction applies only to issues upon which the official worked during the last two years while in office.
- 139 Mississippi – restriction only applies to contracts upon which the officials worked while serving in office.
- 140 New Jersey – restriction applies to officials working on behalf of the casino industry for two years after leaving office. Lifetime ban for officials lobbying on behalf of prior actions affecting a business in which the former official owns 10% interest or more.
- 141 Ohio – restriction applies to legislative officials lobbying the legislature; executive officials lobbying issues upon which they had worked while in office.
- 142 South Carolina – restriction applies only to issues upon which the official worked while serving in office.
- 143 Virginia – restriction applies only to issues upon which the official worked while serving in office.
- 144 Washington – restriction only applies to contracts upon which the officials worked in the last two years while serving in office.
- 145 Massachusetts – restriction applies only to issues upon which the official worked during the last two years while in office.
- 146 Mississippi – restriction only applies to contracts upon which the officials worked while serving in office.
- 147 New Jersey – restriction applies to officials working on behalf of the casino industry for two years after leaving office. Lifetime ban for officials lobbying on behalf of prior actions affecting a business in which the former official owns 10% interest or more.
- 148 Ohio – restriction applies to legislative officials lobbying the legislature; executive officials lobbying issues upon which they had worked while in office.
- 149 South Carolina – restriction applies only to issues upon which the official worked while serving in office.
- 150 Virginia – restriction applies only to issues upon which the official worked while serving in office.
- 151 Washington – restriction only applies to contracts upon which the officials worked in the last two years while serving in office.
- 152 Montana – former public employees may not "take direct advantage, unavailable to others, of matters with which the officer or employee was directly involved..."







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