RESTORING THE PUBLIC TRUST: A REVIEW OF THE FEDERAL PENSION FORFEITURE ACT

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

FEBRUARY 1, 2006

Serial No. 109–118

Printed for the use of the Committee on Government Reform

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

26–073 PDF WASHINGTON : 2006

For sale by the Superintendent of Documents, U.S. Government Printing Office
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RESTORING THE PUBLIC TRUST: A REVIEW OF THE FEDERAL PENSION FORFEITURE ACT

WEDNESDAY, FEBRUARY 1, 2006

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 10:18 a.m., in room 2154, Rayburn House Office Building, Hon. Tom Davis (chairman of the committee) presiding.

Present: Representatives Tom Davis, Shays, Souder, Platts, McHenry, Waxman, Maloney, Clay, Watson, Van Hollen, and Norton.

Also Present: Representative Kirk.

Staff present: David Marin, staff director; Keith Ausbrook, chief counsel; Ellen Brown, legislative director and senior policy counsel; Mason Alinger, deputy legislative director; Amy Laudeman, special assistant; Jack Callender, Howie Denis, and Jim Moore, counsels; Robert Borden, counsel/parliamentarian; Rob White, press secretary; Drew Crockett, deputy director of communications; John Brosnan, GAO detailee; Teresa Austin, chief clerk; Sarah D'Orsie, deputy clerk; Allyson Blandford, office manager; Leneal Scott and JR Deng, computer systems managers; Andrew James and Michael Galindo, staff assistants; Phil Barnett, minority staff director/chief counsel; Kristin Amerling, minority general counsel; Karen Lightfoot, minority communications director/senior policy advisor; Kim Trinca, minority counsel; Richard Butcher and Mark Stephenson, minority professional staff members; Earley Green, minority chief clerk; and Jean Gosa, minority assistant clerk.

Chairman TOM DAVIS. The committee will come to order.

We meet today to discuss legislation intended to restore public trust in the Federal Government. The Federal Pension Forfeiture Act provides an important deterrent by denying Federal retirement benefits to Federal policymakers convicted of accepting bribes, defrauding the Federal Government, embezzling Federal funds, or falsifying Federal documents.

The public is rightly concerned about how Government officials interact with the people who get paid to influence decisions. This isn't anything new. Throughout the Nation's history, we have regularly experienced cycles of scandal and reform. The American people do not care about partisanship and pointing fingers. They want to know that their Government is working honestly and openly.

The Federal Pension Forfeiture Act will add more teeth to the penalties for mixing personal gain with Federal policy. A Federal

pension is a sweet deal. One reason it is sweet is to make Federal employees less susceptible to pressure from outside groups.

Under this bill, if you commit a felony that undermines the public trust, you forfeit your Federal pension. American taxpayers should not be forced to support a person who has violated the public trust. It is a harsh penalty, but so is the damage done by even one case of undue influence.

Over the last few years, and particularly this Congress, several Members have offered similar bills. This Congress, several bills have been introduced that share the same basic principle: Commit a felony related to your official duties, you lose the biggest perk.

Many of us held town hall meetings over the past few weeks in our districts. People are angry and disillusioned. The bad acts of a few have tainted all of us who serve in public office. It is time to begin restoring the public's faith in Government.

We welcome three distinguished witnesses who have excellent credentials in working to promote and create trustworthy Government. First, we will hear from the Honorable Linda Springer, Director of the Office of Personnel Management. Then we will hear from Chellie Pingree, who is the president and chief executive officer of Common Cause, and Joan Claybrook, president of Public Citizen.

We want to thank everybody for joining us, and we look forward to their insights on this proposal.

[The prepared statement of Chairman Tom Davis follows:]

Opening Statement of Chairman Tom Davis
Government Reform Committee Hearing
Restoring the Public Trust: A Review of the "Federal Pension Forfeiture Act"
February 1, 2006

Good morning, we meet today to discuss legislation intended to restore public trust in the federal government. The "Federal Pension Forfeiture Act" would provide an important deterrent by denying federal retirement benefits to federal policymakers convicted of accepting bribes, defrauding the federal government, embezzling federal funds, or falsifying federal documents.

The public is rightly concerned about how government officials interact with the people who get paid to influence decisions. This isn't anything new. Throughout the nation's history, we have regularly experienced cycles of scandal and reform. The American people don't care about partisanship and pointing fingers – they just want to know their government works.

The "Federal Pension Forfeiture Act" will add more teeth to the penalties for mixing personal gain with Federal policy. A Federal pension is a sweet deal. One reason it is so sweet is to make Federal employees less susceptible to pressure from outside groups.

Under my bill, if you commit a felony that undermines the public trust, you forfeit your Federal pension. American taxpayers shouldn't be forced to support a person who has violated the public trust. Yes, this is a harsh penalty – but so is the damage done by even one case of undue influence.

Over the last few years and, particularly this Congress, several members have offered similar bills. This Congress, several bills have been introduced that share the same basic principle – commit a felony related to your official duties and you lose the biggest perk.

Many of us held town hall meetings over the past few weeks in our districts. People are angry and disillusioned. The bad acts of a few have tainted the all of us who serve in public office. It's time to begin restoring the public's faith in government.

We welcome three distinguished witnesses who have excellent credentials in working to promote and create trustworthy government. First, we will hear from Linda Springer, Director of the Office of Personnel Management. Then we will hear from Chellie Pingree, President and Chief Executive

Officer of Common Cause and Joan Claybrook, President of Public Citizen. Thank you for joining us and I look forward to hearing your insights on these proposals.

Chairman TOM DAVIS. I am going to now recognize the distinguished ranking member, Mr. Waxman.

Mr. WAXMAN. Mr. Chairman, I am pleased that you are holding this hearing. The indictments and scandals now gripping Washington have shown that our laws and regulations are not working to promote honesty and integrity in Government.

Nine years ago, as this committee was launching its ill-fated campaign finance investigation, I wrote an op-ed in the New York Times that called for a comprehensive approach to curbing the influence of money and special interests in Washington. I wrote that "the real scandal is what's legal and common." And I said that "our goal should be to understand how the process functions at every step, to expose its flaws and to get rid of the loopholes. This approach may not be popular in Congress but leaders of both parties must realize that the situation must change."

I still believe this today, and I feel confident that under Chairman Davis' leadership the committee can begin to fulfill its fundamental responsibility: to ensure our Nation has honest leadership and open Government.

In the years since I wrote the op-ed, Americans have witnessed a rising stream of abuses in Congress and across the Federal Government. There have been allegations of bribes on the House floor; criminal indictments of high-ranking officials, including a Congressman and the Vice President's most trusted adviser; rigged Federal contracts; K Street shakedowns; and a burgeoning corruption scandal. Our committee has an essential role to play in restoring public confidence in Government.

We are the committee with the authority to reform the ethics laws that govern the Federal Government. We are the committee with the authority to restore the principles of open Government. And we are the committee with the authority to close the revolving door between Federal agencies and the private sector, to ban secret meetings between Government officials and lobbyists, and to halt procurement abuses.

To meet these challenges, we must do two things: first, we must use our broad investigative power to investigate abuses and ensure accountability; and, second, we must take a comprehensive approach to reform. The legislation we are discussing today denying pensions to political appointees convicted of felonies may win broad support, but it won't do much to clean up Washington. In fact, most political appointees don't even serve long enough for their pensions to vest.

We need an approach that stops political appointees from giving lobbyists and special interests secret access to the halls of Government, that halts or at least slows down the revolving door that spins between the White House and K Street, and that assures that the Government's business is conducted in the sunshine. We need to restore honesty in Federal contracting, to stop cronyism, and to rebuild the integrity of our science-based agencies. And we must encourage whistleblowers to come forward and ban the insidious use of covert propaganda.

This is a large agenda, but it is absolutely vital. Corrupt practices have taken a deep hold in Washington, and it will take comprehensive reforms to restore honesty and accountability.

The chairman and I met earlier this week to discuss these issues. We did not agree on every detail, but we did agree on two fundamental points: reform should be comprehensive and far-reaching, and now is the time to act. And we pledged to work together to see if a true bipartisanship can be achieved.

Mr. Chairman, I want to thank you again for holding this hearing, and I look forward to working with you on these matters.

[The prepared statement of Hon. Henry A. Waxman follows:]

Statement of Rep. Henry A. Waxman
House Committee on Government Reform
Hearing on Federal Ethics Reform

February 1, 2006

Mr. Chairman, I am pleased that you are holding this hearing. The indictments and scandals now gripping Washington have shown that our laws and regulations are not working to promote honesty and integrity in government.

Nine years ago – as this Committee was launching its ill-fated campaign finance investigation – I wrote an op-ed in the *New York Times* that called for a comprehensive approach to curbing the influence of money and special interests in Washington. I wrote that "the real scandal is what's legal and common." And I said that "[o]ur goal should be to understand how the process functions at every step, to expose its flaws and to get rid of the loopholes. This approach may not be popular in Congress but leaders of both parties must realize that the situation must change."

I still believe this today. And I hope that under Chairman Davis's leadership, the Committee can begin to fulfill its fundamental responsibility: to ensure our nation has honest leadership and open government.

In the years since I wrote the op-ed, Americans have witnessed a rising stream of abuses in Congress and across the federal government. There have been allegations of bribes on the House floor … criminal indictments of high-ranking officials, including a congressman and the Vice President's most trusted advisor … rigged federal contracts … K Street shakedowns … and a burgeoning corruption scandal.

Our Committee has an essential role to play in restoring public confidence in government. We are the Committee with the authority to reform the ethics laws that govern the federal government. We are the Committee with the authority to restore the principles of open government. And we are the Committee with authority to close the revolving door between federal agencies and the private sector … to ban secret meetings between government officials and lobbyists … and to halt procurement abuses.

To meet these challenges, we must do two things. First, we must use our broad investigative power to investigate abuses and ensure accountability. **[And that is why I am glad to announce that Chairman Davis and I have agreed today to request documents about the lobbying activities of Jack Abramoff and the Alexander Strategy Group and to investigate allegations about the influence of the lobby firm Blank Rome at the Department of Homeland Security.]**

Second, we must take a comprehensive approach to reform. The legislation we are discussing today – denying pensions to political appointees convicted of felonies – may win broad support. But it won't do much to clean up Washington. In fact, most political appointees don't even serve long enough for their pensions to vest.

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This is a large agenda but is absolutely vital. Corrupt practices have taken a deep hold in Washington, and it will take comprehensive reforms to restore honesty and accountability.

The Chairman and I met earlier this week to discuss these issues. We did not agree on every detail, but we did agree that on two fundamental points: reform should be comprehensive and far-reaching and now is the time to act. And we pledged to work together to see if a true bipartisanship can be achieved.

Mr. Chairman, I want to thank you again for holding this hearing, and I look forward to working with you on these matters.

Chairman TOM DAVIS. Thank you, Mr. Waxman. Let me say we did agree there needs to be a comprehensive approach, and this is just a small piece, and hopefully we can. Unfortunately, we may not have jurisdiction over everything we would like to do, but we have a lot of jurisdiction, and let's try to use it. We have a window of opportunity, and hopefully we can work together on these issues.

Any other Members wish to make statements?

Mr. SHAYS. Thank you, Mr. Chairman.

Mr. Chairman, one, thank you for holding this hearing. Thank you for working with Mr. Waxman during the past year and a half. It has been very important that we work together to deal with this issue, and admittedly, it seems like a small part of what is truly a very big problem. But after having 20 community meetings in my district, this issue right here is a no-brainer. And after having 20 community meetings in my district, the biggest message I got was that they want us to act, as we should, as an independent branch of Government and not as a parliament that somehow is closely tied with this administration.

The administration has its sole and complete responsibilities. We have our sole and complete responsibilities. And I am grateful we are dealing with this issue, and I hope that we will be dealing with a number of other issues in the weeks and months to come.

Chairman TOM DAVIS. Thank you.

Mr. Souder.

Mr. SOUDER. Thank you. We are at another critical crossroads in America, and based on what we have seen in some of our fellow Members of Congress, including some in our own party's leadership, we need to really—we cannot ignore the present crisis. We need to move ahead. Quite frankly, we should have moved last fall. Some of those proposals were blocked inside of our own leadership, including one applying to congressional pensions by Congressman Shadegg. But I am glad to see that we are starting right out this year in a first hearing with this proposal.

Mr. Chairman, I applaud your efforts to bring some changes to Government in our first week back. As everyone knows, we have lately been faced with corruption, malfeasance, and abuse of the public trust. It is high time that public officials are held accountable for their actions. We cannot allow individuals to line their pockets by taking advantage of their position in Government. I believe the Federal Pension Forfeiture Act sends a message to any would-be lawmaker that your punishment will be more than a jail sentence. It will impact the rest of your life. We must root out corruption wherever it may be found.

I strongly support Chairman Davis' bill. The bill, as it has been drafted, covers only Members of Congress, congressional staff, and political appointees in the executive branch. As we move forward, I believe this bill should be expanded to cover all Federal employees. The most important part is for the elected officials and our appointees to be held accountable, and I understand that. And I realize that the high-profile nature of recent scandals make legislation dealing specifically with those scandals a very immediate priority. But I also believe that we need to take this opportunity to make complete reform of Government as well as send a message to all

Federal employees that corruption will not be tolerated at any level of Government.

In the late 1990's, a theft ring involving collaboration between outside contractors and the Department of Education employees operated for at least 3 years, stealing more than $300,000 worth of electronic equipment—computers, televisions, VCRs, etc.—and collecting more than $700,000 in false overtime pay. The scheme involved a Department of Education employee charged with overseeing an outside contract. The employee ordered equipment through the contract paid for by the Education Department and had it delivered by a complicit contract employee to her house or the homes of friends and relatives. The complicit contract employees also did personal errands for her, such as driving to Baltimore to bring crab cakes for her to eat lunch in Washington. In return, she signed off on false weekend and holiday hours that they never worked, paid for by the Department of Education. Eleven individuals, including four Education Department employees, have been charged in a 19-count indictment.

Another theft ring was exposed in 2000, in which $1.9 million in Federal impact aid funds intended for two school districts in South Dakota were fraudulently wired to several bank accounts in Maryland. The funds were used to buy $135,000 worth of real estate, a $50,000 Lincoln Navigator, and a $47,000 Cadillac Escalade. This theft was only uncovered when a car salesman alerted the FBI after thieves tried to use false credit information to purchase a Corvette.

These instances show that non-elected and the supposedly nonpolitical employees also abuse the public trust. As much as we should be concerned about Members, staff, and political appointees abusing the public trust, we should also punish rank-and-file bureaucrats who line their pockets with taxpayer money. They are also abusing the public trust, albeit it not in the high-profile manner that gets flashed across the news. That said, I applaud the chairman for his leadership and fast action on this legislation. First we must clean our own house. We must clean our own party, and we need to be aggressive in this, or the public will do it for us. They are angry. They are justifiably angry, and this important piece of legislation must be moved immediately.

Chairman TOM DAVIS. Thank you very much, Mr. Souder.

Members will have 7 days to submit opening statements.

We are now going to hear from our first witness, the Honorable Linda Springer, the Director of the Office of Personnel Management. Linda, thank you for being here today. You know it is our policy we swear you in before your testimony, so if you would rise and raise your right hand.

[Witness sworn.]

Chairman TOM DAVIS. Thank you. Go ahead and proceed.

STATEMENT OF LINDA M. SPRINGER, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

Ms. SPRINGER. Mr. Chairman and members of the committee, I am pleased to be here today to discuss the Federal Pension Forfeiture Act. The bill would expand the list of offenses in current law that trigger a loss of Federal retirement rights. It would add to the

current list of violations a wide range of offenses, from accepting a bribe to making false statements on a Federal benefit application. The expanded list would apply to violations committed while in office, if punishable by imprisonment for more than 1 year, by a Member of Congress, a congressional employee, or a Presidential appointee. As drafted, it would apply to a number of clerical and administrative employees at very modest salary levels as well as to individuals occupying positions at the highest levels of Government. The administration is supportive of the concepts outlined in this draft bill and looks forward to working with Congress on the details of the legislation.

With one exception, under both current law and the bill's expanded list of offenses, survivor annuities for the widow or widower and children of an offender are barred. Payment of spousal benefits is permitted only in forfeiture cases when the Attorney General determines that the spouse cooperated with Federal authorities in the conduct of a criminal investigation and subsequent prosecution of the individual which resulted in such forfeiture. This exception would be applicable to the offenses that would be added under this act.

The Office of Personnel Management wholeheartedly endorses merit principles, with a strong emphasis on honesty and integrity in Government service. We would like to take this opportunity to briefly discuss the history of the forfeiture provisions.

The Hiss Act, approved in 1954, contained a list of job-related Federal felonies, the conviction of which would bar retirement benefits that would be payable to Federal employees and their families. Most of the convictions under which annuities were denied were for violations of postal law and other felony convictions that did not involve national security.

Controversy over the Hiss Act arose in cases where the courts had imposed minimal penalties, such as suspended sentences, small fines, or probation, yet the offenders and their families suffered the additional penalty of losing all annuity benefits, sometimes based on decades of service. In some cases, individuals were re-employed by the Federal Government subsequent to their convictions and were denied annuity benefits based on that employment as well. Due to these effects and other concerns, Congress made major changes in the Hiss Act in 1961. The amendments strengthened the provisions dealing with national security offenses and eliminated provisions applicable to non-security offenses. The amendments also provided for retroactive annuity benefits for individuals who had lost them based on the commission of offenses unrelated to national security.

Now, the bill being considered today, while expanding the types of violations that would result in forfeiture of annuity, would apply only if the offense is punishable by imprisonment for more than 1 year. And that is punishable, whether the sentence was for that amount or not. Even if the actual sentence imposed was suspended or there was probation, the annuity would be forfeited.

Under certain circumstances, all of the offenses listed in the bill may be punished by imprisonment for more than 1 year.

In 1972, the U.S. District Court for the District of Columbia forbade application of the forfeiture law to the very individual, Mr.

Hiss, whose malfeasance led to its passage. This bill would apply to acts committed after enactment. And by so providing, the effective date provision avoids that problem.

Under the Federal Pension Forfeiture Act, the functions of the Office of Personnel Management would be limited. As with any other organization administering a covered pension system, OPM would be responsible for ensuring that the act is applied in accordance with its provisions, and that is something we are able to do. It would, in effect, be an expansion of what we do under existing regulations applicable to offenses upon which annuity forfeiture can be based, and under those circumstances, obviously, OPM affords the individual full due process, including the right to an evidentiary hearing before an administrative law judge.

So, to summarize, OPM is testifying in two dimensions here: one, that, yes, we can administer the law should it be enacted; and, second, on behalf of the administration that we are supportive of the proposed bill. So I hope that is helpful information, and I would be glad to take your questions.

[The prepared statement of Ms. Springer follows:]

STATEMENT OF THE HONORABLE LINDA M. SPRINGER
DIRECTOR
OFFICE OF PERSONNEL MANAGEMENT

before the

COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

on

THE "FEDERAL PENSION FORFEITURE ACT"

FEBRUARY 1, 2006

Mr. Chairman and Members of the Committee:

I am pleased to appear today to discuss the "Federal Pension Forfeiture Act." The bill would expand the list of offenses in current law that trigger a loss of Federal retirement rights. It would add to the current list of violations a wide range of offenses, from accepting a bribe to making false statements on a Federal benefit application. The expanded list would apply to violations committed while in office, if punishable by imprisonment for more than 1 year, by a Member of Congress, a Congressional employee, or a Presidential appointee. As drafted, it would apply to a number of clerical and administrative employees at very modest salary levels as well as to individuals occupying positions at the highest levels of Government. The Administration is supportive of the concepts outlined in this draft bill and looks forward to working with Congress on the details of the legislation.

With one exception, under both current law and the bill's expanded list of offenses, survivor annuities for the widow or widower and children of an offender are barred. Payment of spousal benefits is permitted in forfeiture cases when the Attorney General determines that the spouse cooperated with Federal authorities in the conduct of a criminal investigation, and subsequent

prosecution of the individual which resulted in such forfeiture. This exception would be applicable to the offenses added by the Federal Pension Forfeiture Act.

The Office of Personnel Management (OPM) wholeheartedly endorses merit principles, with a strong emphasis on honesty and integrity in Government service. We would like to take this opportunity to briefly discuss the history of the forfeiture provisions.

The Hiss Act, Public Law 83-769, approved in 1954, contained a list of job-related Federal felonies, the conviction of which would bar retirement benefit payments to Federal employees and their families. Most of the convictions under which annuities were denied were for violations of postal law and other felony convictions that did not involve national security.

Controversy over the Hiss Act arose in cases where the courts had imposed minimal penalties, such as suspended sentences, small fines, or probation, yet the offenders and their families suffered the additional penalty of losing all annuity benefits, sometimes based on decades of service. In some cases, individuals were reemployed by the Federal Government subsequent to their convictions, and were denied annuity benefits based on that employment as well.

Due to these effects and other concerns, the Congress made major changes in the Hiss Act in 1961. The amendments strengthened the provisions dealing with national security offenses, and eliminated the provisions applicable to non-security offenses. The amendments also provided

for retroactive annuity benefits for individuals who had lost them based upon the commission of offenses unrelated to national security.

The bill being considered today, while expanding the types of violations that would result in forfeiture of annuity, would apply only if the offense is punishable by imprisonment for more than one year. Even if the actual sentence imposed in a case was suspended or was probation, the annuity would be forfeited.

Under certain circumstances, all of the offenses listed in the bill may be punished by imprisonment for more than 1 year.

In 1972, in *Hiss v. Hampton,* the United States District Court for the District of Columbia forbade application of the forfeiture law to the very individual whose misfeasance led to its passage. This bill would apply to acts committed after enactment. By so providing, this effective date provision avoids that problem.

Under the Federal Pension Forfeiture Act, the functions of the Office of Personnel Management would be limited. As with any other organization administering a covered pension system, OPM would be responsible for ensuring that the Act is applied in accordance with its provisions. Under the existing regulations applicable to offenses upon which annuity forfeiture can be based, OPM affords the individual full due process, including the right to an evidentiary hearing before an administrative law judge.

I hope this information has been helpful to the committee. I will be glad to answer any questions you may have.

Chairman TOM DAVIS. Thank you very much. I am going to start the questioning with Mr. Waxman, who is going to have to leave the hearing to go to a Democratic conference, which accounts for some of the Members not being here. He will ask his questions first, go there and vote, and then try to get back.

Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman. There is a vote going on in the Democratic Caucus, and there will be a second ballot, so I am going to have to leave in a minute.

Ms. Springer, as I mentioned in my opening statement, we have witnessed in the past few years a series of serious incidents involving conflicts of interest, lobbying abuses, and public corruption. Some of these episodes involved Congress itself, Members of Congress, and it is clear that we must clean our own house on Capitol Hill.

Yet equally serious and disturbing, we have seen a number of incidents at the executive branch of Government: the indictment of the Vice President's chief of staff, his actions relating to outing a CIA agent, fraud and other abuses in Iraq reconstruction contracts, a top senior HHS official negotiating future employment while working on major health care changes, politically connected individuals appointed to senior positions with little or no relevant experience. It was disappointing to me that the President barely mentioned these issues in his address last night.

The first step, it seems to me, is to recognize the problem that exists. So my first question for you is: Does the administration believe that there are problems concerning the ethical conduct of the executive branch? And what is the administration proposing to do to clean up the executive branch?

Ms. SPRINGER. Well, I think that the first step, as it relates to OPM and within our purview, is to work with you on things like this bill. For our part in the administration, which is the oversight of the Federal civilian workforce, we are very concerned that high ethical standards and standards of integrity are met. Certainly as a political appointee, I have to hold to those standards, but those are things that should apply to everyone.

This particular act is one that, as I said, we have a responsibility for administering as well as supporting, and the administration does support it. I would view this as just one piece. As you have noted, there is a need for a more comprehensive approach, and I think that we would be willing to work with you and the chairman and the committee on that.

Mr. WAXMAN. I also think there ought to be a comprehensive approach. This issue alone, taking away pensions, is, I do not believe, going to solve the problem. I don't think you believe that either. We have to do more. Isn't that right?

Ms. SPRINGER. You know, one could question the deterrent value, if you will, and I think that is part of what you may be suggesting. But, clearly, it is an important penalty. Beyond just the pension, there are other things that would flow from this, for example, elimination of health benefits; the FEHB benefits would be forfeited as well, as a derivative of this. So it is pretty far-reaching as a penalty. Whether it has deterrent value would be a question.

Mr. WAXMAN. Well, one major means of shedding light on the access of special interests is to require meaningful disclosure of lobbying contacts. Current law requires self-reporting by the lobbyists, and there is no requirement that specific contacts or the subject matter of the meetings be disclosed. As a result, there has been little accountability in executive branch lobbying.

For example, the White House has refused to disclose information about Mr. Abramoff's contacts with the White House or the subjects on which he lobbied the White House officials. We even had the Vice President of the United States chair a task force on energy, and he went to court, even to the U.S. Supreme Court, so he would not have to disclose who came in and lobbied him.

Does the administration support strengthening lobbying disclosure laws such that a reporting must include a description of the subject matter and the Government official contacted or such that the executive branch officials have a duty to disclose as well as the lobbyists?

Ms. SPRINGER. I have not been a part of any administration deliberations on that topic, so I am not in a position to comment on that.

Mr. WAXMAN. Does the administration have a proposal for strengthening lobbying disclosure laws?

Ms. SPRINGER. That does not fall within the purview of my OPM responsibility, so I would not be able to answer that for you.

Mr. WAXMAN. Another area where reform is necessary involves the revolving door between the executive branch and lobbyists and special interests, and a striking example of an existing loophole in these revolving door rules is Tom Scully. He is the former head of the Center for Medicare and Medicaid Services who negotiated a job with firms representing pharmaceutical interests at the same time he was leading the administration's efforts to develop the Medicare Prescription Drug Act.

Does the administration believe that it is necessary to take steps to tighten the revolving door?

Ms. SPRINGER. I don't know about the Scully case, you know, the details, and I couldn't comment there. But I do know that in my own case, because I was just a year ago planning to leave another position I held in the administration, that I was held to some pretty high level of scrutiny and standard of any kind of contact. And the way I interpreted it, I decided not to do any kind of contact with potential future employers until I left entirely and severed.

So I think that, by and large, most individuals are able to function with integrity under the current standards. You know, there may be some outliers here and there, but I think, by and large, it works.

Mr. WAXMAN. One of the main means of deterring and rooting out Government abuse is to ensure appropriate public access to public information. Unfortunately, the Bush administration has systematically undermined our laws that promote sunshine in Government, so we are facing a situation where there are deep-rooted ethical problems with little accountability. I believe it is time to take comprehensive action. I hope we can move forward expeditiously with a package that includes strengthening lobbying disclosure, closing these revolving doors, restoring open Government, ad-

dressing the widespread waste, fraud, and abuse. We have witnesses in Federal contracting in recent years, ensuring political appointees for positions of public safety have qualifications other than simply being politically well connected, and preventing political interference in science-based policymaking, protecting whistleblowers who shine light on Government abuses, and preventing the use of taxpayer dollars for political propaganda.

These are the positions that I have taken, and I have introduced legislation on each one of those, and I would urge the administration to support such a comprehensive reform so that we can address public corruption at its very roots.

Thank you very much, Mr. Chairman.

Chairman TOM DAVIS. Mr. Waxman, thank you very much. I look forward to working with you on a number of these issues.

Let me ask you, Ms. Springer, if an individual's retirement benefits are forfeited, what happens to the health benefits and life insurance coverage?

Ms. SPRINGER. They are generally, by and large, also forfeited. There are a few small exceptions. There are opportunities for the Government equivalent of COBRA to kick in. But, in effect, they are forfeited, by and large.

Chairman TOM DAVIS. This is not a cure-all, obviously, for public corruption, but you would hope that somebody in a decisionmaking mode, when they are looking at perhaps breaking the law, understands the downside just from going to jail, that they jeopardize their family and everything else. That is really the purpose of doing this.

We have tried to tailor—there are a number of pieces of legislation that are looking at different aspects of what crimes would apply and at what level of Civil Service this applies to. It obviously applies to Members of Congress and staffs, some who are here apply to Schedule Cs in the case of my bill, some of them go all the way down and across the bureaucracy. Does OPM have any thoughts on where it ought to apply at this point, or you are just more concerned about the implementation?

Ms. SPRINGER. Well, our focus certainly is on implementation, but as we have reviewed this bill, we think it certainly goes to a level that includes public officials that I think the American citizens have a direct line to elected officials and to political appointees. So we think that there is a special standard, a high standard to which this group that you have included in your bill need to adhere, and that there is a special relationship with the American public that we need to be the tone setters, if you will. So I think that your group is very appropriate.

Chairman TOM DAVIS. You know, the crimes right now, there are already some crimes that cover Federal workers, mostly in the espionage-sabotage-treason route, as you noted before. This takes it a step further.

Under existing law, which I think now is tailored to treason and those issues—sabotage—how many cases of pension forfeiture have there been?

Ms. SPRINGER. There have been four cases in the past 35 or so years since the last major change to that Hiss Act, and that is what we are operating under currently.

In one of those cases, the spouse was found to have cooperated to the satisfaction of the Justice authorities, and the pension was restored to the spouse at its reduced level under the normal formula. But in the other three cases, it was a complete forfeiture. Certain people availed themselves of the appeal right, but they did not prevail. So four cases.

Chairman TOM DAVIS. Under the legislation as we have it, if the spouse were to cooperate with the government, the pension then could be saved, I would gather.

Ms. SPRINGER. It could be, yes. There would be a determination made by the Attorney General, the Justice Department, that would determine that.

Chairman TOM DAVIS. If nothing else, it is a great prosecutorial tool when you are sitting there trying to break a corruption ring, you have somebody who has obviously been caught with their hand in the cookie jar, but their pension is at stake.

Ms. SPRINGER. I think that is true.

Chairman TOM DAVIS. Their family is at stake. They want to cut their losses, or a spouse wants to—look, what is going to happen if my husband goes away to jail, and this way we—I mean, it just seems to me from a prosecutorial point of view, this is a great way to break the logjam sometimes.

Ms. SPRINGER. I think that is very true. I also think that to have the fullest effect will require OPM and other officials and organizations to make this known to the covered population, as opposed to finding out after the fact. But I think making this known will just add to its strength.

Chairman TOM DAVIS. OK. Thank you very much.

Mr. Shays.

Mr. SHAYS. Thank you. I think this is a pretty straightforward issue, but I look at it on two sides of the equation. One is I don't think someone deserves a pension if they have committed fraud and have been found guilty. The other side of the equation would be does this represent in any way a deterrent to fraud, and I am not sure it does. I am just curious to know if there have been any studies that you have done, your agency has done that would enlighten us on this issue?

Ms. SPRINGER. I am sorry. Enlighten as to?

Mr. SHAYS. Whether taking away someone's pension is a deterrent——

Ms. SPRINGER. Oh, a deterrent, yes. I am sorry. I have not seen any studies to that effect in the course of our review here. Again, I think to the extent that the bill is known and its penalties are known—there are very few people, for example, today who are as familiar with the Hiss Act because it was a very narrow scope. But in this case, making this known I think could have some effect, but if you think about it, these are acts that are already subject to some pretty severe criminal penalties. So this would just be one added factor.

Chairman TOM DAVIS. Would the gentleman yield?

Mr. SHAYS. Yes.

Chairman TOM DAVIS. One other thing is from a prosecutorial point of view, having that tool with the prosecutor to hang that over. To get somebody either to talk or to compromise or get their

spouse I think could be helpful sometimes in breaking—when you have a conspiracy or something like that.

Mr. SHAYS. Thank you.

Let me just ask, in terms of when employees come into the Federal Government, are they given—I mean, obviously they know fraud is wrong, but is there a specific course or orientation that deals with fraud and would in this case let them know—I mean, I would think conceptually it would wake them up to say, you know, if you have committed fraud and you are found guilty, you would lose your pension and you could have many years. I would think that would also have an impact. But do we have courses on ethics that are required or are they voluntary?

Ms. SPRINGER. There are several ways that information is given. I am trying to think of my own experience. I don't think that I personally had a course, but I was directed to certain Web site material that is maintained that covers that material, which is obviously read and there are obviously certain statements and representations that you make generally when you come into the political appointee positions.

But I think you are absolutely right that making this known—and that would be something that OPM, for example, for the Federal civilian work force, the Presidential appointees, would be happy to explore.

Mr. SHAYS. I would just observe, Mr. Chairman, it strikes me that those employees, Members of Congress, whoever, who are playing on the edge and have been employed for a long time would probably have to think twice—it might make them think if they had been close to the edge that they might need to pull back a bit because of the risk of actually losing the one thing that they would probably count on to provide for——

Ms. SPRINGER. Well, I would say that if their spouse knew about it, that might add some pressure, too.

Mr. SHAYS. Good point.

I yield back.

Chairman TOM DAVIS. Thank you.

Mr. Souder.

Mr. SOUDER. Thank you, Mr. Chairman.

I have first a couple of technical questions. In the *Hiss* v. *Hampton* case, are you saying that, for example, in the case of Duke Cunningham, we cannot do something retroactively on his pension?

Ms. SPRINGER. I believe that is correct, yes.

Mr. SOUDER. So the longer we wait, we may have a number of cases that could conceivably—that is interesting. I understand the legal concept, but it shows what is in front of us in our failure to act earlier and the need for fast action.

Second, because I am just seeing the legislation and trying to absorb this, too, if an offense is only punishable by—it has to be imprisonment for a year or more. How do plea bargains affect this? In other words, does it have to be a conviction where the penalty is, if it is a plea bargain and the plea bargain isn't for a year or more?

Ms. SPRINGER. That wouldn't change it. If you are convicted for a crime that carries with it a penalty that could be imposed—could be, doesn't have to be. So even if it is less than a year, for some

reason, or even if it was suspended or something like that, if that conviction of that particular crime carried with it potentially the opportunity to impose a sentence of more than a year, then it would apply. The pension would be forfeited.

Mr. SOUDER. So the negotiated plea bargain would have to carry the offense of a year or more, not the original crime——

Ms. SPRINGER. No, the crime itself for which you were convicted.

Mr. SOUDER. Another question I have, I was concerned about your statement where you separated that you believe clerical or administrative employees at a very modest salary should not be covered. Is that the administration's——

Ms. SPRINGER. No. Actually, what I said was that this would apply. If they are in any of the groups that are——

Mr. SOUDER. No, what I mean is the implication is you don't think they should be covered. Is that the——

Ms. SPRINGER. No, no. No, I am just saying that—to just show that it is not just at the high levels, that it would include all levels of the pay range.

Mr. SOUDER. Does the administration support this being broader than the bill is or——

Ms. SPRINGER. Well, we have financed a study to review the proposed act as it has been presented here, and we support it as it has been presented with this group.

Mr. SOUDER. In the private sector—the spousal and family questions are interesting here. In the private sector, if someone—do you know of models in the private sector of how pension law works if somebody forfeits or does something, how it works with their family? Do they forfeit all their pension? Half their pension? What about if they leave the company?

Ms. SPRINGER. I don't know the answer to that, and there may be some precedent out there that we could study and find out for you. I don't know right off the top of my head the answer.

Mr. SOUDER. In the current law as it relates to bribes, false statements, and espionage, do you know if that covers narcotics?

Ms. SPRINGER. No, it does not.

Mr. SOUDER. So, for example, in Colombia, where we had the spouse of an embassy employee, we had certain people in our Government who were actually working with the cocaine traffickers, they wouldn't lose their pensions if convicted?

Ms. SPRINGER. I do not believe that the current law would cover that.

OK. It is possible that if it involved something that is on that list, it may, but——

Mr. SOUDER. But you are not sure whether narcotics—it would depend whether narcotics——

Ms. SPRINGER. Not narcotics in and of themselves, but if it is in connection with one of the security type of offenses that are listed under the current act, then it could be swept in just, you know, on that basis.

Mr. SOUDER. In the US-VISIT program, where we had clear deals being made to accelerate people getting in outside—many from Saudi Arabia, which is one of the more flagrant violations, if they were on a terrorist watchlist, would that classify as a security risk, or do they have to actually have committed a terrorist act? And

what about illegal immigration where it is not—where the link is difficult here? Because the penalty, I mean, if it has to be convicted of a crime where the penalty is more than 1 year, you could be basically letting people in on a watchlist who we have not been able to convict under US-VISIT, be convicted of that, but that may not be national security, so it would not impact your pension.

Ms. SPRINGER. Well, this particular bill that we are studying here does—you know, it obviously adds on to the Hiss bill. It doesn't, you know, take away anything in the Hiss bill. This bill talks about the actual conviction, as you say, carrying with it the penalty, potential penalty of a year or more. And that is the way this has been written, and beyond that scope, it might be something else that you would need to consider separately.

Mr. SOUDER. Where I disagree with the implications of my friend and colleague from California, he implied that suddenly corruption came under this administration, which is laughable. We did not even raise the question here of Presidential pardons. But even so, we had multiple people in the last administration who clearly were lining up jobs while they were Government employees for Monica Lewinsky to silence a sex scandal, that the last administration had many of these problems, too. The question of corruption is broad, crosses parties, and needs to be addressed.

One of the other problems we had in the last administration was Citizenship USA where there were many people brought in before the campaign, we had multiple hearings in the subcommittee that was then chaired by now-Speaker Dennis Hastert, where I was vice chairman, where they would take in 7,000 forms at a time and you saw the same writing on the citizenship forms, and they were rushed through before the election. But under that criteria, right now that would not be a national security violation because citizenship questions wouldn't not be covered under current law unless we passed legislation like this that would apply.

My understanding of what you said is that wouldn't be covered under current law, immigration fraud, or would it?

Ms. SPRINGER. No, it would not.

Mr. SOUDER. Let me ask one other thing, because this is important as we look whether this needs to be broadened beyond elected officials. At our Southwest border, as we deal with difficult questions of narcotics, of coyotes who are running large groups of people, and people inside the Border Patrol, whether it be terrorist watchlists, whether it be narcotics, whether it be large groups of illegal immigrants, it is clear that occasionally they are penetrating our system. They are penetrating it at border crossings where there may be a cooperation when an agent comes on. There may be no look. I do not believe it is high in our Government, but it is fairly consistent. But under current law, these people could keep their pensions even if convicted.

Ms. SPRINGER. That is correct.

Mr. SOUDER. This is a big problem. I am not sure how much of a deterrent it will be. I think it will be some deterrent. I am willing to look at some of the variations of this. But quite frankly, it is a justice question, as Congressman Shays said. Whether you are elected—it is especially egregious if you are an elected official, and we should be the first accountable. But anybody who is a public of-

ficial who is put in trust of our borders, of our narcotics efforts, of the very citizenship of the United States, that you have an obligation not to take private deals to cooperate with people who are around that, and at the very least the taxpayers should not have to pay you a pension for the rest of your life if you are convicted.

I yield back.

Chairman TOM DAVIS. Thank you very much.

Any other comments?

Ms. SPRINGER. No, we just look forward to continuing to work with the committee on this.

Chairman TOM DAVIS. Thank you. Thank you, Mr. Souder for your questions.

We will call our second panel now. We have Ms. Chellie Pingree, who is the president and chief executive officer of Common Cause, and Ms. Joan Claybrook, the president of Public Citizen. I want to thank you both for being here. Thanks for your patience.

It is our policy that we swear witnesses before you testify, so if you would rise with me and raise your right hands.

[Witnesses sworn.]

Chairman TOM DAVIS. Thank you very much.

Ms. Claybrook, we will start with you. We have a light in front—your entire statements are part of the record. We have a light in front that turns green when you go on, orange after 4, red after 5. Try to stick as close to that as you can, but we want to make sure you get to make your salient points, too. So, Ms. Claybrook, we will start with you, and thank you for being with us.

STATEMENTS OF JOAN CLAYBROOK, PRESIDENT, PUBLIC CITIZEN; AND CHELLIE PINGREE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, COMMON CAUSE

STATEMENT OF JOAN CLAYBROOK

Ms. CLAYBROOK. Thank you very much, Mr. Chairman. I am pleased to be here to testify this morning on behalf of Public Citizen and our 150,000 members nationwide.

The lobbying reform debate has largely focused on the lobbying and ethics as it applies to Congress. It is my understanding that the committee's discussion today really grew out of the Randy Cunningham case. We strongly welcome your initiative to deny pension benefits to Members of Congress, congressional employees, and executive branch political appointees guilty of crimes related to public corruption.

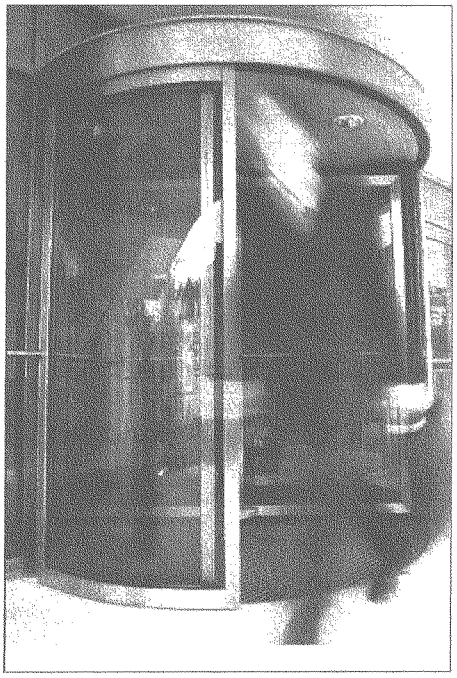
But the debate on lobbying and ethics reform must go beyond that legislative proposal and beyond Congress. It must also include the ethical behavior of executive branch officials who become lobbyists and officers of companies they previously oversaw or regulated, and it should also address strengthening and monitoring the enforcement of the Ethics Reform Act for the executive branch.

A few months ago, a report by 15 civic organizations, including Public Citizen, prepared a report called the Revolving Door Working Group, and here it is, and I would like to submit it for the record, if I could do so at your pleasure. I would like to submit this for the record. It is quite a comprehensive report.

Chairman TOM DAVIS. Without objection, we will submit that for the record.

Ms. CLAYBROOK. It is called "A Matter of Trust," and I think it could help the committee.

[The information referred to follows:]



A Matter of Trust

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

Revolving Door Working Group October 2005

www.revolvingdoor.info

The full text of this report is available
online at 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

This report was designed by Tim Hill, psycosm.com

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The Revolving Door Working Group (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.

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:

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.[1] 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 predate 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.[2]

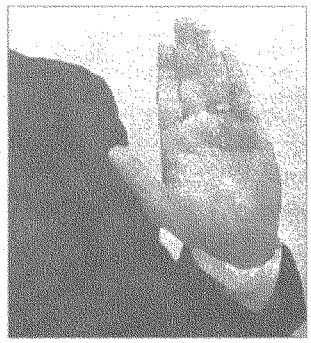
These survey results strongly suggest that the success of efforts to restore public trust in government will hinge on reducing the disproportionate degree to which the private sector (also referenced in this paper as "corporations," "business," "industry" or "trade associations") is able to influence 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.



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."

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."[3]

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;[4]

- 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:

- 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;

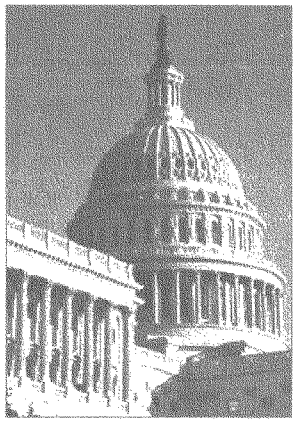
- restricting the granting of waivers that allow public officials to negotiate future employment in the private sector while still in office;

- 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 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.



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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:

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*[5] 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.[6]

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.

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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.

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.

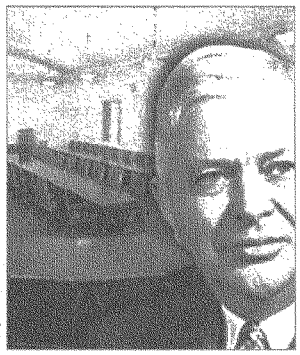
Looking at Cabinets as a whole, it was during the Reagan Administration that the overall business presence first became quite pronounced. In addition to Regan and Weinberger, the corporate veterans in Reagan's Cabinet included Secretary of State Alexander Haig, who had become president of United Technologies 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 Baldridge 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.[7] 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.[8] 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?"[9] 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.[10]



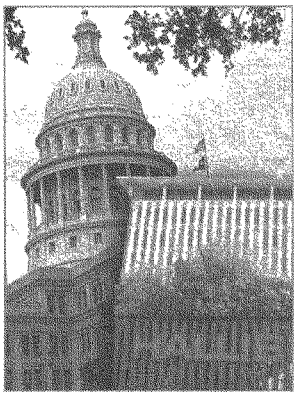
Eisenhower's Secretary of Defense was Charles E. Wilson, the former General Motors president who in his confirmation hearing famously said: "For years I thought what was good for our country was good for General Motors, and vice versa. The difference did not exist."

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.

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.



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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."[11] 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."[12]

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."[13] 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.[14]

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.[15] Lauriski resigned from his position in late 2004 and took a job with a mine-industry consulting company.[16] The *Charleston Gazette* later reported that Lauriski had been negotiating for private-sector jobs as early as six months before leaving office.[17]

- **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."[18] 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.[19]

- **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.[20] In 2005 she was named deputy administrator of the agency.[21]

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

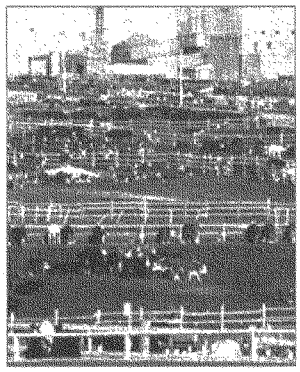
DEPARTMENT OF AGRICULTURE

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."[22] 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.[23]

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.



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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.[24] He left the federal government a year later and returned to the private sector as an executive at Home Depot.[25]

- **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.[26] 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.[27]

- **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.[28] She later became a lobbyist for the firm of Johnston & Associates, whose clients include the Edison Electric Institute.[29]

- **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.[30]

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.[31] Fisher left the EPA in 2003 and later took a job with DuPont.[32]

- **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.[33] 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.[34]

- **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.[35] 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.[36]

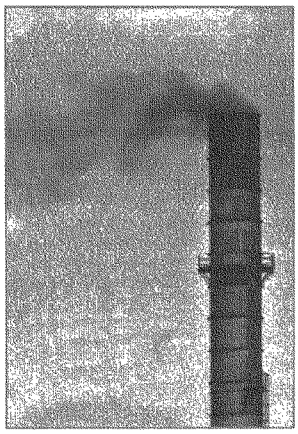
Early in Bush's second term, he named Stephen Johnson, a respected scientist and career agency employee, to head the EPA. This move, which elicited praise from environmentalists and surprise on the part of many observers, was one of the few exceptions that prove the rule: it is very unusual to see someone 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.[37] Henshaw resigned in December 2004 and later became an advisor to C2 Facility Solutions, which calls itself a "critical asset management software firm."[38] Visscher left around the same time to join the U.S. Chemical Safety and Hazard Investigation Board.[39]



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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.[40] (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.

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.

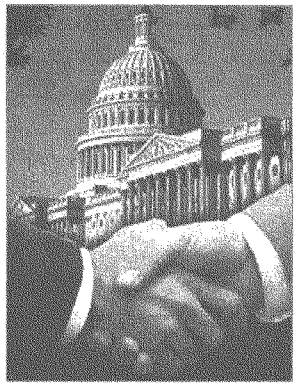
Where the disclosure indicates a financial holding that could result in a conflict of interest, the most common way of handling the matter is for the employee to enter into a written disqualification agreement on the matter, otherwise known as a recusal. This addresses the prohibition in 18 U.S.C. § 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:

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."[41]

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."[42]

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.[43] 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."[44] 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."[45]

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."[46]

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.[47] 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.[48]

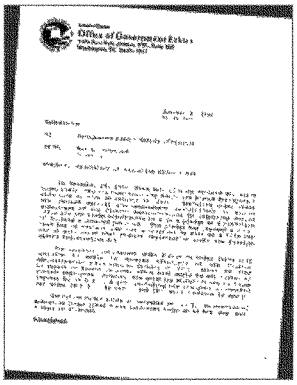
Recently, the Defense Criminal Investigative Service has stated that it will investigate former senior military and civilian defense managers who now work for defense contractors. Moreover, on February 18, 2005, Paul McNulty, U.S. District Attorney for the Eastern District of Virginia, announced the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

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.[51] 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.[52]

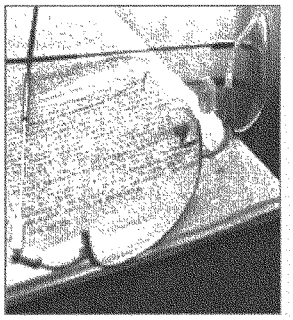
GAO's review illustrates the problems with the integrity of the procurement process and the impact that the revolving door has on the way government spends hundreds of billions of taxpayer dollars.


Office of Government Ethics

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.[53] 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.*"[54] (Emphasis added).

Conflict-of-interest and ethics laws and regulations are based on a government employee's involvement with specific transactions (e.g., contracts),[55] representation before an employee's former office,[56] and financial conflicts of interest.[57] 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.[58] 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.[59] 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.[60] 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.[61]

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."[62] 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.[63] 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.[64] 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.[65]

The Associated Press reported on February 2005, that the Pentagon was investigating eight Air Force contracts handled by Druyun.[66] Those contracts ranged in value from $42 million to $1.5 billion each, with a total value of about $3 billion.[67] 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.[68] The GAO recommended that both contracts, or the tainted portions therein, be put out for new competition.[69]

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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.[70] 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.[71]

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.[72] 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,[73] concluding that his new employer was free from blame.[74] Despite that appearance of impropriety, the Air Force concluded that Floyd did not violate conflict-of-interest or ethics laws.[75] 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.[76]

A *Washington Post* article described Perle as the "ultimate insider" and discussed his use of the revolving door and the access that it provides.[77] 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."[78] 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."[79]

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.[80]

- **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.[81]

- **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.[82]

- **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.[83]

- **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).[84]

- **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.[85]

- **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.[86]

- **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.[87]

- **JAMES SCHLESINGER**, a director of British Nuclear Fuel, formerly served as Secretary of Defense, Secretary of Energy, and Director of the Central Intelligence Agency.[88]

- **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.[89]

- **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.[90]

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:

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.[91] 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."[92]

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.[93] 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 Zoloft,

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."[94]

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."[95]

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

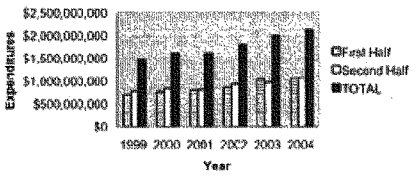
Federal criminal conflict of interest statutes (18 U.S.C. §201) prohibit any public official from soliciting or accepting a "thing of value" in exchange for a legislative favor or other official action–i.e., a bribe. Within this legal framework, the Senate and House, and the Office of Government Ethics 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.

Overall Expenditures on Federal Lobbying



Year	First Half	Second Half	TOTAL
1999	697,851,167	770,929,471	1,468,780,638
2000	765,258,147	830,904,077	1,596,162,224
2001	791,022,401	801,986,305	1,593,008,706
2002	858,830,989	925,832,458	1,784,663,447
2003	1,028,381,176	963,106,849	1,991,488,025
2004	1,057,906,157	1,059,145,404	2,117,051,561

Source: Political MoneyLine

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."

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.[96]

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.

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.[97]

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 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

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 SUBSTANTIALLY 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.[98]

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.[99] 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.[100] 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.

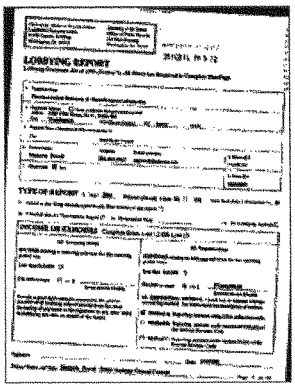
- **DALLAS "ROB" SWEEZY**, director of public and intergovernmental affairs at CMS, who in January 2004 joined National Media Inc., the advertising firm hired by the Bush administration to produce television ads touting the new Medicare law. In May, Sweezy moved over to the lobbying firm Loeffler Jonas 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.



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- **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.

- **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.[101] She since has joined Hogan & Hartson, whose clients include GlaxoSmithKline and PhRMA, as a health policy adviser.[102]

- **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.[103]

- **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.[104]

- **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.[105]

- **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).[106]

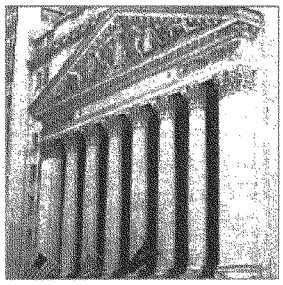
- Morrisey's colleague **JAMES WHITE** left his position as Tauzin's legislative director to join Abbott Laboratories as director of federal government affairs in January 2004.[107] Abbott, the Chicago-based manufacturer of Prevacid, Norvir and other brand-name drugs, spent $3.7 million to lobby the 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.[108] 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.



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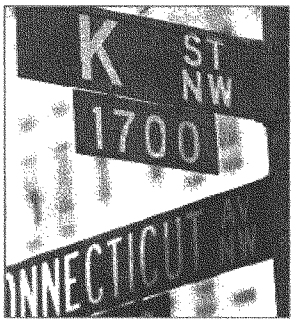
At least 17 top Clinton staffers have taken lobbying jobs on behalf of corporate or individual clients, including former Deputy Secretary of Treasury Stuart Eizenstat and former Director of White House Legislative Affairs Charles Brain. Another ten joined law firms that actively lobby the federal government, 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.

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).[109] 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."[110] 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."[111]



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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.[112] 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.[113] 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.[114]

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.[115] 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.[116]

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.

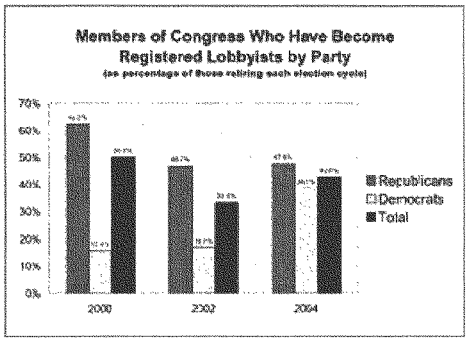
Secondly, government regulations–or lack thereof–touch nearly every sector of business and social life, which is why the amount spent on lobbying the federal government is also at an all-time high. Last but not least, special interest groups today see so much at stake in the legislative and regulatory 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:

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.[117]

For instance, ethical standards for the House of Representatives are implemented and enforced primarily by the Committee on Standards of Official Conduct.[118] Senate ethics standards fall under the authority of the U.S. Senate Select Committee on Ethics.[119] 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.[120] 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."[121] 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.[122]

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.

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.[123]

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.[124]

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.[125] Bowing to a FOIA request by a reporter, the Department of Justice has acknowledged that it settled three enforcement cases, all in 2005.[126] 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.[127]

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

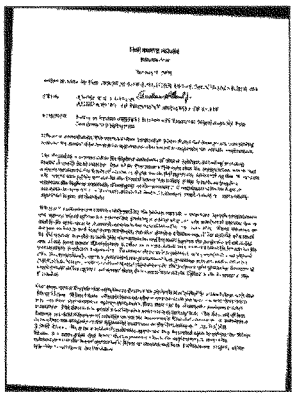
Each House of Congress has its own ethics committee charged with, among other things, enforcement of conflict-of-interest rules and revolving door restrictions for their own members. The Senate in 1964[128] and the House in 1967[129] established, for the first time, standing committees on ethics, designed 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



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.

for its employees.[130] The Ethics in Government Act directed OGE to review financial disclosure forms of presidential appointees, provide ethics training to executive branch officials and oversee the implementation of ethics rules by each agency. The Ethics Act also required OGE to provide an advisory service and to publish its opinions.[131]

As an ethics enforcement agency, OGE is better structured than the congressional ethics committees in that most of its employees are career public servants rather than political appointees. The Director, however, is appointed by the president for a five-year term. It currently has a staff of more than 80 employees. The agency thus enjoys a certain level of professionalism and independence from political operatives in the executive branch and party leaders.

Nevertheless, OGE is far from an ideal agency. Perhaps its greatest weakness is that it has been conceived as a "partner" with all other executive branch agencies in developing, interpreting and enforcing ethics laws and regulations. OGE is designed as an entity that provides guidance and advice to other executive branch agencies rather as a monitor that routinely determines and implements ethics codes for the executive branch. OGE also does not usually enforce the ethics code for other agencies, preferring instead to give that authority to dozens of ethics officers appointed within each executive branch agency. And, as noted above, any cases requiring prosecution are referred to the Justice Department's Public Integrity Section.

For example, while OGE has developed guidelines for granting waivers for employees from the conflict-of-interest laws governing future employment, these are only guidelines. Each executive branch agency promulgates its own waiver procedures, which are then interpreted and enforced by the specific ethics officer appointed within that executive office. As a result, there is no one set of procedures for seeking and receiving waivers from conflict-of-interest laws, and each set of waiver procedures is interpreted differently by different offices. The resulting inconsistencies prompted the White House in 2004 to step in and issue an executive order requiring that all waivers be reviewed by the White House counsel.[132]

Moreover, OGE has neglected to establish itself as an effective public information source. Though the agency compiles and scrutinizes previous employment records for scores of executive branch appointees and employees, it makes little effort to make these records available to the public. Such information usually becomes available as part of public congressional hearings in high-profile cases or through Freedom of Information Act requests. OGE also does not act as a clearinghouse for waivers and other actions initiated in individual agencies.

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.[133]

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.[134]

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:

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 polices 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.[134]

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.[136] 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 monitoring 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:

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 kept 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:

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][137]
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][138]
Mississippi (1 year restriction) [§25-4-105][139]
Missouri (1 year restriction) [§105.454(5)]
New Jersey (2 year restriction) [§§52:13d-17, 52:13d-17.2][140]
New Mexico (1 year restriction) [§10-16-8]
New York (2 year restriction) [§73(8)(a)]
Ohio (1 year restriction) [§102.03(A)][141]
Pennsylvania (1 year restriction) [§1103(g)]
Rhode Island (1 year restriction) [§36-14-5]
South Carolina (1 year restriction) [§8-13-755][142]
South Dakota (1 year restriction) [§2-12-8.2]
Virginia (1 year restriction) [§2.2-3104][143]
Washington (1 year restriction) [§42.50.090, 42.52.080][144]

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][145]
Mississippi (1 year restriction) [§25-4-105][146]
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][147]
New Mexico (1 year restriction) [§10-16-8]
New York (2 year restriction) [§73(8)(a)]
Ohio (1 year restriction) [§102.03(A)][148]
Pennsylvania (1 year restriction) [§1103(g)]
Rhode Island (1 year restriction) [§36-14-5]
South Carolina (1 year restriction) [§8-13-755][149]
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][150]
Washington (1 year restriction) [§42.50.090, 42.52.080][151]
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,[152] Nebraska, New Hampshire, North Dakota, Oklahoma, Oregon, Tennessee, Utah, Vermont, and Wyoming.

Endnotes

Introduction: The Revolving Door and Industry Influence on Public Policy

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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.

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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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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.

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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.

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Chapter 2: The Government-to-Industry Revolving Door

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43 Executive Order 12834, 58 Fed. Reg. 5911 (Jan. 20, 1993).

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46 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, p. 1; online at http://www.citizen.org/documents/WH_ethics_waiver_memo.pdf

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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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Chapter 3: The Government-to-Lobbyist Revolving Door

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115 Lou Duboise, "Broken Hammer?" Salon.com, April 8, 2005.

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

117 The Office of Government Ethics maintains a page of relevant agency supplemental standards of ethical conduct regulations at http://www.usoge.gov/pages/laws_regs_fedreg_stats/agy_supp_regs.html

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 (May 4, 2005).

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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.

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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

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 us 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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Ms. CLAYBROOK. It shows at least two significant lobbying and ethics problems in the executive branch. One is the pervasive problem of the revolving door, by which executive branch officials rotate between public service and the private sector, typically working for the same companies that they previously regulated, granted contracts to, or considered the effects of legislation on.

The second is the loose patchwork of enforcement responsibilities spread among many executive branch agencies and vesting in one agency—the Office of Government Ethics—as the primary police watchdog of ethics in the executive branch, OGE has been created more as an advisory partner to individual Government agencies in implementing the ethics standards.

So first I would like to address the revolving door. In order to establish a sense of trust that Government officials are not trading Government contracts or regulations for lucrative private sector jobs, Federal law requires a 1-year "cooling-off" period in which retiring public officials are not supposed to lobby their former colleagues in Government. Additional conflict-of-interest laws and regulations have extended similar cooling-off periods to retiring procurement officers to prevent them from immediately taking jobs with companies that have received Government contracts that the procurement officer had authority over.

Specifically, "very senior" executive branch officials, those in Executive Schedules I and II salary ranges, are prohibited from appearing as a paid lobbyist before any political employee in the executive branch for 1 year. And "senior" executive branch staff, those in Executive Schedule V and up, are prohibited for 1 year from appearing as lobbyists before their former agency or representing or advising a foreign government or foreign political party in lobbying matters.

Unfortunately, the revolving door policy has two very significant weaknesses. First, it prohibits former Government officials from making direct lobbying contacts with their former colleagues. But it permits them to engage in other lobbying activity. Former officials are not prohibited from developing lobbying strategy, organizing the lobbying team, supervising lobbying efforts during the cooling-off period. In fact, retiring former officials frequently become registered lobbyists immediately on leaving the Government. They simply cannot pick up the telephone. That is all.

Second, the scope of the cooling-off period that applies to Government contracting is so narrow that former procurement officers may now immediately accept employment with the same companies to whom they had issued contracts while in public service. Only employment within a specific division of a company is prohibited if that division was under the official's contracting authority, but not employment for the company itself. And this loophole, as we remember, allowed Darleen Druyun to land a well-paid position at Boeing after overseeing the company's bids on weapons programs for many years in her capacity as a Pentagon procurement official.

The Center for Public Integrity surveyed how the revolving door has turned for the top 100 officers in the executive branch at the end of the Clinton administration and concluded that about a quarter of the 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.

For these issues we recommend the following: Expand the scope of the revolving door restrictions so that former officials are prohibited not only from conducting paid lobbying activity during the cooling-off period but the development and supervising of lobbying efforts.

Two, expand the time period for the cooling-off period to 2 years.

Three, extend the cooling-off period to senior executive branch staff of Level V or higher policymakers involving contracts that now apply primarily to procurement officers.

Four, close the loophole allowing former Government procurement employees to work for a different department or division of a contractor from the division that they oversaw as a Government employee, and the cooling-off period should apply governmentwide.

And, five, when public officials discuss future employment that may pose a conflict of interest, the fact that the discussion is underway should be public information. If there is any potential conflict of interest, recusal from public officials affecting the potential employer should be mandatory unless a waiver from the conflict-of-interest rules is absolutely necessary. This relates, for example, to the Thomas Scully scandal.

And then, second, with regard to the operation of the Office of Government Ethics, it operates more as an advisory partner in the executive branch rather than an enforcement watchdog. Responsibility for implementation of executive branch ethics laws and regulations is widely dispersed among executive agencies. And OGE has not served as an effective central clearinghouse for making public records on ethics matters readily available to Congress and the public.

Although it is professionally staffed and independent from political operatives, OGE is far from an ideal agency. Its primary weakness is that it lacks enforcement authority. Its rules are not binding within the executive branch, but are subject to interpretation by ethics officers in each separate executive branch agency. While it has developed guidelines for granting waivers for employees from conflict-of-interest laws governing future employment, these are only guidelines. Each executive branch agency also promulgates its own waiver procedures, which are then interpreted and enforced by the specific ethics officer appointed within that office. As a result, there is not one set of procedures for seeking and receiving waivers from conflict-of-interest laws, and each set of waivers is interpreted differently by different officers.

One of the granted waivers dealt with Thomas Scully, and my testimony details that.

The resulting embarrassment prompted the White House in 2004 to step in and issue an Executive order requiring that all waivers be reviewed by White House counsel. But this should be the responsibility of OGE, a more robust OGE, where decisions are more immune to political considerations.

OGE has neglected to establish itself as an effective public information source as well. Though the agency compiles and scrutinizes previous Government records for scores of executive branch employees and appointees, it makes little effort to make these records

available to the public. There is no OGE Web site that posts public records of prior employment, financial statements, conflict-of-interest waivers, or even enforcement actions. And when it comes to ethics records in the Federal Government, this type of information is not centralized and is exceedingly hard to secure.

For the most part, OGE appears to be serving the interests of the executive branch, not the public and the Ethics in Government Act. Ironically, OGE has recently sought to weaken public disclosure of personal financial records of political employees. At the prodding of the White House and some congressional leaders, the OGE has been considering capping the reporting of personal wealth of senior executive branch officials at $2.5 million for disclosure, rather than the $50 million cap that exists today, and allowing officials to omit the dates of major stock transactions from financial reports, which would make it difficult to tie Government actions to an employee's choices. Reducing disclosure is not the way to go.

Thus, we recommend three things, and I will conclude with this, and I am sorry I took a little bit longer than your 5 minutes.

Given strong enforcement authority for OGE with the ability to promulgate rules and regulations that are binding on all executive branch agencies, conduct investigations, subpoena witnesses, and issue civil penalties for violations.

Two, empowered as a central agency for implementing and monitoring its responsibilities.

Three, be required to serve as the central clearing house for all public records relevant to ethics in the executive branch and place this information on its Web site.

Thank you very much, Mr. Chairman. I appreciate the opportunity.

[The prepared statement of Ms. Claybrook follows:]

Buyers Up • Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

Testimony of Joan Claybrook
President, Public Citizen

Before the Government Reform Committee on the Subject of Restoring the Public Trust: A Review of the Federal Pension Forfeiture Act And Other Lobbying and Ethics Reform Issues

Feb. 1, 2006

Chairman Davis and Ranking Member Waxman, I thank you for the opportunity to testify today on behalf of Public Citizen and our 150,000 members.

The lobbying reform debate has largely focused on the lobbying and ethics laws as they relate to Congress. It is my understanding that the committee's discussion today on the "Federal Pension Forfeiture Act" really grew out of the House scandal involving Rep. Randy "Duke" Cunningham who accepted $2.4 million in bribes from defense contractors that he aided through the appropriations process. We strongly welcome your initiative to deny full pension benefits to members of Congress, congressional employees and executive branch political appointees guilty of crimes related to public corruption when employed by the federal government.

But the debate on lobbying and ethics reform must go beyond your legislative proposal and beyond Congress. It must also include the ethical behavior of executive branch officials who become lobbyists and officers for the companies that they previously oversaw or regulated, and it should also address strengthening the monitoring and enforcement of executive branch regulations under the Ethics Reform Act.

A few months ago, a major report by 15 civic organizations, including Public Citizen, known as the Revolving Door Working Group, documented the current problems with lobbying and ethics laws in the executive branch and proposed a series of constructive reforms. I ask that you put this report, entitled *A Matter of Trust*, into the record as part of my testimony.

This report shows there are at least two significant lobbying and ethics problems in the executive branch. One is the pervasive problem of the "revolving door" – by which executive branch officials rotate between public service and the private sector, typically working for the same companies that they had previously regulated, granted contracts to, or considered the effects of legislation on.

Second is the loose patchwork of enforcement responsibilities spread across many executive branch agencies. Instead of vesting one agency – the Office of Government Ethics (OGE) – as

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the primary police watchdog of ethics in the executive branch, OGE has been created more as an advisory partner in implementing ethics standards.

A. The Revolving Door

Many special interests—such as corporations, labor unions or ideological and issue groups—spend large sums on campaign contributions and/or lobbying. Yet money is not the only way these groups exercise their influence; they also rely on the movement of people into and out of key policymaking posts in the executive and legislative branches. This revolving door increases the likelihood that those making policies are sympathetic to the needs of interest groups—either because they come from that world or they plan to move to the private sector after finishing a stint with government.

In order to establish a sense of trust that government officials are not trading government contracts or regulations for lucrative private sector jobs, federal law requires a one-year "cooling-off" period in which retiring public officials are not supposed to lobby their former colleagues in government. Additional conflict-of-interest laws and regulations have extended similar cooling-off periods to retiring procurement officers in order to prevent them from immediately taking jobs with companies that have received government contracts that a procurement official had authority over.

Specifically, "very senior" staff of the executive branch, those previously classified within Executive Schedules I and II salary ranges, are prohibited from appearing as a paid lobbyist before any political employee in the executive branch for one year. "Senior" executive branch staff, those previously paid at Executive Schedule V and up, are prohibited for one year from appearing as lobbyists before their former agency or representing or advising a foreign government or foreign political party in lobbying matters.

Unfortunately, the revolving door policy has two very significant weaknesses. First, while it prohibits former government officials from making direct "lobbying contacts" with their former colleagues, it permits them to engage in other lobbying activity. Former officials are not prohibited from developing lobbying strategy, organizing the lobbying team and supervising the lobbying effort during the cooling-off period. In fact, retiring former officials frequently become registered lobbyists immediately upon leaving government service. They simply cannot pick up the telephone and call their former colleagues.

Second, the scope of the cooling-off period that applies to government contracting is so narrow that former procurement officers may now immediately accept employment with the same companies to whom they had issued contracts while in public service. Today, only employment within a specific division of a company is prohibited if that division was under the official's contracting authority, but not employment for the company itself. That loophole allowed Darleen Druyun to land a well-paid position at Boeing after overseeing the company's bids on weapons programs for many years in her capacity as a Pentagon procurement official.

As a result, scores of former executive branch officials – like those in Congress – spin through the revolving door and become K Street lobbyists or corporate officers of companies they had

influence over immediately after leaving public service. 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. 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.

This is a revolving door that is spinning out of control. In order to strengthen the protections against revolving door abuses, several steps need to be taken:

- Expand the scope of the revolving door restrictions so that former officials are prohibited from conducting paid lobbying *activity* during the cooling-off period, including the development and supervision of lobbying efforts. Today they are just restricted from making a direct lobbying *contact*.
- Expand the time period of the cooling-off period to two years. This change, along with expanding the type of lobbying activities covered, will greatly assist efforts to limit undue influence by former government employees.
- Extend the cooling-off period to senior executive branch staff of Level V or higher policymakers that now apply primarily to procurement officers, to prevent them from seeking employment from contractors that received significant contracts as a result of the officials' government actions.
- Close the loophole allowing former government procurement employees to work for a different department or division of a contractor from the division that they oversaw as a government employee. The cooling-off period should apply company-wide.
- When a public official discusses future private employment that may pose a conflict of interest, the fact that the discussion is underway should be public information. If there is any potential conflict of interest, recusal from public decisions affecting the potential employer should be mandatory unless a waiver from the conflict of interest is absolutely necessary for governmental operations. This recommendation concerns the "Thomas Scully scandal," which is discussed at greater length below.

B. The Office of Government Ethics

The Office of Government Ethics is the agency in the executive branch charged with ethics oversight. Though the agency is better structured than the congressional ethics committees in fulfilling its mandate, it has three basic flaws:

- OGE operates more as an advisory partner in the executive branch rather than as an enforcement watchdog.
- Responsibility for implementation of the executive branch ethics laws and regulations is widely dispersed among the various executive agencies.
- OGE has not served as an effective central clearinghouse for making public records on ethics matters readily available to Congress and the public.

OGE was created as an independent agency to monitor and implement the ethics laws for the executive branch. The Ethics Reform Act directs OGE to review financial disclosure forms of

presidential appointees, provide ethics training to executive branch officials and oversee the implementation of ethics rules by each agency. The Ethics Act also requires OGE to provide an advisory service and to publish its opinions.

OGE relies heavily on career professionals to manage the agency and thus is better suited to carry out a mandate for ethics enforcement than the congressional ethics committees. The Director is appointed by the president for a five-year term. The Office currently has a staff of more than 80 employees. The agency thus enjoys a certain level of professionalism and independence from political operatives in the executive branch and from party leaders.

Nevertheless, OGE is far from an ideal agency. OGE's primary weakness is that it lacks enforcement authority. Instead, it has been established primarily as an advisory or "partner" agency that offers guidelines and ethics training to the executive branch, rather than serving as a police watchdog that determines and implements ethics codes for the executive branch. Its responsibilities are essentially shared throughout the federal government. Its rules are not binding within the executive branch, but are subject to interpretation by the ethics officers of each separate executive branch agency, many of whom, according to a recent Public Citizen discussion with OGE staff, lack adequate ethics training. Moreover, any cases requiring prosecution are referred to the Justice Department's Office of Public Integrity.

Consider this example. While OGE has developed guidelines for granting waivers for employees from the conflict-of-interest laws governing future employment, these are only guidelines. Each executive branch agency promulgates its own waiver procedures, which are then interpreted and enforced by the specific ethics officer appointed within that executive office. As a result, there is no one set of procedures for seeking and receiving waivers from conflict-of-interest laws, and each set of waiver procedures is interpreted differently by different offices.

As a result, waivers appear to be 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. All 37 requests were granted.

One of the granted waivers sheds light on the Thomas Scully scandal. On May 12, 2003, Scully, then the chief administrator for the Centers for Medicare and Medicaid Services, secretly obtained an ethics waiver from HHS Secretary Tommy Thompson, allowing Scully to ignore ethics laws that would otherwise have 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 Medicare prescription drug legislation then under consideration, while Scully simultaneously negotiated possible employment with three lobbying firms and two investment firms that had major stakes in the legislation.

The resulting inconsistencies prompted the White House in 2004 to step in and issue an executive order requiring that all waivers be reviewed by the White House counsel. That should be the responsibility of a more robust OGE, where such decisions would be more immune to political considerations.

OGE has neglected to establish itself as an effective public information source. Though the agency compiles and scrutinizes previous employment records for scores of executive branch appointees and employees, it makes little effort to make these records available to the public. There is no OGE Web site that posts public records of prior employment, personal financial statements, conflict of interest waivers or even enforcement actions. When it comes to ethics records in the federal government, this type of information is not centralized and exceedingly hard to secure. Such information usually only becomes available as part of public congressional hearings in high-profile cases or through Freedom of Information Act requests.

For the most part, the OGE appears to be serving the interests of the executive branch, not the public and not the Ethics in Government Act. Ironically, OGE has recently sought to weaken public disclosure of the personal financial records of political appointees. At the prodding of the White House and congressional leaders, the OGE has been considering capping the reporting of personal wealth of senior executive branch officials at $2.5 million (rather than the established $50 million cap) and allowing officials to omit the dates of major stock transactions from financial reports, which would make it difficult to tie government actions to an employee's investment choices. Reducing disclosure of personal financial records runs contrary to what the mission of OGE should be.

To address the problems of ethics enforcement in the executive branch – and Congress, for that matter – the solution is fairly simple: create an independent, professional ethics agency with the legal authority and tools to carry out its mandate. This means that OGE should be:

- Given strong enforcement authority with the ability to promulgate rules and regulations that are binding on all executive branch agencies, conduct investigations, subpoena witnesses, and issue civil penalties for violations.
- Empowered as the central agency for implementing and monitoring its responsibilities, such as being responsible for granting waivers from conflict of interests upon recommendations of the affected agency.
- Required to serve as the central clearinghouse of all public records relevant to ethics in the executive branch and place this information on its Web site, including records of waivers from conflicts of interest requested and granted, personal financial statements of appointees, and the career histories of senior executive branch staff of Level V or higher who enter and leave public service.

The executive branch has more than its share of blame for the collapse of public confidence in our government. The steps outlined above can go a long way toward restoring public confidence in government. The revolving door must be slowed, and OGE must assume the role of a genuine watchdog over governmental ethics rather than a partner and colleague with the executive branch.

Public Citizen • Common Cause • Democracy 21 • Public Campaign
Campaign Legal Center • U.S. PIRG • League of Women Voters

January 23, 2006

Six Benchmarks for Lobbying Reform

During the coming months, the House and Senate will consider reforms to respond to the lobbying scandals in Washington that deeply concern the American people.

A *CNN/USA Today/Gallup* poll (January 10, 2006), for example, found that "corruption ranked among the concerns most often cited by those polled, with 43 percent telling pollsters it would be an 'extremely important' issue in 2006," just 2 percent below the 45 percent response for the war in Iraq and terrorism.

Our organizations are releasing today six benchmark lobbying reforms that should be used to judge the proposals being considered by Congress in the next few months. The organizations include the Campaign Legal Center, Common Cause, Democracy 21, the League of Women Voters, Public Campaign, Public Citizen and U.S. PIRG. We will work to enact these important reforms.

While we are focusing primarily on lobbying reforms today, we want to make clear that campaign contributions are at the heart of the lobbying and corruption scandals now engulfing Congress. In addition to the immediate battle for lobbying reforms, it is essential in the end to achieve fundamental campaign finance reforms, most importantly public financing of elections, if we are to restore the integrity and health of our democracy.

Our organizations will work to fix the presidential public financing system in time for the 2008 presidential election and to extend public financing to congressional races. We will also work for other essential campaign finance reforms, including replacing the Federal Election Commission with a real campaign finance enforcement agency, closing the loophole for 527 groups and abolishing leadership PACs. We also recognize that structural reforms of Congress must be enacted to address the lobbying scandals, including reforms to address the misuse of "earmarks," and that other procedural reforms are necessary to ensure a fair and democratic legislative process.

In terms of lobbying reform, we are proposing six essential benchmark reforms. They include proposals that have overwhelming public support. A *Washington Post/ABC News* poll (January 10, 2006), for example, reported that *90 percent* of the American people believe that it should be illegal for lobbyists to give members of Congress gifts, trips or other things of value. *Two-thirds* of the American people, according to the poll, believe it should be illegal for lobbyists to make contributions to Members and other federal candidates. Our organizations support the following benchmark reforms.

1. **Break the nexus between lobbyists, money and lawmakers.**

   Cap contributions from lobbyists and lobbying firm PACs to federal candidates at $200 per election and to national parties and leadership PACs at $500 per election cycle.

Prohibit lobbyists and lobbying firms from soliciting, arranging or delivering contributions and from serving as officials on candidate campaign committees and leadership PACs.

Prohibit lobbyists, lobbying firms and lobbying organizations from paying or arranging payments for events "honoring" members of Congress and political parties, such as parties at national conventions, and from contributing or arranging contributions to entities established or controlled by members of Congress, such as foundations.

2. **Prevent private interests from financing trips and from subsidizing travel for members of Congress and staff, and executive branch officials and federal judges.**

   Corporations and others should be prohibited from making privately owned planes available for Members to travel at the cost of a first class air ticket rather than the cost of a chartered plane.

3. **Ban gifts to members of Congress and staff.**

   The gift ban should close the existing loophole in the gift rules that allow lobbyists and others to pay for parties held to "honor" or "recognize" specific Members, such as the lavish parties held at the national party conventions.

4. **Oversee and enforce ethics rules and lobbying laws through an independent congressional Office of Public Integrity and increase penalties for violations.**

   Establish an independent Office of Public Integrity in Congress and provide sufficient resources for the Office to effectively carry out its responsibilities.

   The Office should monitor and oversee financial disclosure and lobbying reports; advise Members, staff and lobbyists on compliance with the rules; conduct investigations of non-frivolous allegations of ethics violations, including complaints filed by Members and outside individuals and groups; present cases involving potential ethics violations to the congressional Ethics Committees for consideration and action; and refer potential lobbying law violations to the Justice Department for civil enforcement.

5. **Slow the revolving door.**

   Prohibit members of Congress and senior executive branch officials from making lobbying contacts or conducting lobbying activities for compensation in either branch for two years after leaving their positions.

   Prohibit senior congressional staff from making lobbying contacts for compensation with their former offices or committees for two years after leaving their positions.

6. **Place sunshine on lobbying activities and financial disclosure reports.**

   Require lobbying reports and Members' financial disclosure reports to be filed in an electronic format and made fully searchable on the Internet; lobbying reports to be filed on a quarterly basis; lobbyists and lobbying firms to disclose grassroots lobbying activities; lobbyists to file a list of the Members' offices and congressional committees they lobbied during the quarter; and reports to be filed disclosing the financial backers of stealth lobbying coalitions.

Chairman TOM DAVIS. Thank you very much.

Ms. Pingree, thank you for being with us.

STATEMENT OF CHELLIE PINGREE

Ms. PINGREE. Thank you very much.

Chairman Davis, members of the committee, and particularly Representative Shays, who has worked very closely with Common Cause in the past, I appreciate this opportunity to testify before you and address some of the recent scandals that have been challenging Congress and the executive branch and give our suggestions about restoring the public's trust in Government.

As you know, Common Cause has been active for 35 years on a nonpartisan basis, commenting on the issues of ethics and the influence of money in politics, and we find this a very critical time. As both Congressman Davis and Congressman Waxman mentioned in their earlier remarks, this is an enormous opportunity as the public reacts with great criticism toward the scandals that are evident every day and more and more Members of Congress are interested in finding ways to change the perspective and enforce real reform.

We believe that vigorous enforcement of existing laws is critical to restoring trust, and legislation that makes clear that wrongdoing will not go unpunished is an important part of the solution to this problem. For this reason, Common Cause supports the Federal Pension Forfeiture Act. We believe this legislation that would deny Federal retirement benefits to Federal policy holders, including Members of Congress and their staffs, and political appointees in the executive branch who are convicted of crimes related to public corruption, crimes such as accepting bribes or defrauding the Federal Government, embezzling Federal property or falsifying Federal documents.

Losing a pension to us appears as if it will be a deterrent to officials who may be considering action that betray the public trust. The retirement benefits that Members of Congress and high-level Federal employees are entitled to receive after they retire often are more than the average American earns annually from a full-time job. The fact that public servants who have seriously violated their duties to the public would be rewarded by a lifetime pension seems grossly unfair to average citizens. It seems particularly unfair when the majority of Americans can expect no pension when they retire and when corporations like Enron implode and deny millions of innocent workers their retirement savings.

Passage of the Federal Pension Forfeiture Act is a good step in a multi-pronged effort to restore the public's faith in Government.

While we do support this legislation, we believe that much more is needed.

Common Cause is currently supporting an expansive reform agenda, dealing with Congress and lobbying, including such as issues as disclosure, gifts, travel ban, restrictions on lobbyists and lobbyists' fundraising, and tremendous increases in transparency, accountability, and disclosure.

We also believe that House and Senate leaders of both parties should agree to establish an independent ethics commission with the power to accept complaints, investigate them, and make rec-

ommendations to the respective House and Senate Ethics Committees. And restoring, again, that public trust can only happen if the public has confidence that Congress is committed to cleaning up its own house.

Within the jurisdiction of this committee, we would like to comment on a couple of other proposals before you, some of which my colleague, Joan, has already discussed. But we do appreciate the Chair's taking this opportunity to expand the jurisdiction of the committee and looking at as many ways as possible to restore the public faith.

We agree the problem with the revolving door and the conflicts of interest when Government officials with serious responsibilities are looking to advance their careers in the public sector again has gotten out of control and is an important means of restoring faith in the public.

We were all familiar, as mentioned earlier, with former Medicare Administrator Thomas Scully's effort to conceal the true cost of the President's Medicare prescription drug plan from Congress while negotiating for a job with private sector interests that would be favorably affected by this passage.

Administrator Scully got a waiver from his agency to conduct these employment discussions, and since then, to its credit, as you heard, the administration has clamped down on the practice of granting waivers. However, the time may be ripe for even stricter rules, perhaps written into the law, that simply do not allow for waivers, period. Government and legislative employees should not be negotiating with prospective employers while they have a role in legislation or regulation that affects those same employers.

Political cronyism is another concern of ours, and the appointment of political cronies is a problem that has infected both Democratic and Republican administrations. But the issue has come into much sharper focus recently.

When the head of FEMA, the Federal Emergency Management Agency, turned out to have little prior experience in disaster preparedness, our ability to respond to Hurricane Katrina clearly was impaired. Unfortunately, Michael Brown's apparent political appointment is not the exception. Cronyism rears its head in other, less visible appointments to boards and commissions that affect our lives. Most recently, two appointees to the Corporation for Public Broadcasting, whose duty is to protect public television and public ratio from political interference, were major donors and partisans with no experience in public broadcasting. These appointees have helped jeopardize the editorial independence of public broadcasting at a time when the public needs fact-based investigative journalism more than ever before.

Both Democratic and Republican administrations have been guilty of placing political supporters and major donors in Government jobs or on Government commissions.

We support the proposals contained in the Anti-Cronyism and Public Safety Act that require a political appointee responsible for public safety to have superior credentials and experience that is relevant to the position for which he or she is being considered. We also believe that the candidate should be free of potential conflicts of interest that might arise from regulating a former employer.

Let me mention a couple of others.

All of our proposals, both in front of the issues that regard Congress and in the executive branch, suggest that greater disclosure is critical but currently insufficient. As we know, every day an army of lobbyists descends on Congress and various agencies of the Federal Government. Lobbying the Government has become a billion-dollar industry, but the public knows relatively little about what lobbyists are working on and almost nothing about who they are talking to.

As Congress considers new lobbying rules in the wake of the Abramoff scandal, there are a number of common-sense reforms that would greatly improve the system and should apply to the executive branch as well.

Another place that disclosure rules need to be tightened is privately funded travel for Federal officials. Federal ethics laws require travel disclosure reports of every executive agency. However, the Vice President's office insists that they do not have to inform the American people about the trips that are taken through them, the speeches that are made, or the special interests that the Vice President meets with.

The Vice President contends that his office is not an executive agency and the disclosure rules don't apply because he does not make any trips that are privately funded. But according to the Center for Public Integrity, the Vice President has made more than 275 speeches and appearances, including 23 speeches to think tanks and trade groups and 16 colleges. While the Vice President calls this travel "official business" and puts it on the public tab and not giving the public any information of whether these trips truly serve the public interest or were a good use of Government funds.

Avoiding privately financed travel is a good practice in principle, but not if it is used as a strategy to keep the public in the dark about the office's comings and goings.

We also want too talk a little bit about Government contract policies and procedures that have not been up to the task. And since my time is limited, I will just say that is yet another area of concern particularly raised in the wake of Katrina, relying on no-bid, sole-source contracts, and feel that there is much more concern about disclosure and accountability in that area.

We want to thank again the committee for this opportunity to discuss increasing ethical conduct, the opportunities for transparency and accountability in the Federal Government, and we, too, look forward to working with you as you craft these legislative proposals and think about these issues seriously.

Thank you very much.

[The prepared statement of Ms. Pingree follows:]

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Feb. 1, 2006

Testimony of Common Cause President Chellie Pingree before the House Committee on Government Reform

Chairman Davis, Representative Waxman, and Members of the Committee, Common Cause appreciates this opportunity to testify on legislative efforts to address the recent scandals in Congress and begin to restore the public's trust in government.

We know that recent scandals have greatly frayed that trust. The spectacle of executive branch officials and Members of Congress betraying their duty to serve the public interest increases public cynicism and threatens to erode further citizen participation in our democracy.

The American public has grown increasingly disillusioned about ethics in government, finding fault with both the Administration and Congress for the current state of affairs. A *Los Angeles Times/Bloomberg* poll last week revealed that 47 percent of those surveyed disapprove of the way the President is handling "ethics in government," and only one in three Americans rank Congressional ethics as "excellent" or "good." This is a bipartisan problem. Nearly seven in ten of those surveyed felt there was no difference in the integrity and ethical standards of Republicans and Democrats.

Vigorous enforcement of existing laws is critical to restoring trust. Legislation that makes clear that wrongdoing will not go unpunished is a part of the solution to this problem. For this reason, Common Cause supports the Federal Pension Forfeiture Act. This legislation would deny federal retirement benefits to federal policymakers, including Members of Congress and their staffs, and political appointees in the executive branch who are convicted of crimes related to public corruption, crimes such as accepting bribes or defrauding the federal government, embezzling federal property or falsifying federal documents.

Losing a federal pension will be a deterrent to officials who may considering action that betray the public trust. The retirement benefits that Members of Congress and high-level federal employees are entitled to receive after they retire often are more than the average American earns annually from a full-time job. The fact that public servants who have seriously violated their duties to the public would be rewarded by a lifetime pension seems grossly unfair to average citizens. It seems particularly unfair when the majority of Americans can expect no pension when they retire, and when corporations like Enron implode and deny millions of innocent workers their retirement savings.

Derek Bok Chairman | **Chellie Pingree** President and CEO | **Archibald Cox** Chairman Emeritus | **John Gardner** Founding Chairman

Passage of the Federal Pension Forfeiture Act is a good step in a multi-pronged effort to restore the public's faith in government.

While we support this legislation, much more is needed.

Common Cause is supporting an expansive reform agenda, beyond what this committee is considering today. We have developed five proposals (attached) to reform the flawed Congressional ethics process, and a Washington culture that encouraged not only the flourishing of discredited, now indicted, lobbyist Jack Abramoff, but of a system of special interest influence that undermines our democracy.

We believe House and Senate leaders of both parties should agree to establish an **independent ethics commission** with the power to accept complaints, investigate them and make recommendations to the respective House and Senate ethics committees. Restoring public trust only can happen if the public has confidence that Congress is committed to cleaning up its own house.

We also believe that the root cause of so many of these problems is the undue influence of money on our politics. Common Cause is committed to **public financing of all federal elected offices**. Public financing of elections makes it possible for Members of Congress to focus on serving citizens, not the special interests they rely on to fund their campaigns. It also ensures that the federal government spends its money wisely, based on the public interest, and not on the parochial interests of a specific company or donor.

We also want to address:

Revolving Door: The problem of conflicts of interest when government officials with serious responsibilities are looking to advance their careers in the private sector.

We are all familiar with former Medicare administrator Thomas Scully's effort to conceal the true cost of the President's Medicare prescription drug plan from Congress while negotiating for a job with private sector interests that would be favorably affected by its passage. Today, senior citizens are scrambling to make sense of the convoluted program while our federal budget plunges even further into the red. That a single government employee could have such incredible influence over the passage of a hundred million dollar piece of legislation like the prescription drug bill cries out for tougher ethics rules.

Scully got a waiver from his agency to conduct those employment discussions. Since then, the Administration to its credit has clamped down on the practice of granting such waivers. However the time may be ripe for even stricter rules, perhaps written into law, that simply do not allow for waivers, period. Government and legislative employees should not be negotiating with prospective employers while they have a role in legislation or regulation that affects those same employers.

Political Cronyism: The appointment of political cronies is a problem that has infected both Democratic and Republican administrations, but the issue has come into sharper focus recently.

When the head of the Federal Emergency Management Agency turns out to have little prior experience in disaster preparedness, our ability to respond to Hurricane Katrina was impaired. Unfortunately, Michael Brown's apparently political appointment is not the exception. Cronyism rears its head in other, less visible, appointments to boards and commissions that affect our lives. Two recent Bush appointees to the Corporation for Public Broadcasting, whose duty is to protect public television and public radio from political interference, were major donors and partisans with no experience in public broadcasting. These appointees have helped to jeopardize the editorial independence of public broadcasting at a time when the public needs fact-based investigative journalism more than ever before.

Both Democratic and Republican administrations have been guilty of placing political supporters and major donors in government jobs or on government commissions. But the stakes are higher now. In this post-911 era, should even one member of the President's Foreign Intelligence Advisory Board lack the proper credentials to give the President an informed assessment of how well federal intelligence agencies are functioning? Yet, according to media accounts, Texas oil billionaire Ray Hunt and Cincinnati financier William DeWitt Jr. were recently reappointed to that body, despite their lack of experience or expertise in this critical area of national security.

We support the proposals contained in the Anti-Cronyism and Public Safety Act that require a political appointee responsible for public safety have superior credentials and experience that is relevant to the position for which he or she is being considered. We also believe any candidate should be free of potential conflicts of interest that might arise from regulating a former employer.

Greater Disclosure: is critical, but insufficient.

Every day an army of lobbyists descends on Congress and the various agencies of the federal government. Lobbying the federal government is a billion dollar industry. But the public knows relatively little about what lobbyists are working on and almost nothing about whom they are talking to.

As Congress considers new lobbying rules in the wake of the Jack Abramoff scandal, there are a number of common sense reforms that would greatly improve the system.

Common Cause and other reform advocates long have called for better lobby disclosure that makes it possible for the average citizen to access these forms on the Internet in a user-friendly searchable format. Currently, no one – including the most sophisticated Washington-based researchers – can find out without hours and hours of labor something as simple as the names of all the lobbying firms that worked on the Medicare prescription drug bill, or that lobbied the Food and Drug Administration on a particular regulation. Congressional proposals to tighten lobby disclosure will help us understand the influence of lobbyists on agencies as well as Congress. But any new lobby disclosure rules must be accompanied by a better system of enforcing these rules. The Clerk of the House and the Secretary of the Senate are institutionally inappropriate to play an enforcement role. This function should be placed in an independent ethics commission, as we outline in the attached set of proposals.

Another place disclosure rules need to be tightened is privately funded travel for federal officials. Federal ethics law requires travel disclosure reports of every executive agency. Vice President Dick

Cheney, however, insists he does not have to inform the American people about the trips he takes, the speeches he makes, or the special interests he meets with.

The vice president contends his office is not an executive agency and the disclosure rules don't apply because he does not make any trips that are privately funded. According to the Center for Public Integrity (www.publicintegrity.com), the vice president has made more than 275 speeches and appearances, including speeches to 23 think tanks and trade groups and 16 colleges. The Vice President calls all this travel "official business" and puts it on the public's tab, while not giving the public any explanation of whether these trips truly served their interest and were a good use of government funds.

Avoiding privately funded travel is a good practice, in principle, but not if it is a used as a strategy to keep the public in the dark about the vice president's comings and goings.

If the President truly wants to encourage a culture of accountability in government, then one place to start is with his own vice president. President Bush should make clear to Vice President Cheney that he owes the American people some accounting of how he spends his days ostensibly doing their business.

Government Contracting: We also believe our government's contracting policies and procedures have not been up to the task.

In the reconstruction of Iraq and the Gulf Coast, we saw federal agencies scrambling to meet the incredible demand for results by relying on no-bid, sole source contracts. As we learned in Iraq, when the need for expediency isn't balanced with a prudent amount of free market competition, taxpayers pay through the nose.

We believe that the Congressional oversight of contracting in Iraq has been woefully inadequate. Given the well-documented cases of waste and abuse in Iraq, we believe the review of Iraq reconstruction and troop support contracts is appropriate. Common Cause has called for the creation of a special investigative committee based on the highly successful Truman Committee during World War II. It seems logical that a comprehensive review of what happened would provide valuable insight and would likely save the American taxpayers billions of dollars, just as the Truman Committee did 60 years ago.

Similarly, we are supportive of the proposals to increase accountability in federal contracting in the reconstruction along the Gulf Coast that are contained in the Hurricane Katrina Accountability and Contracting Reform Act. We think the federal government should not be completely outsourcing the oversight of reconstruction contracts. And as I stated earlier, competition is essential and should not be jettisoned for the sake of expediency.

We thank the Committee for this opportunity to discuss increasing ethical conduct, transparency and accountability in the federal government. We look forward to working with you on legislative proposals to advance these goals.

Common Cause Ethics Challenge

For 35 years, Common Cause has been dedicated to ensuring all levels of government are more open, honest and accountable. We expect our public officials to serve the people, not their personal ambitions. Meeting the highest ethical standards is critical to maintaining the connection and faith citizens' have to their democracy.

As a result of the Abramoff corruption scandal, the Congress must take urgent action to reform the ethics process, the existing rules under which lobbyists operate and disclose their activities, and the campaign finance system, and the way elected officials relate to lobbyists. As a substantial beginning, Common Cause proposes the following. We believe these five "big ideas" will change the way business is done in Washington.

REFORM THE ETHICS PROCESS

Create an Independent Ethics Commission to investigate congressional ethics misconduct.

For decades, the ethics process in Congress has been stymied by the fact that it is very difficult for Members to judge their colleagues. Peer review simply is not the answer when it comes to a fair, firm process that ensures that Members live by ethics rules on the books. Building on our 1997 proposal to create an Independent Office of Ethics Council, an Independent Ethics Commission would have two main functions. It would have the power to launch an investigation of an ethics complaint, or an allegation of an ethics impropriety, and then present its findings to the respective Ethics Committees of either the House or Senate. The committees would decide the final outcome of the investigation, either voting to take no action or to impose a range of penalties on the Member.

IMPOSE AN EFFECTIVE GIFT AND TRAVEL BAN

Ban registered lobbyists from giving gifts to members of Congress and their staffs, and prohibit Members of Congress and their staffs from accepting gifts from registered lobbyists. (Gifts are anything of value including dinners and trips.) Also ban all privately financed congressional travel.

For too long, Congress has winked at the gift ban, which restricts the value of gifts and hospitality Members can accept from one source at $50, or a total aggregate annual value of $100. Gifts from registered lobbyists offer the greatest potential for harm, by providing lobbyists with an avenue for building and maintaining the relationships that advance their agendas. When Congress makes decisions affecting all of us, those decisions should be based on serving constituents, not helping a lobbyist-benefactor.

If a trip is important enough for a Member to make, it is important enough to be publicly financed. While there are good and valid reasons for congressional travel, current travel rules enable lobbyists to gain special access to Members and offer the opportunity to indirectly fund vacation junkets through trip sponsorship by lobbyist-funded nonprofits.

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END THE CAMPAIGN MONEY CHASE

Attack the root of the problem: The campaign money that makes lobbyists and the contributions they solicit from their clients so invaluable.

As long as congressional races costs hundreds of thousands, and sometimes millions of dollars, elected officials will rely on lobbyists to help them raise the campaign cash they need. Jack Abramoff and his lobbying colleagues raised more than $5.3 million from their clients, including a few Indian tribes, and gave to 364 federal candidates between 1999 and 2004, according to *The Washington Post*. All these millions gave Abramoff unprecedented power and access, and put the priorities of his clients above the priorities of the average American.

Common Cause long has advocated clean campaigns for federal and state elections, permitting candidates to run for office, agree to voluntary spending limits, and receive public funds for their races. In 1974, the Watergate scandal spurred Congress to create the Presidential Public Financing system. This year, a scandal spurred Connecticut to approve public financing for its state executive and legislative races. The Abramoff scandal should be the catalyst for enactment of publicly-funded campaigns for Members of Congress, and a revamped and strengthened public financing program for presidential campaigns.

SLOW THE REVOLVING DOOR

Extend the moratorium on taking jobs as lobbyists for members of Congress and senior staff from one year to two years, and expand the definition of lobbying to include providing strategic advice on legislation, Members of Congress, and the legislative process.

Increasingly, Members of Congress look to lobbying as their post-government profession, trading on their friendships and understanding of the legislative process to earn salaries that often dwarf what they earned as elected officials. A two-year ban will do more to discourage a practice of looking at service on the senior staff or as a Member of Congress as merely a steppingstone to the more lucrative job of influence peddling. Expanding the definition of lobbying will capture those Members of Congress who join lobbying/law firms and who do not register as lobbyists, but who share their invaluable experience they have had as elected officials with lobbyists in the firm.

- **Require Members to report negotiation of future employment with any corporation, organization or other entity that has legislative issues pending before Congress.** At the very least, the public ought to know when a Member of Congress or congressional staff are discussing future jobs with the very special interests they are supposed to oversee.

- **Eliminate floor privileges and other special access to former lawmakers**, like use of the Congressional dining room and gym, for former members of Congress who are registered lobbyists.

- **Prohibit registered lobbyists from acting as fundraisers and campaign treasurers for federal elected officials.** According to the Center for Public Integrity, 79 Members of Congress have named lobbyists to serve as treasurers of their campaign committees. Hundreds more lobbyists have become effective fundraisers for presidential campaigns, pulling in contributions from clients or corporate political action committees. Indeed, Abramoff raised $100,000 for the Bush campaign in 2004 and was designated a Pioneer. Lobbyists raise campaign funds because they want to become indispensable to people in power, knowing that the services they perform will be rewarded by the access and influence they gain.

SHINE A LIGHT ON LOBBYING ACTIVITIES

Institute real-time reporting of lobbying contacts and real enforcement of disclosure rules.

The multi-billion-dollar lobbying industry operates almost entirely in secret. Lobby reports are filed on paper in Washington, and housed in the offices of the Clerk of the House and the Secretary of the Senate. The Clerk and Secretary were designed to be repositories for the forms, but have no powers to enforce that they are filed on time, completely, and by all those who register. This must change. The American public has a right to know who is lobbying their elected officials. They also have a right to know when those contacts are made in real time, so they can assess the impact of lobbying on public policy decisions.

- Move the responsibility for receiving and accounting for lobby disclosure forms from the Clerk of the House and Secretary of the Senate to the newly created Office of Ethics Counsel. Give the office the authority to enforce the Lobby Disclosure Act, and to make lobby reports publicly available.
- Mandate electronic filing of quarterly lobby disclosure reports, available online and searchable, with a sortable database that lets the public know the name of the lobbyists, the official who was lobbied, and what specific legislation was discussed.
- Direct the Office of Ethics Counsel to conduct random audits of lobbying reports and publish quarterly a list of filers who submitted late or incomplete reports or failed to report.
- Require lobbyists to report within 48 hours each contact with a Member of Congress and Congressional staff, including the date of contact, the staff member contacted, and the legislative issue discussed. The Federal Communications Commission has successfully imposed a similar rule for communications with FCC decision-makers about pending regulatory issues. This public disclosure has given the public valuable insights about the special interests and their issues at the FCC. We should expect as good, if not better, disclosure from the lobbyists influencing public policy on Capitol Hill.

Chairman TOM DAVIS. Thank you very much for your thoughtful testimony.

Mr. Kirk, I am going to start questions with you.

Mr. Kirk has a bill up that does much of the same thing. Really the differences on the legislation, which is narrowly crafted today, basically it is who it applies to and what the crimes are. Of course, reasonable people can disagree, and we are trying to figure it out.

Mark, go ahead.

Mr. KIRK. Thank you, Mr. Chairman, and thank you for agreeing to have a member of another committee here for a statement. Last year, I introduced a bill, H.R. 4535, the Congressional Integrity and Pension Forfeiture Act, which was cosponsored by 37 Members. It was based almost exclusively on Congressman Randy Tate's bill in the 104th Congress, H.R. 4011. That bill had 74 cosponsors. It was taken up and passed by the House of Representatives on September 22, 1996, by an overwhelming bipartisan vote of 391–32, with 1 present.

I will note that the now-Speaker of the House, Dennis Hastert, voted for that legislation. The now-Minority Leader of the House Nancy Pelosi also voted for that legislation. For members of this committee, the vote broke out 16–3.

That bill was patterned after legislation introduced by my predecessor, John Porter, during the 101st Congress in 1990. It was he who in the Illinois General Assembly passed legislation to deny a member of the General Assembly convicted of a felony of their Illinois State pension, which is now the law of our State.

I think it is incumbent upon the Congress now to take this action because the Congress, by its very nature, is largely run by senior Members. Junior Members do not have the right to a pension. Senior Members have very large pensions. The beauty of this provision is that the penalties go up with seniority, and since they are the ones who run both majority and minority parties, the penalties fall most heavily on them.

Chairman TOM DAVIS. Mark, the Members do not say that in their campaign literature.

Mr. KIRK. That is right. [Laughter.]

Chairman TOM DAVIS. The Members do not say they do not run the place. It is a rare admission.

Mr. KIRK. I would also just recommend, on crimes that are covered, I am comfortable making the level of penalties on crimes higher on Members of Congress than anyone else because I think as lawmakers it is incumbent on us to set a higher standard and to be judged against a higher standard. And so while there are other proposals before this committee to deny pensions to all Federal employees that are convicted of a felony or to restrict the number of crimes that would affect a congressional pension, I would recommend that this committee follow the direction the Congress took in 1996 and have a very broad range of public crimes apply only to Members of Congress, denying their pension, because I think it is up to us to set a higher standard.

Now, unfortunately, despite overwhelming bipartisan support in 1996, this legislation was killed by the Senate leaders of both sides in 1996. But the Senate leaders of 1996 are all gone now. We have entirely different leaders, both Republican and Democratic sides.

And so my hope is this Congress can send back this common-sense legislation, which already overwhelmingly passed the House, set a higher standard for Members of Congress on a broad range of public crimes.

I am very comfortable with that. I don't think we need to drag other Federal employees in it, but I think for this body, a higher standard is something that we should be very comfortable with.

Mr. Chairman, thank you for that, and I yield back.

Chairman TOM DAVIS. Thank you very much.

Mr. Van Hollen.

Mr. VAN HOLLEN. Well, thank you, Mr. Chairman, for holding this hearing. Thank you to both our witnesses for being here, and thank you for your testimony.

I want to just commend the chairman on introducing this piece of legislation and holding this hearing. But as he himself, I believe, said earlier—and I think we all acknowledge—the scope of the problem goes beyond this piece of legislation. I support this bill, but I think that if we are going to attack this issue of special influence in Washington and the influence of lobbying over legislation and the product that passes the Congress, we need to go way beyond that. You have addressed that, both of you, in your testimony as well.

Indeed, Mr. Chairman, I hope this will be the first of a number of hearings where we begin to take some serious oversight over this general issue. Let me just mention, for example, many of my constituents who work for the Federal Government have felt that political pressure arising from special interests lobbying the administration has interfered with their ability to pass public policy in the public interest. And you can think of many examples where pressure has been put on scientists in the administration to change their judgments or to try and pressure them not to speak out.

We just heard over the weekend—it was widely reported—James Hansen at NASA said that he was pressured not to speak his mind on issues of global warming because it was not consistent with the Bush administration's policy.

I participated in a forum over the weekend with Susan Wood, who used to be head of one of the public health divisions, women's public health over at FDA, who resigned in protest after an expert panel was overruled at the political level with respect to emergency contraceptives and Plan B.

There are numerous examples, especially in the last 5 years, of people's independent judgment being overruled as a result of political pressures brought by special interests, and I think it is very important that we look into those issues as a committee.

With respect to lobbying reforms, I think many of the proposals you have made here are right on target, and I think we should have a gift ban, and I think we need to be very aggressive about this. The end result cannot just be window dressing. It cannot be an attempt here to create the perception among the American people that Congress has done something if, in fact, it has not done something, because that will just breed more cynicism, and people will lose even more confidence in the Congress and the administration and how we make public policy.

If you could address what I really think is the nub of a lot of this issue, which is the whole question of the campaign finance system, and we don't need at this point to get into different campaign finance reform proposals, which I support many of them and I know that your organizations have been advocates, and I am a cosponsor of those. But just the nexus right now between lobbying and lobbyists for special interests and their role in the fundraising process, and whether or not you have any specific proposals aimed to address that issue.

Ms. CLAYBROOK. We do, and thank you for asking that question. We do believe that for both the Democratic and Republican—sorry. Thank you for asking that question, Mr. Van Hollen. We do believe that is a missing link in both the Democratic and Republican proposals that are now pending in the Congress, and that link, as we see it, is the link between money, lobbyists, and politics. And we have advocated—and I would like to submit for the record—while I realize it is not totally under the jurisdiction of this committee—the six benchmarks for lobbying reform that Common Cause, Public Citizen, and other groups have supported, and one of the key elements of that is not to have lobbyists be able to bundle money from Members of Congress, that is, to go collect it from a lot of other places and hand over a number of checks from various people; not to be treasurers or campaign officials for a Member of Congress; not to hold fundraising events or events that honor Members of Congress; not to hold events, for example, at the political conventions that are recognizing Members of Congress.

So we believe that this nexus of the deep involvement, if you would, of lobbyists in the fundraising process for Members of Congress should be prohibited, and that is one step.

We do support—and I know Chellie does as well because she has been a leader on this in the State of Maine, where she was a public official. We do believe that public funding of elections in the end is really the solution, and we support, of course, reform of the Presidential funding system. And I think that those kinds of proposals really deserve consideration now, now that we have had so many scandals and so many difficulties with this nexus between money, lobbyists, and politicians.

Ms. PINGREE. If I might just make a quick comment, and that is a very comprehensive look at exactly what both of our organizations are supporting.

Two interesting facts. If you look at the most recent Washington Post survey, 57 percent of the public believes that all lobbying fundraising should be banned, so this is a very salient issue. People see the connection between lobbyists and Members of Congress as something they have deep concerns about. As Joan said, we are also enormous supporters of the idea of thinking now about congressional public financing and more and more conversations are revolving around this. I know Representative Shays just had to leave the room, but the Connecticut Legislature just passed public financing with bipartisan support from Republicans and Democrats. Maryland has a bill pending. So it is an issue that is being looked at in many States around the country. The California Legislature passed public financing in the House 2 days ago.

So in the wake of all these scandals, while there are very discrete proposals that we have to deal with in this connection between lobbying and fundraising is important, this conversation will go on for a while and people will continue to look at their Members and say, "So what are you doing in the long run to make sure that we break these ties and that we really change the system of money and its influence in the political process?"

Mr. VAN HOLLEN. Well, thank you for those comments, and I agree with you. And I hope as Congress reviews different proposals you will continue to hold its feet to the fire and be the judge of whether or not what comes out of Congress is window dressing or whether it is something that will make a real difference.

I agree with you with respect to public financing. I am a cosponsor of a piece of legislation that has been introduced here. It did not get a lot of traction until recently. Now people are, fortunately, taking another look. But you know as well as I do that it will take an awful big push from the grass-roots level to pass campaign reform legislation through this body.

When I was in the State legislature, we pushed for it in Maryland, and we still have a ways to go there. Other States, as you said, have since moved forward, which I think is a good thing. But I think that is ultimately the solution for ensuring that Members, elected Members, essentially owe their loyalty to the public and there is not a question raised in the public mind about whether or not there are other influences at work beyond just the commitment of public officials to the public interest. So let's work on all these fronts, and thank you for your work.

Ms. CLAYBROOK. Mr. Van Hollen, I would just like to say that it would be the best investment the taxpayer ever made. It is a cost of one B1 bomber to have public funding of elections for Members of Congress.

Mr. VAN HOLLEN. And, Mr. Chairman, just if I could, the key issue here—because when you poll people and you ask them of their priorities where does campaign finance reform rank, for example, it usually comes down pretty low. But above that you will find issues like health care reform and energy policy. The important thing is that the public understand that getting the foundation of our system right has a direct impact on the policies that we work on with respect to health care and energy.

It is my view, for example, that the prescription drug bill that was passed—I think people are finding out, seniors now when they look at all the complications, that it wasn't written with them in mind. And certainly the prohibition on the Federal Government, you know, being able to negotiate prices on behalf of the taxpayer, that prohibition was certainly not in the public interest. And I think you see similar issues arising with the energy bill.

So the public needs to understand the direct connection between getting our campaign finance system right, getting our foundation in order, and the impact that has on all these other big policies.

Thank you.

Chairman TOM DAVIS. Thank you.

Let me just note that I come from Virginia, which is "anything goes" in terms of campaign contributions, but transparency—and we have really no history of corruption or anything else within the

State, but we do have complete transparency and you cannot raise money during legislative sessions and the like. So we could have a good discussion on this, and I don't think this is the time to do that. I will note on some of the lobbying reforms that you have advocated forever, that some Members—like Mr. Kirk had put his bill forward last year before this became a hot item. We have a short window of opportunity to act. And Mr. Waxman and I have sat down, and we would like to take advantage of this. We are not going to agree on everything, but we can work a lot of things out and move the ball down the field.

We welcome your comments as we do this, your criticisms and everything else. We think it adds to it. But the public right now is beginning to get focused on these issues, and that gives us a rare opportunity, where generally this may rank 14th or 15th, to move it to the top.

So let's try to take advantage of it. We need to have an honest discussion. We are not going to agree on everything. I am certainly not going to agree on public financing. But let's have the—we ought to be able to talk about it and maybe close some things that ought to be closed and try to do some common-sense things.

Ms. CLAYBROOK. I would certainly commend to you to look at some recommendations by a number of the same groups that are working on lobbying reform on the Presidential public funding system. That is a system that already exists. It is quite broken, and it really needs to be amended. And we would seek your help on that, Mr. Chairman.

Chairman TOM DAVIS. Thank you. The big loophole we are getting to now is the court decisions that allow wealthy individuals to spend unlimited amounts. And if you did not have that, I think we could—some of these other items might make some sense. But you are getting into a point where people can spend vast amounts and there is no other way. But that is a discussion that we can have and try to deal with.

On the legislation before us, I don't represent this as a cure-all at all. We saw this as something within our committee's jurisdiction that we can move quickly. It may or may not be attached to something else, but let's get a piece down, but Mr. Waxman and I have agreed that this is by a long ways not the end of what this committee will do and we hope not what the Congress will do. And he has listed some of the things in his opening statement about some of the areas that he wants to look at, and we have agreed to look at them. And I think in some cases, we will come to closure.

Immediately, the legislation before us in the bill that I put forward, we don't include every Federal employee. We include people who are in policymaking positions for the most part, Schedule Cs. Now, some of these people don't have big pensions because they are not career, but some of them have gone in and out of Government over time, and the cumulative effect is fairly significant as well, and, of course, Congress, who is an elected body on that.

As you heard Mr. Kirk, some would like to expand this across Government to everybody working for the Federal Government. We have had some discussions on whether you do that. Career civil servants, do you put their families out of their pension? Any thoughts on that?

Ms. CLAYBROOK. Well, I would like to look at his bill more carefully.

Chairman TOM DAVIS. OK.

Ms. CLAYBROOK. I am an attorney, so I want to do that, and I would like to submit our comments. But, generally, my inclination would be to support a broader piece of legislation like Mr. Kirk's. I worked in the Federal Government for 16 years. I started as a GS–5, so I know the capacity of individuals in the Federal Government to misbehave and I have seen it.

Chairman TOM DAVIS. Sure.

Ms. CLAYBROOK. So I think that—I do believe it would be a deterrent if people thought they could lose their pension. Many people go to work for the Government and stay there because it does have a good pension system, and particularly in these days where pension systems now are hard to come by, it is probably even more important.

So I would not be opposed to looking more broadly at what these penalties should be and who they should cover. I certainly think they should cover the SES positions. I am not sure whether the bill does that or not.

Chairman TOM DAVIS. That is a good point.

Ms. CLAYBROOK. But I definitely think all political appointees and the SES positions. But I think probably more broadly.

Chairman TOM DAVIS. All right. If you would like to submit anything else, we may move on this quickly, but we would be happy to have it.

Ms. Pingree.

Ms. PINGREE. I would concur with Joan and just reinforce again the public perception from the outside of people who work for the Federal Government, who are Members of Congress, who basically, you know, work for all of us, having opportunities to keep their pension even if they do significant wrongdoing. So I do think it would be a deterrent effect. I thought your comment that it would be a prosecutorial tool was important, particularly at a time when there is a great need for access to information. And we see in the Abramoff issue where being able to have that information is extremely important to cleaning up what goes on behind the scenes that we often do not know about. So I thought that was an important point.

And I don't know exactly what the legal issues are, but, again, I think perhaps it was Representative Shays who mentioned that as people come into these jobs, they need to be fully informed about the fact that there will be significant penalties if they do wrongdoing and attach those to every decision that they are making when they make those decisions. So I think we would support that.

Chairman TOM DAVIS. OK. Thank you.

I just had one other question. Ms. Claybrook, I am just confused about one thing. You suggested that OGE has sought to weaken public disclosure at the prodding of the White House. Was that fair?

Ms. CLAYBROOK. Well, no, it was the White House that took the initiative.

Chairman TOM DAVIS. Right. The White House is prodding OGE to weaken these things.

Ms. CLAYBROOK. Yes.

Chairman TOM DAVIS. But have they been successful in that?

Ms. CLAYBROOK. I don't know. I have not had the capacity to—

Chairman TOM DAVIS. OK, because our hope is that OGE has been immune from political considerations. I mean, that is why it was created originally, and that is why I think we want to give them more authority in some of these areas.

Ms. CLAYBROOK. That is correct. We very strongly believe that OGE should have independent authority and that it should be as immune as possible from political considerations. Obviously, if you get a directive from the chief of staff at the White House, you are going to pay attention to it.

Chairman TOM DAVIS. Of course you are, and there are political considerations in everything.

Ms. CLAYBROOK. That is right.

Chairman TOM DAVIS. You do not have to be elected to have them. I would just add one other thing. There are going to be times when career people come up with a different conclusion than the elected administration.

Ms. CLAYBROOK. That is right.

Chairman TOM DAVIS. And we have seen some of those issues, too. My feeling on that, though, is the administration should not be afraid to come forward and explain their position if it is at variance.

Ms. CLAYBROOK. Absolutely.

Chairman TOM DAVIS. But there is nothing wrong with that, whether it is voting rights or whether it is on drugs. If it is a policy position, that is fine. But they should not be timid about sharing their information with Congress and coming forward and explaining it.

Ms. CLAYBROOK. That is correct. That happened to me as actually the Administrator of the National Highway Traffic Safety Administration, and John Dingell and I had quite a set-to over this because one of my employees did not like airbags, and we had a public debate about it. And I supported airbags, and I think in the end having that public debate was just perfect.

Chairman TOM DAVIS. It is never pretty, but it is democracy.

Ms. CLAYBROOK. That is right.

Chairman TOM DAVIS. Again, the elected policymakers can overturn career people, but they should not be afraid of being able to come forward and explain it. And that is what—well, thank you very much.

Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman. I regret that I was not here when these very important witnesses testified. I have had a chance to glance quickly at their testimony. I certainly wanted to be here when the OPM Director testified.

A Member—and I don't recall his name—on the other side was saying as I entered that he thought that Members of Congress should be held to a higher standard. I must say that I have to agree. We, of course, passed legislation that said that at the very least Members ought to be held to the same standard as others. But, you know, isn't it amazing that it took us a long time to get

to the point of saying that the laws that apply to everybody else, hey, guess what? They also apply to Members of Congress.

Now that we have said that and now that we have this pervasive scandal, let's look to see who a Member of Congress is. And when it comes to matters of ethics and the fact that there are so few of us that these positions are so sought after, are the highest public trust, and particularly in light of the scandals before us, it is very hard to argue anything but set the example, not only raise the standard but say, look, they have a higher standard that applies to them than applies to the average American.

I simply want to say, however that plays out—and we have to look closely at how that plays out, and indeed I have a question for you about how that plays out—I do think that is certainly the place to begin.

I want to congratulate my good friend who has made the first hearing a hearing dealing with this egregious issue. Now, what he has done is to choose the most egregious case, the case that is mind-blowing to anyone who knows anything about it. But if I may say so, for that reason it is not the most urgent case. In some respects, it is the easiest case because you know you got to do something about that. If the lobbying can result in the consequences that we now know from the plea, then you certainly have to do something about that.

I would have preferred—and I know it is early in the session, and that is why I am grateful that we have started, at least. I would have preferred—and I think there would have been a greater understanding, particularly of the public, if we said there are a whole bunch of things that are wrong, wrong with that Member, because everybody knows how unusual that is. And if they don't know, beware, Congress, because too many think that he is typical.

One way to dispel that is say here is a whole flock of things we are going to do. So I am going to assume that my good friend, Tom Davis, who has taken the leadership here, first committee to come forward in this way, is having the first of a series of important hearings on this issue.

I believe that the matter ranks so low, as my colleague here from Maryland said, because we have failed to make the nexus between the issues that affect the American people and lobbying. So we talk about lobbying. Who could care less what happens in Washington? And maybe it is difficult to make that nexus, but not if we begin to talk more about the issues that we know have been determined exclusively by lobbying money. And, of course, the best and prime example is the great hopes of seniors that have been dashed by the Medicare prescription drug program. Not only is it indefensibly complicated, but now it is so full of holes that they cannot even work their way through it because there is yet a whole new set of problems that have just erupted. We have to do better on that.

I would like to just ask a question. When I look at these things, I tend to look at them legislatively and more technically. One of the things I find most difficult, because it is hard for me to see what difference it has made, is the notion of, you know, 1 year or 2 years that you do not get to lobby.

Now, in, I guess, the Common Cause testimony, to show just how difficult this is, in your explanation of the revolving door, you un-

derstand that people have to have a right to practice an occupation, so you say slow the revolving door. But to show how hard it is, in your explanation you say—and here I am quoting from your testimony—"Expanding the definition of lobbying will capture those Members of Congress who join lobbying/law firms and who do not register as lobbyists, but who share their invaluable experience they have had as elected officials with lobbyists in the firm." I find that a very difficult matter to deal with. You know, on the face of it, it seems to have free association and free speech implications. I don't even know how in the world you would enforce it. And I am bothered by it.

At the same time, I cannot tell the difference between 1 and 2 years. So it would help me if you have anything further to say, because the rest of the things you say under that I hope we do immediately, like eliminate floor privileges, deal with negotiation for employment contracts, prohibit lobbyists from being the treasurers, etc., but when it comes to, OK, you can't even talk to, you can't share your experience, I don't know how that can survive constitutional muster, much as I am attracted to it. I would just like to hear you, perhaps you have views on why you think that is constitutional or why that would work, or why it would be, for that matter, enforceable?

Ms. PINGREE. Thank you, and I am happy to attempt to answer that question, and, again, Public Citizen has been doing a lot of work on this issue of the revolving door.

I would say that for most of the reform groups we have been trying to address, two concerns. One is to extend the period of time—and you raise a good question, you know, will 1-year be different from 2-year? We feel that it represents a greater deterrent from this notion that people serve as Members of Congress, looking forward to an opportunity to both parlay that influence into a high-paying job, and maybe are making decisions based on their time in Congress that will be affected by the future employment, so I think we are trying to extend that period, and talking about it in the executive branch as well.

I think the second point that you have raised, that perhaps will be heard, to actually regulate, is this concern that there are former Members of Congress or the executive branch who actually go to work in large lobbying—large law firms that have a significant lobbying presence. So they may have the opportunity to direct lobbying activities, to work on strategies and political thinking, yet they may never appear on the floor or be seen in these halls. But their influence and the significance of that influence may be much greater than we are able to assess based on whether or not they are here in the hallways.

Ms. NORTON. Yes. We may have reached the limit of what we can prohibit, is my problem with that.

Ms. PINGREE. And you may well be raising an important point, but it is really one of the most frequently mentioned proposals because I think people are deeply concerned about what is going on behind—

Ms. NORTON. That same Member could go and teach at Georgetown Law School and say the very same things, and then the lobbyists could simply register for his course. And people do that, they

do teach part time. I am just not sure about that, and I am not sure, as much as I want to do something about this problem, that I could—because I think it is unconstitutional on its face, not just as applied, not to mention all kinds of problems about attorney-client problems. The reason I ask it is I am befuddled by the 1 and 2-year, and I see the problem there, and therefore respect your notion of trying to get to something that is more meaningful. To me, in a real sense, it points up the difficulty of trying to do something other than the yearly matter.

I am sorry. Ms. Claybrook did want to answer.

Ms. CLAYBROOK. Could I comment on that, Mr. Chairman, for just a second?

First of all, I understand your concern about the constitutional issues. The reason that we favor this type of proposal is because the intent of the current law that you not lobby for 1 year after you leave the Congress has been completely undermined by Members of Congress being paid multi-bucks to go to either a lobby firm or law firm, and they set up shop as the director of the issue. Maybe Mr. Tauzin would be a good example, where behind the scenes, is directing the lobbyists, telling them what to do, which Members of Congress to contact, what issues that they care about. And so he is essentially the lobbyist without actually making the telephone calls.

Everyone knows that Tauzin's lobbyists are coming to talk to them, and they are bringing a message from Mr. Tauzin, for example. And he is not the only one. Believe me, I am not picking just on Mr. Tauzin.

So the question is whether or not Members of Congress can sell themselves to these entities, these law firms and lobbying shops, as the director, working on particular issues where they have intimate knowledge and intimate contacts that is essentially selling the public trust. And it is a balancing act. It is a balancing issue.

I would prefer that they not be able to work for 5 years in these kind of jobs, if you ask me personally, because there are plenty of things Members of Congress are talented to do, and they don't have to become Washington lobbyists in order to make a living. I think it has perverted the system and undermined the whole process of legislation. So I would apply a much tougher standard in terms of the number of years, and I think that you would admit that there's a difference between 1 year and 5 years in terms of whether Members of Congress are still here and their staffs are still here, and do they have the same relationships?

But in terms of directing and controlling the strategy or laying out the strategy for other lobbyists to affect legislation on their behalf, hopefully there is some way that we can write that would pass constitutional muster with you, as a great lawyer, and the courts, so that there would be some distance, if you would, between Members of Congress and lobbying on issues that they work on.

Chairman TOM DAVIS. Thank you.

Mr. Shays.

Mr. SHAYS. I think this issue is pretty straightforward. It is just something that needs to happen. Though you all in your testimony have obviously gone beyond this issue, and so I will seize the opportunity to talk about that. Both of you would ban gifts entirely?

Ms. CLAYBROOK. Yes.

Ms. PINGREE. Yes.

Mr. SHAYS. What I wrestle with in terms of trips, tell me what trips you would allow?

Ms. CLAYBROOK. We would allow?

Mr. SHAYS. Yes.

Ms. CLAYBROOK. Well, that is an interesting issue that I think our collective judgment has not yet made—sorted out.

Mr. SHAYS. I am not asking you to be collective. I am asking each of you to talk as independent thinking people. What would you allow?

Ms. CLAYBROOK. We haven't had the kind of conversations that would allow us to sort it out, but I am going to tell you——

Mr. SHAYS. I don't understand the word "we." I am asking you.

Ms. CLAYBROOK. We at Public Citizen, we at Public Citizen.

Mr. SHAYS. OK.

Ms. CLAYBROOK. I believe that if a Member of Congress is doing the public business, the public treasury ought to pay for that trip. And the one issue that has been raised in the Senate to us has been whether or not nonprofit organizations, and not the ones that are front groups for lobbyists, but educational institutions, for example, should be allowed to pay the travel for a Member of Congress to, say, make a graduation speech. And that——

Mr. SHAYS. I am wrestling with these things. I am interrupting you. I am sorry. But I am not quite sure where you are really coming down.

Ms. CLAYBROOK. Well, I don't know either on that particular issue.

Mr. SHAYS. Let's just ask a question——

Ms. CLAYBROOK. On that narrow issue I would say all other travel that is on the public——

Mr. SHAYS. What I am wondering is, as I wrestle with this, are we going to do something that ends up being superficial in the process of trying to look like we are doing something, and really not getting at the issue. I mean it seems so clear to me. If you go on a trip to Scotland to play golf at all the best courses, and they are spending thousands of dollars just for the fees on the golf course, I mean, that is like a no-brainer, it shouldn't happen.

Ms. CLAYBROOK. Right.

Mr. SHAYS. But I am thinking if I am invited to give a speech to a group from APAC in Miami, should that be allowed? That is a question.

Ms. CLAYBROOK. I am not sure who APAC is, I am sorry.

Mr. SHAYS. Well, any group. I will just use APAC.

Ms. CLAYBROOK. Any group that is a business group or a lobby group, absolutely not. I believe that——

Mr. SHAYS. Let me ask you this: if I going to raise money in Miami, how do I pay for that if it ends up being the same kind of group?

Ms. CLAYBROOK. Out of your campaign fund.

Mr. SHAYS. But then what is the difference? I mean, with all due respect, they gave you the money and they put it in your campaign. There is no way that I think we are going to want to say to someone that the only way they can raise money is in their district. I

mean that is easy for me. If everybody in Round Hill Road in Greenwich, CT gave me a contribution, I could run for President. But what does someone do in a very poor district? What does someone do when they are the spokesman on a particular group? If my opponent, for instance, goes to every law firm in the district to raise money, is she also allowed to go to every law firm outside the district, and why not? If I am the champion of tort reform, and the law community doesn't want to support me at all, but the medical community does, why wouldn't I want to, and why wouldn't it be logical that a group in Miami or Chicago or somewhere else would want to contribute to my campaign, and why wouldn't I go to a fundraiser?

I particularly think of Senators. Senators go all over the country doing this and——

Ms. CLAYBROOK. Well, they can. They just have to pay for it. It should be paid for out of the campaign fund.

Mr. SHAYS. Then just tell me how is that any different? You got the campaign dollars from the very group that you went to do the fundraiser with.

Ms. CLAYBROOK. That is right, but——

Mr. SHAYS. What is the difference?

Ms. CLAYBROOK. I think that there is a difference, because if you get it directly from the medical association or whatever it is that wants to bring you in, and then they are going to raise big bucks for you, then you are getting it from them and they are paying for your money, and I know that it counts in terms of your campaign funds, but I still think that it——

Mr. SHAYS. What happens if that same medical community invited me to give a speech about something I believe in, and only paid for my travel, only paid for my hotel and maybe paid for the dinner that night? How is that any different? I don't see the difference. That is what I wrestle with. What I also wonder about is, think of the causes you believe in, and I believe in your causes; you are basically saying to me that I can't go and speak and rally the Nation for campaign finance reform, which I believe in, that I am stuck in my district. The only way I can go outside to rally people on something like campaign finance reform is if I do a fundraiser.

Ms. CLAYBROOK. No, no, no. I am not saying that. I am saying that if you are doing the public's businesses, then the public should pay for it. It should come out of the Federal treasury, out of——

Mr. SHAYS. So you are saying that if I want to go to San Francisco to talk about campaign finance reform, I have to—and where do I get the money from? What fund do I get it from here?

Ms. CLAYBROOK. I believe there should be a congressional fund to pay for the travel. I would far rather that you travel every day and have the public pay for it if that is what the Congress agrees to, if there is some system for deciding who gets that, the allocation of those funds, than to have it paid for by private business. I think that is the harm, because once you say that is OK, then it extends——

Mr. SHAYS. I think that is a consistent policy. I mean I could argue that. That is almost like saying that the Government pays for your campaign. But you would take that same analogy and say,

I would take it out of, basically out of my office expenses if I wanted to travel to give a speech.

Ms. CLAYBROOK. But I think there ought to be a larger fund that is put together, whether it is allocated by Members of Congress, by a committee, maybe a combination of both, that is who pays for your travel. And you report it publicly, and you report on what you did and said. That is publicly available very quickly. Then I think the public could live with that.

Mr. SHAYS. Let me ask Common Cause what they think.

Ms. PINGREE. I thought you made an important thought when you started off this conversation, and I think it does get to the heart of what is going to be a plethora of conversations about what is real reform here, because, as everyone has stated, there is going to be a kind of rush to pass a variety of fixes on what is perceived as corruption here in Washington. The danger is, I think, going after things that are too small and aren't appropriate fixes, and creating an even more complex system of what you can and can't do. So I do think you are addressing an appropriate concern, and in a way it requires us all to back up.

And of course, that is why organizations like ours—and certainly you have been a champion of this in the past—talk about until we end the nexus between money and politics, and until we really talk about public financing for congressional offices, there will always be this question: were you at that meeting, or did you go on that trip, or were you at that lunch, so that someone could have closer access to you and an unfair advantage?

Mr. SHAYS. Let me just ask this last question because I have run out. When I was invited to speak to the League of Women Voters in Florida with Marty Meehan, I want you to tell me how I would get there?

Ms. PINGREE. Well, I mean, I think Joan makes a perfectly good point. We have to talk about separating this because it is the whole issue around travel.

Mr. SHAYS. So just answer the question. So how would I pay?

Ms. PINGREE. We should have a public fund. You should pay for it. It should be an important part of your job, expanding both who you are able to speak to and what you are able to view around the world.

Mr. SHAYS. Fair enough.

Ms. PINGREE. We have to change the system.

Mr. SHAYS. Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you.

Mr. Waxman.

Mr. WAXMAN. I want to thank both of you very much for your presentation to us. I am pleased that you are here because it expands the perspective of this issue from the bill that we have before us, which is to deny pensions to people who are convicted of crime, certain people if they are convicted.

I think what we need is honesty. We need honest leaders and we need open Government. An open Government is very important to keep people honest. I often wonder, when I hear about a colleague doing something that is so outrageous, taking a bribe, you wonder, what was this person thinking? Well, most people who commit crimes think no one will know about it.

One of the problems I see is that under current law, only the lobbyists, not the officials they lobby, are required to make disclosure about the fact that they are lobbying, and a lot of them don't bother. We don't enforce that law. I saw somewhere that there was something like 80 percent of people who lobby don't bother to live up to the lobbying laws that are on the books now. It seems to me that there is a lack of accountability regarding lobbyists in the executive branch. Don't you think it would make more sense for people who are being lobbied to have to disclose the fact that they were lobbied and the subject matter? There is nothing wrong with it, by the way. I think lobbyists serve a very important purpose. They represent different interest groups, and we don't want to pass legislation without getting all the input and views of various groups.

I think back to the time when Vice President Cheney chaired an energy task force to come up with a proposal for legislation. He wouldn't even hear from people that would tell him what the President said last night, which is our country is addicted to oil and we need to break that addiction. One of the ways of breaking addiction is to be more efficient in the use of oil. His view, he stated publicly, was, it is virtuous, but it is not a good policy.

Well, I hope the President's views last night will become the policy for this country. Let's be more efficient in the use of energy. Let's make sure we look for alternatives. Let's wean ourselves off this addiction.

But if we wanted to look at who the Vice President was hearing from as he did this official job of trying to develop an energy policy for the administration, it seems to me a realistic question to ask is: what groups did you hear from? What did they ask you about? He took such offense at that question that he went to the U.S. Supreme Court to argue that he didn't have to disclose such information. Do you think there ought to be a requirement that people who are lobbied in the executive branch have to have a disclosure of the fact they have been lobbied and what position was being advanced?

Ms. CLAYBROOK. I do. As a public official, my calendar was public. I believe that the calendars of public officials ought to be clear and public. From time to time Public Citizen has seen some problems and we have asked for calendars and we have been turned down. In other cases we have gotten them. But I think there ought to be a clear rule, that is, that the calendar of public officials should be a public calendar.

Mr. WAXMAN. Is that subject to FOIA, Freedom of Information Act?

Ms. CLAYBROOK. It is, but there have been different rulings. At this moment I can't remember them all, but in some case I know we have gotten the calendars and in others we haven't. I would be glad to submit a memo to you on our understanding that the current law, under the Freedom of Information Act, is one of our specialties at Public Citizen, and I will be happy to give that to you. But I do believe that the law ought to be clear, and that when public officials have meetings, they ought to be public, not that everyone ought to be able to join them and come—surely they can have private meetings, but I think that who was at the meeting and what the subject matter of the meeting was about should be public.

We also have this fight with the Office of Management and Budget. It's been from time to time, every time we raise a big stink about it, then every once in a while they say, John Graham said, "Oh, we're going to have a public process," and then of course it wasn't a public process after the hullabaloo died down. I would like to have a clear rule in the law.

Mr. WAXMAN. I think open Government is very important, and one of the problems that I am seeing is that this administration is restricting the release of information under the Freedom of Information Act. They sent out mandates to agencies to stretch FOIA exemptions to withhold, "sensitive" information. Now, there is noting in the law that says you can withhold information that is sensitive. They even came up with some pseudo classification designations such as, "sensitive but unclassified." Now, if it is classified and you are revealing national security matters, well, I think all of us would agree that shouldn't be disclosed to the public. But if it is classified as "sensitive but unclassified" to avoid disclosure, it seems to me this administration is going out of its way to figure out how to undermine openness in Government.

Ms. CLAYBROOK. I agree with that, Mr. Waxman. I would like to mention one other thing though.

Mr. WAXMAN. Just because I see my yellow light, I am just going to suggest to you that I would appreciate if you look at the law that I propose called the Restore Open Government Act, H.R. 2331. I would be interested in having your opinions on that legislation. And then I just quickly want to touch one other thing.

I think that when we have people like Tom Scully, who was representing the administration—he got a waiver to go out and negotiate a job with companies that represented the pharmaceutical industry while he was negotiating the Medicare Prescription Drug Bill. You mentioned Billy Tauzin. It wasn't that he went to work as a lobbyist for the drug companies. What offended me was that while he was negotiating the bill relating to Medicare, he was in obvious conflict of interest because he was working on the legislation and doing things that benefited the pharmaceutical industry.

Now, I just think that sort of thing has to be tightened up. We shouldn't allow people to be in a conflict of interest situation. Part of it is to have openness, but I don't think the administration ought to give waivers to a guy like Tom Scully, and I think that we can't even reach—this is a violation of the ethics for Congressman Tauzin, but there is nothing we can do to him because he is gone. Now he is making $2 million a year at the chief person at the Pharmaceutical Manufacturers Association [PhRMA].

So I just raise these issues. Appreciate your input on them, and I think that we need to do more than this piece of legislation. We need to look at it in a broader way.

Ms. CLAYBROOK. We certainly agree that the ethics—that the waivers for conflicts of interest ought to be very narrow and very unusual.

I just want to comment on the Freedom of Information Act. One of the things that is undermining the Freedom of Information Act today, and I believe it is within the jurisdiction of this committee, is the issue of attorneys fees. When the law was originally amended in 1974, it included attorneys fees. Now, under some very un-

usual court decisions, you can only get attorneys fees if you get a clear win in the case. But if you are like 90 percent through the case and the Government comes in and negotiates and says, "We are going to give you all the documents now," because they realize they are going to lose, you don't get attorneys fees. I think that perversion of the original intent of the law really has undermined the likelihood that people will bring these cases. We would love to have a small amendment in whatever bills that you do in terms of public disclosure, to rather encourage people to raise issues. You don't always win, and you don't always get your attorneys fees, but you are much more likely to if the Government concedes, whether they concede because the court made it the final ruling or whether the Government conceded because it gave in.

Mr. WAXMAN. We ought to reward people who try to get information, and not punish whistleblowers who try to disclose information. I think those two concepts should both fit within legislation that is in the jurisdiction of this committee.

Thank you.

Chairman TOM DAVIS. Thank you very much.

Mr. McHenry, you have any questions?

Mr. MCHENRY. Thank you, Mr. Chairman.

The question I have for both of you is that we are imperfect in the laws that we have in this Nation, and no matter the set of laws that we put out governing lobbying and ethics in Government, there will always be a criminal element that will try to find a way around those laws.

For instance, in the matter of Duke Cunningham. The disclosure forms that we as Members of Congress fill out, there is one exemption, and that is your home mortgage. Now, it is very unique that you have to disclose whether or not you have a savings account that has $4 in it, you have to disclose the institution it is in. You have to disclose the amount of interest you derive from that $4 through the course of a year. But you can have a mortgage for a home, or no mortgage at all, and an enormously expensive home. So the question I have for you, are you coming forward with a sunshine proposal, rather than simple restrictions to just provide the public with more information?

Ms. PINGREE. Well, I would address that in two ways. I think you're correct that just providing a variety of new rules won't necessarily stop first criminal behavior, and then maybe behavior that's of questionable ethics.

I mean two of the things that we've focused on, particularly in the broader perspective of Congress, but also in some ways affecting the executive branch, are a tremendous amount more disclosure and information available to the public about the people who in fact work for them, so that the information is more readily available, and people can make those judgments on their own.

But the second part, that I think would have a significant effect, again, when people are intent on breaking the law—you know, whatever system you're working in, you can't stop someone from breaking the law—but it's been very clear in terms of the ethics process here in Congress, there's been very lax enforcement, and in many of these cases, as was mentioned earlier, many of those who were already regulated aren't bothering to fill out travel disclo-

sures, gift disclosures, all the things that should have been done, and it's obviously gone to a much deeper level.

We propose an independent ethics commission, which is employed in over 30 States around the country, to have a level of outside complaints, to have a level of higher disclosure and enforcement, and we just think it's an important juncture here. While people are looking at their deep concerns about whether there is, you know, outrageous amounts of corruption here in Washington, but on the other hand, is the fox guarding the hen house, and is the job being well done? So we think, again, to restore confidence, there has to be an independent ethics commission and it has to have very strict guidelines about how it brings these concerns to light.

Mr. MCHENRY. OK.

Ms. CLAYBROOK. If I were you, I would, if you were pushing this, I would cite James Madison in the Federalist Paper No. 57, because what he says is that the purpose of every constitution is not only to have the best rulers, but, he says, in the next place take the most effectual precautions for keeping them virtuous while they continue to hold the public trust.

And I think that's the issue really that we have raised with regard to the Office of Government Ethics here in this hearing today, and also with the lobbying——

Mr. MCHENRY. I have two other questions, so I want to keep moving forward if we could. Is the timing of a contribution an evil?

Ms. PINGREE. Well, it certainly can be associated with an evil, as some of the people who are currently under indictment would suggest. And I think that it raises, again, public perception and questions about whether the timing of a contribution was related to a decision that a policymaker made. And no one can be free of those questions, and the more opportunities you have to either regulate that process, allow more disclosure of that process, or prohibit it, the better off lawmakers will be.

Mr. MCHENRY. OK. Ms. Claybrook.

Ms. CLAYBROOK. That's a very difficult question, but, yes, there are times when you can say a Member of Congress got a contribution just before or after they introduced a bill, they voted on a particular piece of legislation that's very controversial, yes, you could say that.

I don't think that it's the most important issue. I think that the most important issue to me is that there be very clear rules about how you can behave. Obviously, today you can accept campaign contributions. We believe the public funding of elections would end a lot of this. Even free TV would cut down the burden on Members to have to do the money machine fundraising constantly, and would help to solve this problem.

Mr. MCHENRY. It is interesting, the inconsistency here, because also lobbying. You say that a 1-year addition to the 1-year ban on Members going and lobbying would cut down on corruption, yet you say you have to fully ban money in politics, so why not fully ban lobbying?

Ms. CLAYBROOK. Well, the Constitution won't allow that, and you're not going to ban money. What you're going to do is you're going to give Members of Congress an opportunity, under the public funding bills, to opt in, to take public funding so they don't have

to take private money. There will have to be some kind of an initial screening device, small contributions or petitions or something to qualify for public funding, but it's an option for the Member of Congress, it's not mandated.

Mr. MCHENRY. OK. Because there are many of us that believe that both lobbying and money in politics have the element of free speech, and that full disclosure is what we should be all about, rather than simple limitations, because when you put those arbitrary limitations, you create other problems that are unintended, and I think we are dealing with some of those here in Washington, just as we were 20 years before with similar public corruption issues.

Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you.

Ms. Watson, any questions?

Ms. WATSON. I will pass.

Chairman TOM DAVIS. Mr. Clay, any questions?

Mr. CLAY. I will be very brief, Mr. Chairman.

Let me ask both of the witnesses. We have heard a lot of proposals come forward about reform. However, I have not heard anyone mention the practice—I guess it is a little-known practice—of lobbyists giving to, say, the DCCC and the RNCC in the name of a Member, and giving that Member credit for, say, a $5,000, $10,000 contribution. Don't you think that practice also kind of allows for a cozy relationship, allows for favoritism? I would like to hear both of your thoughts about that. Has anyone looked at that and suggested any kind of reform to that practice?

Ms. PINGREE. Again, I think it's why we're such staunch supporters of changing to a system of public financing of elections, because one of the things, as you've rightly observed, is in spite of a tremendous amount of reform to the system of soft money and in terms of more disclosure, there are always those who will find a way around the back door and another way to make sure that you're allowed to use a certain amount of money to influence a Member and a Member's decision. And at its very core, that's what we're trying to get it.

In effect, although I know that people often feel we're placing a burden on elected officials, in a sense we're trying to relieve this burden of any of these questions. You know, did you get the contribution the day before you took the vote? Did the money go to the party instead of you, but they called you up and said, "Oh, by the way, I put some money in the party?" I mean these are things that, frankly, you shouldn't have questioned about the behavior and the decisions that any of you make. The fact that there is so much resistance about this sometimes shocks me because the ability to be an elected official and never have to wonder whether people will suspect that you got the money because some organization feels that you're a good supporter of theirs, or you got the money because they were counting on you doing something after you got the money. I just think is something we should eliminate the process, and there is no better time than now.

Ms. CLAYBROOK. Ditto.

Mr. CLAY. Has anyone brought that subject up in the form of legislation? Has anyone proposed eliminating that practice?

Ms. CLAYBROOK. Well, as far as I know it's not an authorized practice. It's a back door, you know, wink and nod informal communication, so it's kind of hard to prohibit that. So I believe it's a very informal thing because it's not, as far as I know, something that's a matter of record. I know it happens.

Mr. CLAY. Perhaps you all should look again because you will find that both congressional campaign committees give credit to Members, because they direct a lobbyist to put money into those committees, and the Member gets credit for it. So I mean that is just—I think it is an oversight that all of your groups have missed and you may want to take a look at it.

Ms. CLAYBROOK. OK.

Ms. PINGREE. Thank you for that.

Mr. CLAY. Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. SHAYS [presiding]. Thank the gentleman.

Ms. Watson, I think you are next.

Ms. WATSON. Thank you. I would like to tell the two panelists that we appreciate you coming because you represent the public trust. I found myself being elected into a culture of corruption, and I have been very agitated by it throughout my term. Have the two of you looked at the ethics laws already on the books? And what I feel is that we as a Congress have abdicated our responsibility, because we have very few oversight hearings. We have very few whistleblowers to come in and testify. And it seems like we have bypassed what I feel are offenses that should be brought to the public's attention. For instance, we have not held an ethics hearing since both parties sat down and negotiated its composition.

So can you respond to this question: are there not adequate provisions already in law that will cover whatever offense that might come about by Members, or do we need new legislation? I know we are talking about the forfeiture of public pensions. That is certainly a new area. But are there not enough provisions, but they lack compliance? Can you respond?

Ms. CLAYBROOK. I will speak first. I know Chellie has some very strong thoughts on this as well.

First of all, in the Senate, an outside party is allowed to file a complaint with the Ethics Committee. In the House that's been prohibited. We used to be able to. We now cannot. And as a result, the two parties find themselves in a position where if a Member of Congress files an ethics complaint against a Member of the other party—rarely do they do it to a Member of their own party—then it becomes a game of warfare, and then they're filing complaints against the other party. And so what happened was, that after all of the hullabaloo over—in the late 1990's, what happened was that they came to a deal, we won't file a complaint against you, you don't file a complaint against us, because it's like nuclear war.

And I think that's been a terrible result. And so a major thing that we think is that outside parties should be able to file complaints in the Ethics Committee.

But more importantly, or as importantly as that, we see the Ethics Committee as totally disabled and unable to enforce the law, and we think there ought to be an outside independent office of public integrity or commission that is not staffed by Members of

Congress or their staff, that can do the independent prosecutorial work when a complaint is filed, and either clear it or pursue it. And until that happens, there will never be a clear ethics process because there's not a clear ethics enforcement process.

Today we testified that we also believe that the office of public integrity, or Office of Government Ethics, rather, in the executive branch, which does not have enforcement authority, should have enforcement authority, and that's one of the reasons that we were asked to testify today, and that they ought to be staffed to do that, and that this should not be delegated as it is now within each individual Government agency setting its own ethics rules, essentially, and doing its own enforcement or not, which is mostly what happens.

Ms. PINGREE. And I would just followup, a little bit of a yes and no. Yes, there are quite a few rules that were never enforced, and Joan's made that very clear, and why we think there should be some outside level of enforcement and enhanced enforcement, and there are some areas where we've suggested more rules, in the areas of disclosure and restrictions of lobbyists. And whether it's complicated or not, Congress has to look at the gift and travel ban. You know, the Washington Post said 90 percent of the American public wants to eliminate all gifts. People are—these have become high profile issues, and while they're sticky to understand at the very bottom level of what's appropriate travel and what's not, this has to be delved into.

But I want to just enforce again this issue of who—is the fox guarding the hen house? Has there been a good job done? And when you lose the confidence of the public, you have to consider a different system to restore that confidence.

Again, we have talked to many executive directors and agencies in the States where they have independent ethics commissions, they have ways to deal with frivolous complaints, they have ways to make sure that the Members have final authority, but that there is outside complaints and outside investigations. It seems to me, again, in the end, that Members do themselves a disservice not having a way to have these things enforced, so that when something isn't a problem, people are immediately cleared, and when something is a problem, that person doesn't continue to bring shame on the body.

Ms. WATSON. My staff and I have been quite concerned, and so we have looked at the ethics process, and we are drawing up some provisions, and we will discuss them once we get them drawn up. But one would be that any complaint that is filed must be heard within a given amount of time. So that all complaints are heard. Now, they might not need to be heard in a full committee, but I would think the chair and the ranking member ought to decide which are frivolous and which should go forward, and that we need to put a time limit on it.

I am looking at starting at that point, using the provisions that are already in law, and so I am in a quandary right now because I don't know, but I like this idea of an outside commission, because I represent Los Angeles. I am on the West Coast. It takes 5 hours to get there by plane. So most often people don't have the details regarding the processes here in Congress. They look at the polls,

and say, "Well, you're no better than they are." We all get tainted and painted with a brush when we have Members selling their homes and reaping the profit, and living on yachts, and going together to play golf, and representing that private interest back here. We all get tainted because they don't feel any better about Congress than they do about other divisions of Government.

So what is the best way to do it? I think an independent outside commission needs to come there because it is going to be like this as long as we have a two-party system, we are going to find—yes, I will just finish my sentence—as long as we have a two-party system there is going to be resistance to bringing your own up to ethics.

So thank you for that recommendation.

Ms. CLAYBROOK. I would just like to clarify that because the Constitution requires the House to judge itself, or each body to judge itself, the Ethics Committee would not be abolished, but rather, you would have the outside commission would process all of the complaints and whatever, do the investigation and recommend penalties. It would have to go back to the Ethic Committee in the end, but they wouldn't do that nitty-gritty everyday work.

Chairman TOM DAVIS [presiding]. OK. Thank you very much.

Mrs. Maloney.

Mrs. MALONEY. Thank you, Mr. Chairman.

I would like to welcome our two panelists and thank them for their hard work for the public trust and for good Government, and we appreciate all that you do.

Clearly, taking trips to play golf is an outrageous abuse of position and power and lobbying, and it should absolutely be stopped. But in my own life I have worked as a lobbyist, as a volunteer for Common Cause, a former State issues chair for New York State, and professionally for the New York City Board of Education, and I truly believed in what I was lobbying for, and felt that I played an important role in educating legislators who are really spread too thin. You have to really be an expert on so many things that you are voting on, and I think it is important that you can explain education, you can explain good Government laws, and they need that help.

Now, I would like to ask a specific question about educational travel, and I think my colleague, Chris Shays, started down this thing. There is an institute. It is a nonprofit bipartisan institute called the Aspen Institute. I have never been on one of their trips. But my colleagues tell me that they have learned a great deal. What they do is they will go a certain site, and they have a theme. It is either health care or education or the environment or energy, and they bring in a panel of experts in a nonpartisan way to explain the depth of understanding. They have had them on many, many different areas. My colleagues have told me that the trips have helped them understand complex issues. And every issue, you can look at it and say, this is right, that is wrong. You start looking at it, there is always complexities. There are nuances, that you may vote a certain way and it has ramifications that you didn't realize on various areas of our economy and of our constituency.

And they think that these trips are very, very helpful for their understanding and coming up with good policy.

I think that we need to have a good balance. We want to take out anything that is not working for the good understanding. I think, obviously, some of the abuses that have come out are just sickening. I can't imagine why any Member of Congress would even want to go on these trips, first of all. Second, how in the world do they have enough time with all of the pressures that we have on us?

So I wanted to ask a question specifically about the Aspen Institute. I would like to crack down on abuses of lobbying, but I do not want to crack down on the ability of Congress Members to learn and understand and make better judgments, and I would like both panelists to respond to that.

Ms. PINGREE. I think you've, again, brought up a very important consideration. The value of both this committee having this hearing and what I imagine will be a variety of other conversations that will continue to go on, is it gives us the opportunity the dig in a little deeper about how you regulate travel in the case of golf trips to Scotland that don't pass the straight-face test and look bad in the eyes of the public, and how you make sure that this very important role of educating a Member of Congress on the things that they would like to and need to know more about is still allowed to continue, and whether it becomes, you know, strictly a public fund that Member has to spend, or if there is some middle ground, I think is a conversation that we're happy to be a part of.

Now, some people have proposed that in the case of the Aspen Institute—and I'm very familiar with the work that they do—that travel be allowed by organizations that are educational in purpose or 501(c)(3)'s by their IRS designation, which would include the Aspen Institute. But in fact, some of the money that Jack Abramoff funneled for travel was to 501(c)(3) organizations, in theory doing educational purposes. So the question becomes, how do we decide how to regulate this in a way that's appropriate and not overly restrictive, but that doesn't allow for these tremendous loopholes.

I want to add one other quick point—and I've mentioned this story before—I was formerly a State legislator myself, and had the opportunity to do a certain amount of travel on trips sponsored by 501(c)(3) organizations. And on the one hand, they can have a great stated purpose, and many times they did—they had educational seminars and they had interesting places that we were visiting where there were things that we were learning, but I must say at the same time, half of the people in the room were working as commercial lobbyists. They were working for Verizon, or Citibank or a variety of other interests, and we spent 3 days together, not only learning a few things, but attending the symphony and perhaps going golfing or whatever was provided on the trip. And it gave a somewhat unreasonable amount of access to Members of the legislature, and perhaps got back to this question that we've asked before about were there future campaign contributions tied to relationships? Were they able to lobby us in ways that the general public or other advocacy lobbyists like Public Citizen or Common Cause aren't able to do?

So there have been proposals that say that maybe it's about how these are done by 501(c)(3). Maybe you can't have trips where lobbyists are arranging them or attending the trip. I think there's a

lot of questions to be asked, and I don't think we have a definitive answer today, but we appreciate the dialog.

Ms. CLAYBROOK. I would just like to say that I believe there ought to be a public fund. This is something that's important for Members of Congress to go to. They're going to add expertise from their own experience. They're going to learn from others. And I think that there is a public fund—there should be a public fund that pays for this. This is something that Members of Congress should have paid for.

If you are an employee of the executive branch, as I was for many years, and you believe that there is an important trip that you have to take, you have a process that you clear it through and then it's paid for by the public. You have to be compensated based on certain schedules for how much you can pay for a hotel and how much you can pay for the airfare and so on. And I think that's the way that it ought to work.

Poor people don't have luxurious conferences at the Aspen Institute. I've been at some of them. I think that they're wonderful. But, you know, I don't think that—if you start making that exception, then you're going to have, you know, other exceptions, and you're going to have these front group 501(c)(3)'s that have popped up all over the place by business, and I just think that for fairness for the public, that it ought to be a public fund. You decide how you want to spend that public fund as a Member of Congress. You disclose it and you justify it.

Mrs. MALONEY. May I followup with a question, Mr. Chairman? My time is up, but——

Chairman TOM DAVIS. Sure.

Mrs. MALONEY. Quite frankly, I would support public funding of elections, and I supported it when we had a surplus, but there is no way we are going to have public funding of elections with the economy that we have and the deficit that we have. I don't think that there is any way we would be able to create a public fund for educational purposes.

Now there is official travel, but there is usually an official purpose, Iraq, Afghanistan, trade agreements in Australia, the Davos Economic Conference. There are official duties of Members of Congress where I think if you don't go to the country you don't really understand it, and you are voting on huge matters. So I support travel. But there is a difference between official travel that you are there for a specific purpose, and second, educational travel, where you are just going to learn more about an issue. And I personally do not think that in our budget situation, they would ever create a special fund for travel.

I just read in the paper today that Coretta Scott King received 60 honorary doctorates, and I would like to followup on the question of my colleague, who has been a great leader of reform in this body, Christopher Shays, who worked tirelessly for years for campaign finance reform. And he was asking about educational institutions. Say, for example, if some university wanted to give our chairman, Tom Davis, a honorary degree, and they wanted to pay for him to come and get the honorary degree. And he has a tough election, so he's not going to pay for it out of—you can't pay for it out of your campaign.

If you were doing official business or something related to your job, you cannot use campaign funds. There is a very strict division. You cannot use campaign funds except for campaigns. People contribute to have you reelected. You can't use it to go to an educational conference or to go to get an honorary degree, because they did not give you that money for that purpose, that was for campaigns.

So there are some situations—and I am all for knocking down on influence of abuse of power on elected bodies, but there are some situations where that legislator may be a better legislator because of having attended a conference that they understood the energy policies and the complexities, or the education or the health care in a deeper form. And I would like to throw that question back.

Chairman TOM DAVIS. Will the gentlelady yield for just a second? I also note the problem is if Government pays for everything, you get what Government wants you to see. You are never going to get a trip to the ANWR, given the current line-up, to go up and look at the negative side, if you don't get an environmental group to pay for it. You will get the Government coming up there showing you what they want to show you. If you want to go to Mexico or Central America and see the effects of free trade, the AFL–CIO ought to be entitled to take you down there and give you their perspective. If you want the Government perspective, you get the Government line.

I think there is some utility here, and I just throw that out. I don't know how we are going to deal with it, because, clearly, the trips got out of hand, but those are the kinds of issues I think Mrs. Maloney is trying to get at.

Mrs. MALONEY. Mr. Chairman, I thank you. I thought you were going to make a joke about getting the honorary doctorate. [Laughter.]

Chairman TOM DAVIS. Well, I don't think Amherst is going to give me—I earned it the first time, but I don't meet the litmus test. [Laughter.]

Mrs. MALONEY. I would like to followup on the chairman's comments because I am in several disagreements with the current administration on ANWR, on United Nations family planning, and other areas where we have votes literally on the floor on these issues. And in terms of the United Nations Population Fund, I attended a conference in South America that was paid by a not-for-profit on international family planning. In other words, that would have been—you understand what I am saying—ANWR would have been cutoff. So when you are taking a position in opposition to the ruling Government, there would be no way for you to learn the other side. Quite frankly, I was invited to several conferences in Canada on campaign finance reform, that was at one time in opposition to the administration.

Chairman TOM DAVIS. Well, let's get this—you want to react to that?

Ms. CLAYBROOK. I would just like to say that I'm not suggesting that the executive branch decide where you're supposed to go, nor do I suggest that the leaders in Congress decide where you should go. I think that the fund should be one that's allocated to the Member of Congress to make that decision. And they can't do every-

thing, so they're going to have to make certain decisions. And if your preference is to go to South America or up to ANWR or to the Mexican border, then that would be your decision, and that's the way I think the fund ought to be allocated. Plus there already are some committee funds that are allocated to Members of Congress to take trips. And so that's the way I would see it.

I think that having a public fund frees you from all of these other problems that you are experiencing now, and really hurts the public trust. While I understand the need for education institutions and organizations like the Aspen Institute, perhaps we ought to have you—I still think that's something that's a part of your job, and you're a public official. I think it ought to be paid for by the public purse, and I think it's the best investment that the taxpayer would ever make. And by the way, it's one B–1 bomber for public funding for the U.S. Congress every other year, and I think that's a pretty cheap price, and I would do it any day of the week, rather than have—we wouldn't have the deficit that we have now because Members of Congress wouldn't be able to waste the money that they do.

Ms. PINGREE. I'll just add a couple of quick thoughts, because, again, as I said, this is an important part of the dialog between understanding what's appropriate and what could be financed. I appreciate the concerns that you raised, and I, again, just want to reinforce that I do think travel is important for Members, and I think expanding your horizons is important.

But the other sort of bigger picture question, which I think is the reason that you're all here today and there's so much attention, is what is it going to take to restore public trust in Congress? I, again, don't think we're done here. I think this is going to go on because it's a campaign cycle, and because there's going to be more indictments.

And so the question becomes, I think of all of you, what will you be willing to do to restore that faith again? It's not as if anybody wanted to be in this situation or somehow we think a gift ban will bring it all back together again. But it may in fact be worth the investment of taxpayer dollars to spend on a travel fund or to have public financing.

I just want to say, I know we're all quick to discount how hard it is to use public money for these things, but the Connecticut Legislature, with a Republican Governor and Democrats, just passed public financing. The House in California just passed public financing. And these things are going to keep happening. So when the States and the public is ahead of the rest of the elected officials, I think sometimes you have to look behind and say, wait a minute, they might be more ready than we think, and we shouldn't discount that.

Chairman TOM DAVIS. Thank you.

Mrs. MALONEY. My last comment. Congressmen Meehan and Pelosi have really developed a bill, and they are introducing it today, and I would like very much to hear your comments, and I am sure the committee would on those two pieces of legislation.

Chairman TOM DAVIS. Thank you very much.

Mr. Platts.

Mr. PLATTS. Thank you, Mr. Chairman.

I apologize with coming in late, and also to run off to another commitment, but I do want to first thank you for your leadership on this issue as we work to promote greater confidence and trust in Congress, in the Federal Government in general, and specifically with your legislation of the Federal Pension Forfeiture Act. I know that our colleague, Congressman Kirk, was here earlier, and I have been working with Mark on the legislation that is similar in some ways to your legislation, different in some ways, and specifically different about the specific crimes that would be included, and we certainly look forward to working with you as you move this legislation forward to address the breadth of individuals who should be held accountable for wrongful conduct, Members of Congress, as well as executive political appointees, but also the crimes that are relevant to their forfeiture of their pensions.

On the broader issue, I certainly appreciate both of our witnesses here. Your efforts and your organizations' efforts focusing on good Government, and your input today, appreciate the written testimony. I think this is an issue that is integral to everything we do in Washington. As I say, having the public's trust is critical to us being able to address serious issues facing our Nation and people believing that the actions we took were truly in their best interest and not in the interest of a special interest. So restoring trust cuts across all issues out there, and the efforts of your organizations and the chairman's leadership hopefully will have success and move very favorably in the right direction.

Thank you, Mr. Chairman.

Chairman TOM DAVIS. Any other questions? If not, anything else you would like to add?

Ms. CLAYBROOK. Thank you very much for the opportunity to testify.

Chairman TOM DAVIS. Well, we very much appreciate it. We want to, at least this committee, keep you a part of the dialog as we move forward. If you have any additional thoughts you would like to share with us, I will be happy to make it part of the hearing.

The hearing is adjourned.

[Whereupon, at 12:37 p.m., the committee was adjourned.]

[The prepared statements of Hon. Todd Russell Platts, Elijah E. Cummings, and Hon. Jon C. Porter follow:]

COMMITTEE ON GOVERNMENT REFORM

FULL COMMITTEE OVERSIGHT HEARING:

Restoring the Public Trust: A Review of the Federal Pension Forfeiture Act

OPENING STATEMENT OF

***REP. TODD RUSSELL PLATTS** (R-PA-19)*

FEBRUARY 1, 2006

Mr. Chairman, thank you for holding this hearing today on such an important and timely topic. I support the premise behind the Federal Pension Forfeiture Act, and I believe we must act quickly to reaffirm the public's trust in Congress and the Federal government.

In December, Rep. Mark Kirk, myself, and a number of other Members introduced H.R. 4535, the *Congressional Integrity Act of 2005*, which would deny Federal pensions to Members of Congress convicted of a felony. That measure has broad support from both moderate and conservative leaders in the Republican conference, and I would urge you to work with Rep. Kirk, myself, and other Members focused on this issue to ensure that whichever bill Congress moves forward is as comprehensive as it should be.

Along the same lines, I also voice my support for the broader effort to reform the way Washington works. I was pleased when Speaker Hastert announced his intention to enact lobbying reform, and on January 9, 2006, I submitted a proposal with key elements I felt should be included. These principles – *transparency*, *accountability*, and *personal responsibility* – are based on my work as Chairman of the Subcommittee on Government Management, Finance, and Accountability, where I have had the opportunity to examine various mechanisms and controls that enhance accountability. To the extent that this Committee will have input in any lobbying reform, I respectfully offer my expertise toward that effort.

Again, Chairman Davis, I appreciate your interest in this topic, and I look forward to this hearing.

U.S. House of Representatives
109th Congress
Committee on Government Reform

Opening Statement

Representative Elijah E. Cummings, D-Maryland

Full Committee Hearing

"Restoring the Public Trust: A review of the 'Federal Pension Forfeiture Act."

February 1, 2006

Mr. Chairman,

Thank you for calling this critically important hearing to evaluate the "Federal Pension Forfeiture Act," legislation that would prohibit federal policymakers from obtaining federal retirement benefits if convicted of a public corruption related offense.

Mr. Chairman, make no mistake, the cost of ongoing and systemic abuse by public officials exacts a heavy toll on our democracy. The trust of the American people, upon which the government relies, is betrayed with news of every scandal. Likewise, the ability of the federal government to function effectively and objectively is

threatened when self-indulgence, cronyism, political advancement, and the desires of powerful special interests outweigh the critical needs of our citizens.

Our seniors, for example, have been left to contend with a confusing and costly prescription drug benefit -- seemingly designed to primarily benefit the pharmaceutical and insurance companies – some of the largest political donors. Moreover, our citizens are reminded every day at the pump of the cost of a national energy policy devised in secret meetings and written with heavy involvement by energy companies.

In today's environment we must ask ourselves what message is being sent to our citizens here at home and to the nascent democracies abroad about our commitment to trustworthy, transparent, and accountable government, when the actions of Jack Abramoff and former Representative Randy "Duke" Cunningham have come to typify the very worst of a "culture of corruption" run amuck within Washington.

With that said, the Federal Pension Forfeiture Act represents a reasonable step forward in combating this corruption. Specifically, it would deny retirement benefits to members of Congress, staff, and Executive Branch political employees who are convicted of crimes ranging from bribery to embezzlement. However, given the scope and depth of the problems before us, a comprehensive reform package is required.

The Government Reform Committee is well-situated to lead in this regard given our jurisdictional responsibilities over Executive Branch ethics reform. We would do well by the American people if we utilized this opportunity to enact reform that impedes the "revolving door" between Executive Branch officials and private industry, strengthens lobbying disclosures and governmental transparency, depoliticizes science, provides whistleblower protections, and prohibits cronyism in critical positions.

Mr. Chairman, let us find common ground by supporting common sense reforms in these areas. A democratic government can no less function withered by corruption than can a business operate rooted in unbridled deception. History has taught us that if left unchecked, in time, both government and business will collapse under the weight of corruption.

America is too great a nation and our citizens too deserving a people for us to do any less than that which is needed to get the federal government shining brightly once again as an honest and open institution that operates out of the shadow of scandal.

I yield back the balance of my time and look forward to the testimony of today's witnesses.

STATEMENT FOR THE RECORD
CONGRESSMAN JON C. PORTER (R-NV-3)
"Restoring the Public Trust: The Federal Pension Forfeiture Act"
FEBRUARY 1, 2006

Mr. Chairman, thank you for holding this hearing today on pension forfeiture. I would also like to thank the witnesses for taking the time out of their schedules to testify on this important issue.

Events of 2005 brought a level of controversy among members of the House of Representatives. The recent scandals that we have all read about have left an indelible impression in my mind and on the minds of the American people. Today, we are faced with a challenge. The challenge is whether we take proactive steps to fix a broken system for our future or whether we retreat in the shadows to save a few. We must move forward, as difficult a task as that may be.

Recently, I publicly called for members of my own delegation to return money linked to lobbyist Jack Abramoff. I did so, not on partisan grounds, but because a step toward accountability must begin with someone having the courage to speak against wrong and change the status quo. Now, we are all faced with the same challenge of whether to financially punish the policy makers and their advisors or to remain stuck in a box of indecision.

Chairman Davis' bill is essential in helping bring about accountability that we are charged to bring as Government Reform Committee members, as members of Congress, and as American citizens. We are charged with setting the course for our future. We are given the opportunity to leave a legacy of prosperity, promise and peace. We are required to be historical examples of excellence and our leadership in that goal will be our legacy. Scandal and controversy cannot overshadow the good that we do nor can it be the heading in our chapter in history. We must change the course and we must be proactive in doing so.

Again, Chairman Davis, thank you for introducing this important piece of legislation and for holding this hearing. I look forward to hearing the testimony from the witnesses.

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(Original Signature of Member)

109TH CONGRESS
2D SESSION

H. R. _____

To amend title 5, United States Code, to provide for the forfeiture of pensions by Members of Congress, by congressional employees, and by certain executive branch employees, upon conviction for certain offenses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. TOM DAVIS of Virginia introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title 5, United States Code, to provide for the forfeiture of pensions by Members of Congress, by congressional employees, and by certain executive branch employees, upon conviction for certain offenses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Federal Pension For-
5 feiture Act".

1 **SEC. 2. CONVICTION OF CERTAIN OFFENSES.**

2 (a) IN GENERAL.—Section 8312 of title 5, United
3 States Code, is amended in subsection (a)—

4 (1) in paragraph (1), by striking "or" at the
5 end;

6 (2) in paragraph (2), by striking the period at
7 the end and inserting "; or"; and

8 (3) by adding after paragraph (2) the following
9 new paragraph:

10 "(3) was convicted of an offense described in
11 subsection (d), to the extent provided by that sub-
12 section.";

13 (4) in subparagraph (A), by striking "and" at
14 the end;

15 (5) in subparagraph (B), by striking the period
16 at the end and inserting "; and"; and

17 (6) by adding after subparagraph (B) the fol-
18 lowing new subparagraph:

19 "(C) with respect to the offenses described in
20 subsection (d), to the period after the date of the
21 conviction.".

22 (b) OFFENSES COVERED.—Such section is further
23 amended—

24 (1) by redesignating subsection (d) as sub-
25 section (e); and

1 (2) by inserting after subsection (c) the fol-
2 lowing new subsection:
3 "(d)(1) Subject to paragraph (2), the following are
4 the offenses to which subsection (a)(3) applies:
5 "(A) In title 18—
6 "(i) section 201 (bribery of public officials
7 and witnesses);
8 "(ii) section 203 (compensation to Mem-
9 bers of Congress, officers, and others in matters
10 affecting the government);
11 "(iii) section 209 (salary of government of-
12 ficials and employees payable only by United
13 States);
14 "(iv) section 219 (officers and employees
15 acting as agents of foreign principals);
16 "(v) section 371 (conspiracy to commit of-
17 fense or to defraud United States), to the ex-
18 tent of any conspiracy to commit an act which
19 constitutes an offense within the purview of
20 such section 201;
21 "(vi) section 641 (public money, property
22 or records); or
23 "(vii) section 1001 (statements or entries
24 generally), to the extent the offense relates to
25 the individual's status as a Member of Con-

1 gress, a congressional employee, or a political
2 appointee.
3 "(B) Perjury committed under the statutes of
4 the United States in falsely denying the commission
5 of an act which constitutes an offense within the
6 purview of a statute named by subparagraph (A).
7 "(C) Subornation of perjury committed in con-
8 nection with the false denial of another individual as
9 specified by subparagraph (B).
10 "(2) Paragraph (1) applies only if—
11 "(A) the individual is a Member of Congress, a
12 congressional employee, or a political appointee;
13 "(B) the offense is committed after the date of
14 the enactment of the Federal Pension Forfeiture
15 Act; and
16 "(C) the offense is punishable by imprisonment
17 for more than one year.
18 "(3) In this subsection, the term 'political appointee'
19 means an individual—
20 "(A) who is paid at the rate for one of the lev-
21 els of the Executive Schedule, as provided under sec-
22 tions 5312 through 5315 of title 5, United States
23 Code, or any other provision of law;

1 "(B) who is a noncareer appointee in the Senior
2 Executive Service, as defined in section 3132(a)(7)
3 of title 5, United States Code; or
4 "(C) whose position is excepted from the com-
5 petitive service because of its confidential, policy-de-
6 termining, policy-making, or policy-advocating char-
7 acter.".

8 **SEC. 3. ABSENCE FROM THE UNITED STATES TO AVOID**
9 **PROSECUTION.**

10 Section 8313 of title 5, United States Code, is
11 amended in subsection (a)(1)—
12 (1) in subparagraph (A), by striking "or" at
13 the end;
14 (2) in subparagraph (B), by striking "and" at
15 the end and inserting "or" ; and
16 (3) by inserting after subparagraph (B) the fol-
17 lowing new subparagraph:
18 "(C) after the date of the enactment of the
19 Federal Pension Forfeiture Act, for an offense
20 named in section 8312(d) of this title; and".

21 **SEC. 4. REFUND OF CONTRIBUTIONS AND DEPOSITS.**

22 Section 8316 of title 5, United States Code, is
23 amended in subsection (b)—
24 (1) in paragraph (1), by striking "or" at the
25 end;

1 (2) in paragraph (2), by adding "or" at the
2 end; and
3 (3) by inserting after paragraph (2) the fol-
4 lowing new paragraph:
5 "(3) if the individual was convicted of an of-
6 fense named by section 8312(d) of this title, for the
7 period after the conviction.".