

OGA FILE Leg

OGC-89-50619
21 March 1989

MEMORANDUM FOR: [] Office of Congressional Affairs

THROUGH: Chief, Administrative Law Division, OGC []

FROM: []
Assistant General Counsel
ALD/OGC

STAT

SUBJECT: S.1 and H.R.9 - Postemployment Restrictions

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1. You have asked whether the subject bills would adversely affect Agency equities. While enactment of either bill could place additional restrictions on postemployment activities that those who separate from the Agency can undertake, the CIA would not be directly affected. Moreover, any impact would be no different than that experienced in any other executive branch agency or department. Therefore, I would not recommend that the Agency take any position with respect to the proposed legislation. We would like, however, to be kept abreast of legislative developments with respect to these and similar bills.

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2. The two bills contain provisions that are very similar to amendments to the postemployment conflicts statute passed by Congress last year, but pocket vetoed by the President. Several provisions of the two bills are worth highlighting. In addition to existing criminal sanctions, both bills would provide for civil remedies. Such a change might facilitate enforcement actions under 18 U.S.C. 207 by, among other things, implicating a lesser burden of proof. Both bills would also impose "cooling off" periods with respect to services rendered to foreign governments and related entities. The House bill is targeted specifically at trade negotiations, but the Senate version, while limited to only senior and top level employees, attempts to proscribe a much broader range of relationships with a foreign entity. Similarly, the Senate bill proposes to ban, for the first time, mere assistance or advice concerning a representation before or against the United States. Finally, at least as to some of the restrictions, members and employees of Congress would be included in the target populations.

3. In summary, the Agency has no unique equities with respect to the pending bills. While it is conceivable that some individuals would face additional restrictions on postemployment activities, the proposed amendments should not adversely affect Agency interests.

4. If you have any questions, please call me on []

Assistant General Counsel

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89-00591

ROUTING AND RECORD SHEET

SUBJECT: (Optional) Proposed Legislation - *Post Employment Restrictions*

FROM: [Redacted] **EXTENSION:** [Redacted] **NO.:** [Redacted]
 Office of Congressional Affairs
 7B02 HQS

DATE: 14 FEB 1989

TO: (Officer designation, room number, and building)	DATE		OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
	RECEIVED	FORWARDED		
1. [Redacted] <i>Officer of General Counsel</i>				<p>Attached is a copy of a bill which was introduced in the Congress that may be of interest to your office.</p> <p>Please have someone on your staff review it and let me know if you would like me to monitor its progress on an active basis.</p> <p>I would also like to know if there are any provisions of the bill that adversely affect Agency equities.</p> <p>Thanks for your help.</p> <p>[Redacted]</p> <p>STAT</p> <p>STAT</p> <p>STAT</p> <p>STAT STAT</p>
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FORM



United States
of America

No. 6—Part II

Congressional Record

PROCEEDINGS AND DEBATES OF THE 101st CONGRESS, FIRST SESSION

Vol. 135

WASHINGTON, WEDNESDAY, JANUARY 25, 1989

No. 6—Part II

House of Representatives

The House was not in session today. Its next meeting will be held on Friday, January 27, 1989, at 11 a.m.

Senate

WEDNESDAY, JANUARY 25, 1989

(Legislative day of Tuesday, January 3, 1989)

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THURMOND (for himself, Mr. METZENBAUM, Mr. BIDEN, Mr. LEVIN, Mr. SPECTER, Mr. MITCHELL, Mr. SIMON, Mr. GRASSLEY, Mr. BOREN, Mr. PRESSLER, Mr. SIMPSON, Mr. MOYNIHAN, Mr. HARKIN, Mr. PELL, Mr. INOUE, Mr. SANFORD, and Mr. HEINZ):

S. 1. A bill to amend section 207 of title 18, United States Code, to prohibit Members of Congress and officers and employees of any branch of the U.S. Government from attempting to influence the U.S. Government or from representing or advising a foreign entity for a proscribed period after such officer or employee leaves Government service, and for other purposes; read the first time.

INTEGRITY IN POST EMPLOYMENT ACT

Mr. THURMOND. Mr. President, on October 21, 1988, Congress passed the Post Employment Restrictions Act of 1988, major ethics legislation, which strengthens laws against lobbying by high-level Federal officials immediately after they leave public service. This legislation passed the Senate unanimously and the House by an overwhelming margin. Unfortunately, the President pocket vetoed this bill. Although the President vetoed this proposal, enactment of strong, effective ethics legislation continues to be vital. The bill being introduced today, the same that passed the Senate on April 19, 1988, provides a uniform, straightforward, and enforceable way to prevent those who are employed by the

Federal Government from leaving public service and marketing their access and influence for financial gain. In addition, the legislation prevents Federal employees from vending sensitive information vital to national interests to foreign interests for profit.

I am pleased that Senator BIDEN, chairman of the Senate Judiciary Committee, and others are joining me as original cosponsors of this legislation. With such strong initial support, I am confident that this important bill can swiftly move through the legislative process.

Clear threats arise out of the abusive use of access and influence and the vending of sensitive information: First, damage to the integrity of Government, as undue and improper influence is brought to bear on decision-making processes; second, erosion of public confidence in the operation of the Government, as the American people sense former employees are exerting, or appear to be exerting, improper influence on current Government decisions; and third, jeopardy to the national interests, as some former employees advise foreign clients based on sensitive information gained while in positions of trust with the Federal Government.

I introduced my original proposal in the 99th Congress on April 17, 1986. The bill was referred to the Judiciary Committee where two hearings were held on April 29, 1986, and June 18, 1986. The original legislation was debated by the full committee on June 19, 1986, and June 26, 1986, at which

time the bill was reported by the committee.

Since no floor action occurred prior to adjournment of the 99th Congress, the bill was reintroduced in the 100th Congress. On May 19, 1987, the full Judiciary Committee considered the legislation at which time it was reported by the committee.

In April 1988, the full Senate began consideration of the legislation. After a full debate, the legislation was passed by the Senate by unanimous voice vote on April 19, 1988.

Regarding the House, it acted on a proposal that incorporated many of the Senate provisions. Their legislative proposal was considered by the House Judiciary Committee after hearings were held. After informal discussions without a conference between House and Senate Members, on October 21, 1988, the House debated and passed its proposal. On that same day, due to the short time left in the 100th session, the Senate acted on and passed this legislation.

Briefly, I would like to highlight certain provisions included in this legislation which I am introducing today. Major features of this bill would restrict Members of Congress from lobbying the legislative branch and top executive branch officials for 12 months after leaving Government service. Top congressional staff could not lobby the body in which they worked for 1 year. The highest executive branch officials would not lobby the executive branch or Members of Congress for 12 months after termination of employment. Other top execu-

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Executive branch officials could not lobby their former agency for this same period. Additionally, Members, top congressional staff, and high-level executive officials could not be employed by, represent, or advise foreign governments or foreign political parties for 18 months.

In addition, this legislation maintains the lifetime ban in current law that prohibits all executive branch employees from lobbying on any issue in which they had "a personal and substantial" involvement while in Government service.

Under the bill, foreign entities are defined as foreign governments, foreign political parties, or foreign organizations substantially controlled by either. Also, exemptions are included which allow lobbying by former Government officials for certain charitable, scholastic, or humanitarian purposes.

Maximum criminal penalties of \$250,000 in fines and 5-year prison terms, or both, are included in the measure, as well as a provision that allows, along with any criminal action, recovery of up to twice the amount of proceeds obtained by any individual who violates restrictions in the bill.

The act would become effective 9 months after the legislation is signed into law.

In conclusion, I believe my original bill was an appropriate starting place for Congress to consider much-needed changes to the weak, confusing, and oftentimes conflicting laws governing former Members and Federal officials who lobby the Government or work for a foreign entity. The legislation being introduced today fine tunes my original proposal. Should additional modifications be necessary to further improve and strengthen this legislation, they will be considered. I urge swift action on this bill.

In closing, when we face a serious problem such as the misuse of influence and access or vending of sensitive information vital to national interests, we have two alternatives—do nothing, or take steps to resolve the problem. I believe we must take action to prevent irreparable damage to our Nation and to restore public confidence and integrity in our system of Government. It is time that public service be just that—not merely a stepping stone for future employment or profit. The American people demand, deserve, and expect a standard of ethics which will instill confidence in all of us that this Government makes decisions based on the merits of an issue, not based on positions taken by those who have the most access, influence, or financial clout.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Integrity in Post Employment Act of 1989".

SEC. 2. STRENGTHENING AND CLARIFYING THE CURRENT PROVISIONS OF SECTION 207 OF TITLE 18.

(a) OFFENSE.—Section 207 of title 18, United States Code, is amended to read as follows:

"§ 207. Disqualification of former executive and legislative branch employees

"(a) PROHIBITION ON EXECUTIVE BRANCH EMPLOYEES IN A PARTICULAR MATTER.—It shall be unlawful for any former officer or employee, including a special Government employee, of the executive branch of the United States, including any independent agency, or of the District of Columbia—

"(1)(A) knowingly to act as agent or attorney for, or otherwise represent, any other person other than the United States by physical presence in a formal or informal appearance before, or

"(B) with the intent to influence, make any oral or written communication on behalf of any other person other than the United States to,

any department, agency, court, or commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with a particular matter involving specific parties in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while so employed.

"(2) within two years after that former officer's or former employee's employment has ceased, knowingly to act as an agent or attorney for, or otherwise represent or assist in representing—or to aid, counsel, advise, consult or to assist in representing, aiding, counseling, advising or consulting—any person, other than the United States, in connection with a particular matter involving specific parties in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while so employed.

"(b) TWO-YEAR PROHIBITION ON EXECUTIVE BRANCH EMPLOYEES.—It shall be unlawful for any former officer or employee described in subsection (a), within two years after that former officer's or former employee's employment has ceased—

"(1) knowingly to act as agent or attorney for, or otherwise represent, any other person other than the United States, by physical presence in a formal or informal appearance before, or

"(2) with the intent to influence, make any oral or written communication on behalf of any other person other than the United States to,

any department, agency, court, or commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with a particular matter involving specific parties in which the United States or the District of Columbia is a party or has a direct and substantial interest and which was actually pending under the former officer's or former employee's official responsibility within one year prior to the date that former officer or employee ceased employment.

"(c) PROHIBITIONS ON EXECUTIVE AND LEGISLATIVE BRANCH EMPLOYEES.—It shall be unlawful for any person, other than a special

Government employee who has served no more than sixty days in the immediately preceding three hundred and sixty-five consecutive days—

"(1) having been employed as a senior official, within one year after such employment has ceased—

"(A) knowingly to act as agent or attorney for, or otherwise represent, any other person other than the United States by physical presence in a formal or informal appearance before, or

"(B) with the intent to influence, make any oral or written communication on behalf of any other person other than the United States to,

any department, agency, commission, or legislative entity (or any member, officer, or employee thereof) in which the person served during the one year prior to the termination of such employment as an officer or employee;

"(2) having been employed as a top level official in the executive branch, within one year after such employment has ceased—

"(A) knowingly to act as agent or attorney for, or otherwise represent, any other person other than the United States by physical presence in a formal or informal appearance before, or

"(B) with the intent to influence, make any oral or written communication on behalf of any other person other than the United States to,

any entity of the executive branch of the United States, including any independent agency of the United States, or any officer or employee thereof, or any Member of Congress; or

"(3) having served as a Member of Congress, within one year after such service has ceased—

"(A) knowingly to act as agent or attorney for, or otherwise represent, any other person other than the United States by physical presence in a formal or informal appearance before, or

"(B) with the intent to influence, make any oral or written communication on behalf of any other person other than the United States to,

any entity of the legislative branch of the United States, or any member, officer, or employee thereof, or any top level official of the executive branch; or

"(4) having been employed as a senior or top level official, within eighteen months after such employment has ceased, to be employed by, represent, or advise a foreign entity for compensation, financial gain, or other remuneration.

For the purposes of paragraph (1), the legislative entity in which a person served is the Senate, if the person was employed by the Senate, or the House of Representatives, if the person was employed by the House of Representatives.

"(d) AGENTS COMMUNICATING ON BEHALF OF A FORMER OFFICER OR EMPLOYEE.—It shall be unlawful for any person knowingly, in the course of representing any other person other than the United States, by any oral or written communication to any department, agency, commission, court, or legislative entity of the United States (or any member, officer, or employee thereof) to communicate to such department, agency, commission, court, or legislative entity that such communication is on behalf of a former member, officer, or employee covered under subsection (a), (b), or (c) of this section if such a communication by the former member, officer, or employee is prohibited by subsection (a), (b), or (c).

"(e) COVERAGE.—

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CONGRESSIONAL RECORD — SENATE

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"(1) **INDIVIDUALS COVERED.**—For purposes of the coverage of subsections (a), (b), and (c) of this section—

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"(A) the term 'senior official' means any officer or employee of the United States other than those of the judicial branch who is not a top level official (including officers and employees of the legislative branch and officers and employees, including special Government employees, of the executive branch, including any independent agency, commissions, Government corporations, independent establishments as defined in section 104 of title 5, the Postal Service, the Postal Rate Commission, and the District of Columbia), who, at any time during the twelve month period preceding the date of termination of employment of the officer or employee, is—

or attorney any other States by or informal

"(i) compensated at the basic rate of pay for GS-16 of the General Schedule as prescribed in section 5332 of title 5, or at a comparable or greater rate of pay under other authority, including positions listed under section 5314 of title 5 or sections 105(a)(2) (B), (C), and (D) and 106(a)(1) (B), (C), and (D) of title 3; or

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"(ii) on active duty as a commissioned officer of a uniformed service and assigned to a pay grade of O-7 or above as prescribed in section 201 of title 37; and

sion, or leg-officer, or the person to the ter-s an officer

"(B) the term 'top level official' means—

a top level within one ceased—

"(i) any officer or employee of the executive branch of the United States, including any independent agency, who, at any time during the twelve month period preceding the date of termination of employment of the officer or employee, holds a position listed in section 5312 or 5313 of title 5 or under sections 105(a)(2)(A) and 106(a)(1)(A) of title 3, or is paid at a comparable rate of pay under other authority; or

or attorney any other States by or informal

"(ii) any Member of Congress, including Delegates and Resident Commissioners.

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"(2) **EXCEPTIONS.**—(A) The prohibitions of subsections (a), (b), and (c) shall not apply to any person—

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"(i) who is an elected official of a State or local government and whose actions are on behalf of such government;

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"(ii) who is engaging solely in the solicitation or collection of funds and contributions within the United States to be used only for medical assistance, food or clothing to relieve human suffering, in accordance with subchapter II of chapter 9 of title 22, and any rules and regulations prescribed thereunder;

or attorney any other States by or informal

"(iii) whose actions are solely for the purpose of furnishing scientific or technological information if the head of the agency concerned with the particular matter, in consultation with the Office of Government Ethics, or the head of the legislative entity concerned with the particular matter, certifies that the person has outstanding qualifications in a technical discipline regarding the particular matter and that the national interest is served by the participation of such person, and publishes such certification in the Federal Register or, in the case of a legislative entity, in the Congressional Record; or

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"(iv) whose actions are solely for the purpose of furnishing scientific or technological information if the head of the agency concerned with the particular matter, in consultation with the Office of Government Ethics, or the head of the legislative entity concerned with the particular matter, certifies that the person has outstanding qualifications in a technical discipline regarding the particular matter and that the national interest is served by the participation of such person, and publishes such certification in the Federal Register or, in the case of a legislative entity, in the Congressional Record; or

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"(B) The prohibitions of subsection (c) shall not apply to any person—

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"(I) an agency or instrumentality of a State or local government;

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"(II) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965; or

egislative member, omuni-commis-

"(II) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965; or

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"(III) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954,

and whose actions are on behalf of such agency, instrumentality, institution, hospital, or organization.

"(3) **SPECIAL RULES FOR DETAILEES.**—For purposes of this section, a person covered by this section who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.

"(f) **PENALTIES AND REMEDIES FOR VIOLATIONS.**—

"(1) **CRIMINAL SANCTION.**—Any person who engages in conduct prohibited by subsection (a), (b), or (c) shall be fined not more than \$10,000 or imprisoned for not more than two years, or both. Any person who corruptly engages in such prohibited conduct shall be fined not more than \$250,000 or imprisoned for not more than five years, or both.

"(2) **CIVIL RECOVERY.**—The United States may bring in addition to or in lieu of subsection (f)(1) above, a civil action in any United States district court against any person who engages in conduct prohibited by subsection (a), (b), (c), or (d) and, upon proof of such conduct by a preponderance of the evidence, may recover twice the amount of any proceeds obtained by that person due to such conduct. Such civil action shall be barred unless the action is commenced within six years of the later of (A) the date on which the prohibited conduct occurred, and (B) the date on which the United States became or reasonably should have become aware that the prohibited conduct had occurred.

"(3) **ADMINISTRATIVE ACTION.**—Upon finding, after notice and opportunity for a hearing, that a person has engaged in conduct prohibited by subsection (a), (b), (c), or (d) the head of the department, agency, or commission of the executive branch, including any independent agency, before which the prohibited conduct occurred, may prohibit that person from representing anyone other than the United States before such department, agency, or commission, for a period not to exceed five years, or may take other appropriate disciplinary action. Any such disciplinary action shall be subject to review in a United States district court. Departments, agencies, or commissions shall, in consultation with the Director of the Office of Government Ethics, establish procedures and issue regulations to carry out this subsection.

"(4) **INJUNCTIVE RELIEF.**—Upon a showing that a person has engaged in conduct prohibited by subsection (a), (b), (c), or (d) of this section, the United States may obtain an injunction to stop or prevent such conduct.

"(g) **PARTNERS OF AN OFFICER OR EMPLOYEE.**—(1) Whoever, being a partner of a Member, officer or employee, including a special Government employee, of the executive branch or the legislative branch of the United States, including any independent agency, or of the District of Columbia, knowingly acts as an agent or attorney for, or otherwise represents, any other person other than the United States by physical presence in a formal or informal appearance before, or with the intent to influence makes any oral or written communication on behalf of any other person other than the United States to, any department, agency, court, or commission of the United States or the District of Columbia or the House of Congress in which the Member, officer or employee serves or is employed in connection with a particular matter in

which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such Member, officer or employee or special Government employee participates or has participated personally and substantially as a Member, officer or employee, shall be fined not more than \$10,000, or imprisoned for not more than one year, or both.

"(2) **Whoever, being the partner of a Member, officer or employee of the legislative branch in a partnership for the provision of professional services, knowingly acts as an agent or attorney for, or otherwise represents, any other person other than the United States by physical presence in a formal or informal appearance before, or with intent to influence makes any oral or written communication on behalf of any other person other than the United States to any Member, officer, employee or other component part of the House in which the Member, officer or employee serves in connection with a matter pending before either House or a matter which is the subject of legislative oversight in either House shall be fined not more than \$10,000, or imprisoned for not more than one year, or both: Provided, however, That the prohibition of this subsection shall not prohibit a formal or informal appearance before, or oral or written contact to a Member, officer, employee or other component part of either House on behalf of the partnership itself. For the purposes of this paragraph, the term 'professional services' includes but is not limited to those involving a fiduciary relationship.**

"(h) **TESTIMONY.**—Nothing in this section shall prevent a person from giving testimony under oath, or from making statements required to be made under penalty of perjury.

"(i) **DEFENSE.**—In an action under paragraph (1), (2), or (3) of subsection (c) of this section, it is an affirmative defense, which the defendant must establish by a preponderance of the evidence, that the defendant acted without receiving or the expectation of receiving, directly or indirectly, any compensation, financial gain, or remuneration.

"(j) **DEFINITIONS.**—For purposes of this section—

"(1) The term 'foreign entity' includes—

"(A) the government of a foreign country as defined in section 611(e) of title 22;

"(B) a foreign political party as defined in section 611(f) of title 22; and

"(C) a foreign organization substantially controlled by a foreign country or foreign political party.

"(2) The term 'particular matter' includes, but is not limited to, any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, judicial or other proceeding.

"(3) The term 'participated personally and substantially' means an action taken as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation or other such action.

"(4) For purposes of subsection (c), the term 'intent to influence' means the intent to affect any official action by a Government entity of the United States through any officer or employee of the United States including Members of Congress."

(b) **TECHNICAL AMENDMENT.**—The table of sections for chapter 11 of title 18, United States Code, is amended by striking out the item relating to section 207 and inserting in lieu thereof the following:

"207. Disqualification of former executive and legislative branch employees."

SEC. 3. PROHIBITING MEMBERS OF CONGRESS FROM AFFILIATING WITH PROFESSIONAL CORPORATIONS.

Section 208 of title 18, United States Code, is amended by adding the following new paragraph:

"(c) Any Member of the House or Senate who shall (1) affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; (2) permit that individual's name to be used by such firm, partnership, association or corporation; or (3) practice a profession for compensation shall be fined not more than \$10,000 or imprisoned not more than two years, or both. For the purposes of this paragraph, 'professional services' shall include but not be limited to those which involve a fiduciary relationship."

SEC. 4. PROHIBITING MEMBERS OF CONGRESS FROM CONVERTING EXCESS CAMPAIGN FUNDS.

Section 439a of title 2, United States Code, is amended by striking all beginning with "with respect to" through "January 8, 1980."

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall— (1) be effective nine months after the date of enactment of this Act; and

(2) apply to any Member or employee of Congress or employee or officer of the Federal Government, other than those of the judicial branch, employed by any agency, department, or entity of the Federal Government on or after nine months after the date of enactment of this Act.

SEC. 6. SEVERABILITY.

If any provision of this Act, including the amendments made by this Act, or the application of any such provision to any circumstance or person is held invalid, the remainder of this Act, or the application of such provision to any other circumstance or person is not affected thereby.

TITLE II—FAIRNESS IN PERSONAL CAMPAIGN EXPENDITURES

SEC. 201. Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended by adding at the end thereof the following:

"(1)(1) Notwithstanding any other provision of this Act, no candidate who, in connection with his campaign for election to Federal office, makes expenditures from his personal funds or the personal funds of his immediate family to his campaign committee, or makes a loan from such funds to such committee, shall use any other contributions which are made by any other person after the election to such candidate or the principle campaign committee of such candidate to repay any such expenditure or loan.

"(2) For purposes of this subsection, 'immediate family' means a candidate's spouse, and any child, stepchild, parent, grandparent, brother, half-brother, sister or half-sister of the candidate, and the spouse of any such person and any child, step-child, parent, grandparent, brother, half-brother, sister or half-sister of the candidate's spouse and any spouse of any such person."

SEC. 202. Section 313 of the Federal Election Campaign Act of 1971 (2 U.S.C. 439a) is amended by inserting before the period the following: ", and except that no candidate may use any contributions in a manner prohibited by section 315(1)".

SEC. 203. SEVERABILITY.—If any provision of this title or the application of any such provision to any person or circumstance is held invalid, the remainder of this Act and the application of any provision to any other person or circumstance shall not be affected thereby.

Mr. METZENBAUM. Mr. President, I am pleased to join with Senators THURMOND, LEVIN, BIDEN, and others in the introduction of the Post-Employment Restrictions Act of 1989. We began the effort to strengthen the laws against lobbying by former Government officials in the 99th Congress. The Senate came close to passing a bill in 1986, only to be stymied during the last days of the Congress. Last fall, after extensive discussions and negotiations with Members of the Senate and the House, the Congress passed legislation, which would have greatly strengthened and improved the current, extremely weak, bar on lobbying by former officials. To the surprise of the Nation, the President chose to veto this measure. This veto was yet another sad chapter in the administration's consistent history of ignoring the importance of high ethical standards.

The measure we are introducing today is virtually identical to the one which passed the Senate in April of 1988 (see CONGRESSIONAL RECORD, April 19, 1988, pp. S4265-4267). This version of the bill is substantially better than the one which eventually was sent to the President. It represents a stronger, clearer, and more easily enforced set of restrictions against the unseemly practice of high level officials lobbying their friends days after they have left office. In brief, the basic provisions of the bill are the following:

Former Members of Congress are barred from lobbying Congress and top level officials in the executive branch for 1 year.

Former top level officials in the executive branch are barred from lobbying the executive branch and Members of Congress for 1 year.

Former senior officials in the executive branch, compensated at the rate of GS-16 and above, are barred from lobbying their own agency for 1 year.

Former senior congressional staff, compensated at the rate of GS-16 and above, are barred from lobbying the House of Congress for which they worked for 1 year.

All the persons listed above are barred from working for a foreign government, foreign political party, or organization controlled by a foreign government for 18 months.

Certain provisions in this bill deserve special comment in light of the President's veto message last fall.

First, the bill we are introducing today provides that the prohibition on lobbying on behalf of another person comes into play only if there has been compensation for the lobbying contact. The bill provides for an affirmative defense if there is no compensation. The President, in his veto message, argued that compensation should not be required for a violation.

Under the bill we are introducing today, it is not necessary to show that compensation was received for a particular contact, for example, for a particular telephone call or office visit.

Direct or indirect compensation, such as a general retainer to lobby for a client on a matter, is sufficient to establish the compensation element. It is extremely rare that any significant lobbying contact made on behalf of another person involves no direct or indirect compensation. Therefore, I believe the approach in our bill is adequate to prohibit harmful contacts, without sweeping in innocent contacts on minor matters on behalf of relatives or neighbors.

Second, the President in his veto message claimed that the current lifetime ban on members of the executive branch, which prohibits them from representing a client on matters in which they have participated "personally and substantially," should also apply to Members of Congress. The lifetime ban, which is already part of current law, applies to "particular matters involving "specific parties," that is, particular contracts or legal proceedings. For example, an attorney who represents the Government in a particular lawsuit may not switch sides and represent the private defendant in the same suit. It is difficult to apply this same concept to Members of Congress, or congressional staff, since passage of legislation results in no ongoing proceeding such as a lawsuit or pending contract. Thus, I believe the President's objection was misplaced.

During the campaign last fall, President Bush endorsed the approach taken in the bill we are introducing today. Thus, while we remain open to discussions about the particular provisions in this bill, there is solid ground for believing that the administration will support a measure similar to them.

These provisions are modest and sensible. They will greatly reduce the unseemly spectacle of interest groups hiring lobbyists based on whom they know, not what they know. They will help restore public confidence in the processes of Government. I urge my colleagues to join us in the efforts to pass this bill expeditiously.

Mr. BIDEN. Mr. President, I am pleased to join my colleagues today in introducing the Integrity in Post-Employment Act of 1989. This legislation has a long history and I believe that the time has come, once and for all, to strengthen and clarify the criminal laws that apply to the post-employment activities of Federal officers and employees. The bill introduced today provides a uniform and enforceable way to prevent those who are employed by the Federal Government from improperly marketing their access and influence for private gain after leaving public service. I believe that it will go a long way toward restoring public faith and confidence in the integrity of our Government—faith and confidence that are necessary if our Government is to function effectively.

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CONGRESSIONAL RECORD — SENATE

January 25, 1989

This legislation had its genesis in the 99th Congress, with the work of my friend and distinguished colleague from South Carolina, Senator THURMOND. Concerns about the postemployment activities of Government personnel were raised when a high-ranking Federal official left his post and immediately became a consultant for a foreign entity in connection with certain textile negotiations on which the former employee had worked. The specter of two former White House advisers peddling their influence also impelled us to reconsider the rules of ethical conduct by which the highest officials of our Government should be bound.

Under Senator THURMOND's chairmanship, the Judiciary Committee held hearings in the 99th Congress. Because of concerns that were raised about the scope of the legislation at that time, Senator THURMOND appointed an ad hoc subcommittee, of which I was a member, to revise the measure. Following the ad hoc subcommittee's extensive work to address the concerns that had been raised, the full committee reported the bill. Time ran out, however, and Congress did not have an opportunity to vote.

The legislation was reintroduced in the 100th Congress. It passed the Senate on April 19, 1988, due in large part to the hard work of Senators THURMOND, METZENBAUM, LEVIN, and RUDMAN. Negotiations with the House, which had passed a different version of the bill, continued for some time. Finally, in October, both Houses agreed on the text of postemployment legislation and a bill was sent to the President.

I was dismayed when President Reagan, in November, pocket vetoed the bill that was so carefully worked out in the closing days of the 100th Congress. While I share some of the concerns expressed by the President about maintaining our ability to attract topnotch men and women to Government service, I found the veto message, in general, to be short on substance and long on rhetoric.

For example, the President took us to task for not extending to the Congress the current lifetime ban on former executive branch employees lobbying on specific matters with which they were personally and substantially involved. This was not, as the President charged, sloppy and discriminatory, but instead reflected the fact that certain everyday executive actions—such as awarding a contract to a particular company—are not analogous to the work of Members of Congress.

I am hopeful that the President's veto will not deter this body. There remains a pressing need to strengthen and clarify current criminal conflict of interest laws that apply to the postemployment activities of executive branch personnel, and to establish—for the first time—criminal prohibitions on the postemployment activities

of Members of Congress and senior congressional staff. The extension of these prohibitions to Congress is particularly noteworthy. It's about time, in my view, that we set standards that apply not just to others but to ourselves as well.

The bill that I have joined in introducing today—which is the same bill that passed the Senate on April 19, 1988—will, in my view, help ensure that Government decisions are truly made in the public interest by guarding against two principal evils.

First, the legislation will better protect Government decisionmaking from the use of clout—the efforts by some to use their influence with former colleagues to get phone calls returned, meetings scheduled, and decisions made in a manner outside the course of normal Government channels. Second, the legislation will protect against a form of insider trading—the practice by some of using information to which they were privy solely in their capacity as Government employees for their own personal profit or gain.

There is every indication that President Bush shares my desire for a comprehensive and effective bill. He is on record as having endorsed the bill that passed the Senate in April. In addition, the President has established a commission to examine our ethics laws. The commission is clearly a step in the right direction, and I commend President Bush for its establishment.

But I must sound a note of caution. Commissions often have a way of laboring slowly and getting caught up in overstudying a problem. For several years now, we in the Congress have studied the issues encompassed in this legislation, and we believe that the time has come to act. I look forward to learning of the commission's views and I am completely willing, where appropriate, to incorporate its recommendations into the bill introduced today. I would add, however, that neither the Congress nor the American people will tolerate undue delay.

I believe that this legislation is the first page in the final chapter of our effort to improve the standards by which former Government employees and officials conduct themselves and to restore the full faith of the American people in the integrity of our Government. We have sought to balance the compelling interest in fair and impartial decisionmaking with the need to protect fundamental first amendment rights and ensure that we continue to attract and retain highly qualified men and women to serve in Government. I am open to proposals to improve and strengthen the bill—particularly to reflect this balance—and I look forward to working with my colleagues who last year labored so strenuously.

As we move toward enactment of this important legislation, our work must be guided by Henry Clay's reminder that "government is a trust,

and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people."

Mr. LEVIN. Mr. President, when President Reagan vetoed the postemployment lobbying bill at the end of the last Congress, he made a mistake. Had he signed that bill, we would now have in a place the strong provisions we need to ensure that public officials are not able to cash in on their public office when they leave. We would have closed some serious loopholes in current law as they pertain to the executive branch and, more importantly, we would have covered Members of top staff in Congress.

But the President passed up that chance to strengthen our ethics laws, so we are presented, again, with the need to pass legislation in this area.

The bill Senators THURMOND, METZENBAUM, BIDEN, and myself are introducing today is the same bill the Senate passed without dissent or objection in April of last year. It is not the same bill we sent to the President for signature. That bill was the product of a compromise worked out with the House in the waning days of the 100th Congress. Congressman BARNEY FRANK and I spent many hours in October negotiating the technical details of that compromise bill.

The bill we are introducing today is stronger than the bill President Reagan rejected as being too strong. It is also the bill President Bush endorsed during the last year's Presidential campaign. It is because of the support for this bill in the Senate, coupled with President Bush's public support for the bill, that we will be seeking the place the bill directly on the calendar and not have it referred to committee. We hope to get this bill or legislation similar to it passed by the Senate before the April recess so we can negotiate with the House early in this session and have legislation on the President's desk before the July 4th recess.

Mr. President, we've got a serious problem that we must address. The public has seen and heard so much evidence in recent years involving what appears to be personal greed at the expense of good Government that they are losing trust in Government's ability to fairly and competently perform. We must attempt to eliminate unethical behavior on the part of our Federal officials. One way to do that is to strengthen our laws, and a significant step toward doing that is to strengthen and expand the law governing postemployment lobbying by Federal officials. That is the purpose of S. 1.

With the enactment of this legislation, we will send a strong message to the public that their Government is not for hire, that public service is not a commodity to be commercially traded.

We have had laws restricting lobbying by former Government officials in

place for many years; 18 U.S.C. 207, the law which this bill amends, was originally enacted in 1962. The purpose of that law is to avoid unfair influence in the outcome of Government decisions by prohibiting the personal intervention of a recently departed Federal official connected either to the subject matter or the decision-maker. It prohibits such contacts that have the appearance of having special influence and resulting in favored treatment, for a specified period of time, and it imposes criminal penalties for knowing violations.

What we have learned by observing the trials of Michael Deaver and Lyn Nofziger is that the statute which we thought was protecting us from the conduct we condemned has problems that need fixing. This bill attempts to fix those problems. But more than that, this bill expands some of the existing provisions to cover more people in more situations.

18 U.S.C. 207(c) of the postemployment lobbying law—the 1-year ban on lobbying your former agency—is quite limited in its application. As applied to persons at the GS-17 level or above and the military equivalent, it applies only to executive branch personnel; it bars such persons from lobbying only their former agency; and it gives the Office of Government Ethics [OGE] the authority to carve up agencies into even smaller units for purposes of the statute's coverage. The net result of that OGE action is a patchwork-type of system for determining the size of one's "former office." For example, the Executive Office of the President, now, is deemed to consist of 9 separate agencies for the purposes of this statute, but the Department of Agriculture is deemed to be one agency. It doesn't make sense. This bill eliminates that problem by eliminating the authority of OGE to carve up agencies.

The bill also includes Congress in its coverage for the first time. We are so often accused of making exceptions for ourselves in the statutes that we pass. In this bill we have an opportunity to bring Congress within coverage of one of our principal ethics statutes.

The bill would bar top-level Federal officials—except those in the judicial branch—that is, cabinet and deputy secretaries and Members of Congress—from lobbying anywhere in their own branch and any top-level official in the other branch for a year. And, as with current law, it bars senior officials from lobbying their former agency. However, it expands the coverage of senior officials from certain designated officials who are paid at a GS-17 level or above (current law) to anyone—including congressional staff—who is paid at a GS-16 level or above.

The bill increases the size of criminal penalties and also establishes civil sanctions. It also creates a new offense by making unlawful, lobbying on

behalf of a former official who is barred from direct lobbying.

This bill is a significant improvement over current law. It makes the current law more precise, tougher, more likely to be enforced and, therefore, more likely to be followed.

As many of you know, President Bush is going to appoint a bipartisan commission on ethics which is expected to address, among other issues, this legislation. It is anticipated that the commission will report its findings and conclusions within 30 days of appointment and that President Bush will use that report as the basis for his legislative proposal in this area.

Mr. President, the sponsors of this bill are prepared to delay for a reasonable period of time the Senate's consideration of this legislation in order to give the new President an opportunity to present us with his proposal. And we look forward to it. For that reason, while we will seek to place this bill directly on the calendar for Senate consideration, we will postpone any floor action on the bill for a reasonable period of time in order to give President Bush the opportunity to put together his proposal. If however, the President's proposal is not ready by that time, we are prepared to proceed to Senate consideration. I urge the President, therefore, to act with all due speed on this matter.

In closing, Mr. President, I would like to remind us all that the vast majority of our public officials act with integrity and commitment to public service. I am confident that they will understand the need for this legislation as an instrument for preserving the public's trust. And for the few public officials who cross the line, or for whom the line is an unavoidable temptation, this legislation makes taking such a step tougher and imposes more severe consequences.

Mr. President, I thank my colleagues, particularly Senators METZENBAUM and THURMOND, with whom I have worked on this bill over the past year, for their perseverance and commitment.

By Mr. BYRD (for himself, Mr. MITCHELL, Mr. NUNN, Mr. WARNER, Mr. BOREN, Mr. COHEN, and Mr. DANFORTH):

S. 2. A bill to amend the War Powers Resolution to provide expedited procedures for legislation requiring the disengagement of U.S. Armed Forces involved in hostilities or providing specified authorization for their continued engagement in such hostilities, and for other purposes; to the Committee on Foreign Relations.

WAR POWERS RESOLUTION AMENDMENTS

● Mr. WARNER. Mr. President, I rise today to introduce with my colleagues, the distinguished majority leader, Senator MITCHELL, the distinguished President pro tempore and chairman of the Appropriations Committee, Senator BYRD, the distinguished chairman of the Armed Services Commit-

tee, Senator NUNN, the distinguished chairman of the Intelligence Committee, Senator BOREN, the distinguished ranking minority member of the Intelligence Committee, Senator COHEN, and the distinguished ranking minority member of the Commerce, Science, and Transportation Committee, Senator DANFORTH, the War Powers Amendments of 1989.

Mr. President, it has become obvious to the cosponsors of these amendments and to other Members of this body that the war powers amendment, as presently written, does not work. The War Powers Resolution does not assist the Congress in making constructive contributions to policies involving the use of U.S. Armed Forces, and at times, the War Powers Resolution can actually prevent the Congress from exercising its authority over and accepting its responsibility for the use of the Armed Forces. Quite bluntly, the War Powers Resolution has not worked in the past, is not working now, and will not work in the future.

For these reasons, I joined with Senators MITCHELL, BYRD, and NUNN last year in introducing Senate Joint Resolution 323, the War Powers Resolution Amendments of 1988. I am pleased to say that as a result of the introduction of that resolution, the Senate Foreign Relations Committee formed a special Subcommittee on War Powers, chaired by my friend and colleague, Senator BIDEN, which conducted a number of hearings on the subject of war powers. I am hopeful that this review begun last year will continue as the result of the introduction of this resolution today.

From its enactment over a Presidential veto in 1973, the War Powers Resolution has been beset by a host of problems, not the least of which is the fact that at least two of its operative provisions are of questionable constitutionality. Another serious problem with the existing resolution is its framework under which the Congress could purportedly exercise its authority and responsibility over use of the Armed Forces by congressional inaction. The provision calling for termination of the use of forces after 60 days unless Congress extends that authority casts doubt about the Nation's ability to make and keep foreign policy commitments. The uncertainty of American resolve resulting from this statutory timetable could lead to increased hostilities and to an unwillingness of adversaries to negotiate until and unless the Congress extends the automatic deadline. It is for these very reasons that not a single President since the enactment of the War Powers Resolution in 1973, be he Republican or Democrat, has acceded to the authority of the resolution. Furthermore, Mr. President, it is exactly because of the uncertainties created by the War Powers Resolution that Members of this body have been reluc-

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101ST CONGRESS
1ST SESSION

H. R. 9

To amend section 207 of title 18, United States Code, relating to restrictions on post-employment activities.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1989

Mr. FRANK (for himself, Mr. GLICKMAN, Mr. WOLPE, Ms. KAPTUR, and Mr. NAGLE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 207 of title 18, United States Code, relating to restrictions on post-employment activities.

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 "Post-Employment
5 Restrictions Act of 1988".

6 **SEC. 2. RESTRICTIONS ON POST-EMPLOYMENT ACTIVITIES.**

7 (a) RESTRICTIONS.—Section 207 of title 18, United
8 States Code, is amended to read as follows:

1 "§ 207. Restrictions on former officers, employees, and
2 elected officials of the executive and legisla-
3 tive branches; restrictions on partners of cer-
4 tain current officers and employees of the ex-
5 ecutive branch

6 "(a) RESTRICTIONS ON ALL OFFICERS AND EMPLOY-
7 EES OF THE EXECUTIVE BRANCH AND CERTAIN OTHER
8 AGENCIES.—

9 "(1) PERMANENT RESTRICTIONS ON REPRESENTATION ON PARTICULAR MATTERS.—Any person who
10 is an officer or employee of the executive branch of the
11 United States Government, or of any independent
12 agency of the United States (including the Government
13 Printing Office and the General Accounting Office), in-
14 cluding the President, the Vice President, and any spe-
15 cial Government employee, and who, after his or her
16 service or employment with the United States Govern-
17 ment terminates—

18
19 "(A) knowingly acts as agent or attorney for,
20 or otherwise represents, any other person (except
21 the United States) concerning any formal or infor-
22 mal appearance before, or

23 "(B) knowingly makes, with the intent to in-
24 fluence, any communication on behalf of any other
25 person (except the United States) to,

1 any department, agency, court, or court-martial of the
2 United States, or any officer or employee thereof, in
3 connection with any judicial or other proceeding, appli-
4 cation, request for a ruling or other determination, con-
5 tract, claim, controversy, investigation, charge, accusa-
6 tion, arrest, or other particular matter—

7 “(i) in which the United States is a party or
8 has a direct interest,

9 “(ii) in which the person participated person-
10 ally and substantially as such officer or employee
11 through decision, approval, disapproval, recom-
12 mendation, the rendering of advice, investigation,
13 or otherwise, and

14 “(iii) which involved a specific party or spe-
15 cific parties at the time of such participation,
16 shall be punished as provided in subsection (h).

17 “(2) TWO-YEAR RESTRICTIONS ON AIDING OR
18 ADVISING ON PARTICULAR MATTERS.—Any person
19 subject to the restrictions contained in paragraph (1)
20 and who, within 2 years after his or her service or em-
21 ployment with the United States Government termi-
22 nates, knowingly aids or advises any other person
23 (except the United States) concerning any formal or in-
24 formal appearance before any department, agency,
25 court, or court-martial of the United States, or any of-

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1 ficer or employee thereof, in connection with any judi-
2 cial or other proceeding, application, request for a
3 ruling or other determination, contract, claim, contro-
4 versy, investigation, charge, accusation, arrest, or
5 other particular matter—

6 “(A) in which the United States is a party or
7 has a direct interest,

8 “(B) in which the person participated person-
9 ally and substantially as such officer or employee
10 through decision, approval, disapproval, recom-
11 mendation, the rendering of advice, investigation,
12 or otherwise, and

13 “(C) which involved a specific party or spe-
14 cific parties at the time of such participation,
15 shall be punished as provided in subsection (h).

16 “(3) TWO-YEAR RESTRICTIONS CONCERNING
17 PARTICULAR MATTERS UNDER OFFICIAL RESPONSI-
18 BILITY.—Any person subject to the restrictions con-
19 tained in paragraph (1) who, within 2 years after his or
20 her service or employment with the United States
21 Government terminates—

22 “(A) knowingly acts as agent or attorney for,
23 or otherwise represents, any other person (except
24 the United States) in any formal or informal ap-
25 pearance before, or

1 “(B) knowingly makes, with the intent to in-
2 fluence, any communication on behalf of any other
3 person (except the United States) to,
4 any department, agency, court, or court-martial of the
5 United States, or any officer or employee thereof, in
6 connection with any judicial or other proceeding, appli-
7 cation, request for a ruling or other determination, con-
8 tract, claim, controversy, investigation, charge, accusa-
9 tion, arrest, or other particular matter—

10 “(i) in which the United States is a party or
11 has a direct interest,

12 “(ii) which such person knows was actually
13 pending under his or her official responsibility as
14 such officer or employee within a period of 1 year
15 before the termination of his or her service or em-
16 ployment with the United States Government,
17 and

18 “(iii) which involved a specific party or spe-
19 cific parties at the time it was so pending,
20 shall be punished as provided in subsection (h).

21 “(4) ONE-YEAR RESTRICTIONS WITH RESPECT
22 TO TRADE NEGOTIATIONS.—Any person subject to the
23 restrictions contained in paragraph (1) who, within 1
24 year after his or her service or employment with the
25 United States Government terminates—

1 “(A) knowingly acts as agent or attorney for,
2 or otherwise represents, aids, or advises any other
3 person (except the United States) concerning any
4 formal or informal appearance before, or

5 “(B) knowingly makes, with the intent to in-
6 fluence, any communication on behalf of any other
7 person (except the United States) to,
8 any department, agency, court, or court-martial of the
9 United States, or any officer or employee thereof, in
10 connection with any trade negotiation—

11 “(i) in which the United States is a party or
12 has a direct interest, and

13 “(ii)(I) which such person knows was actual-
14 ly pending under his or her official responsibility
15 as such officer or employee within a period of 1
16 year before the termination of his or her service
17 or employment with the United States Govern-
18 ment, or

19 “(II) in which such person participated per-
20 sonally and substantially as such officer or em-
21 ployee within a period of 1 year before the termi-
22 nation of his or her service or employment with
23 the United States Government,

24 shall be punished as provided in subsection (h). For
25 purposes of this paragraph, the term ‘trade negotiation’

1 means negotiations undertaken to enter into a trade
2 agreement pursuant to section 1102 of the Omnibus
3 Trade and Competitiveness Act of 1988. This para-
4 graph applies only in a case in which neither para-
5 graph (1), (2), or (3) of this subsection applies.

6 “(b) ONE-YEAR RESTRICTIONS ON CERTAIN SENIOR
7 EXECUTIVE BRANCH PERSONNEL.—

8 “(1) RESTRICTIONS.—In addition to the restric-
9 tions set forth in subsection (a), any person who is an
10 officer or employee of the executive branch or an inde-
11 pendent agency (including the Government Printing
12 Office and the General Accounting Office), who is re-
13 ferred to in paragraph (2) (other than a special Govern-
14 ment employee who serves less than 60 days in the 1-
15 year period before his or her service or employment as
16 such employee terminates), and who, within 1 year
17 after his or her service or employment as such officer
18 or employee terminates—

19 “(A) knowingly acts as agent or attorney for,
20 or otherwise represents, any other person (except
21 the United States) in any formal or informal ap-
22 pearance before, or,

23 “(B) knowingly makes, with the intent to in-
24 fluence, any communication on behalf of any other
25 person (except the United States) to,

1 any department or agency in which such person served
2 within 1 year before such person's service or employ-
3 ment as such officer or employee terminated, or any of-
4 ficer or employee thereof, in connection with any judi-
5 cial, rulemaking, or other proceeding, application, re-
6 quest for a ruling or other determination, contract,
7 claim, controversy, investigation, charge, accusation,
8 arrest, or other particular matter, which is pending
9 before such department or agency or in which such de-
10 partment or agency has a direct interest, shall be pun-
11 ished as provided in subsection (h).

12 " (2) PERSONS TO WHOM RESTRICTIONS
13 APPLY.—(A) Paragraph (1) shall apply to a person
14 (other than a person subject to the restrictions of sub-
15 section (c) or (d))—

16 " (i) employed at a rate of pay fixed accord-
17 ing to subchapter II of chapter 53 of title 5, or a
18 comparable or greater rate of pay under other au-
19 thority, or

20 " (ii) employed in a position which involves
21 significant decisionmaking or supervisory responsi-
22 bility, as designated by the Director of the Office
23 of Government Ethics, in consultation with the
24 department or agency concerned.

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1 Only positions which are not referred to in clause (i),
2 and for which the basic rate of pay is equal to or
3 greater than the basic rate of pay payable for GS-17
4 of the General Schedule, or positions which are estab-
5 lished within the Senior Executive Service pursuant to
6 the Civil Service Reform Act of 1978, or positions held
7 by active duty commissioned officers of the uniformed
8 services who are serving in a grade or rank for which
9 the pay grade (as specified in section 201 of title 37) is
10 pay grade O-7 or O-8, may be designated under
11 clause (ii).

12 "(B) With respect to persons in positions desig-
13 nated under subparagraph (A)(ii), the Director of the
14 Office of Government Ethics may limit the restrictions
15 of paragraph (1) to ~~permit a former officer or em-~~
16 ~~ployee who served in a separate agency or bureau~~
17 ~~within a department or agency, to make appearances~~
18 ~~before or communications to persons in an unrelated~~
19 ~~agency or bureau, within the same department or~~
20 ~~agency, having separate and distinct subject matter ju-~~
21 ~~isdiction, upon a determination by the Director that~~
22 ~~there exists no potential for use of undue influence or~~
23 ~~unfair advantage based on past government service. On~~
24 ~~an annual basis, the Director of the Office of Govern-~~
25 ~~ment Ethics shall review the designations made under~~

1 subparagraph (A)(ii) and the determinations made
2 under this subparagraph and, in consultation with the
3 department or agency concerned, make such additions
4 and deletions as are necessary. Departments and agen-
5 cies shall cooperate to the fullest extent with the Di-
6 rector of the Office of Government Ethics in the exer-
7 cise of the Director's responsibilities under this para-
8 graph.

9 “(c) RESTRICTIONS ON OTHER SENIOR EXECUTIVE
10 BRANCH PERSONNEL.—In addition to the restrictions set
11 forth in subsection (a), any person who—

12 “(1) is appointed to a position in the executive
13 branch or an independent agency (including the Gov-
14 ernment Printing Office and the General Accounting
15 Office) which is listed in section 5314, 5315, or 5316
16 of title 5, or

17 “(2) is appointed by the President to a position
18 under section 105(a)(2)(B) of title 3 or by the Vice
19 President to a position under section 106(a)(1)(B) of
20 title 3,

21 and who, within 1 year after that person's service in that
22 position terminates—

23 “(A) knowingly acts as agent or attorney for, or
24 otherwise represents, any other person (except the

1 United States) in any formal or informal appearance
2 before, or

3 “(B) knowingly makes, with the intent to influ-
4 ence, any communication on behalf of any other person
5 (except the United States) to,
6 any department or agency in which such person served
7 within 1 year before such person’s service in such position
8 terminated, or any officer or employee thereof, in connection
9 with any judicial, rulemaking, or other proceeding, applica-
10 tion, request for a ruling or other determination, contract,
11 claim, controversy, investigation, charge, accusation, arrest,
12 or other particular matter in which the United States is a
13 party or has a direct interest, shall be punished as provided in
14 subsection (h).

15 “(d) RESTRICTIONS ON VERY SENIOR EXECUTIVE
16 BRANCH PERSONNEL.—(1) In addition to the restrictions set
17 forth in subsection (a), any person who—

18 “(A) serves in the position of President or Vice
19 President of the United States,

20 “(B) is appointed to a position in the executive
21 branch or an independent agency (including the Gov-
22 ernment Printing Office and the General Accounting
23 Office) which is listed in section 5312 or 5313
24 of title 5,

1 “(C) is appointed by the President to a position
2 under section 105(a)(2)(A) of title 3 or by the Vice
3 President to a position under section 106(a)(1)(A) of
4 title 3, or

5 “(D) serves on active duty as a commissioned offi-
6 cer of a uniformed service in a grade or rank for which
7 the pay grade (as specified in section 201 of title 37) is
8 pay grade O-9 or O-10,
9 and who, within 1 year after that person’s service in that
10 position terminates—

11 “(i) knowingly acts as agent or attorney for, or
12 otherwise represents, any other person (except the
13 United States) in any formal or informal appearance
14 before, or

15 “(ii) knowingly makes, with the intent to influ-
16 ence, any communication on behalf of any other person
17 (except the United States) to,
18 any department, agency, or person described in paragraph
19 (2), in connection with any judicial, rulemaking, or other pro-
20 ceeding, application, request for a ruling or other determina-
21 tion, contract, claim, controversy, investigation, charge, ac-
22 cusation, arrest, or other particular matter in which the
23 United States is a party or has a direct interest, shall be
24 punished as provided in subsection (h).

1 “(2) The departments, agencies, and persons referred to
2 in paragraph (1) with respect to appearances or communica-
3 tions by a person in a position described in subparagraph (A),
4 (B), (C), or (D) of paragraph (1) are—

5 “(A) any department or agency in which such
6 person served in such position within a period of 1
7 year before such person’s service or employment with
8 the United States Government terminated, and any of-
9 ficer or employee of such department or agency,

10 “(B) any other person appointed to a position in
11 the executive branch which is listed in section 5312,
12 5313, 5314, 5315, or 5316 of title 5, and

13 “(C) in the case of a former President or Vice
14 President, the following: any department or agency in
15 the executive branch of the United States Government,
16 any independent agency of the United States, and any
17 officer or employee of any such department or agency.

18 “(e) RESTRICTIONS ON MEMBERS OF CONGRESS AND
19 OFFICERS AND EMPLOYEES OF THE LEGISLATIVE
20 BRANCH.—

21 “(1) MEMBERS OF CONGRESS AND ELECTED OF-
22 FICERS.—(A) Any person who is a Member of Con-
23 gress or an elected officer of either House of Congress
24 and who, within 1 year after that person leaves
25 office—

1 “(i) knowingly acts as agent or attorney for,
2 or otherwise represents, any other person (except
3 the United States) in any formal or informal ap-
4 pearance before, or

5 “(ii) knowingly makes, with the intent to in-
6 fluence, any communication on behalf of any other
7 person (except the United States) to,
8 any of the persons described in subparagraph (B), in
9 connection with any matter which is pending before
10 the Congress or any matter on which such former
11 Member of Congress or elected officer seeks action by
12 the Congress or by a Member of Congress in his or her
13 official capacity, shall be punished as provided in sub-
14 section (h).

15 “(B) The persons referred to in subparagraph (A)
16 with respect to appearances or communications by a
17 former Member of Congress or elected officer, are any
18 Member of Congress, elected officer, or employee of
19 either House of Congress.

20 “(2) PERSONAL STAFF.—(A) Any person who is
21 an employee of a Senator or an employee of a Member
22 of the House of Representatives and who, within 1
23 year after that employment terminates—

24 “(i) knowingly acts as agent or attorney for,
25 or otherwise represents, any other person (except

or, 1 the United States) in any formal or informal ap-
 ept 2 pearance before, or

up- 3 “(ii) knowingly makes, with the intent to in-
 4 fluence, any communication on behalf of any other
 in- 5 person (except the United States) to,

er 6 any of the persons described in subparagraph (B), in
 7 connection with any matter which is pending before
 in 8 the Congress or any matter on which such former em-
 ore 9 ployee seeks action by the Congress or by a Member of
 er 10 Congress in his or her official capacity, shall be pun-
 by 11 ished as provided in subsection (h).

er 12 “(B) The persons referred to in subparagraph (A)
 ib- 13 with respect to appearances or communications by a
 14 person who is a former employee are the following:

A) 15 “(i) the Senator or Member of the House of
 a 16 Representatives of whom that person was an em-
 ny 17 ployee; and

of 18 “(ii) any employee of that Senator or
 19 Member of the House of Representatives.

is 20 “(3) COMMITTEE STAFF.—~~Any person who is an,~~
 er 21 ~~employee of a committee of Congress and who, within~~
 1 22 1 year after that person’s employment as such em-
 23 ployee terminates—

or, 24 “(A) knowingly acts as agent or attorney for,
 pt 25 or otherwise represents, any other person (except

1 the United States) in any formal or informal ap-
2 pearance before, or

3 “(B) knowingly makes, with the intent to in-
4 fluence, any communication on behalf of any other
5 person (except the United States) to,
6 any person who is a Member, or an employee, of that
7 committee of Congress, in connection with any matter
8 which is pending before the Congress or any matter on
9 which such former employee seeks action by the Con-
10 gress or by a Member of Congress in his or her official
11 capacity, shall be punished as provided in subsec-
12 tion (h).

13 “(4) LEADERSHIP STAFF.—(A) Any person who
14 is an employee on the leadership staff of the House of
15 Representatives or, an employee on the leadership staff
16 of the Senate and who, within 1 year after that per-
17 son's employment on such staff terminates—

18 “(i) knowingly acts as agent or attorney for,
19 or otherwise represents, any other person (except
20 the United States) in any formal or informal ap-
21 pearance before, or

22 “(ii) knowingly makes, with the intent to in-
23 fluence, any communication on behalf of any other
24 person (except the United States) to,

1 any of the persons described in subparagraph (B), in
2 connection with any matter which is pending before
3 the Congress or any matter on which such former em-
4 ployee seeks action by the Congress or a Member of
5 Congress in his or her official capacity, shall be pun-
6 ished as provided in subsection (h).

7 “(B) The persons referred to in subparagraph (A)
8 with respect to appearances or communications by a
9 former employee are the following:

10 “(i) in the case of a former employee on the
11 leadership staff of the House of Representatives,
12 those persons are any Member of the leadership of
13 the House of Representatives, and any employee
14 on the leadership staff of the House of Represent-
15 atives; and

16 “(ii) in the case of a former employee on the
17 leadership staff of the Senate, those persons are
18 any Member of the leadership of the Senate, and
19 any employee on the leadership staff of the
20 Senate.

21 “(5) LIMITATION ON RESTRICTIONS.—(A) The
22 restrictions contained in paragraphs (2), (3), and (4),
23 apply only to acts by a former employee who was paid
24 for services rendered as such employee at a rate of pay
25 equal to or greater than the basic rate of pay payable

1 for GS-17 of the General Schedule under section 5332
2 of title 5, for a period of more than 60 days during the
3 1-year period before that former employee's service as
4 such employee terminated.

5 "(B) The restrictions contained in paragraphs (1),
6 (2), (3), and (4) shall not apply to any appearance,
7 communication, or representation by a former Member
8 of Congress, elected officer, or employee which is made
9 in carrying out official duties as an officer or employee
10 of the United States Government.

11 "(6) DEFINITIONS.—As used in this subsection—

12 "(A) the term 'committee of Congress' in-
13 cludes standing committees, joint committees, and
14 select committees;

15 "(B) a person is an employee of a House of
16 Congress if that person is an employee of the
17 Senate or an employee of the House of Repre-
18 sentatives;

19 "(C) the term 'employee of the House of
20 Representatives' means an employee of a Member
21 of the House of Representatives, an employee of a
22 committee of the House of Representatives, an
23 employee of a joint committee of the Congress
24 whose pay is disbursed by the Clerk of the House

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of Representatives, and an employee on the leadership staff of the House of Representatives;

“(D) the term ‘employee of the Senate’ means an employee of a Senator, an employee of a committee of the Senate, an employee of a joint committee of the Congress whose pay is disbursed by the Secretary of the Senate, and an employee on the leadership staff of the Senate;

“(E) a person is an employee of a Member of the House of Representatives if that person is an employee of a Member of the House of Representatives under the clerk hire allowance;

“(F) a person is an employee of a Senator if that person is an employee in a position in the office of a Senator;

“(G) the term ‘employee on the leadership staff of the House of Representatives’ means an employee of the office of a Member of the leadership of the House of Representatives described in subparagraph (K), and any elected minority employee of the House of Representatives;

“(H) the term ‘employee on the leadership staff of the Senate’ means an employee of the office of a Member of the leadership of the Senate described in subparagraph (L);

1 “(I) the term ‘Member of Congress’ means a
2 Senator or a Member of the House of Representa-
3 tives;

4 “(J) the term ‘Member of the House of Rep-
5 resentatives’ means a Representative in, or a Del-
6 egate or Resident Commissioner to, the Congress;

7 “(K) the term ‘Member of the leadership of
8 the House of Representatives’ means the Speaker,
9 majority leader, minority leader, majority whip,
10 minority whip, chief deputy majority whip, chief
11 deputy minority whip, Democratic Steering Com-
12 mittee, chairman and vice chairman of the Demo-
13 cratic Caucus, chairman, vice chairman, and sec-
14 retary of the Republican Conference, Republican
15 Research Committee, and Republican Policy
16 Committee, of the House of Representatives; and

17 “(L) the term ‘Member of the leadership of
18 the Senate’ means the Vice President, and the
19 President pro tempore, Deputy President pro tem-
20 pore, majority leader, minority leader, majority
21 whip, minority whip, chairman and secretary of
22 the Conference of the Majority, chairman and sec-
23 retary of the Conference of the Minority, Majority
24 Policy Committee, and Minority Policy Commit-
25 tee, of the Senate.

1 “(f) RESTRICTIONS RELATING TO FOREIGN ENTI-
2 TIES.—

3 “(1) RESTRICTIONS.—Any person who is subject
4 to the restrictions contained in subsection (b), (c), (d),
5 or (e) and who knowingly, within 1 year after leaving
6 the position, office, or employment referred to in sub-
7 section (b), (c), (d), or (e), as the case may be—

8 “(A) represents the interests of a foreign
9 entity before any department, agency, or official
10 of the Government of the United States with the
11 intent to influence a decision of such department
12 or agency or of such official in carrying out his or
13 her official duties, or

14 “(B) aids or advises a foreign entity with the
15 intent to influence a decision of any department or
16 agency of the Government of the United States,
17 or of any official of the Government of the United
18 States in carrying out his or her official duties,
19 shall be punished as provided in subsection (h).

20 “(2) DEFINITIONS.—For purposes of this subsec-
21 tion—

22 “(A) the term ‘foreign entity’ means—

23 “(i) the government of a foreign coun-
24 try; and

1 “(ii) a foreign organization which the
2 Director of the Office of Government Ethics
3 has determined, upon the Director’s own ini-
4 tiative or pursuant to request, to be acting as
5 an instrumentality of the government of a
6 foreign country;

7 “(B) the term ‘government of a foreign coun-
8 try’ has the meaning given that term in section
9 1(e) of the Foreign Agents Registration Act of
10 1938, as amended; and

11 “(C) an organization is acting as an ‘instru-
12 mentality of the government of a foreign country’
13 when the organization acts under the direction or
14 control—

15 “(i) of the government of a foreign
16 country, or

17 “(ii) of a person any of whose activities
18 are directly or indirectly supervised, directed,
19 controlled, financed, or subsidized in whole
20 or in major part by such a government.

21 “(g) OFFENSES LIMITED TO ACTS FOR COMPENSA-
22 TION.—(1) An act does not constitute an offense under sub-
23 section (a), (b), (c), (d), (e), or (f) unless the act is done for
24 compensation.

1 “(2) As used in this subsection, the term ‘compensation’
2 means anything of value which is provided, directly or indi-
3 rectly, for services rendered, including a payment, gift, bene-
4 fit, reward, favor, or gratuity.

5 “(h) PENALTIES.—The punishment for an offense under
6 subsection (a), (b), (c), (d), (e), or (f) is the following:

7 “(1) Any person who engages in the conduct con-
8 stituting the offense shall be imprisoned for not more
9 than 1 year or fined in the amount set forth in this
10 title, or both.

11 “(2) Any person who willfully engages in the con-
12 duct constituting the offense shall be imprisoned for not
13 more than 2 years or fined in the amount set forth in
14 this title, or both.

15 “(i) GENERAL EXCEPTIONS.—

16 “(1) CERTAIN ELECTED OFFICIALS AND EM-
17 PLOYEES.—(A) The restrictions contained in subsec-
18 tions (a)(1) and (a)(2) shall not apply to any appear-
19 ance, communication, or representation which is made
20 in carrying out official duties as an elected official of a
21 State or local government.

22 “(B) The restrictions contained in subsections
23 (a)(3), (a)(4), (b), (c), (d), (e), and (f) shall not apply to
24 any appearance, communication, or representation
25 which is made in carrying out official duties as—

1 “(i) an elected official of a State or local
2 government, or

3 “(ii) an employee of (I) an agency or instru-
4 mentality of a State or local government, (II) an
5 institution of higher education, as defined in sec-
6 tion 1201(a) of the Higher Education Act of
7 1965, or (III) a hospital or medical research orga-
8 nization described in section 501(c)(3) of the In-
9 ternal Revenue Code of 1986 and exempt from
10 tax under section 501(a) of such Code, if the ap-
11 pearance, communication, or representation is on
12 behalf of such government, institution, hospital, or
13 organization.

14 “(2) INTERNATIONAL ORGANIZATIONS.—The re-
15 strictions contained in subsections (a)(3), (a)(4), (b), (c),
16 (d), (e), and (f) shall not apply to the representation of,
17 or advice or aid to, an international organization of
18 which the United States is a member.

19 “(3) PUBLIC SPEECHES AND APPEARANCES.—
20 The restrictions contained in subsections (b), (c), (d),
21 (e), and (f) shall not apply to the making of public
22 speeches or public appearances.

23 “(j) DESIGNATIONS OF SEPARATE STATUTORY AGEN-
24 CIES AND BUREAUS.—

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1 “(1) DESIGNATIONS.—For purposes of subsec-
2 tions (b) and (c), and except as provided in paragraph
3 (2), whenever the Director of the Office of Government
4 Ethics determines that a separate statutory agency or
5 bureau within a department or agency in the executive
6 branch exercises functions which are distinct and sepa-
7 rate from the remaining functions of the department or
8 agency, the Director shall by rule designate such
9 agency or bureau as a separate department or agency.

10 “(2) INAPPLICABILITY OF DESIGNATIONS.—(A)
11 A designation of an agency or bureau under paragraph
12 (1) shall not apply with respect to—

13 “(i) a former head of that designated agency
14 or bureau; and

15 “(ii) any former officer or employee of the
16 department or agency within which the designated
17 agency or bureau exists, if the official responsibil-
18 ities of the officer or employee included supervi-
19 sion of that designated agency or bureau.

20 “(B) No agency or bureau within the Executive
21 Office of the President may be designated under para-
22 graph (1) as a separate department or agency.

23 “(C) Even if an agency or bureau is designated
24 under paragraph (1), a person subject to the restric-
25 tions set forth in subsection (c) may not make any rep-

1 resentation or other appearance prohibited by that sub-
2 section before, and may not make any communication
3 prohibited by that subsection to, any person who is
4 serving in a position set forth in section 5312, 5313,
5 5314, 5315, or 5316 of title 5, in the department or
6 agency within which the designated agency or bureau
7 exists.

8 “(k) EXCEPTION FOR SCIENTIFIC OR TECHNOLOGICAL
9 INFORMATION.—The restrictions contained in subsections
10 (a), (b), (c), and (d) shall not apply with respect to the making
11 of communications solely for the purpose of furnishing scien-
12 tific or technological information, if such communications are
13 made under procedures acceptable to the department or
14 agency concerned or if the head of the department or agency
15 concerned with the particular matter, in consultation with the
16 Director of the Office of Government Ethics, makes a certifi-
17 cation, published in the Federal Register, that the former of-
18 ficer or employee has outstanding qualifications in a scientif-
19 ic, technological, or other technical discipline, and is acting
20 with respect to a particular matter which requires such quali-
21 fications, and that the national interest would be served by
22 the participation of the former officer or employee.

23 “(l) RESTRICTIONS ON PARTNERS OF OFFICERS AND
24 EMPLOYEES.—

1 “(1) RESTRICTIONS.—Any person who is a part-
2 ner of an officer or employee of the executive branch of
3 the United States Government, or of any independent
4 agency of the United States (including the Government
5 Printing Office and the General Accounting Office), in-
6 cluding the President, the Vice President, and any spe-
7 cial Government employee, and who knowingly acts as
8 agent or attorney for any other person (except the
9 United States) before any department, agency, court,
10 or court-martial of the United States, or any officer or
11 employee thereof, in connection with any judicial or
12 other proceeding, application, request for a ruling or
13 other determination, contract, claim, controversy, in-
14 vestigation, charge, accusation, arrest, or other par-
15 ticular matter in which such person knows that—

16 “(A) the United States is a party or has a
17 direct and substantial interest, and

18 “(B) such officer or employee or special Gov-
19 ernment employee ~~participates or has participated~~
20 personally and substantially as an officer or em-
21 ployee through decision, approval, disapproval,
22 recommendation, the rendering of advice, investi-
23 gation, or otherwise,

24 shall be imprisoned for not more than 1 year or fined
25 in the amount set forth in this title, or both.

1 “(2) OFFENSE LIMITED TO ACTS FOR COMPEN-
2 SATION.— An act does not constitute an offense under
3 paragraph (1) unless the act is done for compensation,
4 as defined in subsection (g)(2).

5 “(m) EXCEPTION FOR TESTIMONY.—Nothing in this
6 section shall prevent a former Member of Congress or officer
7 or employee of the executive or legislative branch (including
8 the President and Vice President) from giving testimony
9 under oath, or from making statements required to be made
10 under penalty of perjury.

11 “(n) ADMINISTRATIVE DEPARTMENT.—

12 “(1) AUTHORITY.—If the head of a department
13 or agency finds, after notice and an opportunity for a
14 hearing, that a person knowingly engaged in conduct,
15 before that department or agency, which constitutes an
16 offense under subsection (a), (b), (c), (d), or (f) of this
17 section, such agency or department head may prohibit
18 that person from making, on behalf of any other person
19 (except the United States), any informal or formal ap-
20 pearance before, or, with the intent to influence, any
21 communication to, such department or agency on a
22 pending matter of business for a period of not more
23 than 5 years, or may take other appropriate discipli-
24 nary action. For purposes of this subsection, proof of

1 conduct constituting an offense must be established by
2 a preponderance of the evidence.

3 “(2) REVIEW OF DISCIPLINARY ACTION.—Any
4 disciplinary action under paragraph (1) shall be subject
5 to review in an appropriate United States district
6 court.

7 “(3) PROCEDURES.—Departments and agencies in
8 the executive branch and independent agencies shall, in
9 consultation with the Director of the Office of Govern-
10 ment Ethics, establish procedures to carry out this sub-
11 section.

12 “(o) CIVIL PENALTIES.—The Attorney General may
13 bring a civil action in the appropriate United States district
14 court against any person who engages in conduct constituting
15 an offense under subsection (a), (b), (c), (d), (e), (f), or (l) and,
16 upon proof of such conduct by a preponderance of the evi-
17 dence, such person shall be subject to a civil penalty of not
18 more than \$50,000, or the amount of compensation which
19 the person receives for the prohibited conduct, whichever
20 amount is greater. The imposition of a civil penalty under
21 this subsection does not preclude any other remedy which is
22 available by law to the United States or any other person.

23 “(p) INJUNCTIVE RELIEF.—If the Attorney General
24 has reason to believe that a person is engaging in conduct
25 constituting an offense under subsection (a), (b), (c), (d), (e),

1 (f), or (l), the Attorney General may petition an appropriate
2 United States district court for an order prohibiting that
3 person from engaging in such conduct. The court shall order
4 the trial of the action on the merits to be advanced and con-
5 solidated with the hearing on the petition. The court may
6 issue such order if it finds that such conduct constitutes such
7 an offense. The filing of a petition under this subsection does
8 not preclude any other remedy which is available by law to
9 the United States or any other person.”.

10 (b) CONFORMING AMENDMENT.—The table of sections
11 at the beginning of chapter 11 of title 18, United States
12 Code, is amended by amending the item relating to section
13 207 to read as follows:

“207. Restrictions on former officers, employees, and elected officials of the execu-
tive and legislative branches; restrictions on partners of certain
current officers and employees of the executive branch.”.

14 SEC. 3. EFFECTIVE DATE.

15 (a) IN GENERAL.—Subject to subsection (b), this Act
16 and the amendments made by this Act take effect 9 months
17 after the date of the enactment of this Act.

18 (b) EFFECT ON EMPLOYMENT.—(1) The amendments
19 made by this Act apply only to persons whose service as a
20 Member of Congress or an officer or employee to which such
21 amendments apply terminates on or after the effective date of
22 such amendments.

23 (2) With respect to service as an officer or employee
24 which terminates before the effective date of this Act, section

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1 207 of title 18, United States Code, as in effect at the time of
2 the termination of such service, shall continue to apply, on
3 and after such effective date, with respect to such service.
4 **SEC. 4. SEVERABILITY.**
5 If any provision of this Act or the amendments made by
6 this Act or the application of such provision to any person or
7 circumstance is held invalid, the remainder of this Act and
8 the amendments made by this Act and the application of such
9 provision to other persons not similarly situated or to other
10 circumstances shall not be affected by such invalidation.

