

**NLWJC - Kagan**

**Counsel - Box 033 - Folder 004**

**Campaign Finance Reform  
Education Project**

CAMPAIGN FINANCE REFORM  
(ELENA KAGAN AND WENDY WHITE)

- Campaign Finance Current
- Campaign finance Materials
- Campaign Finance Bills
- McCain -- Feingold Bills
- Campaign Finance
- Campaign Finance
- Campaign Finance Reform Education Project

**C.F.**

Enclosures filed in  
Oversize Attachments #

**CF 808**

3 boxes filed 4/23/97  
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## CODE OF FEDERAL REGULATIONS

Departmental proceedings, representation before Department of Agriculture, see 7 CFR 1.26. Officers and employees of U.S., claims and matters affecting governmental activities of—Disqualification of government officers and employees in representation before Board, see 14 CFR 300.11.

Practice of special government employees permitted before Board, see 14 CFR 300.12.

Persons who may practice before Bureau of Alcohol, Tobacco and Firearms, see 31 CFR 82.

## LAW REVIEW AND JOURNAL COMMENTARIES

Public service by public servants. Lisa G. Lerman, 19 Hofstra L.Rev. 1141 (1991).

Section 205's restriction on pro bono representation by federal attorneys. Carolyn Elefant, 37 Fed.B.News & J. 407 (1990).

## NOTES OF DECISIONS

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promotions. Bachman v. Pertschuk, D.C.D.C. 1977, 437 F.Supp. 973.

A government attorney owning a corporation involved in a quiet title action with the United States government and having a financial interest in the action is not involved in any real or apparent conflict of interest with his duties and responsibilities where he does not intend to participate in the litigation on behalf of the United States or to act as agent or attorney on behalf of the corporation and the action is not being handled by his departmental section. 1977 (Counsel-Inf. Op.) 1 Op.O.L.C. 7.

## 5. Contracts

Generally, carriers' earnings in excess of authorized rate of return are not subject to refund orders by Federal Communications Commission (FCC), but rates carrier charges in future may be lowered if there is history of consistent over-earnings. Ohio Bell Telephone Co. v. F.C.C., C.A.6 1991, 949 F.2d 864.

## 9. Assistance of counsel

In this section forbidding federal employee from representing anyone before agency or court, exclusion permitting one to act without compensation as agent or attorney for any person who is subject of disciplinary, loyalty or other personnel administration proceedings in connection with those proceedings is applicable only in "administration proceedings" and not in proceedings before courts. Bachman v. Pertschuk, D.C.D.C.1977, 437 F.Supp. 973.

Petitioner being investigated by Army to determine his suitability for retention in Army ROTC program and whether he should be ordered to active duty was not entitled to legally qualified counsel; in any event, petitioner knowingly and voluntarily waived any right that he had, if any such right existed, to legally qualified counsel. Scarth v. Geraci, N.D.Tex.1974, 382 F.Supp. 876, affirmed 510 F.2d 1363.

This section does not prohibit government attorneys from representing federal employees in personnel administration proceedings in court as well as before agencies, so long as the representation does not conflict with the attorney's official duties. 1982 (Counsel-Inf.Op.) 6 Op.O.L.C. 461.

## 10. Representation of relatives

Attorneys employed by the federal government are barred by this section from participating in any case in which the District of Columbia

is a party or has a direct and substantial interest. 1980 (Counsel-Inf.Op.) 4B Op.O.L.C. 800.

An employee in the office of a United States Attorney may appear on behalf of his daughter in an Internal Revenue Service office audit of her tax return. 1977 (Counsel-Inf. Op.) 1 Op.O.L.C. 148.

## 11. Prosecutor and defender exchange programs

This section is not a bar to having one or more Assistant United States Attorneys and assistant Federal Public Defenders temporarily exchange duties. 1977 (Counsel-Inf. Op.) 1 Op.O.L.C. 110.

## 12. Agency personnel exchanges

The detailing of Environmental Protection Agency employees to important positions in state agencies, the duties of which may require them to represent the state before the Environmental Protection Agency, is integral to the substantive environmental programs which the

Agency administers, and is not prohibited by this section or section 203 of this title. 1980 (Counsel-Inf.Op.) 4B Op.O.L.C. 498.

## 13. Union activities

The representational bar of this section applies to union organizing activities of a federal employee in which he acts as "agent or attorney" for other federal employees before their agency. 1981 (Counsel-Inf.Op.) 5 Op.O.L.C. 194.

## 14. Class actions

This section does not bar Assistant United States Attorneys from participating as plaintiffs in a class action suit challenging the authority of the Office of Personnel Management to reduce the cost of living allowance paid to all federal employees in Alaska, though they may not accept any compensation for assisting in prosecuting the claims of the class or act as agents or attorneys for the class. 1981 (Counsel-Inf.Op.) 5 Op.O.L.C. 74.

## § 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches

(a) Restrictions on all officers and employees of the executive branch and certain other agencies.—

(1) Permanent restrictions on representation on particular matters.—Any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including any independent agency of the United States), or of the District of Columbia, and who, after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia) in connection with a particular matter—

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) in which the person participated personally and substantially as such officer or employee, and

(C) which involved a specific party or specific parties at the time of such participation,

shall be punished as provided in section 216 of this title.

(2) Two-year restrictions concerning particular matters under official responsibility.—Any person subject to the restrictions contained in paragraph (1) who, within 2 years after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia), in connection with a particular matter—

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) which such person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States or the District of Columbia, and

(C) which involved a specific party or specific parties at the time it was so pending,

shall be punished as provided in section 216 of this title.

(3) Clarification of restrictions.—The restrictions contained in paragraphs (1) and (2) shall apply—

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## 3. Officers or employees within section

This section which prohibits federal employees from appearing as agent or attorney on behalf of anyone in a proceeding to which the United States is a party bars federal employees enrolled in part-time legal studies from entering an appearance under court rule on behalf of indigent criminal appellants entitled to assignment of counsel, despite contention that role of a law student so appearing is neither that of an attorney nor that of an agent for appellant and that such appearance would not frustrate the legislative intent of this section. U. S. v. Bailey, C.A.D.C.1974, 498 F.2d 677, 162 U.S.App.D.C. 135.

Veterans Administration's decision not to accept bid of contractor which had been preselected by Small Business Administration and which was only company negotiating with VA for construction of VA facility was not arbitrary or capricious, and contractor was not entitled to recover its bid preparation and negotiating costs; decision not to award contract was based on appearance of conflict of interest caused by contractor's representation during negotiation process by VA employee, in violation of executive order, VA regulations, and statute prohibiting government employee from acting as agent for anyone in connection with matter in which Government is party or has direct and substantial interest. Refine Const. Co., Inc. v. U.S., CL.Ct.1987, 12 Cl.Ct. 56.

## 4. Prosecution of claims

One who was still employee of Federal Trade Commission could not accept any compensation for his legal services in prosecuting class action in which it was alleged that Commission discriminated on account of race in failing to award

(A) in the case of an officer or employee of the executive branch of the United States (including any independent agency), only with respect to communications to or appearances before any officer or employee of any department, agency, court, or court-martial of the United States on behalf of any other person (except the United States), and only with respect to a matter in which the United States is a party or has a direct and substantial interest; and

(B) in the case of an officer or employee of the District of Columbia, only with respect to communications to or appearances before any officer or employee of any department, agency, or court of the District of Columbia on behalf of any other person (except the District of Columbia), and only with respect to a matter in which the District of Columbia is a party or has a direct and substantial interest.

**(b) One-year restrictions on aiding or advising.—**

(1) **In general.**—Any person who is a former officer or employee of the executive branch of the United States (including any independent agency) and is subject to the restrictions contained in subsection (a)(1), or any person who is a former officer or employee of the legislative branch or a former Member of Congress, who personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States within the 1-year period preceding the date on which his or her service or employment with the United States terminated, and who had access to information concerning such trade or treaty negotiation which is exempt from disclosure under section 552 of title 5, which is so designated by the appropriate department or agency, and which the person knew or should have known was so designated, shall not, on the basis of that information, knowingly represent, aid, or advise any other person (except the United States) concerning such ongoing trade or treaty negotiation for a period of 1 year after his or her service or employment with the United States terminates. Any person who violates this subsection shall be punished as provided in section 216 of this title.

**(2) Definition.**—For purposes of this paragraph—

(A) the term “trade negotiation” means negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made; and

(B) the term “treaty” means an international agreement made by the President that requires the advice and consent of the Senate.

**(c) One-year restrictions on certain senior personnel of the executive branch and independent agencies.—**

(1) **Restrictions.**—In addition to the restrictions set forth in subsections (a) and (b), any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including an independent agency), who is referred to in paragraph (2), and who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in section 216 of this title.

(2) **Persons to whom restrictions apply.**—(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))—

(i) employed at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5,

(ii) employed in a position which is not referred to in clause (i) and for which the basic rate of pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service,

(iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3, or

(iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade O-7 or above.

(B) Paragraph (1) shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.

(C) At the request of a department or agency, the Director of the Office of Government Ethics may waive the restrictions contained in paragraph (1) with respect to any position, or category of positions, referred to in clause (ii) or (iv) of subparagraph (A), in such department or agency if the Director determines that—

(i) the imposition of the restrictions with respect to such position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions, and

(ii) granting the waiver would not create the potential for use of undue influence or unfair advantage.

**(d) Restrictions on very senior personnel of the executive branch and independent agencies.—**

(1) **Restrictions.**—In addition to the restrictions set forth in subsections (a) and (b), any person who—

(A) serves in the position of Vice President of the United States,

(B) is employed in a position in the executive branch of the United States (including any independent agency) at a rate of pay payable for level I of the Executive Schedule or employed in a position in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule, or

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

and who, within 1 year after the termination of that person's service in that position, knowingly makes, with the intent to influence, any communication to or appearance before any person described in paragraph (2), on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of the executive branch of the United States, shall be punished as provided in section 216 of this title.

(2) **Persons who may not be contacted.**—The persons referred to in paragraph (1) with respect to appearances or communications by a person in a position described in subparagraph (A), (B), or (C) of paragraph (1) are—

(A) any officer or employee of any department or agency in which such person served in such position within a period of 1 year before such person's service or employment with the United States Government terminated, and

(B) any person appointed to a position in the executive branch which is listed in sections 5312, 5313, 5314, 5315, or 5316 of title 5.

**(e) Restrictions on Members of Congress and officers and employees of the legislative branch.—**

(1) **Members of Congress and elected officers.**—(A) Any person who is a Member of Congress or an elected officer of either House of Congress and who, within 1 year after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B) or (C), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former Member of Congress are any Member, officer, or employee of either House of Congress, and any employee of any other legislative office of the Congress.

(C) The persons referred to in subparagraph (A) with respect to appearances or communications by a former elected officer are any Member, officer, or employee of the House of Congress in which the elected officer served.

(2) **Personal staff.**—(A) Any person who is an employee of a Senator or an employee of a Member of the House of Representatives and who, within 1 year after the termination of that employment, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a person who is a former employee are the following:

- (i) the Senator or Member of the House of Representatives for whom that person was an employee; and
- (ii) any employee of that Senator or Member of the House of Representatives.

(3) **Committee staff.**—Any person who is an employee of a committee of Congress and who, within 1 year after the termination of that person's employment on such committee, knowingly makes, with the intent to influence, any communication to or appearance before any person who is a Member or an employee of that committee or who was a Member of the committee in the year immediately prior to the termination of such person's employment by the committee, on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(4) **Leadership staff.**—(A) Any person who is an employee on the leadership staff of the House of Representatives or an employee on the leadership staff of the Senate and who, within 1 year after the termination of that person's employment on such staff, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

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

- (i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are any Member of the leadership of the House of Representatives and any employee on the leadership staff of the House of Representatives; and
- (ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate and any employee on the leadership staff of the Senate.

(5) **Other legislative offices.**—(A) Any person who is an employee of any other legislative office of the Congress and who, within 1 year after the termination of that person's employment in such office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by any officer or employee of such office, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the employees and officers of the former legislative office of the Congress of the former employee.

(6) **Limitation on restrictions.**—(A) The restrictions contained in paragraphs (2), (3), and (4) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was paid a rate of basic pay equal to or greater than an amount which is 75 percent of the basic rate of pay payable for a Member of the House of Congress in which such employee was employed.

(B) The restrictions contained in paragraph (5) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was employed

in a position for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the basic rate of pay payable for level 5 of the Senior Executive Service.

(7) **Definitions.**—As used in this subsection—

(A) the term "committee of Congress" includes standing committees, joint committees, and select committees;

(B) a person is an employee of a House of Congress if that person is an employee of the Senate or an employee of the House of Representatives;

(C) the term "employee of the House of Representatives" means an employee of a Member of the House of Representatives, an employee of a committee of the House of Representatives, an employee of a joint committee of the Congress whose pay is disbursed by the Clerk of the House 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 of any other legislative office of the Congress" means an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the Copyright Royalty Tribunal, the United States Capitol Police, and any other agency, entity, or office in the legislative branch not covered by paragraph (1), (2), (3), or (4) of this subsection;

(H) 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 (L), and any elected minority employee of the House of Representatives;

(I) 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 (M);

(J) the term "Member of Congress" means a Senator or a Member of the House of Representatives;

(K) the term "Member of the House of Representatives" means a Representative in, or a Delegate or Resident Commissioner to, the Congress;

(L) the term "Member of the leadership of the House of Representatives" means the Speaker, majority leader, minority leader, majority whip, minority whip, chief deputy majority whip, chief deputy minority whip, chairman of the Democratic Steering Committee, chairman and vice chairman of the Democratic Caucus, chairman, vice chairman, and secretary of the Republican Conference, chairman of the Republican Research Committee, and chairman of the Republican Policy Committee, of the House of Representatives (or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989);

(M) the term "Member of the leadership of the Senate" means the Vice President, and the President pro tempore, Deputy President pro tempore, majority leader, minority leader, majority whip, minority whip, chairman and secretary of the Conference of the Majority, chairman and secretary of the Conference of the Minority, chairman and co-chairman of the Majority Policy Committee, and chairman of the Minority Policy Committee, of the Senate (or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989).

(f) **Restrictions relating to foreign entities.**—

(1) **Restrictions.**—Any person who is subject to the restrictions contained in subsection (c), (d), or (e) and who knowingly, within 1 year after leaving the position, office, or employment referred to in such subsection—

(A) represents a foreign entity before any officer or employee of any department or agency of the United States with the intent to influence a decision of such officer or employee in carrying out his or her official duties, or

(B) aids or advises a foreign entity with the intent to influence a decision of any officer or employee of any department or agency of the United States, in carrying out his or her official duties,

shall be punished as provided in section 216 of this title.

(2) **Special rule for Trade Representative.**—With respect to a person who is the United States Trade Representative or Deputy United States Trade Representative, the restrictions described in paragraph (1) shall apply to representing, aiding, or advising foreign entities at any time after the termination of that person's service as the United States Trade Representative.

(3) **Definition.**—For purposes of this subsection, the term "foreign entity" means the government of a foreign country as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended, or a foreign political party as defined in section 1(f) of that Act.

(g) **Special rules for detailees.**—For purposes of this section, a person 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.

(h) **Designations of separate statutory agencies and bureaus.**—

(1) **Designations.**—For purposes of subsection (c) and except as provided in paragraph (2), whenever the Director of the Office of Government Ethics determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and that there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate department or agency. On an annual basis the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his or her responsibilities under this paragraph.

(2) **Inapplicability of designations.**—No agency or bureau within the Executive Office of the President may be designated under paragraph (1) as a separate department or agency. No designation under paragraph (1) shall apply to persons referred to in subsection (c)(2)(A)(i) or (iii).

(i) **Definitions.**—For purposes of this section—

(1) the term "officer or employee", when used to describe the person to whom a communication is made or before whom an appearance is made, with the intent to influence, shall include—

(A) in subsections (a), (c), and (d), the President and the Vice President; and

(B) in subsection (f), the President, the Vice President, and Members of Congress;

(2) the term "participated" means an action taken as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action; and

(3) the term "particular matter" includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.

(j) **Exceptions.**—

(1) **Official government duties.**—The restrictions contained in this section shall not apply to acts done in carrying out official duties on behalf of the United States or the District of Columbia or as an elected official of a State or local government.

(2) **State and local governments and institutions, hospitals, and organizations.**—The restrictions contained in subsections (c), (d), and (e) shall not apply to acts done in carrying out official duties as an employee of—

(A) an agency or instrumentality of a State or local government if the appearance, communication, or representation is on behalf of such government, or

(B) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or representation is on behalf of such institution, hospital, or organization.

(3) **International organizations.**—The restrictions contained in this section shall not apply to an appearance or communication on behalf of, or advice or aid to, an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States.

(4) **Special knowledge.**—The restrictions contained in subsections (c), (d), and (e) shall not prevent an individual from making or providing a statement, which is based on the individual's own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received.

(5) **Exception for scientific or technological information.**—The restrictions contained in subsections (a), (c), and (d) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the department or agency concerned or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee. For purposes of this paragraph, the term "officer or employee" includes the Vice President.

(6) **Exception for testimony.**—Nothing in this section shall prevent an individual from giving testimony under oath, or from making statements required to be made under penalty of perjury. Notwithstanding the preceding sentence—

(A) a former officer or employee of the executive branch of the United States (including any independent agency) who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter; and

(B) a former officer or employee of the District of Columbia who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the District of Columbia) in that matter.

(7) **Political parties and campaign committees.**—(A) Except as provided in subparagraph (B), the restrictions contained in subsections (c), (d), and (e) shall not apply to a communication or appearance made solely on behalf of a candidate in his or her capacity as a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party.

(B) Subparagraph (A) shall not apply to—

(i) any communication to, or appearance before, the Federal Election Commission by a former officer or employee of the Federal Election Commission; or

(ii) a communication or appearance made by a person who is subject to the restrictions contained in subsections (c), (d), or (e) if, at the time of the communication or appearance, the person is employed by a person or entity other than—

(I) a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party; or

(II) a person or entity who represents, aids, or advises only persons or entities described in subclause (I).

(C) For purposes of this paragraph—

(i) the term "candidate" means any person who seeks nomination for election, or election, to Federal or State office or who has authorized others to explore on his or her behalf the possibility of seeking nomination for election, or election, to Federal or State office;

(ii) the term "authorized committee" means any political committee designated in writing by a candidate as authorized to receive contributions or make expenditures to promote the nomination for election, or the election, of such candidate, or to explore the possibility of seeking nomination for election, or the election, of such candidate, except that a political committee that receives contributions or makes expenditures to promote more than 1 candidate may not be designated as an authorized committee for purposes of subparagraph (A);

(iii) the term "national committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level;

(iv) the term "national Federal campaign committee" means an organization that, by virtue of the bylaws of a political party, is established primarily for the purpose of providing assistance, at the national level, to candidates nominated by that party for election to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(v) the term "State committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level;

(vi) the term "political party" means an association, committee, or organization that nominates a candidate for election to any Federal or State elected office whose name appears on the election ballot as the candidate of such association, committee, or organization; and

(vii) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(k)(1)(A) The President may grant a waiver of a restriction imposed by this section to any officer or employee described in paragraph (2) if the President determines and certifies in writing that it is in the public interest to grant the waiver and that the services of the officer or employee are critically needed for the benefit of the Federal Government. Not more than 25 officers and employees currently employed by the Federal Government at any one time may have been granted waivers under this paragraph.

(B)(i) A waiver granted under this paragraph to any person shall apply only with respect to activities engaged in by that person after that person's Federal Government employment is terminated and only to that person's employment at a Government-owned, contractor operated entity with which the person served as an officer or employee immediately before the person's Federal Government employment began.

(ii) Notwithstanding clause (i), a waiver granted under this paragraph to any person who was an officer or employee of Lawrence Livermore National Laboratory, Los Alamos National Laboratory, or Sandia National Laboratory immediately before the person's Federal Government employment began shall apply to that person's employment by any such national laboratory after the person's employment by the Federal Government is terminated.

(2) Waivers under paragraph (1) may be granted only to civilian officers and employees of the executive branch, other than officers and employees in the Executive Office of the President.

(3) A certification under paragraph (1) shall take effect upon its publication in the Federal Register and shall identify—

(A) the officer or employee covered by the waiver by name and by position, and

(B) the reasons for granting the waiver.

A copy of the certification shall also be provided to the Director of the Office of Government Ethics.

(4) The President may not delegate the authority provided by this subsection.

(5)(A) Each person granted a waiver under this subsection shall prepare reports, in accordance with subparagraph (B), stating whether the person has engaged in activities otherwise prohibited by this section for each six-month period described in subparagraph (B), and if so, what those activities were.

(B) A report under subparagraph (A) shall cover each six-month period beginning on the date of the termination of the person's Federal Government employment (with respect to which the waiver under this subsection was granted) and ending two years after that date. Such report shall be filed with the President and the Director of the Office of Government Ethics not later than 60 days after the end of the six-month period covered by the report. All reports filed with the Director under this paragraph shall be made available for public inspection and copying.

(C) If a person fails to file any report in accordance with subparagraphs (A) and (B), the President shall revoke the waiver and shall notify the person of the revocation. The revocation shall take effect upon the person's receipt of the notification and shall remain in effect until the report is filed.

(D) Any person who is granted a waiver under this subsection shall be ineligible for appointment in the civil service unless all reports required of such person by subparagraphs (A) and (B) have been filed.

(E) As used in this subsection, the term "civil service" has the meaning given that term in section 2101 of title 5.

(As amended Pub.L. 95-521, Title V, § 501(a), Oct. 26, 1978, 92 Stat. 1864; Pub.L. 96-28, §§ 1, 2, June 22, 1979, 93 Stat. 76; Pub.L. 101-189, Div. A, Title VIII, § 814(d)(2), Nov. 29, 1989, 103 Stat. 1499; Pub.L. 101-194, Title I, § 101(a), Nov. 30, 1989, 103 Stat. 1716; Pub.L. 101-280, §§ 2(a), 5(d), May 4, 1990, 104 Stat. 149, 159; Pub.L. 101-509, Title V, § 529 [Title I, § 101 (b)(8)(A)], Nov. 5, 1990, 104 Stat. 440; Pub.L. 102-25, Title VII, § 705(a), Apr. 6, 1991, 105 Stat. 120; Pub.L. 102-190, Div. B, Title XXXI, § 8138(a), Dec. 5, 1991, 105 Stat. 1579; Pub.L. 102-395, Title VI, § 609(a), Oct. 6, 1992, 106 Stat. 1873; Pub.L. 103-322, Title XXXIII, §§ 33002(i), 330010(15), Sept. 13, 1994, 108 Stat. 2140, 2144; Pub.L. 104-65, § 21(a), Dec. 19, 1995, 109 Stat. 704; Pub.L. 104-179, §§ 5, 6, Aug. 6, 1996, 110 Stat. 1567, 1568; Pub.L. 104-208, Div. A, Title I, § 101(f) [Title VI, § 635], Sept. 30, 1996, 110 Stat. 3009—)

#### HISTORICAL AND STATUTORY NOTES

##### References in Text

Section 1102 of the Omnibus Trade and Competitiveness Act of 1988, referred to in subsec. (b)(2)(A), is classified to section 2902 of Title 19, Customs Duties.

The effective date set forth in section 102(a) of the Ethics Reform Act of 1989, referred to in subsec. (e)(7)(L), (M), is the effective date of the amendment to this section by section 101(a) of Pub.L. 101-194. See section 102 of Pub.L. 101-194, set out as an Effective Date of 1989 Amendment note under this section.

Section 1(e), (f) of the Foreign Agents Registration Act of 1938, as amended, referred to in subsec. (f)(3), is classified to section 611(e), (f) of Title 22, Foreign Relations and Intercourse.

Section 1201(a) of the Higher Education Act of 1965, referred to in subsec. (j)(2)(B), is classified to section 1141 of Title 20, Education.

Section 501(c)(3) of the Internal Revenue Code of 1986, referred to in subsec. (j)(2)(B), is section 501(c)(3) of Title 26, Internal Revenue Code.

##### Codification

Section 501(a) of Pub.L. 95-521, which amended this section, was completely revised by Pub.L. 101-194, Title VI, § 601(a), Nov. 30, 1989, 103 Stat. 1760, which reenacted such provisions as section 501(a) of Appendix 7 to Title 5, Government Organization and Employees. Such revision and reenactment is effective Jan.

1, 1991, except that under certain conditions provisions of section 601(a) of Pub.L. 101-194 shall cease to be effective insofar as they enact section 501(a) of Appendix 7, and provisions of section 501(a) of Pub.L. 95-521 as they amended this section shall be deemed to be reenacted, see section 603 of Pub.L. 101-194, set out as a note under section 7701 of Title 26, Internal Revenue Code.

##### 1996 Amendments

Subsec. (c)(2)(A)(ii). Pub.L. 104-179, § 6, substituted "level 5 of the Senior Executive Service," for "level V of the Executive Schedule."

Subsec. (j)(7). Pub.L. 104-179, § 5, added par. (7).

##### 1995 Amendments

Subsec. (f)(2). Pub.L. 104-65, § 21(a), banned both the Trade and Deputy Trade Representative from representing, aiding, or advising foreign entities at any time after termination of service in either position, rather than banning only the Trade Representative from such activities within 3 years after the termination of service in such position.

##### 1994 Amendments

Subsec. (a)(3). Pub.L. 103-322, § 330010(15), substituted "Clarification of restrictions" for "Clarification of Restrictions".

Subsec. (c)(2)(A)(ii). Pub.L. 103-322, § 330002(i), substituted a comma for a semicolon at the end of cl. (ii).

#### 1992 Amendments

Subsec. (f)(2). Pub.L. 102-395, § 609(a)(1), redesignated former par. (2) as (3).

Pub.L. 102-395, § 609(a)(2), added par. (2).

Subsec. (f)(3). Pub.L. 102-395, § 609(a)(1), redesignated former par. (2) as (3).

#### 1991 Amendments

Subsec. (k). Pub.L. 102-25 reinstated subsec. (k), as originally enacted by Pub.L. 101-189, § 814(d)(2), and omitted in revision of section 207 by Pub.L. 101-194, § 101(a).

Subsec. (k)(1)(B). Pub.L. 102-190, § 3138(a)(1), redesignated former subsec. (k)(1)(B) as (k)(1)(B)(i).

Subsec. (k)(1)(B)(i). Pub.L. 102-190, § 3138(a)(1), redesignated former subsec. (k)(1)(B) as (k)(1)(B)(i).

Subsec. (k)(1)(B)(ii). Pub.L. 102-190, § 3138(a)(2), added cl. (ii).

#### 1990 Amendments

Subsec. (a)(1). Pub.L. 101-280, § 2(a)(1)(A)-(E), inserted "(including any special Government employee)" following "who is an officer or employee", substituted "(except the United States or the District of Columbia)" for "(except the United States)", struck out "Government" following "United States" each place it appeared, struck out "and any special Government employee" following "any independent agency of the United States" and struck out "as the case may be," following "District of Columbia" each place it appeared.

Subsec. (a)(1)(A). Pub.L. 101-280, § 2(a)(1)(F), inserted "or the District of Columbia" following "United States".

Subsec. (a)(2). Pub.L. 101-280, § 2(a)(2)(A), (B), substituted "or the District of Columbia" for "Government" and "(except the United States or the District of Columbia)" for "(except the United States)".

Subsec. (a)(2)(A). Pub.L. 101-280, § 2(a)(2)(C), inserted "or the District of Columbia" following "United States".

Subsec. (a)(2)(B). Pub.L. 101-280, § 2(a)(2)(D), struck out "Government" following "United States".

Subsec. (a)(3). Pub.L. 101-280, § 2(a)(3), added par. (3).

Pub.L. 101-280, § 2(a)(4)(B), substituted "or any person who is a former officer or employee of the legislative branch or a former Member of Congress" for "and any person described in subsection (e)(7)".

Pub.L. 101-280, § 2(a)(4)(C), substituted "which is so designated by the appropriate department or agency, and which the person knew or should have known was so designated, shall not, on the basis of that information, knowingly represent" for "and which is so designated by the appropriate department or agency, shall not, on the basis of that information, which the person knew or should have known was so designated, knowingly represent".

Pub.L. 101-280, § 2(a)(4)(D), inserted "a period of" preceding "1 year".

Pub.L. 101-280, § 2(a)(4)(E), struck out "Government" preceding "terminates".

Subsec. (b)(1). Pub.L. 101-280, § 2(a)(4)(A), substituted "a former officer or employee of the executive branch of the United States (including any independent agency) and is" for "a former officer or employee".

Subsec. (c). Pub.L. 101-280, § 5(d), substituted "shall be subject to the penalties set forth in section 216 of this title" for "shall be fined not more than \$10,000 or imprisoned for not more than two years, or both".

Subsec. (c)(1). Pub.L. 101-280, § 2(a)(5)(A), substituted "(including any special Government employee) of the executive branch of the United States" for "of the executive branch".

Subsec. (c)(2)(A)(i). Pub.L. 101-280, § 2(a)(5)(B)(i), inserted "specified in or" following "employed at a rate of pay" and struck out "or a comparable or greater rate of pay under other authority," following "chapter 53 of title 5".

Subsec. (c)(2)(A)(ii). Pub.L. 101-280, § 2(a)(5)(B)(ii), substituted "rate of basic" for "basic rate of" wherever appearing.

Pub.L. 101-509, § 108(b)(8)(A)(i), substituted provisions making restrictions applicable to employees for which basic rate of pay, excluding Title 5, § 5302 or comparable adjustments, is equal to or greater than the basic pay payable for level V of the Executive Schedule, for provisions making restrictions applicable to employees for which basic rate of pay is equal to or greater than the basic pay payable for GS-17 of the General Schedule.

Subsec. (c)(2)(C). Pub.L. 101-280, § 2(a)(5)(B)(iii), redesignated former subpar. (D) as (C). Former subpar. (C), which related to the inclusion of persons employed in the Senior Executive Service at the basic rate of pay of GS-17 or greater as persons to whom the restrictions of this subsection apply, was struck out.

Subsec. (c)(2)(D). Pub.L. 101-280, § 2(a)(5)(B)(iii), redesignated former subpar. (D) as (C).

Subsec. (d)(1)(B). Pub.L. 101-280, § 2(a)(6)(A), substituted "in the executive branch of the United States (including any independent agency)" for "paid".

Subsec. (d)(2). Pub.L. 101-280, § 2(a)(6)(B)(i), substituted "Persons who may not be contacted" for "Entities to which restrictions apply" in the par. caption.

Subsec. (d)(2)(B). Pub.L. 101-280, § 2(a)(6)(B)(ii), struck out "other" following "any".

Subsec. (e)(6). Pub.L. 101-280, § 2(a)(7)(A), substituted "rate of basic" for "basic rate of" wherever appearing.

Subsec. (e)(6)(A), (B). Pub.L. 101-509, § 101(b)(8)(A)(ii), designated existing text as subpar. (A) and, in subpar. (A) as so designated, substituted reference to amount 75% of the basic rate of pay payable for a Member of the employee's House of Congress, for reference to the basic rate of pay payable for GS-17 of the

General Schedule under Title 5, § 5332, and struck out reference to par. (5) restrictions; and added subpar. (B).

Subsec. (e)(7)(L), (M). Pub.L. 101-280, § 2(a)(7)(B), inserted "on or" preceding "after the effective date" wherever appearing.

Subsec. (f)(1). Pub.L. 101-280, § 2(a)(8)(A), substituted "such subsection" for "subsection (c), (d), or (e), as the case may be".

Subsec. (f)(1)(A). Pub.L. 101-280, § 2(a)(8)(B)(i), struck out "the interests of" following "represents".

Pub.L. 101-280, § 2(a)(8)(B)(ii), struck out "of the Government" following "department or agency".

Subsec. (f)(1)(B). Pub.L. 101-280, § 2(a)(8)(C), struck out "of the Government" preceding "of the United States."

Subsec. (f)(1). Pub.L. 101-280, § 2(a)(9), added par. (1). Former par. (1), which related to the definition of "intent to influence" as the intent to affect any official action by a government entity of the United States, including officers, employees and Members of Congress, was struck out.

Subsec. (j)(1). Pub.L. 101-280, § 2(a)(10)(A), substituted "this section" for "subsections (a), (c), (d), and (e)", "on behalf of" for "as an officer or employee of" and "or the District of Columbia" for "Government".

Subsec. (j)(3). Pub.L. 101-280, § 2(a)(10)(B), substituted "this section" for "subsections (c), (d), and (e) of this section" and "in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States" for "of which the United States is a member."

Subsec. (j)(4). Pub.L. 101-280, § 2(a)(10)(C)(i), substituted "Special" for "Personal matters and special" in the paragraph caption.

Pub.L. 101-280, § 2(a)(10)(C)(ii), struck out "apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibitions of those subsections" following "(c), (d), and (e) shall not".

Pub.L. 101-280, § 2(a)(10)(C)(iii), substituted "prevent an individual" for "prevent a former officer or employee".

Pub.L. 101-280, § 2(a)(10)(C)(iv), substituted "individual's" for "former officer's or employee's".

Pub.L. 101-280, § 2(a)(10)(C)(v), struck out "other than that regularly provided for by law or regulation for witnesses" following "if no compensation is thereby received".

Subsec. (j)(6). Pub.L. 101-280, § 2(a)(10)(D), added "For the purposes of this paragraph, the term 'officer or employee' includes the Vice President." and substituted "and (d)" for "(d), and (e)".

Subsec. (j)(6). Pub.L. 101-280, § 2(a)(10)(E)(i), substituted provisions relating to an individual for provisions relating to former Members of Congress or officers or employees of the executive or legislative branches, or of

independent agencies, including the Vice President and special Government employees.

Subsec. (j)(6)(A), (B). Pub.L. 101-280, § 2(a)(10)(E)(ii), redesignated existing provisions as subpar. (A), and as so redesignated, added provisions relating to independent agencies, and, added subpar. (B).

#### 1989 Amendments

Catchline. Pub.L. 101-194 substituted "Restrictions on former officers, employees, and elected officials of the executive and legislative branches" for "Disqualification of former officers and employees; disqualification of partners of current officers and employees".

Subsec. (a). Pub.L. 101-194 substituted the provisions relating to restrictions on all officers and employees of the executive branch and certain other agencies for former provision which read:

"Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to—

"(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

"(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

"(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed;

shall be fined not more than \$10,000 or imprisoned for not more than two years, or both."

Subsec. (b). Pub.L. 101-194 substituted the provisions relating to one-year restrictions on aiding or advising for former provision which read:

"Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) by per-

sonal presence at any formal or informal appearance before—

"(1) any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

"(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

"(3) as to (i), which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or, as to (ii), in which he participated personally and substantially as an officer or employee;

shall be fined not more than \$10,000 or imprisoned for not more than two years, or both."

Subsec. (c). Pub.L. 101-194 substituted the provisions relating to one-year restrictions on certain senior personnel of the executive branch and independent agencies for former provision which read:

"Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to—

"(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

"(2) in connection with any judicial, rule-making, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

"(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest—

shall be fined not more than \$10,000 or imprisoned for not more than two years, or both."

Subsec. (d). Pub.L. 101-194 substituted the provisions relating to restrictions on very senior personnel of the executive branch and independent agencies for former provision which read:

"(1) Subsection (c) of this section shall apply to a person employed—

"(A) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority [covered in subsec. (c)(2)(A)(i) of this section];

"(B) on active duty as a commissioned officer of a uniformed service assigned to pay grade of O-9 or above as described in section

201 of title 37, United States Code [covered in subsec. (c)(2)(A)(iv) of this section]; or

"(C) in a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay O-7 or O-8, as described in section 201 of title 37, United States Code, may be designated [covered in subsec. (c)(2)(A)(ii), (C), (A)(iv) of this section]. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service [covered in subsec. (c)(2)(D)(ii) of this section]. On an annual basis, the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph [next to last and last sentence reenacted in subsec. (h)(1) of this section].

"(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representation by a former officer or employee, who is—

"(A) an elected official of a State or local government, or

"(B) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization [covered in subsec. (f)(1), (2) of this section]."

Subsec. (e). Pub.L. 101-194 added subsec. (e). Former subsec. (e) redesignated (h).

Subsec. (f). Pub.L. 101-194 added subsec. (f). Former subsec. (f) redesignated (j)(5).

Subsec. (g). Pub.L. 101-194 substituted provision relating to special rules for detainees for former provision relating to disqualification of partners of current officers and employees which read:

"Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other 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 officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than \$5,000, or imprisoned for not more than one year, or both."

Subsec. (h). Pub.L. 101-194 redesignated subsec. (e) as (h); enacted subsec. and par. headings; in revising the provision substituted par. (1), first sentence, and par. (2) for provision which had read:

"For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau; and reenacted as the second and third sentences of par. (1) such sentences previously set out as the fourth and fifth sentences of former subsec. (d)(1)(C) of this section. Former subsec. (h) redesignated subsec. (j)(6).

Subsec. (i). Pub.L. 101-194 added subsec. (i). Former subsec. (i) redesignated subsec. (j)(4).

Subsec. (j). Pub.L. 101-194 enacted heading "Exceptions" and struck out former provision which authorized the department or agency head to prohibit a former officer or employee violating subsec. (a), (b), or (c) of this section from making any appearances before the department or agency for not to exceed a five year period or to take other appropriate disciplinary action, subject to judicial review; and required departments and agencies, in consultation with the Director of the Office of Government Ethics, to establish procedures to carry out such provision.

Subsec. (j)(1). Pub.L. 101-194 enacted par. (1), consolidating the four subsec. (a) and (b)

"(except the United States)", the subsec. (c) "other than the United States" and the subsec. (d)(2)(A) representation provisions respecting performance of official duties as an officer or employee of the United States Government or as an elected official of a State or local government.

Subsec. (j)(2). Pub.L. 101-194 enacted par. (2) which incorporated provisions of former subsec. (d)(2)(B) which provided that the prohibition of subsection (c) not apply to appearances, communications, or representation by a former officer or employee, whose principal occupation or employment is with an agency or instrumentality of a State or local government, an accredited degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.

Subsec. (j)(3). Pub.L. 101-194 added par. (3).

Subsec. (j)(4). Pub.L. 101-194 redesignated subsec. (i) as par. (4); enacted par. heading "Personal matters and special knowledge"; and substituted "restrictions contained in subsections (c), (d), and (e)", "prohibitions of those subsections", and "if no compensation" for "prohibition contained in subsection (c)", "prohibition of that subsection", and "provided that no compensation", respectively.

Subsec. (j)(5). Pub.L. 101-194 redesignated subsec. (f) as par. (5); enacted par. heading "Exception for scientific or technological information"; and substituted "restrictions contained in subsections (a), (c), (d), and (e)" for "prohibitions of subsections (a), (b), and (c)" and ", if such communications are made under procedures" for "under procedures".

Subsec. (j)(6). Pub.L. 101-194 redesignated subsec. (h) as par. (6); enacted par. heading "Exception for testimony"; substituted "former Member of Congress or officer or employee of the executive or legislative branch or an independent agency (including the Vice President and any special Government employee)" for "former officer or employee"; and added provision respecting service as an expert witness pursuant to court order.

Subsec. (k). Pub.L. 101-189, § 814(d)(2), added subsec. (k).

#### 1979 Amendment

Subsec. (b). Pub.L. 96-28, § 1, substituted "by personal presence at any formal or informal appearance" for "concerning any formal or informal appearance" in cl. (ii) of the provisions preceding par. (1), and, in par. (3), inserted "as to (i)," preceding "which was actually pending" and ", as to (ii)," preceding "in which he participated".

Subsec. (d). Pub.L. 96-28, § 2, designated existing provisions as par. (1), designated existing pars. (1) and (3) as subpars. (A) and (B) of par. (1) as so designated, and added subpar. (C) of par. (1) and par. (2), incorporated into the new par. and subpar. portions of former provisions relating to positions for which the basic rate of pay was equal to or greater than the basic rate of pay for GS-17 of the General

Schedule prescribed by section 5332 of Title 5 and who had significant decision-making or supervisory responsibility, as designated by the Director of the Office of Government Ethics, in consultation with the head of the department or agency concerned, and provisions relating to the designation of positions by the Director of the Office of Government Ethics.

#### 1978 Amendment

Pub.L. 95-521 expanded section to include provisions designed to more effectively deal with the problem of the disproportionate influence former officers and employees might have upon the government processes and decision-making in their previous departments or agencies when they return in the role of representatives or advocates of nongovernmental groups or interests before those same departments or agencies.

#### Effective Date of 1995 Amendments

Section 21(c) of Pub.L. 104-65 provided that: "The amendments made by this section [amending subsec. (f)(2) of this section and section 2171 of Title 19, Customs Duties] shall apply with respect to an individual appointed as United States Trade Representative or as a Deputy United States Trade Representative on or after the date of enactment of this Act [Dec. 19, 1995]."

#### Effective Date of 1992 Amendments

Section 609(b) of Pub.L. 102-395 provided that: "This section [amending this section] shall not apply to the person serving as the United States Trade Representative at the date of enactment of this Act [Oct. 6, 1992]."

#### Effective Date of 1991 Amendment

Section 3138(b) of Pub.L. 102-190 provided that: "The amendments made by subsection (a) [amending subsec. (k)(1)(B) of this section] shall take effect on the date of the enactment of this Act [Dec. 5, 1991] and shall apply to persons granted waivers under section 207(k)(1) of title 18, United States Code [subsec. (k) of this section], on or after that date."

Section 705(a) of Pub.L. 102-25 provided in part that subsec. (k) [reinstatement of subsec. (k) added by Pub.L. 101-189, § 814(d)(2) and omitted in revision of section by Pub.L. 101-194, § 101(a)] be effective Jan. 1, 1991.

#### Effective Date of 1990 Amendments

Section 529 [Title I, § 101(b)(8)(B)] of Pub.L. 101-509 provided that: "The amendments made by subparagraph (A) [amending subsecs. (c)(2)(A)(ii) and (e)(6) of this section] take effect on January 1, 1991."

Amendment to this section (and enactment or amendment of any note hereunder) by the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Pub.L. 101-509, to take effect on May 4, 1991, except that the Office of Personnel Management may establish an earlier effective date, but not earlier than Feb. 3, 1991, for any such provisions with respect to which the Office determines an earlier effective date to be appropriate, see Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521, set out as a note under section 5301 of Title 5, Government Organization and Employees.

Amendment by section 2(a) of Pub.L. 101-280 effective May 4, 1990, but to be executed to this section as this section had been amended in 1989 by section 101 of Pub.L. 101-194. Since the 1989 amendment by section 101 of Pub.L. 101-194 is effective Jan. 1, 1991, pursuant to section 102 of Pub.L. 101-194, the amendments under section 2(a) of Pub.L. 101-280 will be effective Jan. 1, 1991.

Amendment by section 5(d) of Pub.L. 101-280 effective May 4, 1990, see section 11 of Pub.L. 101-280, set out as a note under section 101 of Appendix 6 to Title 5, Government Organization and Employees.

#### Effective Date of 1989 Amendment

Section 102 of Pub.L. 101-194, as amended Pub.L. 101-280, § 2(b), May 4, 1990, 104 Stat. 152, provided that:

"(a) In general.—(1) Subject to paragraph (2) and to subsection (b), the amendments made by section 101 [amending this section] take effect on January 1, 1991.

"(2) Subject to subsection (b), the amendments made by section 101 [amending this section] take effect at noon on January 3, 1991, with respect to Members of Congress (within the meaning of section 207 of title 18, United States Code).

"(b) Effect on Employment.—(1) The amendments made by section 101 [amending this section] apply only to persons whose service as a Member of Congress, the Vice President, or an officer or employee to which such amendments apply terminates on or after the effective date of such amendments.

"(2) With respect to service as an officer or employee which terminates before the effective date set forth in subsection (a), section 207 of title 18, United States Code [this section] as in effect at the time of the termination of such service, shall continue to apply, on and after such effective date, with respect to such service."

#### Effective Date of 1978 Amendment

Section 503 of Pub.L. 95-521, which formerly provided that the amendments made by section 501 [amending this section] would become effective on July 1, 1979, was completely revised by Pub.L. 101-194, Title VI, § 601(a), Nov. 30, 1989, 103 Stat. 1760, and is now set out as section 502 of Appendix 7 of title 5, Government Organization and Employees. See Codification note under this section.

Section 502 of Pub.L. 95-521, which provided that the amendments made by section 501 [amending this section] shall not apply to those individuals who left Government service prior to the effective date of such amendments [July 1, 1979] or, in the case of individuals who occupied positions designated pursuant to section 207(d) of title 18, United States Code [subsec. (d) of this section] prior to the effective date of such designation; except that any such individual who returns to Government service on or after the effective date of such amendments or designation shall be thereafter covered by such amendments or designation, was completely revised by Pub.L. 101-194, title VI, § 601(a), Nov. 30, 1989, 103 Stat. 1760, and is now set out as Section 502

or Appendix 7 to Title 5, Government Organization and Employees. See Codification note under this section.

#### Transfer of Functions

Any reference in any provision of law enacted before Jan. 4, 1995, to a function, duty, or authority of the Clerk of the House of Representatives treated as referring, with respect to that function, duty, or authority, to the officer of the House of Representatives exercising that function, duty, or authority, as determined by the Committee on House Oversight of the House of Representatives, see section 2(1) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992.

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Any reference in any provision of law enacted before Jan. 4, 1995, to a

function, duty, or authority of the Director of Non-legislative and Financial Services treated as referring, with respect to that function, duty, or authority, to the officer of the House of Representatives exercising that function, duty, or authority, as determined by the Committee on House Oversight of the House of Representatives, see section 2(4) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

#### Legislative History

For legislative history and purpose of Pub.L. 95-521, see 1978 U.S. Code Cong. and Adm. News, p. 4216. See, also, Pub.L. 96-28, 1979 U.S. Code Cong. and Adm. News, p. 328; Pub.L. 101-189, 1989 U.S. Code Cong. and Adm. News, p. 838; Pub.L. 101-194, 1990 U.S. Code Cong. and Adm. News, p. 1225; Pub.L. 101-280, 1990 U.S. Code Cong. and Adm. News, p. 169; Pub.L. 102-25, 1991 U.S. Code Cong. and Adm. News, p. 36; Pub.L. 102-190, 1991 U.S. Code Cong. and Adm. News, p. 918; Pub.L. 103-322, 1994 U.S. Code Cong. and Adm. News, p. 1801; Pub.L. 104-65, 1995 U.S. Code Cong. and Adm. News, p. 644; Pub.L. 104-179, 1995 U.S. Code Cong. and Adm. News, p. 1356.

#### CROSS REFERENCES

American Institute in Taiwan, employees in representing Institute to be exempt from this section, see 22 USCA § 3310.

Management and disposal of Government property, see 40 USCA § 471 et seq.

United States Trade Representatives limitation on appointment, see 19 USCA § 2171.

#### FEDERAL SENTENCING GUIDELINES

See Federal Sentencing Guidelines § 2C1.3, 18 USCA.

#### WEST'S FEDERAL PRACTICE MANUAL

Contract solicitation, see § 1529.

#### ADMINISTRATIVE LAW

Federal personnel practices, revolving door problem, see Koch § 2.49.

Professional responsibility in administrative practice, see Koch § 1.13.

#### CODE OF FEDERAL REGULATIONS

Agency for International Development, International Development Cooperation Agency, see 22 CFR 223.1 et seq.

Bureau of Alcohol, Tobacco and Firearms, practice by former government employees, see 31 CFR 8.37.

Civil Aeronautics Board, permanent disqualification of former Board members and employees in matters in which they personally participated, see 14 CFR 300.13 et seq.

Commodity Futures Trading Commission, regulations concerning conduct of members and employees and former members and employees, see 17 CFR 140.735-1 et seq.

Department of Justice, disqualification of former employee and partners of current employees, see 28 CFR 45.735-7, 28 CFR 45.735-7a.

Department of State, postemployment conflict of interest of employees, see 22 CFR 18.1 et seq.

Interstate Commerce Commission, canons of conduct of employees, see 49 CFR 1000 et seq.

National Defense, Selective Service System, employees, postemployment conflict of interest, see 32 CFR 1690.1 et seq.

Nuclear Regulatory Commission, disqualification of former officers and employees in matters connected with former duties or responsibilities, see 10 CFR 0.735-28.

Office of the Secretary, Department of Housing and Urban Development, employees, standards of conduct, see 24 CFR 0.735-101 et seq.

Office of Secretary of Agriculture, regular employee and special government employee, conflict of interest, see 7 CFR 0.735-14.

Office of the Secretary of the Interior, employee responsibilities and conduct, see 43 CFR 20.735-1 et seq.

Office of the Secretary of Labor, conduct and ethics of employees, see 29 CFR 0.735-1 et seq.

Office of the Secretary of Labor, ethics and conduct of Department of Labor employees, see 29 CFR 0.735-1 et seq.

Office of the Secretary of the Treasury, administrative enforcement of postemployment conflict of interest, see 31 CFR 15.737-7 et seq.

Overseas Private Investment Corporation, postemployment restrictions, administrative enforcement of, see 22 CFR 710.1 et seq.

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# SENATE MANUAL

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STANDING RULES, ORDERS, LAWS, AND  
RESOLUTIONS AFFECTING THE BUSINESS

OF THE

## UNITED STATES SENATE

DECLARATION OF INDEPENDENCE

ARTICLES OF CONFEDERATION

ORDINANCE OF 1787

AND THE

CONSTITUTION OF THE UNITED STATES

*Prepared by*

LANA R. SLACK

*Under the Direction of*

JAMES O. KING

Staff Director

COMMITTEE ON RULES AND ADMINISTRATION

UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

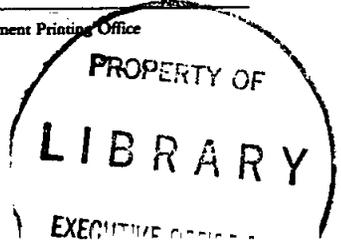
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WASHINGTON : 1992

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Washington, D.C. 20402 (Paper Cover)

Stock Number 052-071-00987-6



- 37.7 7. An employee on the staff of a committee who is compensated at a rate in excess of \$25,000 per annum and employed for more than ninety days in a calendar year shall divest himself of any substantial holdings which may be directly affected by the actions of the committee for which he works, unless the Select Committee, after consultation with the employee's supervisor, grants permission in writing to retain such holdings or the employee makes other arrangements acceptable to the Select Committee and the employee's supervisor to avoid participation in committee actions where there is a conflict of interest, or the appearance thereof.
- 37.8 8. If a Member, upon leaving office, becomes a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or any successor statute, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, he shall not lobby Members, officers, or employees of the Senate for a period of one year after leaving office.
- 37.9 9. If an employee on the staff of a Member, upon leaving that position, becomes a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or any successor statute, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, such employee may not lobby the Member for whom he worked or that Member's staff for a period of one year after leaving that position. If an employee on the staff of a committee, upon leaving his position, becomes such a registered lobbyist or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, such employee may not lobby the members of the committee for which he worked, or the staff of that committee, for a period of one year after leaving his position.
- 37.10 10. (a) <sup>29</sup> Except as provided by subparagraph (b), any employee of the Senate who is required to file a report pursuant to rule XXXIV shall refrain from participating personally and substantially as an employee of the Senate in any contact with any agency of the executive or judicial branch of Government with respect to non-legislative matters affecting any non-governmental person in which the employee has a significant financial interest.

<sup>29</sup> Pursuant to S. Res. 236, 101-2, Jan. 30, 1990, paragraphs 10. and 11. were renumbered as 11. and 12. respectively and paragraph 10. was added.

(b) Subparagraph (a) shall not apply if an employee first advises his supervising authority of his significant financial interest and obtains from his employing authority a written waiver stating that the participation of the employee is necessary. A copy of each such waiver shall be filed with the Select Committee.

11. For purposes of this rule—

37.11

(a) "employee of the Senate" includes an employee or individual described in paragraphs 2, 3, and 4(c) of rule XLI;

(b) an individual who is an employee on the staff of a subcommittee of a committee shall be treated as an employee on the staff of such committee; and

(c) the term "lobbying" means any oral or written communication to influence the content or disposition of any issue before Congress, including any pending or future bill, resolution, treaty, nomination, hearing, report, or investigation; but does not include—

(1) a communication (i) made in the form of testimony given before a committee or office of the Congress, or (ii) submitted for inclusion in the public record, public docket, or public file of a hearing; or

(2) a communication by an individual, acting solely on his own behalf, for redress of personal grievances, or to express his personal opinion.

12. For purposes of this rule—

37.12

(a) a Senator or the Vice President is the supervisor of his administrative, clerical, or other assistants;

(b) a Senator who is the chairman of a committee is the supervisor of the professional, clerical, or other assistants to the committee except that minority staff members shall be under the supervision of the ranking minority Senator on the committee;

(c) a Senator who is a chairman of a subcommittee which has its own staff and financial authorization is the supervisor of the professional, clerical, or other assistants to the subcommittee except that minority staff members shall be under the supervision of the ranking minority Senator on the subcommittee;

(d) the President pro tempore is the supervisor of the Secretary of the Senate, Sergeant at Arms and Doorkeeper, the Chaplain, the Legislative Counsel,

**QUESTIONS AND ANSWERS  
CAMPAIGN FINANCE REFORM EDUCATION AND AWARENESS PROJECT**

**1. How were you and Senator Kassebaum selected for this project?**

Answer: Senator Kassebaum and I have, for some time, been strong advocates of campaign finance reform. We believe that reform is essential to preserve our democratic system and we believe that the public must be made aware of the issues and the stakes involved. The President, knowing of our commitment to this cause, asked that we support his efforts and we have enthusiastically undertaken this mission.

**2. What is the purpose of the project?**

Answer: Our purpose is to make the American public aware of the problems in the current campaign finance system and the need for new solutions. We want the public to understand why reform is critical now and what proposed changes we and the President believe to be important. We intend to carry this message to the American people in any way we can.

**3. What is the structure of this project?**

Answer: This is the beginning of our effort -- our kick off event. We do not have a particular structure in mind. We hope and expect to develop support from others to help us with the project -- and we will do this in the months ahead.

**4. Who is paying for this?**

Answer: As I said, this project is just beginning. Undoubtedly, we will work with other private individuals or groups who also support our mission. [The White House is not funding this project.]

**5. Who will staff the project?**

Answer: We have not hired a staff and, as I said before, do not have a particular structure in mind.

**6. Will you be lobbying members of Congress?**

Answer: Our mission is public awareness and education.

**7. Will this project make any difference?**

Answer: We think we can make a difference by focusing the American people on the need for campaign finance reform and educating them about reform proposals. This is what we can do to demonstrate our commitment to this important public policy issue. We believe that our commitment will help build support for campaign finance reform.

**PRESS QUESTIONS AND ANSWERS  
CAMPAIGN FINANCE REFORM EDUCATION AND AWARENESS PROJECT**

**1. How were Vice President Mondale and Senator Kassebaum selected for this project?**

Answer: Vice President Mondale and Senator Kassebaum have, for some time, been strong advocates of campaign finance reform. They share the President's belief that reform is essential to preserve our democratic system and that the public must be made aware of the issues and the stakes involved. The President, knowing of their commitment to this cause, asked that they support his efforts and they agreed.

**2. What is the purpose of the project?**

Answer: The purpose of the project is to make the American public aware of the problems in the current campaign finance system and the need for new solutions. It is important for the public to understand why reform is critical and what changes to the system are being proposed. Vice President Mondale and Senator Kassebaum have undertaken to carry this message to the American people in any way they can.

**3. Who's idea was it?**

Answer: This idea was generated by President Clinton as a means of moving forward with his commitment to campaign finance reform.

**4. What is the structure of this project?**

Answer: The announcement today marks the beginning of this effort. The exact structure of the project will evolve as it gets underway. The project will, undoubtedly, attract additional support from others.

**5. Who is paying for this?**

Answer: This project is just beginning. Vice President Mondale and Senator Kassebaum hope and expect that other private individuals and groups who also support this mission will participate in the effort.

**6. Will the White House be involved in fundraising for the project?**

Answer: The White House will not be involved in any fundraising efforts.

**7. Is the White House establishing any fundraising groundrules?**

Answer: The White House is not raising funds for this project. We assume that Vice President Mondale and Senator Kassebaum will reach out to others who share their commitment to campaign finance reform.

**8. Who will staff the project?**

Answer: The project is just beginning and no staff has been hired at this time. Vice President Mondale and Senator Kassebaum will make staffing decisions as the project gets underway.

**9. Will White House staff be involved?**

Answer: The project will be self-directed and White House officials will not staff the project.

**10. Will the White House guide the effort?**

Answer: No. The project will be self-directed, but the White House may provide information relevant to the project, as appropriate -- and as it does with other groups interested in campaign finance reform.

**11. Will you be lobbying members of Congress?**

Answer: The mission of this project is public awareness and education. [The project as it is now conceived will not engage in grassroots lobbying efforts.]

**12. Isn't this a violation of the anti-lobbying act?**

Answer: No. This project is about education.

**13. Will this project make any difference?**

Answer: The President believes that this project can make a difference by focusing the American people on the need for campaign finance reform and educating them about reform proposals.

**14. Is this effort designed to support McCain-Feingold or any other campaign finance effort?**

Answer: As stated by Vice-President Mondale in his remarks, this project will support McCain Feingold by articulating the need for this legislation and explaining what the legislation will do.

**QUESTIONS AND ANSWERS**  
**CAMPAIGN FINANCE REFORM EDUCATION AND AWARENESS PROJECT**

**1. How were you and Vice President Mondale selected for this project?**

Answer: Vice President Mondale and I have, for some time, been strong advocates of campaign finance reform. We believe that reform is essential to preserve our democratic system and we believe that the public must be made aware of the issues and the stakes involved. The President, knowing of our commitment to this cause, asked that we support his efforts and we have enthusiastically undertaken this mission.

**2. What is the purpose of the project?**

Answer: Our purpose is to make the American public aware of the problems in the current campaign finance system and the need for new solutions. We want the public to understand why reform is critical now and what proposed changes we and the President believe to be important. We intend to carry this message to the American people in any way we can.

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U. S. Department of Justice

Office of Legal Counsel

Office of the  
Assistant Attorney General

WASHINGTON, D. C. 20530

April 14, 1993

**MEMORANDUM FOR THE ATTORNEY GENERAL  
AND THE DEPUTY ATTORNEY GENERAL**

**FROM: WALTER DELLINGER**   
**ASSISTANT ATTORNEY GENERAL**  
**OFFICE OF LEGAL COUNSEL**

**SUBJECT: ANTI-LOBBYING ACT GUIDELINES**

The attached OLC guidelines are based on a 1989 opinion of the Office, issued by then Assistant Attorney General William P. Barr, and on long-standing Criminal Division practice. The guidelines explain that the Anti-Lobbying Act, 18 U.S.C. § 1913, does not prohibit officials from supporting an Administration's legislative program through direct communications with Congress; through communications with the public in speeches, writings, and appearances; or through most forms of private communications to members of the public. The Act, however, does bar high-expenditure campaigns in which members of the public are expressly urged to write their Senators or Representatives.



Memorandum DC 20536

April 14, 1995

**GUIDELINES ON 18 U.S.C. § 1913**

The Anti-Lobbying Act, 18 U.S.C. § 1913, prohibits officers and employees of the executive branch from engaging in certain forms of lobbying. If applied according to its literal terms, section 1913 would have extraordinary breadth, and it has long been recognized that the statute, if so applied, might be unconstitutional. The Office of Legal Counsel has interpreted the statute in light of its underlying purpose "to restrict the use of appropriated funds for large-scale, high-expenditure campaigns specifically urging private recipients to contact Members of Congress about pending legislative matters on behalf of an Administration position." Memorandum for Dick Thornburgh, Attorney General, from William P. Barr, Assistant Attorney General, Office of Legal Counsel, "Constraints Imposed by 18 U.S.C. § 1913 on Lobbying Efforts." 13 Op. O.L.C. 361, 365 (1989) (prelim. print) (citation and footnote omitted) ("1989 Barr Opinion"). Although there has never been a criminal prosecution under the Act since its adoption in 1919, the Criminal Division and its Public Integrity Section have frequently construed the Act in the context of particular referrals. The principles that the Criminal Division has developed over time provide guidance to the meaning of the statute that is necessary in order for the Act to provide reasonably ascertainable guidance to those to whom it applies.

Section A below describes officials whose lobbying activities are not inhibited by the Anti-Lobbying Act. Section B describes the kind of lobbying permitted under the Act. Section C describes the kind of lobbying prohibited by the Act. Section D describes a further restriction that agencies may wish to observe, although they are not required to do so under the Act. Section E describes additional prohibitions imposed by typical "publicity or propaganda" riders, as interpreted by the Comptroller General, although identifying the precise restrictions, if any, applicable to any particular agency requires an examination of that agency's appropriations act.

A. The Department of Justice consistently has construed the Anti-Lobbying Act as not limiting the lobbying activities personally undertaken by the President, his aides and assistants within the Executive Office of the President, the Vice President, cabinet members within their areas of responsibility, and other Senate-confirmed officials appointed by the President within their areas of responsibility.

**B. Under the Anti-Lobbying Act, government employees MAY:**

- communicate directly with Members of Congress and their staffs in support of Administration or department positions. The Act does not apply to such direct communications.
- communicate with the public through public speeches, appearances and published writings to support Administration positions -- including using such public fora to call on the public to contact Members of Congress in support of or opposition to legislation.
- communicate privately with members of the public to inform them of Administration positions and to promote those positions -- but only to the extent that such communications do not contravene the limitations listed in Section C below.
- lobby Congress or the public (without any restriction imposed by the Anti-Lobbying Act) to support Administration positions on nominations, treaties, or any non-legislative, non-appropriations issue. The Act applies only to lobbying with respect to legislation or appropriations.

**C. Under the Anti-Lobbying Act, government employees MAY NOT:**

- engage in substantial "grass roots" lobbying campaigns of telegrams, letters, and other private forms of communication expressly asking recipients to contact Members of Congress, in support of or opposition to legislation. Grass roots lobbying does not include communication with the public through public speeches, appearances, or writings. Although the 1989 Barr Opinion does not define the meaning of "substantial" grass roots campaigns, the opinion notes that the 1919 legislative history cites an expenditure of \$7500 -- roughly equivalent to \$50,000 in 1989 -- for a campaign of letter-writing urging recipients to contact Congress.

**D. Although not required by the Anti-Lobbying Act, agencies may wish to observe a more general restriction with respect to officials other than those listed in Section A:**

- against expressly urging citizens to contact Congress in support of or opposition to legislation. As Sections B and C taken together indicate, the Anti-Lobbying Act does not forbid

government employees from urging citizens to contact Members of Congress on behalf of an Administration position, except in the context of a grass roots campaign. Nevertheless, the Comptroller General, following his understanding of the Department of Justice's historical interpretation of the Act before the 1989 Barr Opinion, has construed the restriction as being triggered by explicit requests for citizens to contact their representatives in support of or opposition to legislation. Given the Comptroller General's interpretation, and given the difficulty of predicting what may be perceived as a grass roots campaign in a particular context, agencies may wish to err on the side of caution, by refraining from including in their communications with private citizens any requests to contact Members of Congress in support of or opposition to legislation.

E. The Office of Legal Counsel's published opinions do not set out a detailed, independent analysis of "publicity or propaganda" riders contained in the appropriations acts of some agencies. The Comptroller General has suggested that, under such riders, government employees also MAY NOT (1) provide administrative support for the lobbying activities of private organizations, (2) prepare editorials or other communications that will be disseminated without an accurate disclosure of the government's role in their origin, and (3) appeal to members of the public to contact their elected representatives in support of or opposition to proposals before Congress.

X 100279/62146

# A DECLARATION FOR INDEPENDENCE

**W**e, the undersigned, in order to reclaim our democracy, demand that Congress declare independence from the influence of special-interest money by passing effective bipartisan campaign finance reform by the Fourth of July.

The bipartisan McCain-Feingold bill, currently pending in Congress, provides the framework for effective campaign finance reform.

1	SIGNATURE	ADDRESS
	PRINT YOUR NAME	CITY STATE ZIP

2	SIGNATURE	ADDRESS
	PRINT YOUR NAME	CITY STATE ZIP

3	SIGNATURE	ADDRESS
	PRINT YOUR NAME	CITY STATE ZIP

4	SIGNATURE	ADDRESS
	PRINT YOUR NAME	CITY STATE ZIP

5	SIGNATURE	ADDRESS
	PRINT YOUR NAME	CITY STATE ZIP

Signatures Collected By:

Name (please print)

Address

City State Zip

Phone

Please return to:  
Project Independence  
c/o Common Cause,  
1250 Connecticut Avenue, NW  
Washington, D.C. 20036  
Phone: 800-926-1064  
Fax: 202-659-3716



Draft 1 (March 5: 11:55 pm)

Draft 1 (March 5: 11:55 pm)

**FACT SHEET**  
**President Clinton's Radio Address On Campaign Finance Reform**  
March 8, 1997

In today's radio address, the President announced that he is directing his Administration (the Justice Department) to petition the Federal Election Commission (FEC) to issue new, tighter rules regarding the solicitation and acceptance of "soft money" by candidates and parties. The petition proposes to end the current soft money system by requiring that candidates for federal office and national parties only be permitted to raise and spend "hard money" -- funds subject to the restrictions, contribution limits, and reporting requirements of the 1974 Federal Election Campaign Act (FECA).

**A Commitment To Ending Business As Usual: Banning Soft Money**

Time and again, President Clinton has exhibited his commitment to curbing the influence of special interests and money in our political system. Since 1992, the President has consistently called for a ban on soft money in federal elections:

- **1992:** In *Putting People First*, the President proposed to "end the unlimited soft money contributions that are funneled through national, state and local parties to presidential candidates."
- **1993:** The President submitted to Congress comprehensive campaign finance reform legislation that includes a ban on soft money. A version of the bill passes both the Senate and the House of Representatives but conferees fail to reach agreement on a final version of the legislation. (Michael, is this correct?)
- **1996:** In the 1996 State of the Union, the President announces his support of the bipartisan McCain-Feingold reform legislation which includes a ban on soft money in federal elections. He repeats his call for passage of this bipartisan bill in his 1997 State of the Union.
- **1997:** The President challenges the Republican Party to join with the Democratic Party to stop accepting soft money contributions prior to passage of bipartisan campaign finance reform legislation.

**Background**

Federal law requires that expenditures incurred for the purpose of influencing a federal election must be paid for with funds subject to the limits of federal law; that is with so-called "hard money." In the case of candidates, that means \$1,000 contributions from individuals and \$5,000 contributions from PACs. For many years the FEC struggled with defining exactly what that meant and how political party expenditures that have an apparent mixed purpose -- in that they support both federal and state candidates -- should be treated.

After some delay, and in the wake of protracted litigation that eventually resulted in a federal court order, the FEC issued regulations in 1990 establishing a system for allocating party

committee expenditures between federal and non-federal purposes. Those regulations came under some criticism when they were first issued by those who claimed an allocation system would be abused by a determined effort to use soft money to influence federal elections. Others believed the rules accurately reflected the dual purpose of many party committee expenditures for generic party activities in support of both federal and non-federal candidates.

It is now become abundantly clear that the FEC regulations governing the use of soft money are not working. Both major party committees and their state affiliates have come to rely to an alarming extent on the use of some money in their national elections. Large contributions well in excess of \$100,000 from individuals, corporations, and labor unions, have become common today as both political parties struggle to gain a competitive advantage. It is well past time for the FEC to reassess this matter and issue new regulations governing the use of soft money to influence federal elections.

Next week the Justice Department, at the President's directions, will be sending a formal petition to the FEC asking it to consider new regulations that will ban the use of soft money to influence federal elections. The allocation system in use today must be thrown out and replaced by new rules that recognize the reality of modern political campaigns. As the federal court recognized when it ordered the FEC to issue rules back in the late 1980s, the FEC has the authority to act and end the current soft money system by ending allocations between hard and soft money for joint activities altogether.

#### **Contents of the Petition**

The President's petition asks the FEC to take the following three actions regarding the solicitation and disbursement of soft money:

- Prohibit national political parties (and their congressional campaign committees or agents) from soliciting or receiving any funds not subject to the limitations or prohibitions of FECA.
- Prohibit any federal officeholder or candidate (and their agents) from soliciting or receiving any funds not subject to the limitations or prohibitions of FECA.
- Provide that any amount of funds expended by a state party during a federal election year for any activity that might affect a federal election (including a get-out-the-vote drive, generic advertising or any communication that mentions a federal candidate) must be paid for from funds subject to FECA.

1. Self formed - President

2. Self finance

3. Public education

↳ Pres Position

4. No actin by Congress

5. Not tied to Common Cause —