



**Testimony of Scott Amey, General Counsel  
Project On Government Oversight  
before the House Committee on Oversight and Reform  
on  
“H.R. 1 and Executive Branch Conflicts of Interest”**

I want to thank Chairman Cummings, Ranking Member Jordan, and the Committee for asking the Project On Government Oversight (POGO) to testify about executive branch ethics. I am Scott Amey, POGO’s General Counsel. POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles. POGO strives above all else to be fair and accurate in our investigations and reporting. We are diligent in our research. We give credit where credit is due and hold those to account who need to be held accountable—without regard to party.

While some Members of Congress and some in the public might think H.R. 1, the For the People Act of 2019,<sup>1</sup> is solely aimed at President Trump and his Administration—and there are some bills drafted in the 115<sup>th</sup> and 116<sup>th</sup> Congresses with that purpose in mind—H.R. 1 is not such a bill. In fact, it addresses some problems that many good government groups have assembled for over a decade to correct, problems created by the revolving door and the unlevel playing field that have long existed. Organizations have worked for many years to strengthen ethics and conflict-of-interest standards, including badgering the ethics czar in the Obama Administration.

Those efforts began long before any candidate won the parties’ nominations in the 2016 campaign. We have worked tirelessly to revise the appointee ethics pledge, and we handed over our suggested reforms to both the Trump and Clinton campaigns and transition teams. I along with two colleagues had the privilege of meeting with an official from President Trump’s transition team in October 2016 to discuss our proposals and President Trump’s “drain the swamp” campaign promise. We also supported then-candidate Trump’s five-point ethics reform plan to expand lobbying bans on executive and legislative branch officials, expand the definition of lobbyists to include consultants and advisors, permanently ban senior executive branch officials from lobbying for foreign governments, and prevent “registered foreign lobbyists from raising money in American elections.”<sup>2</sup>

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<sup>1</sup> U.S. House of Representatives, “For the People Act of 2019” (H.R. 1), introduced January 3, 2019, by Representative John P. Sarbanes. <https://www.congress.gov/116/bills/hr1/BILLS-116hr1ih.pdf>

<sup>2</sup> Ryan Lovelace, “Trump proposes ethics plan to ‘drain the swamp in Washington,’” *Washington Examiner*, October 17, 2016. <https://www.washingtonexaminer.com/trump-proposes-ethics-plan-to-drain-the-swamp-in-washington> (Downloaded February 4, 2019)

This Committee did not sit idle. On January 31, 2017, Chairman Jason Chaffetz and Ranking Member Elijah Cummings convened a gathering of Members and government watchdogs to discuss ethics concerns plaguing the federal government. Many groups in attendance followed up with Committee staff. POGO followed up with meetings and sent a letter to Chairman Chaffetz and Ranking Member Cummings with our thoughts on reauthorizing and improving the Office of Government Ethics (OGE).<sup>3</sup> H.R. 1 is an opportunity to make good on the previous work this Committee has performed and to reform the ethics system to meet old and emerging challenges.

There has not been a shortage of ethics concerns over the last decade. We have all read government reports, criminal indictments, and media accounts involving bribery,<sup>4</sup> illegal foreign lobbying,<sup>5</sup> illegal gifts,<sup>6</sup> personal financial conflicts of interest,<sup>7</sup> misuse of one's government position or government property,<sup>8</sup> the constantly spinning revolving door,<sup>9</sup> lack of impartiality,<sup>10</sup> and abuse of authority.<sup>11</sup> Everyone is now aware of something called an emolument,<sup>12</sup> although its precise definition is subject to intense debate and litigation.<sup>13</sup>

H.R. 1 is a comprehensive reform bill aimed at closing gaps in ethics and conflict-of-interest standards, and at reforming election and campaign finance processes. My testimony today will provide insights into the bill, focusing on the ethics reforms for the executive branch contained in Title VIII.<sup>14</sup> In addition, I will provide supplementary thoughts on common-sense ethics

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<sup>3</sup> Letter from Danielle Brian, Executive Director, Project On Government Oversight, to Chairman Jason Chaffetz and Ranking Member Elijah Cummings, House Oversight and Government Reform Committee about the Office of Government Ethics, February 14, 2017. [http://www.pogoarchives.org/m/ga/POGO\\_Letter-to-HOGR-on-Ethics-Suggestions-2017-02-14.pdf](http://www.pogoarchives.org/m/ga/POGO_Letter-to-HOGR-on-Ethics-Suggestions-2017-02-14.pdf)

<sup>4</sup> Tom Vanden Brook, "Fat Leonard: Sprawling Navy bribery-and-fraud scandal nets another senior sailor," *USA Today*, November 26, 2018. <https://www.usatoday.com/story/news/politics/2018/11/26/fat-leonard-navy-bribery-and-fraud-scandal-nets-another-senior-sailor/2120233002/> (Downloaded February 4, 2019)

<sup>5</sup> Department of Justice, "FARA-Related Cases (2007-2018)." <https://www.justice.gov/nsd-fara/recent-cases>

<sup>6</sup> Department of Veterans Affairs, Office of Inspector General, *Administrative Investigation: VA Secretary and Delegation Travel to Europe* (Report No. 17-05909-106), February 14, 2018, pp. iv-vi. <https://www.va.gov/oig/pubs/VAOIG-17-05909-106.pdf>

<sup>7</sup> The Office of Government Ethics lists over 100 cases involving a personal financial conflicts of interest since 1990. Office of Government Ethics, "Conflict of Interest Prosecution Surveys." <https://oge.gov/Web/OGE.nsf/Resources/Conflict+of+Interest+Prosecution+Surveys+Index+by+Statute>

<sup>8</sup> Christopher Flavelle, "Rank-and-File FEMA Workers Rally Around Administrator Under Ethics Probe," *Bloomberg*, September 18, 2018. <https://www.bloomberg.com/news/articles/2018-09-18/fema-chief-faces-ethics-probe-amid-agency-s-hurricane-response> (Downloaded February 4, 2019)

<sup>9</sup> Mandy Smithberger, *Brass Parachutes: Defense Contractors' Capture of Pentagon Officials through the Revolving Door*, Project On Government Oversight, November 5, 2018. [https://s3.amazonaws.com/docs.pogo.org/report/2018/POGO\\_Brass\\_Parachutes\\_DoD\\_Revolving\\_Door\\_Report\\_2018-11-05.pdf](https://s3.amazonaws.com/docs.pogo.org/report/2018/POGO_Brass_Parachutes_DoD_Revolving_Door_Report_2018-11-05.pdf) (Hereinafter *Brass Parachutes*)

<sup>10</sup> Office of the Inspector General, Department of Justice, *A Report of Investigation of Certain Allegations Relating to Former FBI Deputy Director Andrew McCabe*, February 2018. <https://oig.justice.gov/reports/2018/o20180413.pdf>

<sup>11</sup> Virginia Canter, "Why did it take so long for Trump to drain the swamp of Pruitt?" *The Hill*, July 16, 2018. <https://thehill.com/opinion/white-house/397254-why-did-it-take-so-long-for-trump-to-drain-the-swamp-of-pruitt> (Downloaded February 4, 2019)

<sup>12</sup> U.S. Constitution, Article I, § 9, Cl. 8 and Article II, § 1, Cl. 7.

<sup>13</sup> Jacob Pinter, "Emoluments Lawsuit Against Trump Can Go Forward, Judge Says," *NPR*, November 3, 2018. <https://www.npr.org/2018/11/03/663933067/emoluments-lawsuit-against-trump-can-go-forward-judge-says> (Downloaded February 4, 2019)

<sup>14</sup> Testimony of Sarah Turberville, Director of The Constitution Project at the Project On

solutions to long-standing problems that are missing from the bill—reforms to the revolving door that many good government groups have promoted for years.

As the government has increased its reliance on the private sector for goods and services, the revolving door has become an accepted occurrence, with people coming and going between public service and private industry. In a recent study of the revolving door spinning to the defense industry, POGO found:

1. In 2018, there were 645 instances of the top 20 defense contractors hiring former senior government officials, military officers, Members of Congress, and senior legislative staff as lobbyists, board members, or senior executives.<sup>15</sup> Since some lobbyists work for multiple defense contractors, there are more instances than officials.
2. Of those instances, nearly 90 percent became registered lobbyists, where the operational skill is influence-peddling.
3. At least 380 high-ranking Department of Defense officials and military officers shifted into the private sector to become lobbyists, board members, executives, or consultants for defense contractors.
4. Of those Department of Defense officials, a quarter of them (95) went to work at the Department of Defense's top 5 contractors (Lockheed Martin, Boeing, General Dynamics, Raytheon, and Northrop Grumman).<sup>16</sup>

The most significant takeaway from POGO's study is that the vast majority of the high-ranking military officials who revolve through the door to the defense industry they once oversaw or dealt with are not being lured to the private sector because of their knowledge and experience with programs. Instead, they are jumping ship to go lobby their former colleagues and to provide their new employer or clients with access to information and government officials.

The revolving door is not unique to the Pentagon. In fact, the integrity of decisions, missions, programs, and spending throughout the government is at risk because they are being steered by individuals or companies that:

1. have a personal or private interest in the outcomes;
2. are lenient toward or favor past or future employers or industries; and
3. have an unfair advantage over competitors, which could be used to the detriment of the public.

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Government Oversight, before the House Judiciary Committee, "Closing the Gap in Judicial Ethics," January 29, 2019. <https://www.pogo.org/testimony/2019/01/closing-the-gap-in-judicial-ethics/>

<sup>15</sup> The top-20 contractors list was as of FY 2016, the most current list available at the time POGO began its investigation.

<sup>16</sup> *Brass Parachutes; The Politics of Contracting*, Project On Government Oversight, June 29, 2004. <https://www.pogo.org/report/2004/06/politics-of-contracting/> (Hereinafter *The Politics of Contracting*)

The revolving door and the tainted influence-peddling that it creates have resulted in intensified “public distrust in government” and in questions about who the government serves,<sup>17</sup> “a decline in civic participation,” and low morale within government circles.<sup>18</sup>

For years, POGO has advocated for stronger policies to ensure that high-level government officials going through the revolving door do so in a way that protects government policies from undue industry influence. H.R. 1 would help slow the revolving door, including the cycling of procurement officials leaving government service to work for companies they might have been doing business with. For instance, the bill would prohibit “golden parachute” incentive payments from non-government sources to former employees entering government service. It would also codify ethics restrictions created by executive orders since 1993 governing appointees.<sup>19</sup> These reforms are common-sense steps that will help ensure that those serving in the government are doing so with the public, not their own wallets, in mind.

We have witnessed through the years that ethics enforcement is weak and inconsistent across agencies.<sup>20</sup> Acting in part on long-standing recommendations from civil society, H.R. 1 would also strengthen the OGE, giving the OGE director final approval over any executive branch recusals, exemptions, or waivers from ethics laws or regulations, and requiring those recusals, exemptions, or waivers to be publicly posted on OGE’s website. This centralization of authority ensures consistent application of ethics rules and the exceptions to them, and greatly increases transparency. The bill would also give OGE improved investigatory powers over possible violations of ethics laws, and the authority to issue administrative remedies when an ethics violation has occurred, increasing the likelihood that those who violate ethics laws will be held accountable. Finally, the bill would limit any president’s ability to remove the OGE director to instances where there is cause for firing, allowing the director to truly serve independently and ensuring continuity after elections, which should provide more independence to this vital government position.

Not only does H.R. 1 address long-standing executive branch ethics concerns, it also addresses deficiencies in the Foreign Agents Registration Act (FARA). FARA requires all American citizens working to influence U.S. policy on behalf of foreign governments or political parties to register with the Department of Justice and report information about those lobbying efforts. However, a POGO investigation in 2014 found routine failures to follow the law and systemic non-prosecution by the Justice Department.<sup>21</sup> H.R. 1 would give the Department the authority to

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<sup>17</sup> “Public Trust in Government: 1958 – 2017,” Pew Research Center, December 14, 2017. <http://www.people-press.org/2017/12/14/public-trust-in-government-1958-2017/> (Downloaded February 4, 2019)

<sup>18</sup> *A Matter of Trust: How The Revolving Door Undermines Public Confidence In Government—And What To Do About It*, Revolving Door Working Group, October 2005, p. 8. <http://pogoarchives.org/m/gc/a-matter-of-trust-20051001.pdf>

<sup>19</sup> See Appendix A, “Ethics Rules Enacted by Presidents, 1993 – 2017.”

<sup>20</sup> Public Comments of the Campaign Legal Center, Common Cause, Democracy 21, Public Citizen, and U.S. PIRG to the Office of Government Ethics regarding “RIN 3209-AA04, Proposed Amendments Limiting Gifts to Employees of the Executive Branch,” November 14, 2011. <https://www.citizen.org/sites/default/files/oge-gift-comments.pdf> (Downloaded February 4, 2019)

<sup>21</sup> Ben Freeman and Lydia Dennett, “Loopholes, Filing Failures, and Lax Enforcement: How the Foreign Agents Registration Act Falls Short,” Project On Government Oversight, December 16, 2014. <https://www.pogo.org/report/2014/12/loopholes-filing-failures-and-lax-enforcement-how-foreign-agents-registration-act-falls-short/>

levy civil fines to punish offenders who do not properly comply with the law, providing an effective enforcement mechanism between civil injunctions and criminal charges that would help end the Department's reliance on voluntary compliance.

The government isn't alone in the ethics game. Companies in the private sector require conflict-of-interest reviews and non-disclosure and non-compete agreements to protect their knowledge base, intellectual property, and bottom lines, all in an effort to best serve their stakeholders.<sup>22</sup> The federal government's ethics system similarly needs to protect its stakeholders, the American public. H.R. 1 was created to do that by mending cracks in the current ethics system, and sometimes adjust for conflicts of interest that were not envisioned. Provisions in Title VIII achieve that mission, although some of those provisions should be amended to better serve their purpose.

1. **Section 8002** amends 18 U.S.C. § 209, the supplementation of salary ban. The provision would redefine salary to include bonuses, infamously known as “golden parachutes,” that companies pay employees contingent on their accepting a government job. Payouts for entering public service have concerned Congress for years. In 2013, Senate Finance Committee members questioned Jack Lew, President Obama's pick to run the Treasury Department, about his severance package from Citigroup for returning to public service.<sup>23</sup> POGO supports the amended language, which would prohibit former executives from receiving a financial payout for going into government service. While serving the public should be applauded, a financial windfall for doing so should not be considered equal to a “bona fide” pension, bonus, or other established benefit plan under the law.<sup>24</sup> In addition, “severance payments” should be included on the list of bonuses that are not considered “bona fide.”<sup>25</sup>

2. **Section 8003** amends certain definitions in Section 601 of the Ethics in Government Act of 1978.<sup>26</sup> Congress should amend Section 602, which prohibits a covered employee from using his or her official position “to participate in a particular matter in which the covered employee knows a former employer or former client of the covered employee has a financial interest,” to apply when a covered employee “knows or reasonably should know...,” a change that would match existing language at 18 U.S.C. § 207(a)(2)(B). I would also urge Congress to include OGE in Section 602's provision on the publication of waivers by agencies, requiring OGE to collect the waivers and publish them on its website in the same place it publishes ethics agreements, financial disclosure forms, and compliance records.<sup>27</sup>

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<sup>22</sup> *Brass Parachutes*, p. 2.

<sup>23</sup> Kevin G. Hall, “Treasury nominee Jack Lew grilled over Citi bonus, tax haven,” *McClatchy DC Bureau*, February 13, 2013. <https://www.mcclatchydc.com/news/politics-government/congress/article24744838.html> (Downloaded February 4, 2019)

<sup>24</sup> 18 U.S.C. § 209(b).

<sup>25</sup> Charles J. Lewis, “Blumenthal angered by defense contractor bonus,” *ctpost*, June 12, 2012. <https://www.ctpost.com/local/article/Blumenthal-angered-by-defense-contractor-bonus-3628747.php> (Downloaded February 4, 2019)

<sup>26</sup> 5 U.S.C. Appendix, Ethics In Government Act of 1978—( §§ 101—505).

<sup>27</sup> Office of Government Ethics, “Public Financial Disclosure Reports.” <https://extapps2.oge.gov/201/Presiden.nsf/PAS%20Index?OpenView>

3. **Section 8004** strikes the exemption in the Procurement Integrity Act that allows acquisition and program officials to accept “compensation from a division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract[.]”<sup>28</sup> POGO fully supports this amendment. The current law’s weak distinction permits the covered officials to leave the government to go work for companies they contracted with or oversaw in their government positions. As a result, former officials are allowed to leverage their relationship with the contractor for future employment, calling into question the decisions they made while in government service, and are allowed access to former colleagues, which can create an unfair competitive advantage.<sup>29</sup> As we witnessed in the Darleen Druyun case, it is absurd to allow an acquisition official to go work for a company in, say, its missile division but prohibit her from going to the aircraft division.<sup>30</sup> Darleen Druyun was appointed deputy general manager for missile defense systems at Boeing soon after she awarded Boeing a large aircraft refueling contract. Existing laws allowed her to accept that job. Druyun eventually pleaded guilty to a separate ethics violation and served nine months in federal prison.<sup>31</sup>

We also support the addition of 41 U.S.C. § 2108, creating a two-year ban on a government official awarding or administering a contract to a former employer. This common-sense amendment strengthens and extends the current one-year cooling-off period governing personal and business relationships.<sup>32</sup> The Committee should clarify “administration of a contract awarded...” to include the “planning, creation, award, administration, and oversight of a contract.”

4. **Section 8005** extends the representational and lobbying ban covering “certain senior personnel” who are governed by 18 U.S.C. § 207(c) from one year to two years. POGO supports this amendment. There are, however, a number of additional amendments that Congress should include in this bill. Specifically, 207(c) should require employees who leave federal agencies to wait at least two years before contacting their former agency on behalf of any individual or entity to discuss agency business, including regulations or rules, policymaking, federal funds, examinations, or enforcement matters.<sup>33</sup>

Previous well-intentioned lobbying reforms have created a shadow influence industry of advisors, consultants, and trade-association chiefs who can peddle influence but are not required to register as lobbyists. To address this problem at the Department of Defense, Congress recently legislated a ban prohibiting “behind the scenes” activities<sup>34</sup> that should be extended government-

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<sup>28</sup> 41 U.S.C. § 2104(b); 48 CFR § 3.104-3(d)(3).

<sup>29</sup> *Brass Parachutes; The Politics of Contracting*.

<sup>30</sup> “Boeing Fires Former Top Air Force Official Over Unethical Conduct,” Project On Government Oversight, November 24, 2003. <http://pogoarchive.pub30.convio.net/pogo-files/alerts/government-corruption/gc-rd-20031124.html>

<sup>31</sup> “Federal Contractor Misconduct Database,” Project On Government Oversight.

<https://www.contractormisconduct.org/misconduct/48/united-states-of-america-v-darleen-a-druyun>

<sup>32</sup> 5 CFR § 2635.502(b)(1)(iv) (restricting government activities for “[a]ny person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.”).

<sup>33</sup> Executive Order 13490, January 21, 2009. President Trump’s ethics pledge restates the one-year ban at 18 U.S.C. § 207(c). See Appendix A.

<sup>34</sup> 2 U.S.C. § 1602(7) (defining “lobbying activities”); P.L. 115-91, §1045 (2017). See Appendix B.

wide.<sup>35</sup> Congress should also require departing federal employees to wait at least two years before taking a job with any entity that had business before the agency within a year prior to their departure. POGO also urges Congress to amend H.R. 1 to include a prohibition on political appointees and Senior Executive Service policymakers (people who develop rules and determine program requirements) seeking employment for a period of two years from companies materially impacted by—including financially benefiting from—the policies they helped draft. The term “materially benefiting” would include obtaining a direct and predictable economic, financial, business, or competitive advantage or right.

**5. Subtitle B—Presidential Conflicts of Interest** creates new ethics requirements for the president and vice president, which we support. Specifically, Section 8012 states that “[i]t is the sense of Congress that the president and the vice president should conduct themselves as if they were bound by section 208 of title 18, United States Code, by divesting conflicting assets...or by establishing a qualified blind trust[.]” While constitutional concerns have been raised about the application of certain conflict-of-interest laws to the President and Vice President,<sup>36</sup> this section strikes the right balance by asking those executives to “conduct themselves as if they were bound” by the personal financial conflict-of-interest law. This request follows decades of presidential precedents when it comes to such situations, and will help avoid real or apparent financial conflicts of interest.

**6. Section 8022** implements standards for waivers granted under Executive Order 13770.<sup>37</sup> POGO supports the provision because the public has little information about waivers under the President’s order. We also urge Congress to provide more transparency of waivers, exemptions, and recusals granted under other ethics laws and regulations, including those under 18 U.S.C. §§ 207 and 208 and 5 CFR §§ 2635.502 and 2635.503.

**7. Section 8033** amends the tenure of the OGE director. H.R. 1 limits the president’s ability to remove the director to only when there is just cause for removal. Traditionally, “just cause for removal” means only when there is “inefficiency, neglect of duty, or malfeasance in office.”<sup>38</sup> In recent years we have come to learn about OGE’s importance, whether in vetting presidential nominees or providing ethics training. In order to avoid potential impasses when ethics allegations involve White House staff, Cabinet-level officials, or agency officials, OGE needs to

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<sup>35</sup> “[M]ost of the restrictions under 18 U.S.C. § 207 are limited to appearances and communications. They do not bar you from providing behind-the-scenes assistance to any person or entity. If you provide behind-the-scenes assistance, however, you should not have any communication to the Government attributed to you by another.” Office of Government Ethics, “Introduction to the Primary Post-Government Employee Restrictions Applicable to Former Executive Branch Employees,” September 23, 2016, p. 3. [https://www.oge.gov/Web/OGEnsf/0/3741DC247191C8B88525803B0052BD7E/\\$FILE/LA-16-08.pdf](https://www.oge.gov/Web/OGEnsf/0/3741DC247191C8B88525803B0052BD7E/$FILE/LA-16-08.pdf)

<sup>36</sup> Jack Maskell, “Conflict of Interest and ‘Ethics’ Provisions That May Apply to the President,” Congressional Research Service, November 22, 2016, pp. 1-2. (Citing Letter from Laurence H. Silberman, Acting Attorney General, U.S. DOJ, to the Chairman, Senate Committee on Rules and Administration, September 20, 1974, concerning the nomination of Nelson A. Rockefeller to fill the vacancy as Vice President.) <https://fas.org/sgp/crs/misc/conflict.pdf> (Downloaded February 4, 2019)

<sup>37</sup> Executive Order 13770, January 28, 2017. [https://www2.oge.gov/web/oge.nsf/0/A43C4DBAB9EC4DC7852580BC006FBA83/\\$FILE/Exec%20Order%2013770.pdf](https://www2.oge.gov/web/oge.nsf/0/A43C4DBAB9EC4DC7852580BC006FBA83/$FILE/Exec%20Order%2013770.pdf)

<sup>38</sup> The Office of Special Counsel, the agency in charge of protecting whistleblower, has a similar removal-for-cause provision. 5 U.S.C. § 1211(b).

be insulated from political pressure rather than to be in the position of serving at the pleasure of the president. Yet a president also needs to be able to remove a director who engages in misconduct. Section 8033 appropriately balances the need for independence and the need for accountability. In addition to this, H.R. 1 should establish a line of succession in case the OGE director resigns or is terminated, which would help preserve the independence of the agency and avoid creating a lapdog who is trying to impress or appease senior leadership inside the White House.

**8. Section 8034** authorizes mandatory education and training programs for designated ethics officials, which would help ensure consistent and fair application of ethics laws. Absent is the frequency with which those programs should be required. I would urge Congress to amend the current provision in H.R. 1 to require education and training programs every two years.

H.R. 1 also includes provisions that allow OGE to “investigate an allegation” and recommend “appropriate disciplinary action.” While POGO supports these provisions, OGE already has limited authority to take these actions.<sup>39</sup> H.R. 1 should expand that authority to ensure OGE has clear, independent authority to investigate complaints and to issue binding corrective and disciplinary actions when there are ethics violations in noncriminal cases. POGO also supports the provision granting OGE subpoena power for the production of information, documents, records, and other data, which is essential to properly investigating an ethics allegation. That power, in addition to OGE’s existing authority to receive comments from an official or employee and hold a hearing,<sup>40</sup> would assist OGE investigations into violations. Congress should require OGE to report the use of such authority to the president and Congress.

**9. Section 8062** codifies the ethics pledge rules that started with the Clinton Administration and have continued through the Trump Administration.<sup>41</sup> POGO supports making the pledge rules a law, because otherwise they exist only at the whim of each president. For instance, President Clinton revoked his pledge on his last day in office, thereby lifting the restrictions that prohibited conflicts of interest.<sup>42</sup> Codifying the pledge would prevent a similar circumstance and add continuity within the ethics community, which has to adjust for changes in the ethics rules with each incoming Administration.

This provision, however, could go even further, building on other presidential executive orders that require ethics commitments by senior-level executive branch personnel. Although controversial at times, the ethics pledges have added and extended ethics restrictions to senior officials who often escape restrictions that exist in law and regulations for lower-level federal employees. Congress should codify President Trump’s executive order that requires a five-year limitation on former political appointees engaging in lobbying activities with respect to their former agency.<sup>43</sup> Congress also should ban former officials from lobbying any covered executive

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<sup>39</sup> 5 U.S.C. Appendix, Ethics in Government Act, § 402(f)(2)(A)(ii) and (B)(iii); 5 CFR § 2635.106(b); 5 CFR § 2638.504.

<sup>40</sup> 5 U.S.C. Appendix, Ethics in Government Act, § 402(f)(2)(B)(ii) and (iii).

<sup>41</sup> Executive Order 12834, January 20, 1993.

[https://www.oge.gov/Web/OGE.nsf/0/5DEB1725A191ABB385257E96006A90F9/\\$FILE/eo12834.pdf](https://www.oge.gov/Web/OGE.nsf/0/5DEB1725A191ABB385257E96006A90F9/$FILE/eo12834.pdf); *See* Appendix A.

<sup>42</sup> Executive Order 13184, December 28, 2000.

<sup>43</sup> Executive Order 13770, Section 1.1.

branch official or non-career Senior Executive Service appointee for the remainder of the Administration.<sup>44</sup>

The section could also be strengthened by preventing officials at the end of their government tenure from accepting positions during the two years after the official leaves government when their decisions or policies directly and substantially benefited their potential new employers, partners, or clients. One such official this restriction would have applied to is Daniel B. Poneman, a former acting secretary of energy in the Obama Administration who left the Energy Department in the fall of 2014 and started working at Centrus Energy Corporation in March 2015. Centrus is in the enriched uranium industry—an industry that Poneman supported while in his senior government positions.<sup>45</sup>

In 2016, POGO and other good government groups drafted ethics-pledge language restricting an incoming appointee’s financial conflicts of interest or acceptance of a position with an entity that directly and substantially benefited from the official’s decisions. We provided this draft language to both the Clinton and Trump campaigns and transition teams in 2016. Congress should add the following language to Section 8062:

*3. Revolving Door Ban—All Appointees Leaving Government.*

(a) If, upon my departure from the Government, I am covered by 207(c) of title 18, United States Code, I will abide by post-government restrictions on communications to or appearances before my former executive agency as set forth in section 207(c) of title 18, United States Code, for a period of 2 years. Additionally, I will do the same with respect to such communications to or appearances before the Executive Office of the President.

(b) I will not for a period of 2 years from the end of my appointment accept employment from, or representation of, any party that materially benefited from a particular matter involving specific parties, or from a particular matter benefiting a single source, in which I personally and substantially participated. I agree that my Stop Trading On Congressional Knowledge (STOCK) Act notifications and recusals will be made publicly available upon my leaving government service.

(c) Upon my departure from the Government I will not have any communications with or appearances before any executive branch agency, including the Executive Office of the President, regarding a particular matter involving specific parties on which I worked and I, my current employer, my current client, or a member of my household have a financial interest.

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<sup>44</sup> Executive Order 13770, Section 1.3.

<sup>45</sup> Hannah Northey, “Former DOE deputy to lead controversial enrichment company,” *E&E News*, March 6, 2015. <https://www.eenews.net/stories/1060014618> (Downloaded February 4, 2019); Darius Dixon, “Ex-energy official’s \$1.7 million gig draws fire,” *Politico*, March 16, 2015. <https://www.politico.com/story/2015/03/dan-poneman-centrus-116089> (Downloaded February 4, 2019); Centrus Energy was formerly known as “USEC Inc., a private, investor-owned company” operating uranium enrichment plants. USEC Inc. closed down in 2013. Prior to becoming a public company, it was a part of the Department of Energy known as the United States Enrichment Corporation, which handled the government’s uranium enrichment operations. Centrus Energy, “History.” <https://www.centrusenergy.com/who-we-are/history/> (Downloaded February 4, 2019)

Finally, Section 8062 should require that all records related to the codified ethics pledge, including any recusals, waivers, or exemptions to that pledge, be publicly posted by OGE with other ethics records (ethics agreements, financial disclosure reports, certificates of divestiture, and certification compliance forms).

The following are additional recommendations that Congress should pass to make the government more ethical and to help restore the public's faith in government.

## 1. Promoting Ethics and Addressing Corruption

- **Create a government-wide database of senior officials who go through the revolving door.** Ten years ago, Congress required the Department of Defense (DoD) to create a system for officials to obtain “a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.”<sup>46</sup> That law also required DoD to store those opinions in a database to ensure compliance. Congress should amend H.R. 1 to create a similar system for civilian agencies. Congress should also expand the coverage to include covered officials who are involved in the planning, creation, awarding, administration, and oversight of a contract or grant. POGO has urged DoD to make its database public since March 2009.<sup>47</sup> As a fervent believer in the aphorism “sunshine is the best disinfectant,” we recommend that Congress make the civilian database public. Taxpayers have a right to know when former senior officials seek employment with those they were doing government business with.
- **Require the Justice Department's Office of Professional Responsibility to report findings of intentional misconduct or reckless disregard.** Through Freedom of Information Act requests, POGO learned the Justice Department's Office of Professional Responsibility (OPR) documented more than 650 instances from 2002 to 2013 of federal prosecutors and other Justice Department employees violating rules, laws, or ethical standards that governed their work. Because the Department of Justice does not generally make the names of those officials public, the Department is largely insulated from meaningful public scrutiny and accountability.<sup>48</sup> Congress should require OPR to notify both the relevant state bar authorities and the House and Senate Judiciary Committees about any findings of intentional misconduct or reckless disregard by Justice Department attorneys. Further, Congress should give the Justice Department's Inspector General explicit authority to investigate allegations of misconduct throughout the agency, including those against attorneys, an authority that other agency inspectors general already have.

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<sup>46</sup> P.L. 110-181, § 847 (2008). *See* Appendix C.

<sup>47</sup> Scott Amey, “POGO Wants Public DoD Revolving Door Database,” Project On Government Oversight, March 16, 2009. <https://www.pogo.org/letter/2009/03/pogo-wants-public-dod-revolving-door-database/>

<sup>48</sup> Nick Schwellenbach, “Hundreds of Justice Department Attorneys Violated Professional Rules, Laws, or Ethical Standards,” Project On Government Oversight, March 13, 2014. <https://www.pogo.org/report/2014/03/hundreds-of-justice-department-attorneys-violated-professional-rules-laws-or-ethical-standards/>

- Improve transparency of Foreign Corrupt Practices Act (FCPA) enforcement.** Congress should establish a centralized public repository of information about open and pending investigations and cases in order to make the United States’ efforts to combat international bribery more effective. Additionally, when a company reports possible FCPA violations to the Department of Justice and/or the Securities and Exchange Commission (SEC) and either agency decides against bringing an enforcement action, Congress should require the public disclosure of the facts that the company reported and the reasons enforcement action was not taken. Either the Justice Department or the SEC should also be required to report statistics regarding instances when the United States government seeks help from, or provides help to, other countries in foreign bribery cases.<sup>49</sup>
- Improving foreign-influence transparency.** POGO applauds the inclusion of reforms to the Foreign Agents Registration Act (FARA) in H.R. 1. Since 2014, POGO has recommended incorporating civil fines into the statute to give the Department of Justice a middle-of-the-road enforcement mechanism to punish offenders who do not properly label their FARA filings, who file late, who don’t file if they should have, or who do not register if they should have. We support the provision in H.R. 1 that creates a dedicated enforcement unit. We believe this change will significantly boost the compliance by foreign agents and public access to FARA disclosures the law is supposed to afford.

However, more can be done to clarify registration and reporting requirements under the law. For example, a lack of Departmental guidance or definitions for terms like “principal beneficiary” has left many wondering exactly what triggers a registration requirement. POGO recommends that FARA be amended to eliminate a confusing exemption that allows those representing foreign companies to register under the far less strict domestic lobbying law, the Lobbying Disclosure Act. Foreign governmental and commercial interests are not always as distinct from one another as they are in the United States, and this exemption has frequently been misunderstood and exploited.

- Require disclosure of “beneficial owners” of corporations and limited liability companies.** Congress should require persons who form corporations and limited liability companies in states where they are not required to disclose the beneficial owner of that entity to disclose that information to the federal government. The Federal Awardee Performance and Integrity Information System collects information involving corporate relationships, the highest and immediate owners, predecessors, and subsidiaries.<sup>50</sup> Missing, however, is information about owners who have an interest in the benefits of an

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<sup>49</sup> Neil Gordon, “United States Among Leaders in Fighting Bribery,” Project On Government Oversight, September 12, 2018. <https://www.pogo.org/analysis/2018/09/united-states-among-leaders-in-fighting-bribery/>

<sup>50</sup> Federal Awardee Performance and Integrity Information System. <https://www.fapiis.gov/fapiis/viewcorpdetail.action?rctrID=146390067&rctrCage=8X637&rctrName=AHNTECH%2C+INC>.

entity, but are not on record as owners. Beneficial owners can lurk in the shadows, but can create conflicts of interest that should be known.<sup>51</sup>

- **Require nominees to disclose when someone with a financial interest in a nomination helps with the process.** Individuals, known as “Sherpas,” guide presidential nominees through the confirmation process and gain access to senior officials and information. While these Sherpas are sometimes government officials, they can be government outsiders, where existing conflict-of-interest laws do not apply.<sup>52</sup> The risk is that these individuals can use the access and information for personal or private gain. Congress should ensure that nominees publicly disclose any material benefit they received throughout their confirmation process from any individual who currently has or had in the past year employers or clients with financial interests involving the nominee’s agency.
- **Require clear limits to employment for departing government officials.** Congress should require government officials to enter into a written, binding revolving-door exit plan that sets forth the programs and projects from which the former employee is banned from working. Like financial disclosure statements, these reports should be filed with the Office of Government Ethics and made available to the public.

When it comes to government ethics, the one thing that everyone can agree on, no matter who is in the White House or controlling Congress, is that the system is complex. In 2004, POGO called the revolving door laws and regulations a “spaghetti bowl.”<sup>53</sup> Add in numerous other ethics and conflict-of-interest laws, government-wide and agency-specific regulations, ethics pledges,<sup>54</sup> and commitments made to Senate committees during nomination hearings, and you have a spaghetti trough.<sup>55</sup> Different ethics laws and regulations apply to the president and vice president, appointees, senior and very senior officials, government employees, agency procurement officers, Justice Department lawyers, and government scientists. The intertwined criminal and civil laws have been smashed together from the Constitution; codification of bribery; graft; and conflict-of-interest laws in 1962<sup>56</sup>; the Ethics in Government Act of 1978; and defense authorization acts, to name just a few.<sup>57</sup>

While complex, that system is necessary for the government to represent and serve the people rather than a few or the well-connected. On May 8, 1965, President Lyndon B. Johnson issued Executive Order 11222, which instructed agencies to establish “standards of ethical conduct for

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<sup>51</sup> Gavin Hayman and Chris Taggart, “How a global register of beneficial ownership can help end secrecy,” Open Contracting Partnership, April 4, 2016. <https://www.open-contracting.org/2016/04/04/open-contracting-beneficial-ownership/> (Downloaded February 4, 2019)

<sup>52</sup> Laura Peterson, “Washington’s Sherpas: Lobbyists Shepherding Agency Nominees Create Ethics Concerns,” Project On Government Oversight, December 20, 2018. <https://www.pogo.org/investigation/2018/12/washington-sherpas/>

<sup>53</sup> *The Politics of Contracting*, p. 23.

<sup>54</sup> See Appendix A.

<sup>55</sup> See *Brass Parachutes*, Appendix A.

<sup>56</sup> P.L. 87-849 (1962).

<sup>57</sup> Office of Government Ethics, “Laws and Regulations.” <https://www.oge.gov/web/oge.nsf/Laws+and+Regulations/>

government officers and employees.”<sup>58</sup> President Johnson wrote that “[w]here government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or adviser of government must help to earn and must honor that trust by his own integrity and conduct in all official actions.”<sup>59</sup>

As a result, the government created an ethics system that is designed to prevent, expose, and resolve any ethics violations, and punish, if necessary, any public servant who violates the public trust for personal or private gain. President Johnson’s order became the foundation for the basic obligations of public service, which state the general principle that:

Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.<sup>60</sup>

Even the Federal Acquisition Regulation affirms the need for government contracting decisions to be “above reproach”:

Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.<sup>61</sup>

Our support for Title VIII of the For the People Act of 2019 and the improvements that I have detailed for the Committee are common sense. Government ethics are important, and improving that system is vital. H.R. 1 is a step forward in reducing improper influence over government decisions, missions, programs, and spending that is often contrary to what is in the public’s interest.

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<sup>58</sup> Executive Order 11222, May 8, 1965.

[https://www2.oge.gov/web/oge.nsf/0/1F0C74554C7759BA85257E96006A90EF/\\$FILE/48bd8af3f2ec4dcf80bbd125adaabbb42.pdf](https://www2.oge.gov/web/oge.nsf/0/1F0C74554C7759BA85257E96006A90EF/$FILE/48bd8af3f2ec4dcf80bbd125adaabbb42.pdf) (Hereinafter EO 11222)

<sup>59</sup> EO 11222, Section 101.

<sup>60</sup> 5 CFR § 2635.101(a).

<sup>61</sup> 48 CFR § 3.101-1.

Thank you for inviting me to testify today. I look forward to answering any questions from Committee Members and to working with the Committee to further explore how the federal ethics and conflict-of-interest system can be improved.

# APPENDIX A

Ethics Rules Enacted by Presidents, 1993 - 2017

## Ethics Rules Enacted by Presidents, 1993 - 2017<sup>1</sup>

	President Trump	President Obama	President Bush	President Clinton	Ideal Appointee Ethics Pledge <sup>2</sup>
<b>Ban on Lobbying the Appointee's Former Agency</b>	Every appointee 5 years covering "lobbying activities."	<i>None</i>	<i>None</i>	Every appointee 5 years	5 years
<b>Ban on Communicating with the Appointee's Former Agency</b>	Senior appointees 1 year as required by 18 U.S.C. § 207(c).	Senior appointees 2 years (a 1-year increase above 18 U.S.C. § 207(c)).	Restatement of post-employment restrictions at 18 U.S.C. § 207.	<i>None</i> , but subject to post-employment restrictions at 18 U.S.C. § 207.	2 years
<b>Ban on Lobbying Other Appointees</b>	No "lobbying activities" for the remainder of the Administration.	No lobbying the Administration.	Restatement of post-employment restrictions in 18 U.S.C. § 207.	For Executive Office of the President appointees 5 years with respect to any executive agency for which they had personal and substantial responsibility.	The remainder of the Administration
<b>Ban on Former Appointee Working for Any Foreign Government or Foreign Political Party</b>	Permanent for those registered under the Foreign Agents Registration Act (FARA), but won't cover those registered under the Lobbying Disclosure Act (LDA) (2 U.S.C. § 1601 <i>et seq.</i> ).	<i>None</i>	Restatement of post-employment restrictions in 18 U.S.C. § 207.	Permanent (additional provisions applied to trade negotiators).	Permanent for FARA and LDA registered lobbyists

<sup>1</sup> President Trump, [EO 13770](#); President Obama, [EO 13490](#) (revoked by [EO 13770](#)); President Bush, [Standards of Official Conduct](#); President Clinton, [EO 12834](#) (revoked by [EO 13184](#)).

<sup>2</sup> POGO urges Congress to pass additional restrictions applying to entities with a financial conflict of interest and entities that benefited from a former government official's decisions.

	<b>President Trump</b>	<b>President Obama</b>	<b>President Bush</b>	<b>President Clinton</b>	<b>Ideal Appointee Ethics Pledge<sup>3</sup></b>
<b>Ban on Appointee Accepting Gifts from Lobbyists or Lobbying Organizations</b>	No gifts from registered lobbyists or lobbying organizations.	No gifts from registered lobbyists or lobbying organizations.	Restatement of Subpart A of Standards of Conduct (5 CFR § 2635.101 <i>et seq.</i> ).	<i>None</i>	No gifts from lobbyists or lobbying organizations.
<b>Ban on Appointee Handling Matters Related to Former Employers and Clients</b>	2 years No participating in any particular matter involving specific parties that is directly and substantially related to former employers or clients.	2 years No participating in any particular matter involving specific parties that is directly and substantially related to former employers or clients.	Restatement of Subpart A of Standards of Conduct.	<i>None</i>	2 years
<b>Ban on Former Registered Lobbyists</b>	2 years No participating in any particular matter on which they lobbied within the 2 years before the date of the appointment; also includes a 2-year ban on participating in the specific issue area in which that particular matter falls.	2 years No participating in any particular matter on which they lobbied within the 2 years before the date of their appointment; no participating in the specific issue area in which that particular matter falls. Appointees also pledged to not seek or accept employment from any executive agency that they lobbied within 2 years of their appointment.	<i>None</i>	<i>None</i>	2 years for participating on matters on which they lobbied; 2 years for participating in an issue area in which the matter falls; 2 years for seeking or accepting employment with an agency that the appointee lobbied.

<sup>3</sup> POGO urges Congress to pass additional restrictions applying to entities with a financial conflict of interest or that benefited from a former government official's decisions.

	<b>President Trump</b>	<b>President Obama</b>	<b>President Bush</b>	<b>President Clinton</b>	<b>Ideal Appointee Ethics Pledge<sup>4</sup></b>
<b>Hiring Based on Qualifications, Competence, and Experience</b>	Included	Included	<i>None</i>	<i>None</i>	Include hiring requirements
<b>Public Disclosure</b>	None. Pledges and waivers filed with appointee's agency.	The Office of Government Ethics (OGE) was required to file a public report on the administration of the pledge. Pledges and waivers filed with appointee's agency.	<i>None</i>	Pledges and waivers filed with appointee's agency.	OGE should publicly post final submissions of ethics paperwork for executive branch officials occupying positions for which the pay is set at Levels 1 or 2 of the Executive Schedule. Final submissions should include signed ethics pledges pursuant to Executive Order 13770, ethics pledge waivers pursuant to Executive Order 13770, waivers under 18 U.S.C. § 208, authorizations under 5 CFR § 2635.502, waivers under 5 CFR § 2635.503, Certificates of Divestiture and requests for Certificates of Divestiture, financial disclosure reports, ethics training records, authorizations to accept gifts of free attendance at widely attended gatherings, STOCK Act notices of employment negotiations (limited to employment for which the government employee was hired), disciplinary actions and reprimands related to ethics violations, and any documents demonstrating compliance or noncompliance with ethics agreements.
<b>Report to the President</b>	<i>None</i>	Required to report to the President.	<i>None</i>	<i>None</i>	Require a report to the President and Congress.

<sup>4</sup> POGO urges Congress to pass additional restrictions applying to entities with a financial conflict of interest or that benefited from a former government official's decisions.

	President Trump	President Obama	President Bush	President Clinton	Ideal Appointee Ethics Pledge <sup>5</sup>
<b>Lobbying Defined</b>	LDA definition of “lobbying activities,” but the term does not include communicating or appearing with regard to a judicial proceeding; a criminal or civil law enforcement inquiry, investigation, or proceeding; or any agency process for rulemaking, adjudication, or licensing, as defined in and governed by the Administrative Procedure Act, as amended, 5 U.S.C. § 551 et seq.	“to act ... as a registered lobbyist” under the LDA	Restatement of post-employment restrictions in 18 U.S.C. § 207.	<p>Knowingly communicating or appearing before an agency with intent to influence official action, not including:</p> <ol style="list-style-type: none"> <li>1. Lobbying for state or local government</li> <li>2. Certain judicial, criminal, civil, or administrative proceedings</li> <li>3. Work for a college, hospital, research institution or not-for-profit organization</li> <li>4. Lobbying for international organizations, if the secretary of state approves</li> <li>5. Furnishing scientific or technological information</li> <li>6. Testimony under oath pursuant to 18 U.S.C. § 207(j)(6)</li> </ol>	Expand the definition to go beyond the current limitations on registered lobbyists to cover anyone with a financial conflict of interest, closing loopholes, and adopting a single standard that will apply to lobbyists for moneyed interests, those who secretly advise them, and the people they work for—all those who might affect public policy for private gain.

<sup>5</sup> POGO urges Congress to pass additional restrictions applying to entities with a financial conflict of interest or that benefited from a former government official’s decisions.

	<b>President Trump</b>	<b>President Obama</b>	<b>President Bush</b>	<b>President Clinton</b>	<b>Ideal Appointee Ethics Pledge<sup>6</sup></b>
<b>Executive Agency Defined</b>	Excludes separate agency components as designated by OGE.	Covers the entire agency.	<i>None</i>	Excludes separate agency components as designated by OGE.	Cover the entire agency
<b>Administration</b>	Agency heads are required to establish rules to ensure pledges are signed and ensure compliance with the order within the agency.	Agency heads are required to establish rules to ensure pledges are signed, ensure compliance with waivers in written ethics agreements, and ensure that spousal employment issues and other conflicts are addressed in written ethics agreements.	<i>None</i>	Agency heads are required to establish rules to ensure pledges are signed by appointees and trade negotiators, and ensure compliance with the order within the agency.	Agency heads should be required to establish rules to ensure pledges are signed and ensure compliance with written ethics agreements. POGO has urged Congress to provide OGE with clear investigative authority and the ability to make binding corrective and disciplinary actions. We also recommend public disclosure of Level I and II ethics records and that the OGE director should only be removed for cause.
<b>Waiver Authority</b>	Granted to the President or his designee and takes effect when a certification is signed by the President. A copy is provided to the agency.	Granted to the OMB director or their designee, if certified in writing that the restriction is inconsistent with the purpose of the restriction or it is in the public interest (national security or economic exigent circumstances).	<i>None</i>	Granted to the President and must be certified by the President in writing that the waiver is in the public interest. The waiver would be published in the Federal Register and given to the appointee and agency.	Waivers should be allowed and once granted, they should be placed on OGE's public website.

<sup>6</sup> POGO urges Congress to pass additional restrictions applying to entities with a financial conflict of interest or that benefitted from a former government official's decisions.

# APPENDIX B

Prohibition on lobbying activities with respect to the Department of Defense  
by certain officers of the Armed Forces and civilian employees  
of the Department following separation from military service  
or employment with the Department.

P.L. 115-91, § 1045 (2017)

**SEC. 1044. PROHIBITION ON CHARGE OF CERTAIN TARIFFS ON AIRCRAFT TRAVELING THROUGH CHANNEL ROUTES.**

(a) IN GENERAL.—Chapter 157 of title 10, United States Code, is amended by adding at the end the following new section:

**“§ 2652. Prohibition on charge of certain tariffs on aircraft traveling through channel routes**

“The United States Transportation Command may not charge a tariff by reason of the use by a military service of an aircraft of that military service on a route designated by the United States Transportation Command as a channel route.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2652. Prohibition on charge of certain tariffs on aircraft traveling through channel routes.”.

**SEC. 1045. PROHIBITION ON LOBBYING ACTIVITIES WITH RESPECT TO THE DEPARTMENT OF DEFENSE BY CERTAIN OFFICERS OF THE ARMED FORCES AND CIVILIAN EMPLOYEES OF THE DEPARTMENT FOLLOWING SEPARATION FROM MILITARY SERVICE OR EMPLOYMENT WITH THE DEPARTMENT.**

(a) TWO-YEAR PROHIBITION.—

(1) PROHIBITION.—An individual described in paragraph (2) may not engage in lobbying activities with respect to the Department of Defense during the two-year period beginning on the date of retirement or separation from service in the Armed Forces or the date of retirement or separation from service with the Department, as applicable.

(2) COVERED INDIVIDUALS.—An individual described in this paragraph is the following:

(A) An officer of the Armed Forces in grade O–9 or higher at the time of retirement or separation from the Armed Forces.

(B) A civilian employee of the Department of Defense who had a civilian grade equivalent to a military grade specified in subparagraph (A) at the time of the employee’s retirement or separation from service with the Department.

(b) ONE-YEAR PROHIBITION.—

(1) PROHIBITION.—An individual described in paragraph (2) may not engage in lobbying activities with respect to the Department of Defense during the one-year period beginning on the date of retirement or separation from service in the Armed Forces or the date of retirement or separation from service with the Department, as applicable.

(2) COVERED INDIVIDUALS.—An individual described in this paragraph is the following:

(A) An officer of the Armed Forces in grade O–7 or O–8 at the time of retirement or separation from the Armed Forces.

(B) A civilian employee of the Department of Defense who had a civilian grade equivalent to a military grade specified in subparagraph (A) at the time of the employee’s retirement or separation from service with the Department.

(c) DEFINITIONS.—In this section:

(1) The term “lobbying activities with respect to the Department of Defense” means the following:

(A) Lobbying contacts and other lobbying activities with covered executive branch officials with respect to the Department of Defense.

(B) Lobbying contacts with covered executive branch officials described in subparagraphs (C) through (F) of section 3(3) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602(3)) in the Department of Defense.

(2) The terms “lobbying activities” and “lobbying contacts” have the meaning given such terms in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602).

(3) The term “covered executive branch official” has the meaning given that term in section 3(3) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602(3)).

**SEC. 1046. PROHIBITION ON USE OF FUNDS FOR RETIREMENT OF LEGACY MARITIME MINE COUNTERMEASURES PLATFORMS.**

(a) PROHIBITION.—Except as provided in subsection (b), the Secretary of the Navy may not obligate or expend funds to—

(1) retire, prepare to retire, transfer, or place in storage any AVENGER-class mine countermeasures ship or associated equipment;

(2) retire, prepare to retire, transfer, or place in storage any SEA DRAGON (MH-53) helicopter or associated equipment;

(3) make any reductions to manning levels with respect to any AVENGER-class mine countermeasures ship; or

(4) make any reductions to manning levels with respect to any SEA DRAGON helicopter squadron or detachment.

(b) WAIVER.—The Secretary of the Navy may waive the prohibition under subsection (a)—

(1) with respect to an AVENGER-class ship or a SEA DRAGON helicopter, if the Secretary certifies to the congressional defense committees that the Secretary has—

(A) identified a replacement capability and the necessary quantity of such systems to meet all combatant commander mine countermeasures operational requirements that are currently being met by the ship or helicopter to be retired, transferred, or placed in storage;

(B) achieved initial operational capability of all systems described in subparagraph (A); and

(C) deployed a sufficient quantity of systems described in subparagraph (A) that have achieved initial operational capability to continue to meet or exceed all combatant commander mine countermeasures operational requirements currently being met by the ship or helicopter to be retired, transferred, or placed in storage; or

(2) with respect to a SEA DRAGON helicopter, if the Secretary certifies to such committees that the Secretary has determined, on a case-by-case basis, that such a helicopter is non-operational because of a mishap or other damage or because it is uneconomical to repair.

# APPENDIX C

Requirements for Senior Department of Defense Officials  
Seeking Employment with Defense Contractors  
P.L. 110-181, § 847 (2008)

evidence in any de novo action at law or equity brought pursuant to this subsection.”

(d) DEFINITIONS.—Subsection (e) of such section is amended—

(1) in paragraph (4), by inserting “or a grant” after “a contract”; and

(2) by inserting before the period at the end the following: “and any Inspector General that receives funding from, or has oversight over contracts awarded for or on behalf of, the Secretary of Defense”.

**SEC. 847. REQUIREMENTS FOR SENIOR DEPARTMENT OF DEFENSE OFFICIALS SEEKING EMPLOYMENT WITH DEFENSE CONTRACTORS.**

10 USC 1701  
note.

(a) REQUIREMENT TO SEEK AND OBTAIN WRITTEN OPINION.—

(1) REQUEST.—An official or former official of the Department of Defense described in subsection (c) who, within two years after leaving service in the Department of Defense, expects to receive compensation from a Department of Defense contractor, shall, prior to accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

(2) SUBMISSION OF REQUEST.—A request for a written opinion under paragraph (1) shall be submitted in writing to an ethics official of the Department of Defense having responsibility for the organization in which the official or former official serves or served and shall set forth all information relevant to the request, including information relating to government positions held and major duties in those positions, actions taken concerning future employment, positions sought, and future job descriptions, if applicable.

(3) WRITTEN OPINION.—Not later than 30 days after receiving a request by an official or former official of the Department of Defense described in subsection (c), the appropriate ethics counselor shall provide such official or former official a written opinion regarding the applicability or inapplicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

Deadline.

(4) CONTRACTOR REQUIREMENT.—A Department of Defense contractor may not knowingly provide compensation to a former Department of Defense official described in subsection (c) within two years after such former official leaves service in the Department of Defense, without first determining that the former official has sought and received (or has not received after 30 days of seeking) a written opinion from the appropriate ethics counselor regarding the applicability of post-employment restrictions to the activities that the former official is expected to undertake on behalf of the contractor.

(5) ADMINISTRATIVE ACTIONS.—In the event that an official or former official of the Department of Defense described in subsection (c), or a Department of Defense contractor, knowingly fails to comply with the requirements of this subsection, the Secretary of Defense may take any of the administrative actions set forth in section 27(e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(e)) that the Secretary of Defense determines to be appropriate.

(b) RECORDKEEPING REQUIREMENT.—

(1) DATABASE.—Each request for a written opinion made pursuant to this section, and each written opinion provided pursuant to such a request, shall be retained by the Department of Defense in a central database or repository for not less than five years beginning on the date on which the written opinion was provided.

Deadline.

(2) INSPECTOR GENERAL REVIEW.—The Inspector General of the Department of Defense shall conduct periodic reviews to ensure that written opinions are being provided and retained in accordance with the requirements of this section. The first such review shall be conducted no later than two years after the date of the enactment of this Act.

(c) COVERED DEPARTMENT OF DEFENSE OFFICIALS.—An official or former official of the Department of Defense is covered by the requirements of this section if such official or former official—

(1) participated personally and substantially in an acquisition as defined in section 4(16) of the Office of Federal Procurement Policy Act with a value in excess of \$10,000,000 and serves or served—

(A) in an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code;

(B) in a position in the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code; or

(C) in a general or flag officer position compensated at a rate of pay for grade O-7 or above under section 201 of title 37, United States Code; or

(2) serves or served as a program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract in an amount in excess of \$10,000,000.

(d) DEFINITION.—In this section, the term “post-employment restrictions” includes—

(1) section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423);

(2) section 207 of title 18, United States Code; and

(3) any other statute or regulation restricting the employment or activities of individuals who leave government service in the Department of Defense.

**SEC. 848. REPORT ON CONTRACTOR ETHICS PROGRAMS OF MAJOR DEFENSE CONTRACTORS.**

(a) REPORT REQUIRED.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the internal ethics programs of major defense contractors.

(b) ELEMENTS.—The report required by subsection (a) shall address, at a minimum—

(1) the extent to which major defense contractors have internal ethics programs in place;

(2) the extent to which the ethics programs described in paragraph (1) include—