

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 8325
OFFERED BY MRS. CAROLYN B. MALONEY OF
NEW YORK**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Preventing Personal
3 Conflicts of Interest in Federal Acquisition Act”.

**4 SEC. 2. PREVENTING PERSONAL CONFLICTS OF INTEREST
5 IN FEDERAL ACQUISITION.**

6 (a) FEDERAL ACQUISITION REGULATION REVI-
7 SIONS.—Not later than 12 months after the date of the
8 enactment of this Act, the Federal Acquisition Regulatory
9 Council shall—

10 (1) expand the scope of rules to prevent per-
11 sonal conflicts of interest beyond the limited types of
12 functions or services that are currently addressed in
13 subpart 3.11 of the Federal Acquisition Regulation,
14 by including coverage for—

15 (A) consulting, analytical, or advisory serv-
16 ices supporting the primary missions, or serv-
17 ices supporting the regulatory, policymaking,

1 and adjudicative functions, of an Executive
2 agency;

3 (B) functions closely associated with inher-
4 ently governmental functions, as defined in the
5 Federal Acquisition Regulation, that give rise to
6 heightened concerns for personal conflicts of in-
7 terest; and

8 (C) other functions or services that give
9 rise to heightened concerns for personal con-
10 flicts of interest, as deemed appropriate; and

11 (2) revise the Federal Acquisition Regulation to
12 address the functions and services identified under
13 paragraph (1), including by providing and updat-
14 ing—

15 (A) the definitions, policies, and proce-
16 dures related to preventing potential personal
17 conflicts of interest;

18 (B) solicitation provisions and contract
19 clauses for Executive agencies to use in solicita-
20 tions and contracts, where appropriate, to pre-
21 vent personal conflicts of interest;

22 (C) the responsibilities of employers to
23 screen their employees for personal conflicts of
24 interest, to inform their employees of their legal
25 duties related to preventing personal conflicts of

1 interest and the appearance of personal con-
2 flicts of interest, and to seek compliance from
3 their employees of such procedures and require-
4 ments;

5 (D) the restrictions on a contractor's em-
6 ployees disclosing, or using for personal gain,
7 confidential information obtained in connection
8 with performing the contract; and

9 (E) the duties and procedures of reporting
10 apparent violations of rules governing personal
11 conflicts of interest, including to the agency's
12 Inspector General, where appropriate.

13 **SEC. 3. ETHICS SAFEGUARDS RELATED TO CONTRACTOR**
14 **CONFLICTS OF INTEREST.**

15 Section 2303 of title 41, United States Code, is
16 amended to read as follows:

17 **“§ 2303. Ethics safeguards related to contractor con-**
18 **licts of interest**

19 **“(a) POLICY ON PERSONAL CONFLICTS OF INTEREST**
20 **BY CONTRACTOR EMPLOYEES.—**

21 **“(1) DEVELOPMENT AND ISSUANCE OF POL-**
22 **ICY.—**The Administrator shall develop and issue a
23 standard policy to prevent personal conflicts of inter-
24 est by contractor employees performing the following

1 functions for or on behalf of an Executive agency or
2 department:

3 “(A) Relevant acquisition functions (in-
4 cluding the development, award, and adminis-
5 tration of Federal Government contracts).

6 “(B) Consulting, analytical, and advisory
7 services supporting the primary missions, or
8 services supporting the regulatory, policy-
9 making, and adjudicative functions, of an Exec-
10 utive agency.

11 “(C) Other functions or services provided
12 by contractors that present heightened risks of
13 personal conflicts of interest, as determined by
14 the Administrator.

15 “(2) ELEMENTS OF POLICY.—The policy
16 shall—

17 “(A) define ‘personal conflict of interest’
18 as it relates to contractor employees performing
19 covered functions; and

20 “(B) require each contractor whose em-
21 ployees perform covered functions to—

22 “(i) identify and prevent personal con-
23 flicts of interest for the employees;

24 “(ii) prohibit contractor employees
25 who have access to non-public government

1 information obtained while performing cov-
2 ered functions from using the information
3 for personal gain;

4 “(iii) report any personal conflict-of-
5 interest violation by an employee to the ap-
6 plicable contracting officer or contracting
7 officer’s representative as soon as it is
8 identified;

9 “(iv) maintain effective oversight to
10 verify compliance with personal conflict-of-
11 interest safeguards;

12 “(v) have procedures in place to
13 screen for potential conflicts of interest for
14 all employees performing covered func-
15 tions; and

16 “(vi) take appropriate disciplinary ac-
17 tion in the case of employees who fail to
18 comply with policies established pursuant
19 to this section.

20 “(3) CONTRACT CLAUSE.—

21 “(A) CONTENTS.—The Administrator shall
22 develop a personal conflicts-of-interest clause or
23 a set of clauses for inclusion in solicitations and
24 contracts (and task or delivery orders) for the

1 performance of covered functions that sets
2 forth—

3 “(i) the personal conflicts-of-interest
4 policy developed under this subsection; and

5 “(ii) the contractor’s responsibilities
6 under the policy.

7 “(B) EFFECTIVE DATE.—Updates to the
8 clause or clauses identified in subparagraph (A)
9 shall take effect one year after enactment, and
10 shall apply to—

11 “(i) contracts entered into on or after
12 that effective date; and

13 “(ii) task or delivery orders awarded
14 on or after that effective date, regardless
15 of whether the contracts pursuant to which
16 the task or delivery orders are awarded are
17 entered before, on, or after the effective
18 date.

19 “(4) PARTIAL APPLICABILITY.— If only a por-
20 tion of a contract is for the performance of covered
21 functions, then this subsection applies only to that
22 portion of the contract.

23 “(b) BEST PRACTICES.—The Administrator shall, in
24 consultation with the Director of the Office of Government
25 Ethics, develop and maintain a repository of best practices

1 relating to the prevention and mitigation of organizational
2 and personal conflicts of interest in Federal contracting.

3 “(c) DEFINITIONS.—In this section:

4 “(1) COVERED FUNCTION.—The term ‘covered
5 function’ means a function described under sub-
6 section (a)(1).

7 “(2) RELEVANT ACQUISITION FUNCTION.—The
8 term ‘relevant acquisition function’ means an acqui-
9 sition function closely associated with inherently gov-
10 ernmental functions.”.

11 **SEC. 4. PROHIBITION AGAINST CERTAIN CONFLICTS OF IN-**
12 **TEREST.**

13 Chapter 23 of title 41, United States Code, is amend-
14 ed by adding at the end the following:

15 **“§ 2314. Prohibition against certain conflicts of inter-**
16 **est**

17 “(a) PROHIBITION AGAINST CERTAIN CONFLICTS OF
18 INTEREST.—

19 “(1) PROHIBITION.—No contractor, contractor
20 employee, subcontractor, or subcontractor employee
21 shall provide services supporting the regulatory, pol-
22 icymaking, or adjudicative functions of an Executive
23 agency at the same time that the contractor, con-
24 tractor employee, subcontractor, or subcontractor

1 employee provides services to an entity regulated by,
2 or having non-routine business before, the agency.

3 “(2) EXCEPTION.—

4 “(A) IN GENERAL.—The head of the execu-
5 tive agency may issue an exception to the re-
6 quirement under paragraph (1) with respect to
7 a contractor, contractor employee, subcon-
8 tractor, or subcontractor employee only if the
9 head of the agency determines in writing there
10 is a compelling reason to award a contract, or
11 continue performance of a contract, with such
12 exception.

13 “(B) DETERMINATION.—In determining
14 whether there is a compelling reason under sub-
15 paragraph (A), the head of an Executive agency
16 shall consider—

17 “(i) the nature and extent of the risks
18 associated with the conflict;

19 “(ii) the essential need of the govern-
20 ment to receive the services, notwith-
21 standing such a conflict, and direct harm
22 to the government of not receiving the
23 services from the entity or person; and

24 “(iii) the ability of the contractor,
25 contractor employee, subcontractor, or sub-

1 contractor employee to mitigate the con-
2 flict.

3 “(C) NON-DELEGATION OF AUTHORITY.—
4 The head of the Executive agency shall not del-
5 egate the authority to issue an exception under
6 this subparagraph below the level of the head of
7 a contracting activity.

8 “(3) PUBLIC NOTICE OF ISSUE OF EXCEP-
9 TION.—

10 “(A) PUBLIC AVAILABILITY.—A notice of
11 an exception issued pursuant to paragraph (2)
12 shall be made publicly available in electronic
13 format through the Government-wide point of
14 entry, as defined in the Federal Acquisition
15 Regulation, at the time of contract award, or at
16 the time that an Executive agency decides to
17 proceed with contract performance, if arising
18 after award.

19 “(B) CONTENTS OF NOTIFICATION.—The
20 notice shall include, at a minimum—

21 “(i) the contractor, contractor em-
22 ployee, subcontractor, or subcontractor em-
23 ployee receiving the exception, although
24 reasonable redactions should be made to
25 the public version of the notice to protect

1 the privacy of individual employees of a
2 contractor or subcontractor;

3 “(ii) identification of the contract;

4 “(iii) a description of the nature of
5 the conflict;

6 “(iv) the rationale for applying the ex-
7 ception; and

8 “(v) the measures that will be taken
9 to mitigate or avoid the conflict.

10 “(b) DISCLOSURES AND LIMITATIONS FOR CONSULT-
11 ANTS.—Each contractor, contractor employee, subcon-
12 tractor, and subcontractor employee providing consulting,
13 analytical, or advisory services in support of the primary
14 missions, or the regulatory, policymaking, or adjudicative
15 functions, of an Executive agency shall—

16 “(1) disclose to the contracting officer, in suffi-
17 cient detail, specific work performed in the last five
18 years on behalf of any entities regulated by, or hav-
19 ing non-routine business before, the Executive agen-
20 cy; and

21 “(2) during the term of the contract, refrain
22 from entering into consulting or other contractual
23 arrangements with any entity to perform specific
24 work that may reasonably create a conflict of inter-
25 est, without receiving the written approval of the

1 contracting officer before the execution of the con-
2 tractual arrangement.

3 “(c) CIVIL PENALTIES.—

4 “(1) CIVIL ACTION.—The Attorney General
5 may bring a civil action in an appropriate district
6 court of the United States against a contractor, con-
7 tractor employee, subcontractor, or subcontractor
8 employee who knowingly violates the prohibitions
9 under subsection (a) or fails to comply with the re-
10 quirements of subsection (b).

11 “(2) PENALTY.—On proof of that conduct by a
12 preponderance of the evidence—

13 “(A) an individual shall be liable to the
14 Federal Government for a civil penalty of not
15 more than \$50,000 for each violation plus the
16 amount of compensation that the individual re-
17 ceived under the corresponding Government
18 contract; and

19 “(B) an organization shall be liable to the
20 Federal Government for a civil penalty of not
21 more than \$500,000 for each violation plus the
22 amount of compensation that the organization
23 received under the corresponding Government
24 contract.

1 “(3) STATUTE OF LIMITATION.—A civil action
2 under paragraph (1) shall be brought within 6 years
3 after the later of the date on which—

4 “(A) the prohibited conduct establishing
5 the cause of action occurred; or

6 “(B) the Federal Government first knew or
7 should reasonably have known that the prohib-
8 ited conduct had occurred.

9 “(4) RULES OF CONSTRUCTION.—The civil pen-
10 alties set forth in this subsection are not exclusive
11 and do not limit the potential for a person that vio-
12 lates the prohibitions under subsection (a) or fails to
13 comply with the requirements of subsection (b), to
14 be found liable under the False Claims Act, section
15 3729 through section 3733 of title 31, or other ap-
16 plicable civil or criminal penalties, as prescribed by
17 law.

18 “(d) ADMINISTRATIVE ACTIONS.—

19 “(1) TYPES OF ACTION THAT AN EXECUTIVE
20 AGENCY MAY TAKE.—An Executive agency that re-
21 ceives information that a contractor or a person has
22 failed to comply with a legal requirement to disclose
23 an organizational conflict of interest or a personal
24 conflict of interest, as defined in the Federal Acqui-
25 sition Regulation, or has violated the prohibitions

1 under subsection (a) or fails to comply with the re-
2 quirements of subsection (b), shall consider taking
3 one or more of the following actions, as appropriate:

4 “(A) Canceling the Executive agency pro-
5 curement or disqualify a contractor from con-
6 sideration, if a contract has not yet been award-
7 ed.

8 “(B) Terminating a contract with respect
9 to which—

10 “(i) the contractor or someone acting
11 for the contractor has been held liable for
12 an offense punishable under subsection (a);
13 or

14 “(ii) the contracting officer deter-
15 mines that a person or contractor failed to
16 disclose a material organizational or per-
17 sonal conflict of interest.

18 “(C) Initiating a suspension or debarment
19 proceeding for the protection of the Federal
20 Government in accordance with procedures in
21 the Federal Acquisition Regulation.

22 “(2) AMOUNT GOVERNMENT ENTITLED TO RE-
23 COVER.—When a Federal agency terminates a con-
24 tract pursuant to paragraph (1)(B), the Federal
25 Government is entitled to recover, in addition to any

1 penalty prescribed by law, the amount expended
2 under the contract.

3 “(3) PRESENT RESPONSIBILITY AFFECTED BY
4 CONDUCT.—For purposes of a suspension or debar-
5 ment proceeding initiated pursuant to paragraph
6 (1)(C), engaging in conduct constituting an offense
7 under this section affects the present responsibility
8 of a Federal Government contractor or subcon-
9 tractor.”.

