

Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Wallison, Peter J.: Files
Folder Title: Ethics - 1986 Thurmond Legislation (5)
Box: OA 14008

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

AMENDMENT NO. ___

Calendar No. ___

Purpose: To insert the compromise substitute.

IN THE SENATE OF THE UNITED STATES--99th Cong., 2d Sess.

S. 2334

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

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

Amendment In the Nature of a Substitute intended to be proposed by Mr. _____

Viz:

1 Strike all after the enacting clause and insert in lieu
2 thereof the following:

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Integrity in Post
5 Employment Act of 1986".

6 SEC. 2. STRENGTHENING THE CURRENT PROVISIONS OF SECTION 207
7 OF TITLE 18.

8 (a) Increased Penalty for Willful Violation.--The matter
9 after subsection (c) beginning "shall be fined" is amended
10 by inserting after the period at the end thereof the
11 following: "Whoever willfully violates subsection (a), (b),

1 or (c) shall be fined not more than \$250,000 or imprisoned
2 not more than five years, or both.".

3 (b) Forfeiture of Illegal Proceeds.--The matter after
4 subsection (c) beginning with "shall be fined", as amended
5 by subsection (a) of this section, is further amended by
6 inserting at the end thereof the following: "Any proceeds
7 received in violation of the provisions of subsection (a),
8 (b), or (c) shall be subject to forfeiture to the United
9 States in a civil action brought by the Attorney General.".

10 (c) Removal of Office of Government Ethics Authority.--
11 (1) Section 207 of title 18, United States Code, is amended
12 by striking out subsection (e).

13 (2) Subsections (f) through (j) of section 207 of title
14 18, United States Code, are redesignated as subsections (e)
15 through (i), respectively.

16 (d) One-Year Prohibition on Contact with Federal
17 Government for High Level Officials and Inclusion of All
18 Officers or Employees of the Three Branches of Government
19 Employed at or Above GS-16 in Current Provisions.--(1)
20 Subsection (c) of section 207 of title 18, United States
21 Code, is amended to read as follows:

22 18, United States Code, is amended to read as follows:

23 "(c) Whoever, other than a special Government employee
24 who serves for less than 120 days in a period of 365
25 consecutive days--

1 “(1) having been so employed as specified in
2 paragraph (1) of subsection (d) of this section, within
3 one-year after such employment has ceased, knowingly acts
4 as agent or attorney for, or otherwise represents, anyone
5 other than the United States in any formal or informal
6 appearance before, or, with the intent to influence,
7 makes any oral or written communication on behalf of
8 anyone other than the United States, for compensation,
9 financial gain, or other remuneration to--

10 “(A)(i) the department, agency, or other entity
11 in which the person served as an officer or employee;

12 “(ii) the Congress if the person was employed by
13 the Congress; or

14 “(iii) the court if the person was employed by
15 the judicial branch, and

16 “(B) in connection with any judicial,
17 rulemaking, or other proceeding, application, request
18 for a ruling or other determination, contract, claim,
19 controversy, investigation, charge, accusation,
20 arrest, or other particular matter, and

21 “(C) which is pending before the department,
22 agency, entity, Congress, or court or in which the
23 department, agency, entity, Congress, or the court
24 has a direct and substantial interest, or

25 “(2) having been so employed as specified in

1 paragraph (2) of subsection (d) of this section, within
2 eighteen months after termination of employment, with the
3 intent to influence makes any oral or written
4 communication to any Member of Congress, officer or
5 employee of the United States, including a special
6 Government employee, in the executive, legislative, or
7 judicial branch of the Government, or in any independent
8 agency of the United States, or an officer or employee of
9 a Government corporation, Government controlled
10 corporation, or an independent establishment as defined
11 in section 104 of title 5, on behalf of another person
12 (other than the United States) for compensation,
13 financial gain, or other remuneration--''.

14 (2) Subsection (d) of section 207 of title 18, United
15 States Code, is amended by redesignating paragraph (2) and
16 paragraph (3) and striking out paragraph (1) and inserting in
17 lieu thereof the following:

18 ''(1) Subsection (c)(1) of this section shall apply to
19 any employee of the Congress, officer or employee of the
20 United States, including a special Government employee, in
21 the executive, legislative, or judicial branch of the
22 Government, or in any independent agency of the United
23 States, or an officer or employee of a Government
24 corporation, Government controlled corporation, or an
25 independent establishment as defined in section 104 of title

1 5--

2 “(A) employed at a basic rate of pay equal to or
3 greater than the basic rate of pay for GS-16 of the
4 General Schedule as prescribed by section 5332 of title
5 5; or

6 “(B) employed on active duty as a commissioned
7 officer of a uniformed service assigned to pay grade of
8 0-7 or above as described in section 201 of title 37.

9 “(2) Subsection (c)(2) of this section shall apply to
10 any person--

11 “(A) employed in a position listed in section 5312,
12 5313, or 5314 of title 5 or under section 105(a)(2)(A) of
13 title 3; or

14 “(B) who serves as a Member of Congress; or

15 “(C) who serves as a judge of the United States as
16 defined in section 451 of title 28.”.

17 (e) Power To Enjoin Violations of Section 207.--Section
18 207 of title 18, United States Code, is amended by inserting
19 at the end thereof the following new subsection:

20 “(j) A violation of this section may be enjoined at the
21 suit of the Attorney General.”.

22 SEC. 3. REPRESENTATION OF FOREIGN GOVERNMENTS.

23 (a) Inclusion of Activities in the Foreign Agents
24 Registration Act.--Section 2 of the Foreign Agents
25 Registration Act of 1938, as amended, is amended by inserting

1 at the end thereof the following:

2 “(g)(1) In addition to the registration requirements of
3 subsections (a) through (e) of this section, any officer or
4 employee of the United States as identified in subsection
5 (d)(2) of section 207 of title 18, United States Code, shall
6 be required in any statement filed under this section to--

7 “(A) disclose the identity and nature of any foreign
8 principal for which such officer or employee acts as an
9 agent, representative, employer, or servant;

10 “(B) disclose the frequency of contact with such
11 foreign principal;

12 “(C) disclose the actions taken or intended to be
13 undertaken to influence members of Congress or officers
14 or employees of the United States on behalf of such
15 foreign principal; and

16 “(D) include a declaration that the registrant has
17 not disclosed confidential Government information or
18 tactics.

19 “(2) Whoever knowingly and willfully falsifies, conceals
20 or covers up by any trick, scheme, or device any information
21 required by this subsection to be included in a registration
22 statement shall be fined not more than \$10,000 or imprisoned
23 not more than five years, or both.”.

24 (b) Disclosure of International Trade Negotiations.--This
25 subsection to be redrafted and included at a later date.

1 (c) Three-Year Ban on High Level Officials Representing
2 Foreign Entities and a Two-Year Ban for Officers and
3 Employees at or Above GS-16.--(1) Subsection (c) of section
4 207 of title 18, as amended by section 2(d) of this Act, is
5 further amended by--

6 (A) striking out the dash at the end of clause (2)
7 and inserting in lieu thereof `` , or ``; and

8 (B) inserting after clause (2) the following:

9 `` (3) having been so employed as specified in paragraph
10 (1) of subsection (d) of this section, within two-year after
11 such employment has ceased, knowingly acts as agent or
12 attorney for, or otherwise represents, anyone other than the
13 United States in any formal or informal appearance before,
14 or, with the intent to influence, makes any oral or written
15 communication on behalf of a foreign entity for compensation,
16 financial gain, or other remuneration to--

17 `` (A)(i) the department, agency, or other entity in
18 which the person served as an officer or employee;

19 `` (ii) the Congress if the person was employed by the
20 Congress; or

21 `` (iii) the court if the person was employed by the
22 judicial branch; and

23 `` (B) in connection with any judicial, rulemaking, or
24 other proceeding, application, request for a ruling or
25 other determination, contract, claim, controversy,

1 investigation, charge, accusation, arrest, or other
2 particular matter, and

3 `` (C) which is pending before the department, agency,
4 entity, Congress, or court or in which the department,
5 agency, entity, Congress, or the court has a direct and
6 substantial interest, or

7 `` (4) having been so employed as specified in paragraph
8 (2) of subsection (d) of this section within three years
9 after such employment has ceased is--

10 `` (A) employed by;

11 `` (B) represents; or

12 `` (C) advises,

13 a foreign entity for compensation, financial gain, or other
14 remuneration--''.

15 (2) Subsection (d) of section 2Ø7 of title 18, United
16 States Code, as amended by section 2(d)(2) of this Act, is
17 amended by adding at the end thereof the following:

18 `` (4) The prohibition provided in subsection (c) shall
19 not apply to a Member, officer, or employee engaging only
20 in--

21 `` (A) the soliciting or collecting of funds and
22 contributions within the United States to be used only
23 for medical aid and assistance, or for food and clothing
24 to relieve human suffering, if such solicitation or
25 collection of funds and contributions is in accordance

1 with and subject to the provisions of subchapter II of
2 chapter 9 of title 22, United States Code, and such rules
3 and regulations as may be prescribed thereunder;

4 "(B) activities in furtherance of bona fide
5 religious, charitable, scholastic, academic, or
6 scientific pursuits or of the fine arts; or

7 "(C) activities in furtherance of the purposes of an
8 international organization of which the United States is
9 a member."

10 (3) Section 207 of title 18, United States Code, as
11 amended by section 2(e) of this Act, is amended by adding at
12 the end thereof the following:

13 "(k) For purposes of this section the term 'foreign
14 entity' means--

15 "(1) a foreign country;

16 "(2) a foreign political party; or

17 "(3) a foreign organization substantially controlled
18 by a foreign country or foreign political party."

19 SEC. 4. DISCLOSURE OF DOMESTIC LOBBYING.

20 Section 207 of title 18, United States Code, as amended
21 by section 3(c)(3) of this Act, is amended by inserting at
22 the end thereof the following:

23 "(1)(1) No person having been employed as provided in
24 subsection (d)(2) of this section shall lobby the United
25 States on behalf of another person other than the United

1 States unless he has filed with the agency or department in
2 which such person served a true and complete registration
3 statement and supplements thereto as required by this
4 subsection. Except as provided in this subsection, every
5 person who agrees to lobby on behalf of another person other
6 than the United States shall, within ten days thereafter,
7 file with the agency or department in which such person
8 served, in duplicate, a registration statement, under oath on
9 a form prescribed by the agency or department in which such
10 person served. The obligation of a former Government official
11 or employee to file a registration statement shall, after the
12 tenth day after agreement to lobby, continue from day to day,
13 and termination of such status shall not relieve such officer
14 or employee from his obligation to file a registration
15 statement for the period during which he lobbys the United
16 States.

17 “(2) The registration statement required by paragraph
18 (1) shall include the following which shall be regarded as
19 material for the purposes of this section:

20 “(A) Registrant's name, former association with the
21 agency or department, principal business address, and all
22 other business addresses in the United States or
23 elsewhere, and all residence addresses, if any;

24 “(B) A comprehensive statement of the nature of
25 registrant's business and a list of all clients employing

1 the registrant to lobby; a complete list of registrant's
2 employees and a statement of the nature of the work of
3 each;

4 "(C) Copies of each written agreement and the terms
5 and conditions of each oral agreement, including all
6 modifications of such agreements, or, where no contract
7 exists, a full statement of all the circumstances, by
8 reason of which the registrant is employed to lobby the
9 United States; a comprehensive statement of the nature
10 and method of performance of each such contract, and of
11 the existing and proposed activity or activities engaged
12 in or to be engaged in by the registrant, including a
13 detailed statement of any such activity which is a
14 political activity;

15 "(D) The nature and amount of contributions, income,
16 money, or thing of value, if any, that the registrant has
17 received within the preceding sixty days from each person
18 the registrant, either as compensation or for
19 disbursement or otherwise, and the form and time of each
20 such payment and from whom received; and

21 "(E) Such further statements and such further copies
22 of documents as are necessary to make the statements made
23 in the registration statement and supplements thereto,
24 and the of documents furnished therewith, not misleading.

25 "(3) Every former Government employee or officer who has

1 filed a registration statement required by this subsection
2 shall, within thirty days after the expiration of each period
3 of six months succeeding such filing, file with the agency or
4 department in which such person served a supplement thereto
5 under oath, on a form prescribed by the agency or department
6 in which such person served, which shall set forth with
7 respect to such preceding six months' period such facts as
8 the agency or department in which such person served may deem
9 necessary to make the information required under paragraph
10 (1) accurate, complete, and current with respect to such
11 period. If the head of the agency or department in which such
12 person served determines that it is necessary to carry out
13 the purposes of this subsection, the head may, in any
14 particular case, require supplements to the registration
15 statement to be filed at more frequent intervals in respect
16 to all or particular items of information to be furnished.

17 “(4) The registration statement and supplements thereto
18 shall be executed under oath.

19 “(5) The fact that a registration statement or
20 supplement thereto has been filed shall not necessarily be
21 deemed a full compliance with this subsection and the
22 regulations thereunder on the part of the registrant; nor
23 shall it indicate that the agency or department in which such
24 person served has in any way passed upon the merits of such
25 registration statement or supplement thereto; nor shall it

1 preclude prosecution, as provided for in this subsection, for
2 a willful failure to file a registration statement or
3 supplement thereto when due or for willful false statement of
4 a material fact therein or the willful omission of a material
5 fact required to be stated therein or the willful omission of
6 a material fact or copy of a material document necessary to
7 make the statements made in a registration statement and
8 supplements thereto, and the copies of documents furnished
9 therewith, not misleading.

10 “(6) The obligation to file statements under this
11 subsection shall terminate five years after the registrant
12 terminates Federal employment.

13 “(7) Any violation of this subsection shall be reported
14 to the Attorney General by the Inspector General of the
15 agency or department which learns of such violation.”.

16 SEC. 5. EXCLUSION FOR ATTORNEYS APPEARING IN JUDICIAL
17 PROCEEDINGS.

18 Section 207 of title 18, United States Code, as amended
19 by section 4 of this Act, is amended by inserting at the end
20 thereof the following:

21 “(m) The prohibitions of subsections (b) and (c) shall
22 not apply to an attorney appearing in a judicial proceeding
23 before a court of the United States.”.

24 SEC. 6. EXEMPTION FROM PROHIBITIONS OF SECTION 207.

25 Section 207 of title 18, United States Code, as amended

1 by section 5 of this Act, is amended by inserting at the end
2 thereof the following:

3 “(n)(1) Notwithstanding any other provision of this
4 section, the Attorney General may grant an exemption from the
5 prohibitions of subsections (a), (b), and (c) of this section
6 to any individual for conduct occurring after the grant of
7 such exemption if the Attorney General determines that such
8 an exemption would--

9 “(A) serve the overriding public interest or general
10 public welfare; or

11 “(B) the interests of the Federal Government.

12 “(2) Any exemption granted under paragraph (1) shall be
13 published in the Federal Register--

14 “(A) prior to the grant of the exemption; and

15 “(B) at least once every six months while such
16 exemption is in effect.”.

17 SEC. 7. EFFECTIVE DATE.

18 The amendments made by this Act shall--

19 (1) be effective six months after the date of
20 enactment of this Act; and

21 (2) apply to any Member or employee of Congress,
22 judge of the United States, employee of the judicial
23 branch, or employee or officer of the Federal Government
24 employed by any agency, department, or entity of the
25 Federal Government on or after six months after the date

029920.296

15

S.L.C.

1 of enactment of this Act.

EYES ONLY

Peter Wallison

DRAFT 4/24/86

FOR RELEASE ON DELIVERY
Expected at 9:00 A.M. EST
April 29, 1986

STATEMENT OF

DAVID H. MARTIN
DIRECTOR
OFFICE OF GOVERNMENT ETHICS

BEFORE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ON

S. 2334
INTEGRITY IN POST EMPLOYMENT ACT OF 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I appreciate the invitation to appear before this Committee to present the views of the Office of Government Ethics on amendments to the post employment provisions of section 207 of title 18, United States Code.

As I understand the provisions of S. 2334, the current provisions of section 207(a) of title 18, United States Code will not be changed. Thus, after leaving government employment, former executive branch employees continue to be restricted from serving as another person's representative to the Government on a case, contractual matter or other similar application or proceeding, formal or informal, in which he or she

EYES ONLY

participated personally and substantially while a government employee. This is a lifetime ban. There are two important limitations to this prohibition which attack "switching sides." First, the former employee is not restricted unless the matter in which he or she previously participated was (1) a "particular matter involving specific parties" and (2) is the same matter in which he or she now attempts to represent another before the Government. For instance, where an employee's prior involvement was limited to the design of a program policy, general rule-making or technical concepts -- matters which do not involve specific parties -- he or she is not restricted by this prohibition as to any specific matter which may involve his or her prior work. Second, this bar requires that the employee be personally involved in the matter in a substantial way. The kind of representation that is restricted includes not only acting as another's attorney or agent, but any other kind of representation or communication made with the intent to influence the United States. This includes promotional and contract representations. It also includes representations made with or without compensation.

The current provisions of 18 U.S.C. § 207(b) and (c) dealing with prohibitions involving representations on matters under a former employee's "official responsibility" and representations made by a "senior employee" would be replaced §. 2334 as follows:

- (1) A one year restriction, after termination of employment, on all federal employees (executive, legislative and judicial) and Members of Congress, on making any oral or written communication to Congress or any other branch of the federal Government with the intent to influence on behalf of another person for compensation or other remuneration;
- (2) A two year restriction, after termination of employment, on all federal employees (executive, legislative and judicial) and Members of Congress, who

EYES ONLY

(A) are employed by, advise, represent or assist a foreign entity for compensation or remuneration or (B) with intent to influence make an oral or written communication to Congress or any other branch of government on behalf of a foreign entity for compensation; and

- (3) A lifetime restriction on those individuals in the executive branch having been employed in or currently serving in Executive Level I or II positions or certain additional positions in the White House Office for which the rate of pay does equal or exceed the rate currently being paid for Executive Level II. This restriction would bar them with or without compensation from being employed by, representing, or assisting in any way a foreign entity or with the intent to influence, make oral or written communications to Congress or any other branch of the federal Government on behalf of the foreign entity.

Before addressing the merits of any of the proposed restrictions, I commend this Committee for recognizing the need to create a more uniform approach to post-federal employment issues. Too often in the past there has been criticism suggesting that a double standard has been employed in matters involving ethics, standards of conduct, and criminal conflicts of interest matters. Some suggest that congressional rules governing Members of Congress and their staffs are more lax than those applied in the executive branch; others contend that career employees in the executive branch are treated differently than political employees. Recognizing that post employment concerns should not be restricted to officers and employees of the executive branch is viewed very positively by this Office.

EYES ONLY

EYES ONLY

However, while we believe that certain of the same concerns regarding the misuse of personal influence are present regardless of which branch of government an individual serves, we cannot support the all-encompassing types of restrictions which this proposal contains for former employees of the executive branch. Many of the following concerns regarding the sweep and coverage of S. 2334 might be held by officers and employees of the judicial and legislative branches as well.

In enacting post employment or any conflict of interest restrictions, we believe that the restriction should have some reasonable relationship to preventing a perceived or actual harm to the Government and that the Government's need to avoid the harm outweighs all other interests involved. We are unaware of any studies or general concerns that would demonstrate a public harm that has a substantive relationship to the breadth of the net this proposal would cast. Post employment restrictions were traditionally enacted to prevent the use of inside information or influence as to specific matters in which the former employee participated or matters which he or she supervised, or prevent the use of personal influence on the part of former senior officials for a period of time so that their former colleagues and subordinates have an opportunity to readjust their professional relationship with the individual. In both kinds of restrictions, there is a direct relationship between duties the former official performed, or information he or she had, and the restriction. Thus, we do not see where there is harm, actual or apparent, in allowing most former officers or employees of any branch of the government to represent someone before another branch of government. A primary purpose of the conflict of interest laws is to protect the integrity of the decision-making process in government. In our view, representations made by an employee who has left one branch of government, to a different branch, will not be perceived as affecting any resulting government action other than as a reasonable, fair and unbiased process. This is true even to restrictions that are

EYES ONLY

EV

limited to an officer or employee's branch of government. It makes no difference to our analysis whether the person represents a foreign entity or not, or for that matter whether the individual is paid. What is paramount is prohibiting the use of inside information and personal influence, which in some instances may extend to an entire branch of government.

We recognize that restrictions which apply to everyone on all matters are very attractive, especially to those of us who must determine designations and administer restrictions. We also recognize the validity of the types of concerns which are expressed towards the present post employment restrictions. It should be possible, however, to address these concerns without stifling the legitimate career aspirations of the majority of government workers or the ability of our society to achieve healthy benefits from the mobility of workers between the private and public sectors. With this attitude, we have been an advocate within the executive branch for a reformulation of the principles of section 207. From our experience with a program which includes post employment restrictions, we offer for your consideration the following alternative proposal for amending section 207:

alternative subsection (a) — would apply to all former government employees of all three branches: a lifetime ban on representing or assisting another with respect to particular matters involving specific parties in which the employee had been personally and substantially involved.

alternative subsection (b) — would apply to all former government employees of all three branches: a two-year ban on representing or assisting another with respect to particular matters involving specific parties which were actually pending under the employee's official responsibility.

EYES ONLY

alternative subsection (c) — one-year no contact ban (i) for Executive Level and White House staff, 0-9's in the military, and equivalent positions in other branches, as to the entire government, and (ii) for the Senior Executive Service, 0-7's and 0-8's in the military and equivalent positions in other branches, as to their former departments or agencies in the executive branch or equivalent organizational units in other branches.

alternative subsection (d) — two-year employment ban with respect to foreign entities for Executive Level, White House staff, Senior Executive Service, 0-7's and above in uniformed services and equivalent positions in the other branches.

Note that present subsections (d)(1) (senior employee designations) and (c) (separate statutory agency designations) would be deleted.

With regard to our general suggestion for an alternative subsection (d) above, you should note that the ban also includes members of Congress and their staffs. Surely the chairmen and senior staff of certain congressional committees share the same type of information, whether it be in the area of national security, financial or commercial matters, as those individuals who handle such information on behalf of the executive branch.

We note the following technical issues with respect to the present language of S. 2334:

The language of proposed subsection (b) specifically includes the officers and employees of "a government corporation, government controlled corporation, or an independent establishment as defined in section 104 of title 5" Yet in paragraph (1)

EYES ONLY

EYES ONLY

of that subsection, the listed entities with respect to which representations are prohibited do not include these same entities. The coverage should be the same. It would be reasonable to apply post employment restrictions to any Member of Congress or any officer or employee of the executive, judicial or legislative branch of the Government, of any independent agency of the United States or any officer or employee of a government corporation who is by the corporation's statutory authority an officer or employee of the federal government. Many individuals who are employees of "mixed ownership corporations" or other corporations established by statute are not by law officers or employees of the federal government. These individuals should not be covered by this one provision of the criminal conflict of interest statutes. Further, the entities or persons to which or to whom representatives are prohibited should include the same entities and individuals who are restricted by the provision.

We note also in the language of subsection (b)(1) and its subparagraphs (A) and (B) that you have used the terms "compensation, financial gain, or other remuneration." If it is the intent that these terms have separate meanings, that should be made clear either by the legislative history or by definition.

We believe that the restriction in subsection (b)(2)(A) encompasses that of (b)(2)(B) and that it is unnecessary to include the latter if you intend that the restriction in subparagraph (A) cover any kind of compensated service whether or not it involves representational services. That is, such activities as compensated representational services and catering services would be prohibited by subparagraph (A).

There are practical objections to the restrictions of subsection (b)(2) if it is applied to all employees as now drafted. It would seem that nonresident aliens should be excluded

EYES ONLY

EYES ONLY

from coverage. First, nonresident aliens who are hired as employees of the United States government in their own countries to assist, for example, in servicing the functions of the State Department, Defense Department, AID, and USIA would be severely affected. On the face of this proposal, these individuals would be prohibited from being employed by almost anyone in their own countries upon leaving the U.S. employ. We believe that a post employment provision that would not take this into consideration would substantially impair our government's foreign operations and may very well be unforeseeable.

We also observe that because of the manner in which the term "foreign entity" is defined by proposed subsection (h), the apparent intent of proposed subsections (b)(2) and (c) might be easily avoided. The literal prohibitions of these provisions would not be violated if a former government employee were to provide services to a United States corporation or other domestic entity which was controlled by a party described in proposed subsection (h).

Like any rule, these restrictions must have exceptions which apply to special circumstances. However, we are not sure that those embodied in the current proposal cover all the necessary special considerations which may result from the increased restrictions. For instance, present section (d)(1) limits application of the restrictions to former employees who act in this capacity as an elected official of a federal, state, or local government. However, consideration should be given to exceptions for public service with international organizations such as the United Nations or the International Red Cross or to health care institutions or institutions of higher learning which were deemed important to medicine and academia when the present 207 restrictions were enacted.

EYES ONLY

EYES ONLY

By striking present subsection (h) you have eliminated the testimony under oath exception for those individuals who may be subject to the lifetime proscriptions under section 207(a). What is a former employee to do when subpoenaed to testify on a matter in which he or she participated while in federal service?

Additionally, section 202 of title 18 contains language regarding section 207 and would require attention with any section 207 amendments.

Finally, close consideration should be given the effective date of any post employment amendments. Since the restriction will be viewed by some as an encroachment on individual freedom of choice, a delay in the effective date may give some currently employed individuals the option of terminating federal employment in lieu of subjecting themselves to further restriction. Also, we would urge that due process require that no provision, such as the proposed subsection (c), should have a lifetime ban not related to a specific matter nor in fairness apply to any individual who has already terminated government service.

Department of Justice
STATEMENT M S 2334
EYES ONLY

Mr. Chairman and Members of the Committee, I am pleased to be here today to present the views of the Department of Justice on the operation of one of the conflict-of-interest statutes, 18 U.S.C. §207. I will also discuss S. _____, a bill which would substantially amend 18 U.S.C. §207.

Policy Objectives of Section 207 of Title 18, United States Code

Section 207 of Title 18, United States Code, was enacted in 1962 as part of a comprehensive statutory scheme 1/ which evolved from a number of conflicts-of-interest statutes enacted by Congress more than a century ago in the wake of revelations of rampant corruption in connection with the procurement of goods and services and the handling of claims against the United States during the Civil War. In 1872, legislation was passed which prohibited a former employee of a department of the executive branch from acting as counsel, attorney or agent for a period of two years after leaving office in the prosecution of claims pending in the department at the time the former employee worked there. 2/ Three principal policy considerations supplied much of the motivation for the enactment of this legislation: 3/ first, Congress wanted to minimize the risk that a former employee would use inside information about a claim to the detriment of the government; second, Congress wanted to safeguard Federal funds by preventing a former employee from profiting by his or her

1/ Pub.L. 87-849 (76 Stat. 1119, October 23, 1962).

2/ Act of June 1, 1872, ch. 256 §5, 17 Stat. 202.

3/ See Cong. Globe, 42d Cong., 2d Sess. 1584, 1846-47, 3109-13, 3135 (1872).

EYES ONLY

EYES ONLY

knowledge about monies owed by the United States; and third, Congress wanted to minimize the risk that a former employee would exercise a continuing personal influence over his or her former associates.

These early policy considerations, and others similar to them, provided the impetus for the enactment of the major revision to Federal bribery and conflicts-of-interest laws in 1962. 4/ According to the House Report which accompanied the 1962 legislation: 5/

The proper operation of a democratic government requires that officials be independent and impartial; that Government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. The attainment of one or more of these ends is impaired whenever there exists, or appears to exist, an actual or potential conflict between the private interests of a Government employee and his duties as an official. The public interest, therefore, requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to employee conduct in situations where actual or potential conflicts exist.

It is also fundamental to the effectiveness of democratic government that, to the maximum extent possible, the most qualified individuals in the society serve its government. Accordingly, legal protections against conflicts of interest must be so designed as not unnecessarily or unreasonably to impede the recruitment and retention by the Government of those men and women who are most

4/ See n.1, supra.

5/ H.R. Rep. No. 748, 87th Cong., 1st Sess. 5-6 (1961).

EYES ONLY

qualified to serve it. An essential principle underlying the staffing of our governmental structure is that its employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where actual or potential conflicts with the responsibility of such employees to the public cannot be avoided.

Likewise, one prominent commentator has noted the following policy objectives of the 1962 legislation: 6/ (1) impartiality, fairness and equality of treatment toward those dealing with government; (2) assurance that decisions of public importance will not be influenced by private considerations; (3) efficiency and economy in carrying on the business of government; (4) maintenance of public confidence in government; and (5) prevention of the use of public office for private gain. Section 207 of Title 18, United States Code was a major component of the 1962 legislation. Substantial amendments were made to Section 207 by the Ethics in Government Act of 1978; 7/ the section was amended again in 1979. 8/

The Senate Report 9/ accompanying the 1978 amendments notes that Section 207 is designed to ensure government efficiency, eliminate official corruption, promote evenhanded exercise of administrative discretion, prevent use of undue influence over former colleagues, and prevent use of information about

6/ R. Perkins, The New Federal Conflict-of-Interest Law, 76 Harv. L. Rev. 1113, 1118 (1963).

7/ Ethics in Government Act of 1978, Pub. L. 95-521, §301(a), 92 Stat. 1864.

8/ Act of June 22, 1979, Pub. L. 96-28, §§1, 2, 93 Stat. 76.

9/ S.Rep. 95-170, 95th Cong., 1st Sess. 31, 34 (1977).

specific cases gained during government service for a former employee's own benefit and that of private clients. The object of the statute is to promote honest government, and impartial decisions, and to prevent corruption and other official misconduct before it occurs, as well as penalizing it once it is found.

An Overview of Section 207

There are four subsections in Section 207 of Title 18, United States Code, which provide for felony sanctions upon a conviction: §§207(a); 207(b)(1); 207(b)(11); and 207(c). Each of these subsections provides for a maximum sentence of a fine of not more than \$10,000 or imprisonment for not more than two years, or both, but 18 U.S.C. §3623 substantially increases the maximum fine for individuals for offenses committed after December 31, 1984.

Subsection 207(a) and subsection 207(b)(1) each covers all former officers and employees, including special Government employees, of the executive branch, independent agencies, and the District of Columbia, except such officers and employees who left government employment before July 1, 1979. 10/ Subsection 207(b)(11) and subsection 207(c) each covers persons as set forth in subsection 207(d), except such persons who left government employment before July 1, 1979, or, in the case of such persons

10/ Those officers or employees who left their employment prior to July 1, 1979 remain subject to 18 U.S.C. §207(a) (1976) which provides:

Whoever, having been an officer or employee of the executive branch of the United States

who occupied designated positions, prior to the effective date of such designation. In addition, subsection (c) does not cover a special government employee who serves for less than sixty days in a given calendar year.

Specific exceptions to the applicability of subsections 207(a), 207(b)(1) and 207(b)(11) are set forth in subsection 207(f). Likewise, exceptions to the applicability of subsection 207(c) are set forth in subsections 207(d)(2), 207(e), 207(f), 207(h), and 207(i).

Generally, Subsection 207(a) prohibits, for the life of a matter, a person subject to its terms from representing anyone except the United States in a Federal forum or before a Federal official in connection with any particular matter involving a specific party or parties in which the United States or the

(Footnote Continued)

Government, or 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 anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and 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.

District of Columbia is a party or has a direct and substantial interest, and in which the person participated personally and substantially as an official.

Subsection 207(b)(i) prohibits a person subject to its terms from representing anyone except the United States in a federal forum or before a federal official in connection with a 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 which particular matter was actually pending under the former official's official responsibility as an such an official within a period of one year prior to the termination of such responsibility. This prohibition is limited to the two years following a former official's employment or, in cases where the former official's responsibilities changed before the official left government service, the two years following the change.

Subsection 207(b)(ii), for two years after their government employment has ceased, bars persons subject to its terms from representing, aiding, counseling, advising, consulting, or assisting in representing anyone except the United States by personal presence at any formal or informal appearance before a federal forum or official, in connection with particular matters involving a specific party or parties in which they participated personally and substantially as government officials.

Subsection 207(c), unlike subsections 207(a), 207(b)(i) and 207(b)(ii), embraces particular matters which do not involve specific parties and which arise after the former officer or

EYES ONLY

- 7 -

employee has left government service. The subsection, in general, prohibits persons subject to its terms from representing anyone except the United States before the agency where such person served in connection with any particular matter which is pending before such agency or in which such agency has a direct and substantial interest.

In addition to its four felony provisions, section 207 includes a misdemeanor provision which regulates the conduct of partners of officers or employees of the executive branch, independent Federal agencies and the District of Columbia, including special Government employees. Such partners are barred from acting as agents or attorneys for anyone except the United States before certain Federal forums, or officers or employees thereof, in connection with a particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officers or employees participate or have participated personally and substantially as officers or employees or which is the subject of their official responsibility. The statute provides that an offense under this subsection is punishable by a fine of not more than \$5,000 or imprisonment for not more than one year, or both, but 18 U.S.C. §3623 substantially increases the maximum fine for individuals for offenses committed after December 31, 1984.

Lastly, subsection 207(j) establishes a basis for administrative disciplinary action, pursuant to regulations promulgated under the authority of the subsection, and following a

EYES ONLY

- 8 -

determination by the head of a department or agency in which the former officer or employee served that such former officer or employee violated subsection 207(a), 207(b)(1), 207(b)(11) or 207(c).

Compliance With Section 207

The Criminal Division has no evidence which demonstrates that section 207 violations are a significant law enforcement problem. Indeed, the rather sparse number of section 207 investigations and prosecutions reported to the Executive Office for United States Attorneys by the United States Attorneys for the period 1980 through February 1985 would suggest that such offenses occur infrequently. In that five year period, 45 matters involving section 207 issues were reported by the United States Attorneys as closed without prosecution. Nine of these declinations resulted from referrals which were made prior to 1980. In this same period, five section 207 prosecutions were initiated, according to the reports of the United States Attorneys. Three of these prosecutions resulted in guilty pleas. One prosecution resulted in an acquittal. The fifth prosecution was dismissed at the request of the United States Attorney.

Likewise, the Criminal Division's Public Integrity Section's recent experience with matters involving section 207 indicates that there is no widespread failure to comply with the statute. In this regard, the Section received approximately fifty-one referrals of matters involving section 207 in the

period 1980 through February 1985. Criminal prosecution was declined in each of these matters. The Public Integrity Section handled two of these referrals, which involved former Department of Justice attorneys, under the provisions of subsection 207(j).

Enforcement of Section 207

Crima prevention is a major goal of law enforcement. The Office of Government Ethics (OGE) complements the Criminal Division's enforcement of the federal criminal conflicts-of-interest statutes by facilitating understanding among executive branch officials about what the statutes require from them. Such understanding minimizes the risk that an inadvertent offense will be committed. The OGE endeavors to assure that executive branch officials are aware of their responsibilities under the statutes by developing regulations and policies concerning the statutes, issuing advisory opinions about the statutes, reviewing the financial disclosure reports of Presidential nominees, monitoring the adequacy and effectiveness of federal agency ethics programs, and sponsoring training conferences for agency ethics personnel. The Public Integrity Section of the Criminal Division helps the OGE effectively to perform its advisory function by consulting with it, for example, about questions involving statutory construction. The Section, moreover, has twice provided briefings for the OGE staff about the Section's view of the statutes and the manner in which such matters are ordinarily processed in the criminal justice system and participated in a seminar concerning the

conflicts-of-interest statutes with OGE officials in October 1985. An objective of such a dialogue is to assure effective coordination between the advisory and prosecutive components of the executive branch.

There is a Memorandum of Agreement, effective May 19, 1980, between the OGE, the Office of Legal Counsel (OLC) and the Criminal Division. This memorandum provides in part that the Director, OGE, shall consult with the Criminal Division before rendering an advisory opinion on an actual or apparent violation of any conflict of interest law. Should the Criminal Division decide to undertake a criminal investigation, the Director will not render an advisory opinion pending a determination by the Criminal Division not to prosecute.

In summary, the Criminal Division's Public Integrity Section and the OGE have an informal but close relationship regarding the prevention of conflicts-of-interest offenses.

Disciplinary action pursuant to subsection 207(j) is of major importance in the effective enforcement of section 207. Most section 207 violations which we have seen have involved conduct totally unsuited for criminal prosecution, but which might be redressed effectively by means of an administrative sanction commensurate with the seriousness of the conduct.

The potential for criminal prosecution under section 207 enhances enforcement by providing a general deterrent against the conduct the statute is designed to prevent. Allegations of section 207 offenses are investigated mainly by the various Inspectors General, or the Federal Bureau of Investigation or

both. Section 207 matters referred to a United States Attorney's office or to the Public Integrity Section are ordinarily handled by the receiving office. Likewise, prosecutive determinations are made by the receiving office. A Chapter in the United States Attorneys' Manual, which was drafted in the Public Integrity Section, includes an overview of section 207 for the benefit of federal prosecutors who are called on to review a section 207 matter. 11/

S. _____ The Integrity in
Post-Employment Act of 1986

While we share the concerns expressed by the Chairman in his recent statement on the floor of the Senate regarding the introduction of The Integrity in Post-Employment Act of 1986, and would be pleased to work with the Committee to draft legislation addressing that concern, we believe that S. _____ should not be passed in its current form for several reasons.

First, S. _____ would eliminate three felony provisions from 18 U.S.C. §207 (subsections 207(b)(1), 207(b)(11) and 207(c)). We do not believe that there is any reason to eliminate the prohibition set forth in subsection 207(b)(1), but would not oppose the elimination of subsection 207(b)(11) and 207(c). Subsection 207(b)(11) is largely redundant in view of subsection 207(a), and subsection 207(c) is riddled with

11/ 9 USAM §§85.200 through 85.206; 85.240 through 85.249 b.

exceptions limiting its effectiveness. Moreover, subsection 207(c) designates as felonious conduct which ordinarily would result in no demonstrable, tangible harm to the United States Government and very well might be beneficial to the Government. The likelihood of a jury conviction in such a case would be virtually nil. Only where there is proof of positive corruption, tangible harm to the Government or some other equally serious collateral circumstance would a felony prosecution under subsection 207(c) have any reasonable likelihood of a successful outcome. Thus, except as a general deterrent, perhaps influencing future conduct, the subsection is of doubtful worth as an enforcement tool.

Second, SEC. 2(b)(1) of the bill would severely restrict the post-employment activities of former federal officials without regard to whether or not such activities in reality would pose any risk of any of the harms conflicts-of-interest statutes have been designed to minimize. SEC. 2(b)(1) would place an unreasonable post-employment burden on a large number of junior to middle-level federal employees who would otherwise immediately after leaving federal service represent other persons before federal agencies in connection with particular matters these employees had nothing to do with during their federal service, either as direct participants or as supervisors. For example, a junior Army officer leaving the military following distinguished service would be barred for one

year from representing clients before the Securities and Exchange Commission. In addition, a clerk-typist leaving the United States Department of Agriculture would be barred for one year from sending an advertisement of the clerk-typist's new employer to the United States Department of Health and Human Services. Rather than going forward with a bill taking such a broad approach, the Committee may wish to consider amending 18 U.S.C. §207(b)(1) to include the legislative and judicial branches of the Government. Likewise, the Committee may wish to consider amending 18 U.S.C. §207(a) making it applicable to the legislative and judicial branches.

Third, SEC. 2(b)(2), also, is overly broad. For example, it would seem to prohibit a former federal truck driver from driving a truck for a foreign entity for two years after the truck driver's employment with the federal government. Likewise, SEC. 2(c)(1) is overly broad. For example, it would seem to prohibit a covered person from supplying a doctor's name to a foreign friend abroad in need of medical advice.

We do not presently have specific recommendations regarding how best to revise the bill, nor do we have any empirical data demonstrating the necessity of S. _____ or any provision like it. But because the bill eliminates 18 U.S.C. §207(b)(1) without providing a comparable substitute, and contains overly broad provisions, we recommend that if the Committee should decide that some form of the bill should be passed, the Committee make substantial revisions; we would be pleased to comment about them.

- 14 -
EYES ONLY

Mr. Chairman, that concludes my prepared remarks and I would be happy to answer any questions you may have.

EYES ONLY