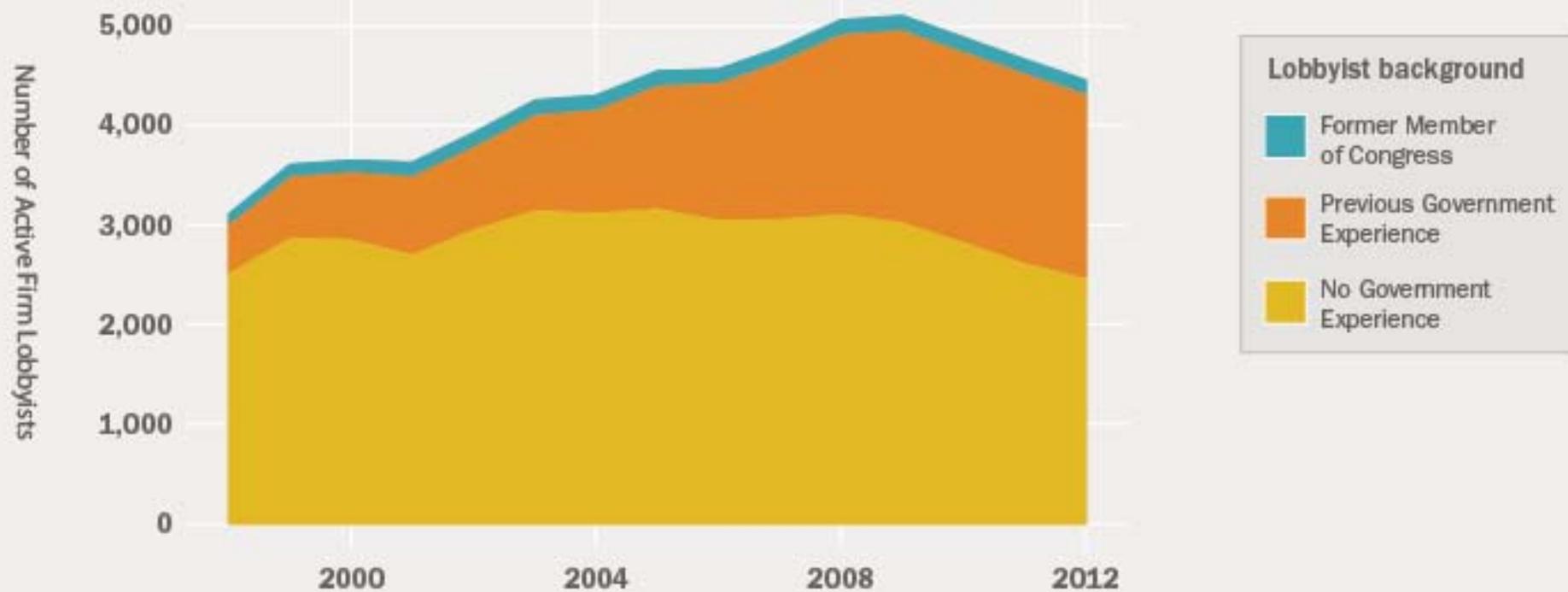


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- CFPB Forms Panel: Mortgage Disclosures: A New HUD-1 is Coming . . . Will You Be Ready?:** Panelists will discuss the status of CFPB's efforts to create new combined mortgage disclosure forms that will replace the current TIL, GFE and HUD-1 Settlement Statement, and what attendees might expect to see from the disclosure forms when the Bureau releases its regulations in July. Speakers: Ben Olson, Consumer Financial Protection Bureau; Scott Olson, former staff to Rep. Barney Frank; Ken Markison, Mortgage Bankers Association; and moderator Justin Ailes, ALTA.
- Congressional Briefing:** In two separate sessions, Rob Jesmer of the National Republican Senatorial Committee and Guy Cecil of the Democratic Senatorial Campaign Committee will give a briefing on the 2012 Senate races. You can get a preview of their perspective by [clicking here](#).
- Luncheon with CFPB Director:** Richard Cordray, director of the Consumer Financial Protection Bureau Director, has been invited to speak during the May 7 luncheon. As the new cop on the beat protecting consumers, you'll want to hear the priorities Cordray has set for the Bureau.

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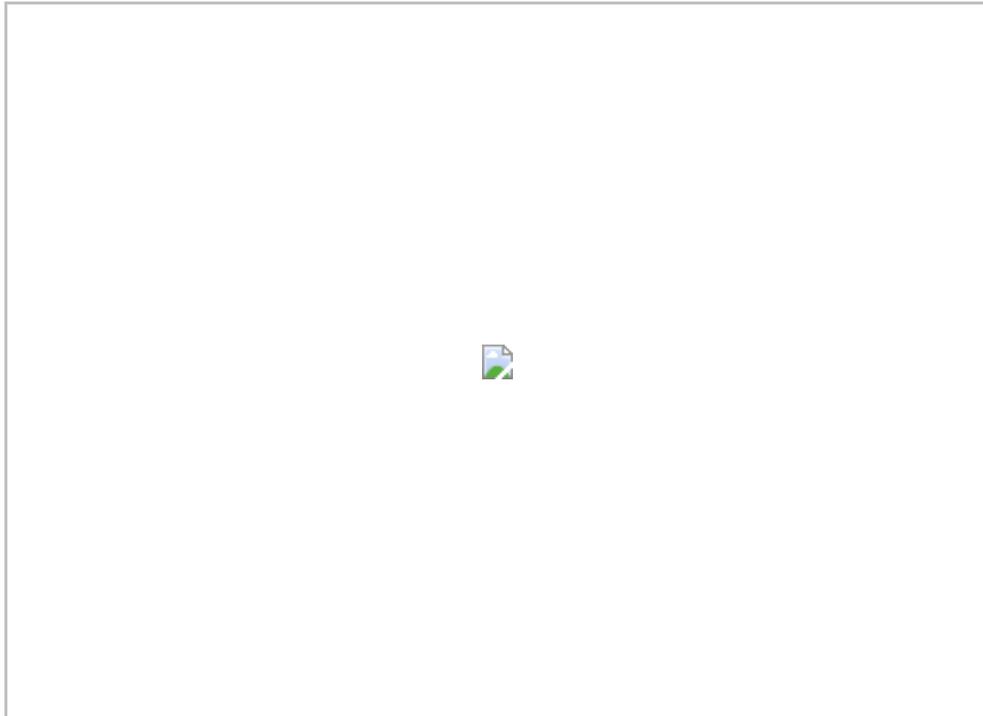
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# REP. SCHWEIKERT DISCUSSES REPUBLICAN UNVEIL OF GSE REFORM ON CNBC'S SQUAWK BOX



03/29/11

**Washington, D.C.** – Congressman David Schweikert (R-AZ), Vice Chairman of the House Financial Services Subcommittee on Capital Markets and Government-Sponsored Enterprises appeared on CNBC's Squawk Box this morning to discuss Republican efforts to unwind Fannie Mae and Freddie Mac. Here is the [video](#) and excerpts from the interview: **0**



## SCHWEIKERT ON HIS BILL THE "GSE RISK AND ACTIVITIES LIMITATION ACT":

"We've been going up and down Fannie and Freddie and saying 'how can we avoid the continued hazard of bad acts ending up on the American taxpayers?' One bill we're introducing today is to make sure Fannie and Freddie don't go off and start securitizing car loans and other types of activities that keep them focused where they're at. It's sort of like playing with a little drop of mercury. We're trying to keep them in one place."

### **SCHWEIKERT ON FANNIE AND FREDDIE'S ROLE 5 YEARS FROM NOW:**

"For many of us, we want to get rid of the Full Faith and Credit, even an implied guarantee from the American taxpayers on Fannie and Freddie securitization. But you've got to make sure you have a private MBS, mortgage backed security, market up and working. So picture a see-saw where as Fannie-Freddie's "G" fees go up, when their loan limits may come down. At the same time, we've promulgated the rules here in Congress. We also let the markets understand what is a qualifying loan and make sure that as one comes down, the other is out there and we have a healthy private mortgage market."

### **SCHWEIKERT ON IF OBAMA ADMINISTRATION AND REPUBLICANS ARE ON THE SAME PAGE:**

"I wouldn't say we're on the same page but we are reading from the same principles. To their credit, the White Paper makes it clear we do have a problem and need to move away from this implied guarantee. Now the devil is in the details. How do you build a private mortgage market? And think of it, from when Ma and Pa walk in the door and ask for a loan all the way down to the end where a snippet of a bond is sitting in someone's pension account, what are the rules? And there's dozens of mechanics that have to be put together."

### **SCHWEIKERT ON IF WHITE HOUSE AND REPUBLICANS CAN AGREE ON FANNIE AND FREDDIE UNWIND:**

"I hope so because I'm spending a few hours every day working on this. And it's like a lot of things. As soon as you think you have one solution, you find out there's a half dozen other problems that have to be taken care of. And a lot of this is private mortgage insurance. Is that the way to move forward? Is it covered bonds? What is the way to produce quality mortgage debt that can be securitized that we can have in our investment accounts that will be highly rated and be safe? And I'll make you the argument debt that's been created in the last two years is wonderful. It's good quality debt, good quality mortgage debt because we're doing it on a new basis -- our home values are down so much. But what's the future?"

### **SCHWEIKERT ON IF IT WILL TAKE 5-7 YEARS TO UNWIND FANNIE AND FREDDIE:**

"I think that may be too long. If we're producing the rules and giving a tell to the private markets, I think it probably has to be about half that time."

###

**UNITED STATES HOUSE OF REPRESENTATIVES**  
**CALENDAR YEAR 2012 FINANCIAL DISCLOSURE STATEMENT**

Form A  
 For use by Members, officers, and employees

**HAND DELIVERED** <sup>Page 9</sup>  
 2013 JUL -3 AM 10:46  
 (Office Use Only) **HE**

Name: Matthew Tully Daytime Telephone: \_\_\_\_\_

Filer Status	<input type="checkbox"/> Member of the U.S. House of Representatives	State: _____ District: _____	<input checked="" type="checkbox"/> Officer or Employee	Employing Office: <u>Rep David Schweikert</u>
Report Type	<input type="checkbox"/> Annual (May 15, 2013)	<input type="checkbox"/> Amendment	<input checked="" type="checkbox"/> Termination	Termination Date: <u>May 5, 2013</u>

**A \$200 penalty shall be assessed against anyone who files more than 30 days late.**

**PRELIMINARY INFORMATION — ANSWER EACH OF THESE QUESTIONS**

I. Did you or your spouse have "earned" income (e.g., salaries or fees) of \$200 or more from any source in the reporting period? <b>If yes, complete and attach Schedule I.</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	VI. Did you, your spouse, or a dependent child receive any reportable gift in the reporting period (i.e., aggregating more than \$350 and not otherwise exempt)? <b>If yes, complete and attach Schedule VI.</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
II. Did any individual or organization make a donation to charity in lieu of paying you for a speech, appearance, or article in the reporting period? <b>If yes, complete and attach Schedule II.</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	VII. Did you, your spouse, or a dependent child receive any reportable travel or reimbursements for travel in the reporting period (worth more than \$350 from one source)? <b>If yes, complete and attach Schedule VII.</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
III. Did you, your spouse, or a dependent child receive "unearned" income of more than \$200 in the reporting period or hold any reportable asset worth more than \$1,000 at the end of the period? <b>If yes, complete and attach Schedule III.</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	VIII. Did you hold any reportable positions on or before the date of filing in the current calendar year? <b>If yes, complete and attach Schedule VIII.</b>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
IV. Did you, your spouse, or a dependent child purchase, sell, or exchange any reportable asset in a transaction exceeding \$1,000 during the reporting period? <b>If yes, complete and attach Schedule IV.</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	IX. Did you have any reportable agreement or arrangement with an outside entity? <b>If yes, complete and attach Schedule IX.</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
V. Did you, your spouse, or a dependent child have any reportable liability (more than \$10,000) during the reporting period? <b>If yes, complete and attach Schedule V.</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<b>Each question in this part must be answered and the appropriate schedule attached for each "Yes" response.</b>	

**EXCLUSION OF SPOUSE, DEPENDENT, OR TRUST INFORMATION — ANSWER EACH OF THESE QUESTIONS**

<b>IPO</b> —Did you purchase any shares that were allocated as a part of an Initial Public Offering?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>TRUSTS</b> —Details regarding "Qualified Blind Trusts" approved by the Committee on Ethics and certain other "excepted trusts" need not be disclosed. Have you excluded from this report details of such a trust benefiting you, your spouse, or dependent child?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>EXEMPTION</b> —Have you excluded from this report any other assets, "unearned" income, transactions, or liabilities of a spouse or dependent child because they meet all three tests for exemption? Do not answer "yes" unless you have first consulted with the Committee on Ethics.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

**SCHEDULE VIII—POSITIONS**

Report all positions, compensated or uncompensated, held during the current calendar year as an officer, director, trustee of an organization, partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States.

**Exclude:** Positions listed on Schedule I; positions held in any religious, social, fraternal, or political entities (such as political parties and campaign organizations); and positions solely of an honorary nature.

Position	Name of Organization
n/a	

**SCHEDULE IX—AGREEMENTS**

Identify the date, parties to, and general terms of any agreement or arrangement with respect to: future employment; a leave of absence during the period of government service; continuation or deferral of payments by a former or current employer other than the U.S. Government; or continuing participation in an employee welfare or benefit plan maintained by a former employer.

Date	Parties To	Terms of Agreement
May 6 2013	Matthew Pully and Essent US Holdings	Employment

Clerk of the House of Representatives Legislative Resource Center B-106 Cannon Building Washington, DC 20515 <a href="http://lobbyingdisclosure.house.gov">http://lobbyingdisclosure.house.gov</a>	Secretary of the Senate Office of Public Records 232 Hart Building Washington, DC 20510 <a href="http://www.senate.gov/lobby">http://www.senate.gov/lobby</a>
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# LOBBYING REGISTRATION

## Lobbying Disclosure Act of 1995 (Section 4)

**Check One:**  New Registrant  New Client for Existing Registrant  Amendment

1. Effective Date of Registration 05/06/2013

2. House Identification \_\_\_\_\_

Senate Identification 401081032

**REGISTRANT**  Organization/Lobbying Firm  Self Employed Individual

3. Registrant Organization Essent US Holdings, Inc.

Address Two Radnor Corporate Center

Address2 100 Matsonford Rd

City Radnor

State PA

Zip 19087

Country USA

4. Principal place of business (if different than line 3)

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

Country \_\_\_\_\_

5. Contact name and telephone number

International Number

Contact Mr. Anthony D. Shore

Telephone 6102300555

E-mail tony.shore@essent.us

6. General description of registrant's business or activities

Provider of mortgage guaranty insurance and related services

**CLIENT** *A Lobbying Firm is required to file a separate registration for each client. Organizations employing in-house lobbyists should*

*check the box labeled "Self" and proceed to line 10.*  **Self**

7. Client name Essent US Holdings, Inc.

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

Country USA

8. Principal place of business (if different than line 7)

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

Country \_\_\_\_\_

9. General description of client's business or activities

## LOBBYISTS

10. Name of each individual who has acted or is expected to act as a lobbyist for the client identified on line 7. If any person listed in this section has served as a "covered executive branch official" or "covered legislative branch official" within twenty years of first acting as a lobbyist for the client, *state the executive and/or legislative position(s) in which the person served.*

Name			Covered Official Position (if applicable)
First	Last	Suffix	
Matthew D.	Tully		Chief of Staff for Rep. David Schweikert

Matthew D.	Tully	Legislative Director for Rep. David Schweikert
Matthew D.	Tully	Legislative Assistant for Rep. John Shadegg
Matthew D.	Tully	Legislative Assistant for Rep. David Dreier

**LOBBYING ISSUES**

11. General lobbying issue areas (Select all applicable codes).

HOU    TAX    INS    FIN    \_\_\_\_\_

12. Specific lobbying issues (current and anticipated)

Housing/GSE reform, mortgage insurance, and housing issues

**AFFILIATED ORGANIZATIONS**

13. Is there an entity other than the client that contributes more than \$5,000 to the lobbying activities of the registrant in a quarterly period and either actively participates in and/or in whole or in major part supervises, plans, or controls the registrant’s lobbying activities?

- No --> Go to line 14.                       Yes --> Complete the rest of this section for each entity matching the criteria above, then proceed to line 14.

Internet Address: \_\_\_\_\_

Name	Address	Principal Place of Business
	Street	
	City	State/Province    Zip Code    Country

**FOREIGN ENTITIES**

14. Is there any foreign entity

- a) holds at least 20% equitable ownership in the client or any organization identified on line 13; or
- b) directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances or subsidizes activities of the client or any organization identified on line 13; or
- c) is an affiliate of the client or any organization identified on line 13 and has a direct interest in the outcome of the lobbying activity?

- No --> Sign and date the registration.                       Yes --> Complete the rest of this section for each entity matching the criteria above, then sign the registration.

Name	Address	Principal place of business	Amount of contribution for lobbying activities	Ownership
	Street	City		
	City	State/Province		
		Country		
	House	City		
Essent Group Ltd.	Hamilton HM 11	BER	0.00	100 %

**Signature**    Digitally Signed By: Anthony D. Shore, Vice President Chief Compliance Officer                      **Date**    06/20/2013

Jo Bonner, Alabama  
*Chairman*  
Linda T. Sánchez, California  
*Ranking Member*

Michael T. McCaul, Texas  
K. Michael Conaway, Texas  
Charles W. Dent, Pennsylvania  
Gregg Harper, Mississippi

John A. Yarmuth, Kentucky  
Donna F. Edwards, Maryland  
Pedro R. Pierluisi, Puerto Rico  
Joe Courtney, Connecticut



ONE HUNDRED TWELFTH CONGRESS

## U.S. House of Representatives

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*Counsel to the Ranking Member*

1015 Longworth House Office Building  
Washington, D.C. 20515-6328  
Telephone: (202) 225-7103  
Facsimile: (202) 225-7392

November 19, 2012

### MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics *JB*  
Jo Bonner, Chairman  
Linda T. Sánchez, Ranking Member *RTS*

**SUBJECT:** Negotiations for Future Employment and Restrictions on Post-Employment  
for House Staff

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The purpose of this memorandum is to notify you regarding key issues of concern to staff members<sup>1</sup> who are negotiating for future employment or departing from employment with the House of Representatives or one of the legislative branch offices.<sup>2</sup> The matters discussed here include negotiations for future employment, post-employment restrictions, financial disclosure requirements (termination reports), and outside employment and earned income restrictions. Although this memorandum will be of particular interest to departing staff, current staff and their employing Members should also familiarize themselves with these restrictions, particularly the criminal restrictions on post-employment communications.<sup>3</sup>

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<sup>1</sup> The terms “staff” and “employee” are used interchangeably throughout this memorandum to refer to persons who are employed by a Member, committee, leadership office, or other legislative office (*see note 2, below*). Relevant distinctions among these categories of employees are noted as necessary.

<sup>2</sup> “[O]ther legislative offices” include employees of the Architect of the Capitol, United States Botanic Garden, Government Accountability Office, Government Printing Office, Library of Congress, Office of Technology Assessment, Congressional Budget Office, and Capitol Police. It also includes any other House legislative branch office not covered by the other provisions, such as the Clerk, Parliamentarian, Office of Legal Counsel, and Chief Administrative Officer. *See* 18 U.S.C. § 207(e)(9)(G).

<sup>3</sup> This guidance, as well as some additional requirements and restrictions, also applies to House Members and officers, and is addressed in a separate memorandum entitled “Negotiations for Future Employment and Restrictions on Post-Employment for House Members and Officers.” The staff memorandum will not specifically mention the requirements for Members and officers, or how they differ from those pertaining to House staff. Members and officers seeking guidance should consult the companion memorandum referenced above.

## POST-EMPLOYMENT RESTRICTIONS

Since 1989, legislative branch officials, including certain employees, have been subject to restrictions on their post-House employment.<sup>27</sup> These limitations are part of the federal criminal code, and they apply to Members and officers of the House, as well as to employees of House Member, committee, and leadership offices who are paid at least 75% of a Member's salary.<sup>28</sup> The basic rate of pay for Members in calendar year 2012 is \$174,000, and thus the post-employment threshold for individuals who terminate their employment with a Member, committee, or leadership office in 2012 is **\$130,500**. The threshold rate for other years is available from the Ethics Committee. For employees of "other legislative offices,"<sup>29</sup> the basic rate of pay triggering the restrictions is level IV of the Executive Schedule, which for 2012 is **\$155,500**.<sup>30</sup>

An employee is subject to these restrictions if the employee is paid at or above the threshold rate for at least 60 days during the one-year period preceding termination of the employee's House service.<sup>31</sup> Accordingly, it is possible for an employee who is usually paid below the threshold rate to become subject to the post-employment restrictions by the receipt of a "bonus" or merit adjustment that is paid in two or more months. Employees who are subject to the restrictions are referred to as "covered" individuals.

For covered individuals, the law establishes a one-year "cooling-off period" that is measured from the date of the individual's departure from the House payroll.<sup>32</sup> When an office continues an individual on the payroll for the purpose of paying for accrued leave after individual's services to the House have ceased, the one-year cooling-off period will not begin until after the individual's final day on the House payroll. House employees whose pay is **below** the threshold are **not** subject to the post-employment restrictions set out in the statute, and no other provision of federal statutory law or the House rules establishes any comparable restrictions on post-employment activity.

Set out below is a detailed description of prohibited and permitted post-employment activity by covered former employees under the statute. This explanation is followed by a table that briefly summarizes the statutory restrictions. Please note that the statute, as part of the criminal code, is enforced by the Justice Department, rather than by the Ethics Committee, and Committee interpretations of the statute are not binding on the Department.

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<sup>27</sup> See 18 U.S.C. § 207(e), (f).

<sup>28</sup> *Id.* § 207(e)(7).

<sup>29</sup> For the definition of "other legislative offices," see note 2, above.

<sup>30</sup> 18 U.S.C. § 207(e)(7)(B).

<sup>31</sup> *Id.* § 207(e)(7). With regard to House employees who are federal civil service or military annuitants, it is the view of the Ethics Committee that the post-employment restrictions apply to those whose combined House salary and annuity were at or above the threshold rate for the specified time period.

<sup>32</sup> *Id.* § 207(e)(3)-(7).

## Prohibited Activity

Under the statute, a covered former employee may **not**, for a period of **one year** after leaving office:

- × **Knowingly communicate with or appear before the employee’s former employing office or committee** with the intent to influence, on behalf of any other person, the official actions or decisions of a Member, officer, or employee in such office or on such committee.<sup>33</sup> An individual who was employed by more than one House office (*i.e.*, “shared staff”) during the individual’s last twelve months of employment with the House is subject to the post-employment restrictions with respect to each of the individual’s employing offices if the employee’s combined House salaries exceeded the triggering threshold.

The statute excepts certain representations made on behalf of specific types of entities, as described below in the context of “permissible activity.” With regard to restricted activity, the statute specifically provides that:

- Covered former employees on the **personal staff**<sup>34</sup> of a Member may not seek official action, on behalf of other persons, from that Member or from any of the Member’s employees.<sup>35</sup>
- Covered former **committee staff**<sup>36</sup> may not seek official action, on behalf of other persons, from any current Member or employee of the employing committee or from any Member who was on the committee during the last 12 months the former employee worked there.<sup>37</sup> This restriction bars contacts with any of these individuals on any subject relating to official business, regardless of whether it pertains to matters within the committee’s jurisdiction.<sup>38</sup>
- Covered former employees on the **leadership staff**<sup>39</sup> may not seek official action, on behalf of other persons, from current Members of the leadership<sup>40</sup> or any current staff of those Members.<sup>41</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.* § 207(e)(9)(E).

<sup>35</sup> *Id.* § 207(e)(3). The statute expressly prohibits contacting any employee of a Member whom the departed employee is prohibited from contacting. *Id.* § 207(e)(3)(B)(ii).

<sup>36</sup> *Id.* § 207(e)(9)(A). For the purposes of the statute, a **detailee** is deemed to be an employee of both the entity from which the detailee comes and the House committee to which the individual is detailed. *Id.* § 207(g).

<sup>37</sup> *Id.* § 207(e)(4).

<sup>38</sup> *Id.* (barring communication or appearances on “any matter” on which the former employee seeks action).

<sup>39</sup> *Id.* § 207(e)(9)(H).

- Covered former employees of any **other legislative office**<sup>42</sup> may not seek official action, on behalf of other persons, from current officers and employees of that legislative office.<sup>43</sup>
- ✗ Knowingly **represent a foreign government or foreign political party** before any federal official (including any Member of Congress) with the intent to influence a decision of such official in official duties.<sup>44</sup>
- ✗ Knowingly **aid or advise a foreign government or foreign political party** with the intent to influence a decision of any federal official (including any Member of Congress) in carrying out his or her official duties.<sup>45</sup>
- ✗ **Use confidential information obtained by means of personal and substantial participation in trade or treaty negotiations** within one year preceding the employee's departure from the House payroll, in the course of representing, aiding, or advising anyone other than the United States regarding those negotiations.<sup>46</sup>

As to the prohibition against making any “communication to or appearance before” anyone in the legislative branch, former Members should be aware of the broad manner in which the Department of Justice (DOJ) has defined those terms.<sup>47</sup> A DOJ opinion defines “communication” as “the act of imparting or transmitting information with the intent that the

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<sup>40</sup> The “leadership” of the House of Representatives consists of the Speaker; majority leader; minority leader; majority whip; minority whip; chief deputy majority whip; chief deputy minority whip; chairman of the Democratic Steering Committee; chairman and vice chairman of the Democratic Caucus; chairman, vice chairman, and secretary of the Republican Conference; chairman of the Republican Research Committee; chairman of the Republican Policy Committee; and any similar position created after the statute took effect. 18 U.S.C. § 207(e)(9)(L).

<sup>41</sup> *See id.* §§ 207(e)(5)(B) and (e)(9)(H).

<sup>42</sup> For the definition of “other legislative office,” see note 2, above.

<sup>43</sup> 18 U.S.C. §§ 207(e)(6) and (e)(9)(G).

<sup>44</sup> *Id.* §§ 207(f)(1)(A) and (i)(1)(B). Section § 207 uses the same definitions of the terms “foreign government” and “foreign political party” as the Foreign Agents Registration Act (22 U.S.C. § 611(e), (f)). *See id.* § 207(f)(3). These restrictions also apply with regard to any foreign commercial corporation that “exercises the functions of a sovereign.” *See* U.S. OGE, Attachment to DO-04-023: *Summary of Post-Employment Restrictions of 18 U.S.C. § 207*, at 11 (July 29, 2004) (available on the OGE Web site at [www.oge.gov/DisplayTemplates/ModelSub.aspx?id=2199](http://www.oge.gov/DisplayTemplates/ModelSub.aspx?id=2199)). Also pertinent to these provisions of the statute is a U.S. Office of Legal Counsel (OLC) opinion of June 22, 2004, which concludes that 18 U.S.C. § 207(f) covers representational contacts with Members of Congress. *See* U.S. OLC Memorandum Opinion, *Application of 18 U.S.C. § 207(f) to a Former Senior Employee* (available on the OLC Web site at [www.justice.gov/olc/oge\\_op2\\_22jun04.htm](http://www.justice.gov/olc/oge_op2_22jun04.htm)).

<sup>45</sup> 18 U.S.C. § 207(f)(1)(B).

<sup>46</sup> *Id.* § 207(b).

<sup>47</sup> 18 U.S.C. § 207. The provisions of 18 U.S.C. § 207 should not be confused with those of the Lobbying Disclosure Act (2 U.S.C. §§ 1601 *et seq.*) (LDA). In other words, merely because a particular activity does not constitute “lobbying” for purposes of that Act does **not** mean that the activity is permissible under 18 U.S.C. § 207.

information be attributed to the former official.”<sup>48</sup> Such DOJ guidance is binding on the Ethics Committee.

Further, an advisory memorandum issued by the U.S. Office of Government Ethics (OGE) for Executive Branch employees states, “[a]n ‘appearance’ extends to a former employee’s mere physical presence at a proceeding when the circumstances make it clear that his attendance is intended to influence the United States.”<sup>49</sup> The provision is broad enough that it precludes a covered former employee even from, for example, requesting or scheduling, for or on behalf of any other person, a meeting with any Member, officer, or employee whom the individual is prohibited from contacting on official business.<sup>50</sup> While OGE guidance is merely persuasive, rather than binding, on Committee interpretations of the statute, this Committee endeavors when possible to interpret the statute in a manner consistent with OGE practice.

In addition to these one-year “cooling-off period” restrictions, departing employees should also be aware of a permanent federal statutory restriction that prohibits any U.S. citizen acting without authority of the United States from:

- ✗ Directly or indirectly **commencing or carrying on any correspondence or intercourse with any foreign government**, or any officer or agent thereof, with the intent to influence the measures or conduct of any foreign government or of any officer or agent thereof in relation to any disputes or controversies with the United States, or to defeat the measures of the United States.<sup>51</sup>

### Permissible Activity

Under federal statutory law, covered former employees **may, immediately** upon leaving office:

- ✓ **Contact Members, officers, and employees of the Senate, and – except for those officials specified above in the section on “Prohibited Activity” – Members,**

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<sup>48</sup> U.S. OLC, “*Communications*” under 18 U.S.C. § 207 at 3 (Jan. 19, 2001) (available on the OLC Web site at [www.justice.gov/olc/207cfinal.htm](http://www.justice.gov/olc/207cfinal.htm)). In that opinion, the OLC provides the following illustrative examples: “A high-ranking official who aggressively publicizes the fact that he is leaving an agency to start a one-man consulting firm, then submits a report to the agency shortly thereafter under the name of that firm, almost certainly intends that the report will be attributed to him. Similarly, a former official who is not introduced by name, but participates on a conference call with his former agency colleagues, almost certainly intends this his colleagues will recognize his voice.” *Id.*

<sup>49</sup> *Summary of Post-Employment Restrictions of 18 U.S.C. § 207*, note 44 above, at 3.

<sup>50</sup> Committee interpretations of the statute contained in this memorandum are based on analysis of the statutory terms and purposes, and opinions and guidance, issued by the Justice Department and OGE. However, as noted above, 18 U.S.C. § 207 is a criminal statute, and Committee interpretations of it are not binding on the Justice Department (*but see* note 75, below).

<sup>51</sup> 18 U.S.C. § 953 (the Logan Act). An eighteenth century law, the Logan Act restricts private correspondence with foreign governments. This statute, which appears to have been a reaction to the attempts of one citizen to engage in private diplomacy, has never been the basis of a prosecution, and this Committee has publicly questioned its constitutionality. House Comm. on Standards of Official Conduct, *Manual of Offenses and Procedures, Korean Influence Investigation*, 95th Cong., 1st Sess. 18-19 (Comm. Print 1977). Members should be aware, however, that the law remains part of the criminal code.

**officers, and employees of the House and other Legislative Branch offices**, with intent to influence official action so long as not representing a foreign government or political party.

- ✓ **Aid or advise clients** (other than foreign governments or foreign political parties) **concerning how to lobby Congress**, provided the former employee makes no appearance before or communication to those officials specified above in the “Prohibited Activity” section. Such a “background role” would not pose the contemplated risk of improper influence since the current officials would not be aware of the former employee’s participation.<sup>52</sup> Any such participation must remain behind-the-scenes; during the one-year “cooling-off” period, former employees must not permit their name to be openly associated with such contact by other persons.<sup>53</sup>
- ✓ **Contact Executive Branch** officials with the intent to influence official action so long as not representing a foreign government or foreign political party.<sup>54</sup>
- ✓ **Contact state government officials** with the intent to influence state government actions or decisions. Former employees should comply with any state laws governing such contacts.
- ✓ **Contact one foreign government on behalf of another** foreign government.<sup>55</sup>
- ✓ **Contact any Members, officers, and employees of the House and other Legislative Branch officials** on official business under any of the following circumstances:

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<sup>52</sup> Former employees who are lawyers may have additional restrictions, as explained in note 15 of this Memorandum.

<sup>53</sup> As noted above, the major restrictions set forth in 18 U.S.C. § 207(e) focus on communications and appearances. By contrast, if a former Member plays a background role, and does not appear in person or convey his or her name on any communications, the law does not appear to prohibit that person from advising those who seek official action from the Congress. This construction is consistent with regulations promulgated by the U.S. OGE, interpreting a comparable prohibition that applies to Executive Branch personnel. *See* 5 C.F.R. § 2637.201(b)(3), (6). This matter is also addressed in the 2001 U.S. OLC opinion that is cited in note 48 above, including with regard to activities that do not constitute permissible “behind-the-scenes” activities.

<sup>54</sup> Covered former employees who are representing a tribal government as an employee of the tribe or as an officer or employee of the United States assigned to a tribe have an additional restriction on contacts with the Executive Branch and certain other entities. Such individuals must first notify the head of the department, agency, court, or commission being contacted of “any personal and substantial involvement” they had in the matter while a federal employee. *See* 25 U.S.C. § 450i(j); 18 U.S.C. § 207(j)(1)(B).

<sup>55</sup> No federal statute expressly permits such contacts, but so far as the Committee is aware, no federal statute prohibits such contacts. Thus, it appears that such contacts are permissible under federal law. Covered former employees who intend to undertake such activity, however, should carefully review the Foreign Agents Registration Act (22 U.S.C. §§ 611 *et seq.*) (FARA) to ensure compliance with its requirements. Briefly stated, FARA provides that anyone who acts within the United States under the direction or control of a foreign principal to influence official decisions, official policies, or public opinion on behalf of a foreign principal must register with the Justice Department. *See generally* 22 U.S.C. §§ 611 *et seq.*; U.S. Dep’t of Justice (DOJ), “FARA FAQ” (available on the DOJ Web site, [www.fara.gov/fara-faq.html](http://www.fara.gov/fara-faq.html)).

- The former employee is carrying out official duties on behalf of the **federal government** or the District of Columbia;<sup>56</sup>
  - The former employee is acting as an **elected official of a state or local government**;<sup>57</sup>
  - The former employee is an **employee** (not a private consultant or other independent contractor) of a **state or local government**, or an agency or instrumentality thereof, acting on its behalf;<sup>58</sup>
  - The former employee is an **employee** of an accredited, degree-granting **institution of higher education** and is acting on behalf of such institution;<sup>59</sup> or
  - The former employee is an **employee** of a **charitable hospital or medical research organization** and is acting on behalf of such hospital or organization.<sup>60</sup>
- ✓ **Represent or give aid or advice to international organizations** of which the United States is a member if the Secretary of State certifies in advance that such activities are in the interest of the United States.<sup>61</sup> Otherwise, covered employees must wait one year before engaging in such activities.
- ✓ Make statements or communications as an **employee of a candidate, authorized campaign committee, national or state party, or political committee**, if acting on behalf of that committee or party.<sup>62</sup> However, if the former employee is employed by a person or entity who represents, aids, or advises only such persons or entities, the communications would be prohibited.<sup>63</sup>

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<sup>56</sup> 18 U.S.C. § 207(j)(1)(A).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* (j)(2)(A).

<sup>59</sup> *Id.* § 207(j)(2)(B). The statute uses the definition of “institution of higher education” contained in § 101 of the Higher Education Act of 1965 (20 U.S.C. § 1001 *et seq.*). As a general matter, the definition includes only nonprofit, degree-granting educational institutions located in the United States or its territories. *See* 20 U.S.C. § 1001(a)-(b).

<sup>60</sup> 18 U.S.C. § 207(j)(2)(B). For this exception to apply, the hospital or medical research organization must be exempted under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)). *Id.*

<sup>61</sup> *Id.* § 207(j)(3).

<sup>62</sup> *Id.* § 207(j)(7)(A).

<sup>63</sup> *Id.* § 207(j)(7)(B)(ii)(II).

- ✓ **Make statements based upon the “special knowledge”** of the former employee concerning the particular area that is the subject of the statement, if **no compensation** is received in connection therewith.<sup>64</sup>
- ✓ **Give testimony under oath**, or make statements required to be made under penalty of perjury.<sup>65</sup>
- ✓ **Contact staff of the Clerk of the House** regarding the individual’s compliance with the disclosure requirements under the Lobbying Disclosure Act.<sup>66</sup>
- ✓ **Make political contributions** to, and **sponsor or attend political fundraisers** for, current Members of Congress, *provided that* no appearances or communications are made with the intent to influence, on behalf of any other person, the official actions or decisions of current Members or staff.<sup>67</sup>
- ✓ **Interact socially with current Members of Congress and staff** *provided that* no appearances or communications are made with the intent to influence, on behalf of any other person, the official actions or decisions of current Members or staff.<sup>68</sup>

*Example 1.* Staff member *A*, who earns more than 75% of a Member’s salary, resigns from her position on Member *B*’s personal staff. She may not lobby *B* or anyone on his staff for one year (except on behalf of an exempt organization), but she may lobby any other Member or staff member on behalf of anyone other than a foreign government or political party as soon as she leaves the House payroll.

*Example 2.* Staff member *C*, who earns more than 75% of a Member’s salary, resigns from his position on the Ways and Means Committee. He may not lobby any current member or employee of Ways and Means, or any Member who was on that committee during *C*’s last year of congressional service, on behalf of any non-exempt person or entity, for one year. He may, however, lobby any other Member or staff member on any issue, except on behalf of a foreign government.

*Example 3.* Staff member *D*, who earns *less* than 75% of a Member’s salary, resigns from her position on Member *E*’s staff to become a lobbyist. *D* may immediately lobby *E* or any other Member for any client.

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<sup>64</sup> *Id.* § 207(j)(4). “Special knowledge” is not defined in the statute. The Federal Register, which provides rules on the application of the statute to employees in the Executive Branch, states that a “former employee has special knowledge concerning a subject area if he is familiar with the subject area as a result of education, interaction with experts, or other unique or particularized experience.” 5 C.F.R. § 2641.301(d)(1). In addition, in the proposed rulemaking for this provision, the OGE emphasized that it regarded its interpretation of this exception to be “relatively narrow.” *See* 73 Fed. Reg. 36183 (June 25, 2008). While these definitions are not binding on the Ethics Committee, they provide guidance as to how the term should be interpreted.

<sup>65</sup> 18 U.S.C. § 207(j)(6).

<sup>66</sup> *Id.* § 207(e)(8).

<sup>67</sup> *See id.* § 207.

<sup>68</sup> *See id.*

**Example 4.** Staff member *F*, who earns more than 75% of a Member's salary, resigns from Member *G*'s staff to accept a position in an Executive Branch agency. *F* may lobby *G* immediately on behalf of the agency.

**Example 5.** Staff member *H*, who earns more than 75% of a Member's salary, resigns from his congressional position to join the staff of the Governor of his state. As a state employee, *H* may lobby anyone in Congress, including his former employing Member, on behalf of the state.

**Example 6.** Staff member *I*, who earns more than 75% of a Member's salary, resigns her congressional position and moves back to her home state. *I* may lobby state government officials on behalf of any clients.

**Example 7.** Staff member *J*, who earns more than 75% of a Member's salary, resigns his position with Member *K* and begins work as a lobbyist at a lobbying firm. One of *J*'s clients is a state university. *J* may not lobby *K* on behalf of the university (or any other client) for one year following his departure from the House. However, if *J* were an employee of the university rather than an outside retained lobbyist, contact with *K* on behalf of the university would be permitted.

**Example 8.** Staff member *L*, who earns more than 75% of a Member's salary, resigns his congressional position to become a lobbyist. For the first year after leaving the Hill, *L* lobbies only Executive Branch personnel, and *L* has no foreign clients. *L* is complying with the law.

**Example 9.** During his final year of House employment, staff member *M* worked for Member *N* from January to June 30, and for a committee from July 1 through December 30. December 30 was *M*'s final day on the House payroll. *M* was paid more than 75% of a Member's salary. *M* may not lobby *N* or the committee for one year following his termination from each employer. Thus, *M* would be barred from lobbying *N* until July 1, and current and former members of the committee and current committee staff until December 31 of the following year.

**Example 10.** During his one-year "cooling-off" period, former staff member *O* wishes to call his former employing Member to request that she meet with representatives of one of his clients to discuss legislation of interest to the client. *O* would not be present at the meeting. *O* would violate the statute by requesting the meeting, in that the request would be a communication intended to influence official action.

**Example 11.** During his first year after leaving House employment, *P*, who had been a committee staff member paid more than 75% of a Member's salary, wishes to contact a current employee of that committee to urge him to support federal funding for a non-profit organization operated by a friend of *P*. The non-profit organization is not a client of *P*, and *P* would receive no compensation for making the contact. *P* would violate the statute by doing so, in that the statute bars such

contacts regardless of whether the former employee would be compensated for them.

***Entity Contacted by Covered Former Employee***

***Entity Represented by Covered Former Employee***

	<b>Former Congressional Office/Committee</b>	<b>Executive Branch</b>	<b>Foreign Governments</b>	<b>State Governments</b>
<b>Private Entity</b>	Must wait 1 year before contacting former Congressional office or committee directly. May immediately advise entity behind scenes. May contact other Congressional offices immediately	May contact immediately	May contact immediately	May contact immediately
<b>Federal, State, or Local Government</b>	May contact all Congressional offices immediately as employee or elected official of the federal, state, or local government	May contact immediately	May contact immediately	May contact immediately
<b>Tribal Government</b>	Must wait 1 year before contacting former Congressional office or committee directly. May immediately advise entity behind scenes. May contact other Congressional offices immediately	May contact immediately if employed by tribe or U.S.; must inform head of agency or department of any personal and substantial involvement in matter while a House employee	May contact immediately	May contact immediately
<b>Foreign Government</b>	Must wait 1 year before contacting any Congressional office or committee directly or advising foreign government behind scenes. Must register with Justice Department if acting as a foreign agent in the U.S.	Must wait 1 year before contacting Executive Branch directly or advising foreign government behind scenes. Must register with Justice Department if acting as a foreign agent in the U.S.	May contact immediately	May contact immediately. Must register with Justice Department if acting as a foreign agent in the U.S.
<b>International Org. of which U.S. is a Member</b>	If Secretary of State approves as in national interests may immediately advise international organization and contact Congress directly. Otherwise, must wait 1 year to do either.	If Secretary of State approves as in national interests may immediately advise international organization and contact Executive Branch directly. Otherwise, must wait 1 year to do either.	May contact immediately	May contact immediately
<b>Accredited U.S. College or University</b>	May contact all Congressional offices immediately as employee of college or university	May contact immediately	May contact immediately	May contact immediately
<b>Charitable Hospital or Medical Research Org.</b>	May contact all Congressional offices immediately as employee of hospital or medical research organization	May contact immediately	May contact immediately	May contact immediately
<b>Candidate, Political Campaign, or Party</b>	May make communications immediately as employee of candidate, authorized campaign committee, or federal or state party or committee, unless employed by entity that advises only such entities	May contact immediately	May contact immediately	May contact immediately

## Penalties

Each violation of the post-employment restrictions set forth in the statute is a felony punishable by imprisonment up to one year (or up to five years for willful violations) and a fine of up to \$50,000 for each violation or the value of the compensation received for the act which violated the restrictions, whichever is greater.<sup>69</sup> The statute further authorizes the Attorney General to seek an injunction prohibiting a person from engaging in conduct that violates the act.<sup>70</sup>

By its terms, 18 U.S.C. § 207 governs the conduct of **former** Members, officers and employees, and does not apply to the conduct of **current** Members, officers and employees. However, the post-employment restrictions have been the subject of recent close attention by the United States Department of Justice, as reflected in the guilty pleas by former House staff and others to criminal violations of the statute.<sup>71</sup> Therefore, current Members and staff who receive or otherwise participate in improper contacts by a covered former employee should be aware that, depending on the circumstances, they may be subject to criminal or House disciplinary action. The recent examples involving § 207 violations indicate that a Member who aids and abets a covered former employee in the violation may be prosecuted for conspiracy to violate the post-employment restrictions.<sup>72</sup>

Furthermore, in an Ethics Committee disciplinary case that was completed in the 106th Congress, a Member admitted to engaging in several forms of conduct that violated House Rules requiring that each Member and staff person “conduct himself at all times in a manner that shall reflect creditably on the House.”<sup>73</sup> One of those violations was his engaging in a pattern and practice of knowingly allowing his former chief of staff to appear before and communicate with him in his official capacity during the one-year period following her resignation, “in a manner that created the appearance that his official decisions might have been improperly affected.”<sup>74</sup>

An employee (or former employee) who has any concerns about the applicability of the post-employment restrictions to his or her proposed conduct should write to the Ethics Committee to request a written advisory opinion. While, as noted above, Ethics Committee interpretations of 18 U.S.C. § 207 are not binding on the Justice Department, those interpretations are based on the Committee’s analysis of the terms and purposes of the statute, as

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<sup>69</sup> 18 U.S.C. § 216.

<sup>70</sup> *Id.* § 216(c).

<sup>71</sup> *See, e.g., United States v. Jack A. Abramoff*, Docket No. 06-CR-001 (D.D.C.) (“*Abramoff* action”). In addition, in September 2006, former Representative Robert W. Ney pleaded guilty to conspiracy to violate, among other statutes, the post-employment restrictions for former covered employees (“*Ney* action”).

<sup>72</sup> *See, e.g., Abramoff and Ney* actions, note 71 above.

<sup>73</sup> House Rule 23, cl. 1; *see also* House Comm. on Standards of Official Conduct, *In the Matter of Representative E.G. “Bud” Shuster*, H. Rep. 106-979, 106th Cong., 2d Sess. vol. I (July 19, 2002) (“*Shuster Report*”).

<sup>74</sup> House Comm. on Standards of Official Conduct, *Summary of Activities, One Hundred Sixth Congress*, H. Rep. 106-1044, 106th Cong., 2d Sess. at 10, 13, 16 (2000); *see also* *Shuster Report*, *supra* note 73 above, vol. I.

## United States Senate

SELECT COMMITTEE ON ETHICS  
HART SENATE OFFICE BUILDING, ROOM 220  
SECOND AND CONSTITUTION AVENUE, NE  
WASHINGTON, DC 20510-6425

May 24, 2012

### Guidance on the Post-Employment Contact Ban

#### Purpose

Application of the post-employment restrictions set forth in federal criminal laws and Senate rules applies to both former and current Senate personnel and has been the focus of recent investigations by the Senate Select Committee on Ethics. We are providing this guidance to reinforce prior explanations in the *Senate Ethics Manual* and in the Committee's training materials in order to assure that the Senate community understands what the law and rules allow and what is prohibited. If you have any questions about a specific situation or wish to arrange for a briefing on this topic, you are strongly encouraged to contact the Committee's staff at 4-2981.

Generally, Senators and senior staff who have left the Senate may not contact their former colleagues with the intent to influence their official actions on behalf of anyone else during a "cooling off" period after they leave the Senate. **Former Senators are banned for two years from contacting the Senate and House of Representatives. Former officers and "senior staff" are banned for one year from contacting only the Senate. And all former Senate employees, even if not senior, are prohibited from making certain lobbying contacts for one year after leaving.**

However, even during the period when departed Senators and staff are banned from official contacts with their former colleagues, **purely social contact** with former colleagues is generally permitted. They may also make **political contributions** to, and sponsor or attend campaign fundraisers for, current Members of Congress, subject to the restrictions described below. Former Senators and staff may also play a **solely background role** advising others who seek official action from the Congress, that is, providing "behind-the-scenes" assistance, with one important exception.<sup>1</sup> Former Senators and staff may also contact government officials **outside of the Congress** on behalf of a client immediately upon leaving the Senate. Additional exceptions to the ban are discussed in the *Senate Ethics Manual*, at 90-91 (2003 ed.).

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<sup>1</sup> Under 18 U.S.C. § 207(f), there is a one-year ban on former Senate personnel from knowingly *aiding or advising* a foreign government or foreign political party with the intent to influence a decision of any federal official, including any Member of Congress, in carrying out the individual's official duties. Section 207(f) also prohibits knowingly representing a foreign government or foreign political party *before* any federal official, including any Member of Congress, with the intent to influence a decision of such official.

## **The Restrictions for Former Senators**

For two years after leaving office, federal criminal law (18 U.S.C. § 207(e)) prohibits former Senators from knowingly communicating or appearing before any current Member or employee of the Senate or House of Representatives if they have the intent to influence official actions and they are acting on behalf of any other person. This ban applies to any matter on which the former Senator seeks official action on behalf of someone else, regardless of whether the former Senator is a registered lobbyist or is retained or employed by those who lobby, and even if the contact would not be considered to be a “lobbying contact” under other laws or rules.<sup>2</sup>

All Senate personnel should be aware of the broad manner in which the terms “communication” and “appearance” have been defined under the criminal law. For example, requesting or scheduling a meeting, on behalf of any other person, with a former colleague’s office is prohibited.

Additionally, under Senate rules (Rule 37.8) former Senators who are lobbyists or who work for an entity that employs or retains lobbyists may not lobby current Senators and staff for two years. For purposes of the rules, the term “lobbying” is defined as “any oral or written communication to influence the content or disposition of any issue before Congress, including any pending or future bill, resolution, treaty, nomination, hearing, report, or investigation.”<sup>3</sup>

While the conduct prohibited by the Senate rules is narrower than that barred by criminal law, the *Senate Ethics Manual* cautions that “[a]ll persons are advised to obey the broadest applicable restriction, whether it be under law or rule, and individuals should be particularly careful to keep within the law, as it carries criminal penalties.”<sup>4</sup> Thus, the Committee advises former and current Senators and staff to follow the criminal law and apply its restriction broadly, to avoid even the appearance of impropriety.

## **The Restrictions for Former Officers and Senior Staff**

Under the same federal criminal statute, Senate officers and senior staff are barred for one year from knowingly communicating or appearing before their former Senate colleagues if their intent is to influence official actions and they are acting on behalf of any other person. As discussed above, the statutory ban applies to any matter on which the covered individual seeks official action on behalf of someone else, regardless of whether the former officer or senior staffer is a registered lobbyist or works for those who lobby. Other than the ban only lasting one

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<sup>2</sup> The provisions of 18 U.S.C. § 207 should not be confused with those of the Lobbying Disclosure Act of 1995, as amended (2 U.S.C. § 1601 *et seq.*). Merely because a particular activity does not constitute “lobbying” for purposes of the registration statute or Senate rules does not mean that the activity is permissible under the criminal law.

<sup>3</sup> Senate Rule 37.13(c). There are exceptions for testimony before a Congressional committee, a communication submitted for the public record, and a communication by an individual acting solely in the individual’s own behalf to express a personal opinion or to redress a personal grievance.

<sup>4</sup> *Senate Ethics Manual*, at 90. Possible penalties for violating § 207(e) include both imprisonment of up to one year (or up to five years for willful violations) and a fine of up to \$50,000 per contact.

year and applying only to the Senate, this law applies to former Senate officers and senior staff in the same manner as it does to former Senators.

A former Senate employee is covered by the criminal law if the employee was paid at or above a rate of pay of least 75% of a Member's salary (\$130,500 for CY 2012) for 60 days or more, in total, during the last year of Senate employment (the "senior rate"). Thus, it may be possible for an employee to become subject to the post-employment contact ban by the receipt of a "bonus" or merit adjustment that is paid during two or more months in the year before they leave the Senate.

Under Senate rules (Rule 37. 9(c)), former officers and senior staff who become lobbyists or work for an entity that retains or employs lobbyists may not lobby the Senate for one year. Again, former officers and senior staff are advised to follow the broader restrictions of the criminal law.

### **The Restrictions for All Other Former Staff**

Those individuals who earned below the senior rate of pay before leaving the Senate are only covered by Senate rules. All former **personal office staff** may not lobby their own office for one year (Senate Rule 37.9). Former **committee staff** and former **personal office staff with "substantive committee responsibilities"** may not lobby the Members or staff of their relevant committee (including all subcommittees) for one year. Substantive responsibilities include, but are not limited to, "assisting in the drafting of committee bills or assisting at hearings and in mark-up (as opposed to committee monitoring and liaison services for a Member's personal office)."<sup>5</sup> Former **leadership staff** may not lobby any Member or staffer of their party's leadership, including the personal staff of their former Senator, for one year.

### **What Current Senators and Staff Need to Know**

Current Members, officers, and employees may not knowingly assist former Senators and staff to violate these restrictions.

### ***No Aiding Violations by Former Senators and staff***

Although the law and Senate rules are targeted at former Senate personnel, all current Members and staff are also prohibited from assisting them in violating these laws or rules. This means that current Senate Members, officers, and employees **may not aid or abet** a covered individual in violating the criminal law or Senate rules.<sup>6</sup> For example, current Senate Members,

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<sup>5</sup> *Senate Ethics Manual*, at 87.

<sup>6</sup> The same restriction appears to apply in the Executive Branch. For example, regulations implementing § 207 that are applicable to Executive Branch employees state that a person who "aids, abets, counsels, commands, induces, or procures commission of a violation of section 207 is punishable as a principal under 18 U.S.C. § 2." 5 C.F.R. § 2641.103 (2011) (Note). *See also United States v. Robert W. Ney*, Crim. No. 06-272 (D.D.C. 2006) (criminal information charged that former Congressman aided and abetted violations of the post-employment restrictions by a former Congressional staffer in violation of 18 U.S.C. §§ 207(e) and 2).

officers, and employees who know, or have reason to know, that former Senate personnel are subject to these restrictions, should not attend or schedule official meetings with the former Senator or staffer or otherwise assist the individual in taking any action that would violate the law or rules. Paragraph 2 of the Code of Ethics for Government Service provides that any person in government service should “[u]phold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.” Other provisions of the Code state that government employees must “[p]ut loyalty to the highest moral principles and the country” above loyalty to others, and to uphold all of these principles, “ever conscious that public office is a public trust.”

All members of the Senate community have a responsibility to uphold the law and to avoid even the appearance of impropriety. Any current Senator or staffer who knowingly assists a covered individual to violate the criminal law or Senate rule may themselves be subject to disciplinary action and possible referral to the Department of Justice.

### *No “Informational” Exception*

The legislative history of § 207(e) makes clear the broad scope of the restriction and the intent to prohibit “specific contacts in which the former official did not advocate or plead on behalf of his client, but simply makes contact on behalf of another . . . .”<sup>7</sup> Thus, a contact by a former Senator or staffer covered by this provision merely seeking information from a current employee may be problematic under the statute when the information is sought on behalf of a client.

The mere request for information by a former Member or senior staffer on behalf of an influential constituent will often induce official action even if no express request is made. Such a request would alert the Senate employee to the constituent’s interest in a particular issue and sometime influences the answer. Moreover, a request for routine information not intended to induce some action would not require the services of a former Senator or senior staffer, thus raising the inference that the contact is in fact intended to influence the recipient in some way. These types of **informational requests** made by individuals with “clout” on behalf of another, typically made with the intent to influence, often induce the intended action and are **prohibited**.<sup>8</sup>

Additionally, an exception does not exist when a Senate office would have taken the official action that is being sought by the former Senator or staffer anyway. A violation of the law is complete once contact is made with the intent to influence. It does not matter whether the contact actually influenced action. The prohibited contact by itself creates the appearance that official actions may have been improperly affected.<sup>9</sup>

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<sup>7</sup> S. Rep. 100-101, at 22 (1987).

<sup>8</sup> See H.R. Rep. 100-1068, at 16 (1988). See also S. Rep. 95-170, at 32-33 (1977) (stating that post-employment restrictions reflect Congress’s determination that former officials should be prevented from using “information, influence, and access acquired during government service at public expense, for improper and unfair advantage in subsequent dealings with that department or agency”).

<sup>9</sup> See H.R. Rep. 100-1068, at 16.

## **What to Do If You Are Contacted by Someone Subject to the Restrictions**

Senators or staff who have reason to believe that they may have received a prohibited contact from a former colleague should not assist the individual and should affirmatively explain that the individual's conduct appears to be improper and that it must cease. Senators and staff should advise the former colleague to contact the Committee and also promptly inform the Committee themselves of the steps taken to cease the communications.

If you are uncertain about whether an individual may be subject to the Senate-wide ban, the Secretary of the Senate posts the names of former Senators, officers, and senior staff, along with the beginning and ending dates of their post-employment contact ban period, on the Senate's website ([http://www.senate.gov/legislative/termination\\_disclosure/report2012.htm](http://www.senate.gov/legislative/termination_disclosure/report2012.htm)). Senate offices and committees should have some mechanism in place to identify individuals who are subject to a ban on contacting their office.

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# Bill Summary & Status

## 109th Congress (2005 - 2006)

### H.R.4696

### CRS Summary

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#### **H.R.4696**

**Latest Title:** Restoring Trust in Government Act

**Sponsor:** [Rep Rogers, Mike J.](#) [MI-8] (introduced 2/1/2006)   [Cosponsors](#) (4)

**Latest Major Action:** 2/9/2006 House committee/subcommittee actions. Status: Executive Comment Requested from Interior.

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#### **SUMMARY AS OF:**

2/1/2006--Introduced.

Restoring Trust in Government Act - Establishes an independent commission on lobbying and ethics in the legislative branch.

Requires monthly online lobbying disclosure reports to the commission, available to the public on the Internet.

Amends the Lobbying Disclosure Act of 1995 (LDA) to subject individuals to criminal penalties for noncompliance with lobbying disclosure requirements.

Denies floor privileges to former Members, Delegates, Resident Commissioners, Parliamentarians, and elected officers and minority employees nominated as elected officers of the House of Representatives who are registered lobbyists.

Amends the federal criminal code to revise the one-year prohibition on lobbying contacts by former elected officers and employees of the legislative branch with any Member, officer, or employee of the entity in which such person served before his or her tenure terminated. Extends such ban to contacts with any officers or employees of either chamber or other congressional legislative office. Applies the prohibition to acts by former personal, committee, and leadership staff who had responsibilities a significant portion of which related to the development of policy.

Places a four-year prohibition on lobbying Congress for foreign governments, subject to criminal penalties, for former senior and very senior executive branch personnel, Members of Congress, and legislative officers and employees.

Requires random audits of Members of Congress' annual financial disclosure statements.

Amends the Ethics in Government Act of 1978 to impose criminal penalties for intentionally misrepresenting facts on financial disclosure statements.

Requires the commission to affirmatively approve all privately funded travel by Members of Congress and staff.

Revokes the federal pension of a Member of Congress or congressional employee if he or she is convicted of any federal offense related to bribery.

Amends the Indian Gaming Regulatory Act to revise background investigation requirements to require the National Indian Gaming Commission to conduct or cause to be conducted background investigations on the 10 persons or entities with the highest financial interest in each gaming operation it regulates.

Requires Commission background investigations of tribal class II gaming commissioners and their employees.

Grants the Chairman of the Commission authority to approve the 10 persons or entities with such highest financial interest.

Doubles from \$8 million to \$16 million the aggregate limitation on fees paid annually to the Commission by each gaming operation that conducts a regulated class II or III gaming activity.

Allows an Indian tribe to engage in class II and III gaming activities on lands taken into trust for the tribe after enactment of this Act only if the application requesting that the land be taken into trust stated that the tribe intended to conduct such gaming activities.

Revises the exceptions to the prohibition on gaming on Indian lands acquired in trust under the Act after October 17, 1988.

Permits an Indian tribe to conduct gaming on lands acquired after October 17, 1988, on only one contiguous parcel of Indian lands located where the tribe has its primary geographic, social, and historical nexus and within the state or states where the tribe is primarily located.

Amends the Federal Election Campaign Act of 1971 to: (1) treat members of an unincorporated Indian tribe in the same manner as the stockholders of a corporation; and (2) prohibit section 527 organizations from disbursing funds for electioneering communications.

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