BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

What Rules Should Apply To Post-Federal Employment And How Should They Be Enforced?

Once Federal employees leave public service their employment options are restricted by law and regulation. Executive branch and agency attempts to enforce such restrictions have been limited.

This report discusses the Government's efforts to regulate post-Federal employment and what can be done to improve executive branch administration of existing post-Federal employment laws and regulations. The report endorses the concept of establishing an Office of Ethics within the executive branch as is currently included in pending legislation. This Office, in assuming the full range of ethics responsibilities in the Government as recommended previously by GAO, should be given specific responsibility to (1) determine the extent to which post-Federal employment activities of former Government officials may be a problem, (2) recommend either to the President or the Congress action necessary to improve enforcement of post-Federal employment laws and regulations, and (3) serve as the administering authority to ensure successful implementation by individual Government agencies of such recommended action.

Also, Notwithstanding the establishment of an Office of Ethics, the Congress should remedy the shortcomings of 18 U.S.C. 207.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

The interchange of personnel between the Government and private business is referred to as the "revolving door" syndrome. While certain advantages are gained by both the public and private sectors through this interchange, there is an increasing public consciousness of former Government officials using or appearing to use their public experience to their personal advantage in the private sector. This report discusses this issue and the efforts by the executive branch and the Congress to deal with it.

We made this review at the request of Senator Charles H. Percy, the ranking minority member, Senate Committee on Governmental Affairs. Our authority is the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67). At the request of Senator Percy's office, we did not take the additional time to obtain formal agencies' comments.

We are sending copies of this report to the Director, Office of Management and Budget, the Chairman, Civil Service Commission, the Attorney General, and other interested parties.

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

WHAT RULES SHOULD APPLY TO POST-FEDERAL EMPLOYMENT AND HOW SHOULD THEY BE ENFORCED?

D I G E S T

The interchange of personnel between the Government and private business can create problems. Former Government officials using or appearing to use their public experience to their personal advantage in private business can detrimentally affect the Government's credibility.

Executive branch and Federal agency efforts to enforce existing post-Federal employment laws and regulations have been limited. There is no single agency with adequate administering and enforcing responsibility and authority. Agencies' uncertainty over their authority, vague statutory language, loopholes in laws and regulations, and the absence of administrative and civil penalties for noncompliance with the laws all contribute to the limited enforcement. (See ch. 3.)

As a result:

--Government-wide data is not available to determine the extent of post-Federal employment violations and whether other ethical problems exist due to post-Federal employment practices. (See p. 6.)

--Department of Justice prosecution of post-Federal employment violation referrals has had limited success. (See p. 8.)

--Inadvertent violations may occur because agencies are not thoroughly advising employees of their post-Federal employment responsibilities. (See p. 16.)

--Agencies generally rely on informal methods to monitor employee compliance with post-Federal employment restrictions. (See p. 15.)

--Existing agency enforcement attempts have been limited. (See p. 11.)

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FPCD-78-38

There is an increasing public consciousness of former Government officials using or appearing to use their public experience to their personal advantage in the private sector. The administration and the Congress have made ethics a high priority and are employing a strategy of legislating increasingly restrictive Government-wide prohibitions on a former Government official's employment activities.

Sufficient evidence is currently available to illustrate that conflict-of-interest situations can take various forms, including improprieties that do not violate a specific law or regulation, which can be as damaging to the Government's credibility as an actual violation of the law. Both issues--actual violations of the law and conflict-of-interest improprieties that do not violate a law--need a specific focus. Attempting to restrict post-Federal employment practices so that the Government is protected and the employee is not unduly restricted in career opportunities will involve overcoming the administrative problems of developing effective enforcement systems that do not create a lot of paperwork or require a large agency staff.

As with financial disclosure issues, GAO believes that the effectiveness of the executive branch to deal with post-Federal employment matters depends heavily on strong administration and enforcement by a central office. S. 555, already passed by the Senate, and H.R. 13676, under consideration in the House of Representatives, contain a provision to establish an executive branch Office of Ethics. This Office is the same as the one recommended by GAO in a prior report "Action Needed To Make The Executive Branch Financial Disclosure System Effective" and which was subsequently proposed by the President in his Ethics in Government Act of 1977. GAO reiterates its support for such an Office. However, GAO strongly recommends that language be added to legislation specifically mandating this Office to recommend either to the President or the Congress appropriate Government action in post-Federal employment

matters needed to protect the public's interest in avoiding situations in which real or apparent conflict-of-interest situations exist and protect the rights of individuals to seek and obtain employment. GAO believes specific language is necessary due to the limited enforcement activities of Federal agencies to date.

Since individual agency operations, missions, activities, and personnel activities are diverse and the types of potential or apparent post-Federal employment violations will vary, this Office can, among other things,

--monitor or establish an agency-implemented monitoring system to study the post-Federal employment issue and define its characteristics and its parameters;

--provide leadership and guidance to Federal agencies and recommend to the President and the Congress strategies and tactics required to minimize actual post-Federal employment conflict-of-interest situations or appearances of such situations;

--establish, in collaboration with individual agencies, agency enforcement strategies and tactics and monitor agency efforts to implement them; and

--provide a continuing program of information and education for Federal officers and employees. (See p. 45.)

Notwithstanding the establishment of an Office of Ethics, the Congress should remedy the shortcomings of 18 U.S.C. 207 and specify to the Executive agencies their responsibilities and authorities in post-Federal employment matters. Specific issues which should be addressed are listed on page 46.

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ABBREVIATIONS

ABA	American Bar Association
CFTC	Commodity Futures Trading Commission
CPSC	Consumer Product Safety Commission
CSC	Civil Service Commission
DOD	Department of Defense
FCC	Federal Communications Commission
FDA	Food and Drug Administration
FRB	Federal Reserve Board
FTC	Federal Trade Commission

GAO	General Accounting Office
IRS	Internal Revenue Service
NASA	National Aeronautics and Space Administration
NRC	Nuclear Regulatory Commission
SEC	Securities and Exchange Commission
USDA	Department of Agriculture

CHAPTER 1

INTRODUCTION

In the past several years, much attention has been directed to ethical standards for Federal employees. The news media, public interest groups, and concerned citizens, in an effort to bring reform to Government, have publicly questioned actions by Federal officials.

In 1977, GAO completed a 3-year investigation of the financial disclosure systems of 23 Federal departments and agencies and reported to the Congress on the actions needed to make these systems more effective. We reported that these systems lacked effective administration and enforcement, and we recommended 1/ that an Office of Ethics be established in the executive branch with strong enforcement powers to deal with the many complex and judgmental issues regarding financial disclosure and ethical standards.

This report, the result of a review conducted pursuant to a request by Senator Charles H. Percy of the Senate Committee on Governmental Affairs, examines conflict-of-interest issues related to Federal employees leaving Government employment and the restrictions on their subsequent employment activities.

THE POST-FEDERAL EMPLOYMENT ISSUE

The post-Federal employment activities of former Government officials have been studied by the public interest group Common Cause, by committees in the Senate and House, and by a Presidential task force on conflict-of-interest. In some cases, the "revolving door syndrome"--interchange of personnel between the Federal and private sectors--has been discussed, with particular emphasis placed on post-Federal employment activities--the movement of former Government employees to private industry. These studies have contributed to the growing criticism of the post-Federal employment practices of individuals and to perceived disadvantages which include the following:

--A Federal employee who anticipates future employment with regulated clients might have a vested interest in acting favorably toward certain companies while with an agency.

1/"Action Needed To Make the Executive Branch Financial Disclosure System Effective" (FPCD-77-23, February 28, 1977). Also, see app. I for report digest.

--The practice of former Government employees taking jobs with regulated companies promotes undue industry advantage over the Government due to the former employee's knowledge of agency procedures and the decisionmaking process.

--Prior association with agency officials may enable a former employee to have informal contacts with former colleagues still at the agency that may influence regulatory agency decisions.

--The adversary process may be eroded because prior affiliations in the agency may make it difficult for representatives of the Government and regulated industries to advance their opposing positions.

--It may appear that the employee who moves to the regulated industry is being rewarded for his participation while regulating the industry.

--It is unfair for a person who has been appointed to a position of public trust to profit unduly from that experience by accepting a well-paying position offered solely because of his prior position, especially when the individual has served in his Government position for only a short time.

On the other hand, there are possible advantages of employee movement from the Government to the private sector.

--A former Government employee who accepts a position with a regulated firm may advise the firm to fully comply with the agency's regulations and to cooperate with the agency in every respect.

--There is an advantage to Government agencies in having persons familiar with agency proceedings representing private parties. For example, former Internal Revenue Service (IRS) employees have facilitated the resolution of tax matters because they are aware of the agency's organization and operating procedures.

--The Government, by attacting persons capable of judging and analyzing industry proposals

and points of view, precludes a greater Government reliance on the regulated industry's opinions, research findings, and data. More restrictive post-Federal employment regulations may lessen the chance of the Government attracting qualified individuals.

Conflict-of-interest situations can take various forms. Post-Federal employment conflict-of-interest improprieties can occur without violating a law or regulation. Also, mere appearances of impropriety can be as damaging to the Government's credibility as an actual violation of the law.

Three issues--actual violations of the law, apppearances of such violations, and conflict-of-interest improprieties that do not violate a law--need a specific focus. There are difficulties in addressing moral issues on a criminal basis. In many cases, improprieties occur from poor judgment, which is difficult to guard against--protection from it certainly cannot be legislated. Nevertheless, a balance must be drawn between precluding the adverse effects of post-Federal employment violations and the appearances thereof, while at the same time preserving the advantages of an interchange between Government and industry. The flow of information between the Government and private industry should not be unduly restricted; unreasonable post-Federal employment restraints may inhibit this flow.

CHAPTER 2

POST-FEDERAL EMPLOYMENT RESTRICTIONS

A former Federal Government employee's appearances before a former employing agency and/or acceptance of employment in the private sector are controlled by various statutes and agency regulations, including three main elements:

--18 U.S.C. 207, the only post-Federal employment statute that applies throughout the executive branch.

--Organic acts (acts establishing the specific agency) and other statutes specifically applicable to certain agencies.

--Individual agency promulgated regulations.

18 U.S.C. 207

In 1962, 18 U.S.C. 207 was enacted to revise existing criminal statutes dealing with post-Federal employment conflict-of-interest. Its purpose was to simplify and strengthen conflict-of-interest laws in order to ensure high ethical standards in Government. At that time, the Congress, the executive branch, and members of the bar agreed that the current laws, while correct in principle, were confusing and inadequate.

In essence, 18 U.S.C. 207 places two restrictions on employment activites of former Federal employees:

--Section (a) permanently bars former employees from acting as an agent or attorney in a particular matter involving specific parties in which the United States has an interest and in which the individual substantially and personally participated while at that agency.

--Section (b) prohibits, for a period of 1 year, former employees from personally appearing as an agent or attorney for anyone before an agency in a particular matter involving specific parties in which the United States has an interest and over which they had official responsibility within the past year.

The effect is that there is a permanent restriction on a narrow range of particular matters (section (a)), and limited

restrictions on a wider range of matters (section (b)). (See app. II for the complete text of 18 U.S.C. 207.)

AGENCY STATUTORY RESTRICTIONS

A second element in the Government's sphere of influence over a former employee's post-Federal employment activities is individual agency statutory restrictions. Organic acts establishing the Federal Communications Commission (FCC), the Department of Energy, the Consumer Product Safety Commission (CPSC), and the Federal Reserve Board (FRB) restrict post-Federal employment appearances, prevent subsequent employment, or establish an employment reporting requirement. The Department of Defense (DOD) and the National Aeronautics and Space Administration (NASA) also have statutory restrictions covering sales to them and/or require certain former officials to report their subsequent employment.

AGENCY-PROMULGATED REGULATIONS

A third element of the Government's sphere of influence over post-Federal employment practices is agency-promulgated regulations. We examined the regulations of 13 agencies and found several which further defined or otherwise implemented the restrictions and provisions of 18 U.S.C. 207. For example,

--regulations of the Securities and Exchange Commission (SEC), FRB, and other agencies narrowly defined terms such as "personal appearance," "representative capacity," "particular matter," and "official responsibility;" and

--the Nuclear Regulatory Commission (NRC), the Federal Trade Commission (FTC), and the Commodity Futures Trading Commission (CFTC) require former employees to either notify the agency of any intent to deal with it or to apply for a waiver to appear on matters before the agency.

CHAPTER 3

ISSUES AND PROBLEMS IN ENFORCEMENT

OF POST-FEDERAL EMPLOYMENT RESTRICTIONS

Title 18, U.S.C. 207, was enacted to strengthen the conflict-of-interest laws then in effect. However, experience has shown that due to loopholes, the vagueness in its terms, and the absence of a designated responsibility within the executive branch to enforce its provisions, this law and the various laws and regulations patterned after it are not adequate to deal with current post-Federal employment issues. Also, a Presidential initiative, the proposed "Ethics in Government Act of 1977," intended in part to strengthen then post-Federal employment laws and regulations, appears to be the first since 18 U.S.C. 207 was enacted in 1962. We found

--the Civil Service Commission (CSC) and the Department of Justice have not been designated and have not assumed a central role in post-Federal employment issues;

--Federal agency efforts to enforce post-Federal employment laws and regulations have been limited;

--Justice's attempts to prosecute suspected post-Federal employment violations have met limited success;

--while considerable data has been offered concerning appearances of post-Federal employment violations, Government-wide data is not available to determine the extent of post-Federal employment violations; and

--most agencies employ inadequate programs to educate employees about their post-Federal employment responsibilities.

AGENCIES DO NOT GATHER AND MAINTAIN DATA TO DETERMINE IF A POST-FEDERAL EMPLOYMENT PROBLEM EXISTS

Department of Justice officials stated that there is no substantive evidence describing the significance of post-Federal employment problems, and most agency officials contacted considered such problems at their agencies to be insignificant. We examined agencies' records to see if they maintained information on former employees' activities to

enable them to determine if violations of post-Federal employment laws and regulations are occurring. We found that in general agencies do not gather and maintain such information.

For example, we found agencies with restrictions on subsequent employment did not have reliable systems in effect to monitor where their former employees subject to these restrictions are subsequently employed. Also, we found agencies whose statutes and regulations prohibit reappearance before these agencies generally only informally monitored appearances. A Justice official commented that the Department does not maintain statistical information on post-Federal employment referrals received from Federal agencies.

With respect to agencies with restrictions on subsequent employment, we examined monitoring practices at CPSC and FRB, each of which has specific noncriminal restrictions contained in its organic statute. At CPSC, information was not available on where employees were working after leaving CPSC. At FRB, where the restriction on subsequent employment applies only to members of the Board of Governors, there were no records of subsequent employment of former members.

We were similarly unsuccessful in our examination at agencies with laws and regulations which restrict representational appearances before an agency. At various agencies data necessary for monitoring compliance was not readily available.

Although agency officials claim that post-Federal employment problems are not significant and although their records are insufficient to affirm or deny these opinions, there is considerable data provided by the news media and from studies of post-Federal employment activities to suggest that post-Federal employment conflict-of-interest situations do occur or appear to occur. The fact that in some instances the law has not been violated does not overshadow the fact that an impropriety may have occurred and may need to be addressed.

GOVERNMENT AUTHORITY TO IMPOSE RESTRICTIONS IS NOT UNLIMITED

No authoritative judicial precedent exists regarding the extent of the Government's authority in establishing post-Federal employment restrictions on its employees. Clearly, the Government has very broad authority to take such appropriate action as necessary to maintain integrity and fairness in Government, including the establishment of post-Federal employment restrictions. Nevertheless, we do not think the

Government's authority in this area is unlimited. Since any post-Federal employment restriction necessarily affects individuals' employment activities in the private sector, it would appear that for a specific restriction to be legally enforceable it could not amount to an unreasonable or arbitrary interference with such activities. 1/ This, of course, would require a balancing of the extent to which the individual's interest is adversely affected and the magnitude of the Government's possibly overriding interest in placing the restriction on the individual.

CENTRALIZED ENFORCEMENT OF 18 U.S.C. 207 IS LACKING

Title 18, U.S.C. 207, does not specify enforcement responsibility. However, we believe agencies have an implicit responsibility to take necessary measures to ensure former employee compliance with this statute. 2/

Department of Justice role

In January 1977, the "Task Force on Conflict of Interest and Ethical Standards of Conduct" reported that the current system of statutes governing conflict-of-interest is frequently a frustration to prosecutors. They gave, as an example, a problem in dealing with criminal intent which often tends to give an appearance of "prosecutorial disinterest." Our review of Justice's involvement in prosecuting post-Federal employment violations bears out this observation.

Justice, by authority cited in 28 U.S.C. 535 and 512, may investigate violations of title 18 provisions and may issue advisory opinions to heads of executive agencies on questions of law. Also, Justice is recognized as the ultimate enforcer of 18 U.S.C. 207 due to the responsibility to prosecute violation of criminal statutes. It has not been assigned specific

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1/In Greene v. McElroy, 360 U.S. 474, 492 (1958), the Supreme Court stated:

> "* * * The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the 'liberty' and 'property' concepts of the Fifth Amendment.* * *"

2/Perkins, The New Federal Conflict-of-Interest Laws, 76 Harv. L. Rev. 1113, 1166 (1963).

responsibility for designing and coordinating agency efforts for day-to-day enforcing of post-Federal employment statutes and regulations.

The traditional role of Justice in post-Federal employment has been reactive--i.e., rendering opinions upon agency request and prosecuting violators. It has responded to numerous agency requests for advisory opinions and has issued general memoranda in 1963 and 1976 on the conflict-of-interest provisions of 18 U.S.C. 207. Relative to Justice's prosecutorial responsibilities, we were advised that since 1970, Justice has prosecuted about five cases, one resulting in a conviction.

Department of Justice officials cited the following as problems in prosecuting violations:

--A difficulty in proving that the former employee knowingly intended to commit the violation.

--A difficulty in demonstrating that there were consequences to such actions--e.g., that there was harm done.

In addition, they stated that criminal prosecution is sometimes viewed as too severe for the action and no alternative civil or administrative remedy is available.

Similarly, the Chief of the Public Integrity section of Justice's Criminal Division has commented publicly of poorly drafted statutes containing loopholes, vaguely defined prohibitions, criminal sanctions frequently overly severe for the conduct, and an inadequate combination of criminal and administrative sanctions. He stated that although the Department has tried to "make" cases, if someone were to say that he was not enforcing the law, he would have to agree. Except for recent involvement with the Congress on 1977 ethics legislation, we found no evidence that Justice has attempted to resolve such problems by recommending that 18 U.S.C. 207 and other post-Federal employment regulations be enforced.

Civil Service Commission role

CSC, generally responsible for Federal Government-wide employment matters in a broad sense, has not assumed a central role in post-Federal employment issues. It does not appear that CSC has been clearly mandated to do so. There is only one person at CSC responsible for conflict-of-interest matters, and we were advised that CSC does not intend to increase resources committed to this issue. We were also advised that CSC considers enforcement of post-Federal employment laws and regulations to be a Justice Department function, and they refer post-Federal employment matters to Justice.

Statutory impediments
to effective enforcement

Other impediments to effective enforcement of 18 U.S.C. 207 are limitations inherent in the language and scope of the statute. This could lead to situations in which post-Federal employment activities are legal but questionable in appearance.

For example, various studies have noted:

--A fundamental limitation, in that there is no bar on immediate appearances before an agency on matters that arose after the former employee terminated his employment. This allows for the possibility of a former employee, shortly after leaving the agency, seeking preferential treatment from former colleagues.

--The law does not prohibit behind-the-scenes aiding and assisting on matters that former employees may have been personally and substantially involved in while at the agency.

--Many terms in the statute are vague and could lead to misinterpretation of the law and inconsistent treatment among agencies. Included in this are "personally and substantially," "official responsibility," and "agent or attorney."

Such inhibitors are addressed in proposed ethics legislation. S. 555 would restrict immediate contact by former employees with their former agency and behind-the-scenes aiding and assisting and clears up some vague language in 18 U.S.C. 207.

AGENCY ENFORCEMENT OF POST-FEDERAL EMPLOYMENT REGULATIONS NEEDS IMPROVEMENT

Some Federal agencies have taken the initiative to establish a system to enforce former employee compliance with existing post-Federal employment laws and regulations; however, such efforts need improvement. Generally, we believe Federal agencies have an implicit responsibility for enforcing post-Federal employment prohibitions, and that it is incumbent upon the President and his executive department and agency heads to take such initiatives.

There is no Government-wide statutory requirement that agencies monitor a former employee's appearances before the former employing agency or subsequent employment, and there is no such Government-wide statutory requirement that employees report their post-employment activities. Consequently, the only agencies that gather this information are those who have statutory and regulatory requirements to do so.

Some agency officials questioned the need to establish enforcement mechanisms since they did not view this as a problem. Others questioned their authority to require terminating employees or former employees to divulge information concerning their employment, and questioned whether enforcement efforts would violate a person's right to privacy or would be constitutionally challenged.

One mechanism that has been suggested as a means of enforcing 18 U.S.C. 207 is for former employees to file reports with their former agencies detailing their current employment status and ongoing activities with their former agencies.

We believe that there may be barriers under present law to the implementation of such a Government-wide post-Federal employment reporting system without specific statutory authority as a means of enforcing 18 U.S.C. 207. While 18 U.S.C. 207 imposes criminal prohibitions against certain post-employment activities, it does not expressly or implicitly require former employees to file any reports with their former agency nor does it expressly or implicitly authorize agencies to adopt reporting requirements. For these reasons, coupled with the fact that where similar reporting

requirements have been established it has been through specific legislation, 1/ it is doubtful that agencies could administratively impose enforceable post-employment reporting requirements as a means of enforcing 18 U.S.C. 207.

Even if a Government-wide post-employment reporting system were viewed as legally enforceable (i.e., compulsory), such a system would raise questions regarding the constitutional privilege against self-incrimination if its only purpose would be to identify criminal violations of 18 U.S.C. 207.

The privilege against self-incrimination generally protects individuals from being compelled to provide the Government with any information which may incriminate them. It extends to the providing of any information which could "furnish a link in the chain of evidence needed in a prosecution" of the individual involved. 2/ The possibility that an agency's attempt to require a former employee to provide possibly incriminating information could be successfully challenged is demonstrated by a recent court case in which DOD was enjoined from requiring a former military officer to attest that his present duties did "not involve selling to the government"--a violation of 18 U.S.C. 281. 3/

We recognize the possibility that an agency could require, under the authority of 5 U.S.C. 500(d)(3), former employees who apply to practice before it to provide certain information on their current employment. This statute gives any individual who is a member of a State bar the right to practice before a Federal agency (i.e., represent another individual before an agency) upon satisfying certain administrative requirements. Under subparagraph (d)(3) of 5 U.S.C. 500, however, the right to practice before an agency does not extend to former employees in cases in which representation is prohibited by statute or regulation (e.g., 18 U.S.C. 207). On this basis, a reporting requirement along these lines could be justified as a precondition to practice designed to avoid violations of 18 U.S.C. 207, i.e., the agency could determine before the fact whether a conflict within the meaning of 18 U.S.C. 207 exists. There would be no self-incrimination problem since the reporting would be prospective in nature.

1/For example, the reporting requirements imposed by NASA (42 U.S.C. 2462).

2/See Blau v. United States, 340 U.S. 159 (1950); Marchetti v. United States, 390 U.S. 39, 49 (1968).

3/Henry C. Field, Jr., v. James R. Schlesinger, et al., Civ. Act. No 74-1590 (D.D.C. Aug. 26, 1976).

Additionally, any post-employment reporting system would necessarily have to comply with the requirements and restrictions contained in the Privacy Act, which limits an agency's collection of information to that as is "relevant and necessary to accomplish a purpose of the agency required by statute or executive order of the President * * *." This limitation raises the question whether any given agency could, consistent with the Privacy Act, properly set up a post-employment reporting system, as 18 U.S.C. 207 does not specifically require agencies to enforce its provisions and there exists no Executive order dealing with the enforcement of this statute. However, it should be recognized that Privacy Act questions would become relevant only if it is concluded that an agency has basic authority to administratively enforce a post-employment reporting requirement. As described earlier, it is doubtful whether an agency could administratively enforce such a requirement. One possible way to remove this difficulty would be legislation specifically requiring employees to report post-Federal employment activities.

We examined enforcement mechanisms already in effect--reporting systems, clearance/waiver systems, notification systems, and information systems to ensure employee awareness of post-Federal employment responsibilities. We found:

--Two agencies, DOD and NASA, have reporting systems in effect; however, due to certain problems, they are questionable in their adequacy to prevent violations.

--Procedural problems in existing clearance/ waiver mechanisms lessen their effectiveness in ensuring that applicable laws and regulations are complied with.

--Notification systems, designed to alert agencies of former employees intending to appear before it, are not being implemented to achieve greatest results.

--Generally speaking, agencies' programs may not ensure an employee's awareness of post-Federal employment restrictions; therefore, an agency risks an increase in the chances that former employees will not comply with relevant laws and regulations and decreases chances of current employees assisting in detecting noncompliance by former employees.

Inadequate reporting systems

DOD and NASA currently have reporting systems in effect. At both DOD and NASA, certain former employees who go to work for specific contractors are required by statute to file employment reports with the agency. In addition, there is an administrative DOD reporting requirement intended to enforce the civil selling prohibition which applies to retired regular military officers. These systems have weaknesses, such as the following:

--The reporting documents do not contain sufficiently detailed data to facilitate identification of violations.

--When reports are filed, agencies do not review them for all possible improprieties.

--The systems are not evaluated for effectiveness.

--There are no assurances that all persons who need to file do so.

--The data collected is not always analyzed to determine if persons are complying with the law or regulations. These agencies often just tabulate and summarize the data and submit it to the Congress.

NASA officials stated that the law only requires them to collect the data, not to check for violations or police compliance.

Two agencies, CPSC and FRB, have statutory restrictions on subsequent employment that could lend themselves to an implementation of a reporting system. Neither agency has a monitoring system and neither agency has any assurance that former employees are not violating the law by working for prohibited firms.

Clearance and waiver
procedures are inadequate

Currently, two agencies have instituted clearance/waiver procedures to enforce prohibitions of former employees reappearing before the agency in a representative capacity.

FTC and Federal Maritime Commission regulations restrict, in various degrees, former employees from working on any pro-

ceeding or investigation which was pending before the Commission while they were employed there. To obtain a waiver to this provision, former employees must file a clearance statement. When the clearance statement is filed with the agency, a review of the statement is made, including an examination of the specific matters with which the former employee was involved during his agency employment. If the agency determines that no violations of 18 U.S.C. 207 or agency regulations would occur, a waiver is granted.

In general, these two systems suffer similar deficiencies:

--There is no standard criterion for determining if a waiver should be granted. This could lead to inconsistent treatment within agencies on whether or not a waiver should be granted.

--The decision is left to the individual to determine whether or not to apply for a waiver.

--Since neither agency monitors appearances, they do not know if all former employees required to apply do so and therefore do not know how effective their systems are in precluding violations.

While these systems are not totally effective, there is merit to them in that some enforcement of 18 U.S.C. 207 and agency regulations is taking place.

Notification systems

In addition to the enforcement systems mentioned above, SEC, NRC, and CFTC require former employees who plan to appear before each of these agencies to notify the agency of such intent. This differs from the waiver process in that there is no provision whereby agencies grant formal waivers.

As a general rule, these agencies perform only a cursory review of each notification. SEC advised us that it had previously thoroughly investigated all notifications, but experience showed that no problems surfaced and therefore SEC considered the exercise a waste of time and discontinued it. at CFTC, we were advised that the agency merely acknowledges the receipt of a former employee's notification statement and does not provide a denial or approval to appear.

The notification requirements at SEC and CFTC include all appearances and communications with the agency. NRC's notification requirement deals strictly with appearances. However, at all three agencies there is little assurance that those who should notify the agency actually do so.

At SEC, a great deal of reliance is placed on the employee to satisfy the notification requirement. We were advised that SEC is not sure that all people file the required notification; agencies and departments are not required to report contacts by former employees, and they do not police the effectiveness of the system.

At CFTC we found an identical situation. We were advised that it is the employee's responsibility to determine if he or she should file a notification. Also, there is no agency requirement to log contacts by former employees; employees are not required to notify General Counsel when a former employee appears before or contacts the agency; and they do not police the system for effectiveness.

An NRC official advised us that NRC is not sure that all people who appear before the agency file a notification. In his opinion the agency is small and a former employee who appeared would be recognized. However, at the present time, there is no requirement that employees report all former employee contacts at the Commission.

INADEQUATE INFORMATION SYSTEMS ON POST-FEDERAL EMPLOYMENT RESPONSIBILITIES

Compliance with post-Federal employment regulations and statutes depends, in part, upon the extent employees are aware of such regulations and statutes. The "Task Force on Conflict of Interest and Ethical Standards of Conduct" reported in January 1977, as a problem inhibiting enforcement,

> "* * * Federal employees are seldom aware of and rarely understand the exact dimensions of conflict of interest. The awareness level is often so low that the employee does not know enough to even inquire into the possibility that his intended actions are prohibited. Extensive and continuous education programs, are, therefore necessary to help prevent conflict situations."

Based on our review, it is evident that agencies, in general, are not taking adequate measures to insure complete employee awareness of their post-Federal employment responsibilities.

Many agencies have rules governing post-employment conduct which are included in the agencies' codes of conduct. These rules can be communicated to individuals at recruitment or at the time the individual begins employment with the agency. Some agencies require new employees to sign a statement that they have read and understood their responsibilities under the code of conduct.

A few agencies conduct ethics seminars and some periodically circulate ethics memoranda. Some agencies do not counsel exiting employees on post-Federal employment restrictions and some do not advise prospective employees of post-Federal employment restrictions.

One example of an agency's limited communication of post-Federal employment responsibilities to its staff and prospective employees is the efforts at FTC. At FTC, we were advised that

--no specific effort is made to acquaint a new employee with post-employment responsibilities;

--post-employment responsibilities are not mentioned during recruiting; and

--in some cases, there is no exit interview, at which time post-employment responsibilities could be reemphasized.

FTC officials advised us that except for FTC lawyers, who are familiar with post-employment restrictions, some employees may not be familiar with their post-employment responsibilities. We were later advised that because of problems noted during our review, FTC is revising its rules of conduct to include a requirement that employees terminating their service will be advised of their post-Federal employment responsibilities.

Another agency, the Food and Drug Administration (FDA), is preparing a new guide to ethics designed to help employees avoid post-Federal employment conflict-of-interest situations. While this effort is commendable, we were advised that FDA efforts in this regard were initiated in January 1975, and as of March 1978, the guide has not been issued.

One agency recruiter advised us that he did not mention post-employment restrictions to prospective employees because he wanted to avoid the negative aspect of employment with the agency. Only when an individual accepts the employment is he

or she given a copy of the agency's code of conduct. Probably the most significant overall omission is that some agencies do not always reinforce the employee's awareness at the time employment is terminated. This could lead to cases of inadvertent violations of post-employment statutes and regulations.

CONCLUSIONS

Executive branch initiatives and agency efforts to enforce 18 U.S.C. 207 and corollary statutes and regulations have been limited. The lack of enforcement originates from the absence of specific language in legislation establishing enforcement responsibilities, but it is perpetuated by vagueness in the statute's terms, the absence of a Government entity assuming a central role and providing necessary leadership and guidance, and various prosecutorial problems. As a result (1) there have been few prosecutions by Justice and (2) agencies have been left on their own to enforce the statute at the agency level, resulting in inactive and ineffective enforcement.

The absence of enforcement can also be serious because previous studies have pointed out that many apparent conflict-of-interest situations, or cases which raise ethical questions, have occurred either at the highest levels of career employees or, in many instances, at the political appointee level. On this basis, doubts can be legitimately expressed whether high-level employees who would likely be affected by such enforcement systems can make serious attempts to enforce post-employment regulations.

Because agencies generally do not monitor and enforce post-employment regulations, little information exists to determine whether post-Federal employment is a problem and the extent to which former officials violate post-employment laws and regulations. Therefore little hard data is available to assist the Congress and the executive branch in determining whether or not existing statutes and regulations are adequate.

In cases in which agencies have attempted to enforce the statute and other post-employment regulations, we found that

--individual agency enforcement mechanisms such as clearance/waiver systems and notification requirements need improvement; and

--agencies may not be thoroughly advising employees at recruitment, during active employment, or at termination of their Government service of their post-employment responsibilities.

Evidence is not available that actual cases of post-Federal employment conflict-of-interest situations are widespread. However, ample notice has been provided by public interest groups, the executive and legislative branches, and the news media that mere appearances of improprieties cannot be ignored. We believe that post-Federal employment matters have too long been handled on an ad hoc basis with limited top-level executive branch initiatives, guidance, and leadership.

CHAPTER 4

EXECUTIVE AND LEGISLATIVE BRANCH INITIATIVES

CONCERNING POST-FEDERAL EMPLOYMENT PRACTICES

During 1977 both the executive and legislative branches took positive action to deal with the post-Federal employment issue.

In February 1977, the "Public Officials Integrity Act of 1977" (S. 555) was introduced. This bill is a successor to and incorporated many of the major features of the "Watergate Reform Act of 1976"; however, as initially introduced, it did not contain any changes to the post-Federal employment restriction of 18 U.S.C. 207.

At about this same time, the Senate Committee on Governmental Affairs published the first volume of its "Study on Regulatory Processes." The study demonstrated weaknesses in current post-Federal employment legislation and the efforts of executive branch agencies to enforce compliance with existing post-employment laws and regulations.

The President, in May 1977, submitted to the Congress the proposed "Ethics in Government Act of 1977." This act called for a three-part program dealing with financial disclosure, the creation of an Office of Ethics, and strengthening the restrictions on post-Federal employment activities of Government officials.

The Committee, using both the results of their study of the regulatory process and the President's proposed legislation, amended S. 555 to include a title V which would strengthen the restrictions contained in 18 U.S.C. 207 and would clarify certain language considered ambiguous in the past. S. 555 was passed by the Senate in June 1977 and a corresponding bill, H.R. 13676, is pending action in the House of Representatives.

SENATE BILL 555--"PUBLIC OFFICIALS INTEGRITY ACT OF 1977"

Title V of the "Public Officials Integrity Act of 1977" affects post-Federal employment restrictions. This title would amend subsections (a) and (b), respectively, of 18 U.S.C. 207 to

--extend the lifetime prohibition to include "aiding and assisting";

--prohibit written and oral communications in addition to appearances and extend the ban from 1 to 2 years--according to the Committee report, it does not, however, prohibit aiding and assisting as long as the former employee does not contact the agency; and

--as with 18 U.S.C. 207, both subsections (a) and (b) would still only apply to particular matters involving specific parties.

However, according to the Committee report, title V, unlike 18 U.S.C. 207, is intended to include consultants and expert witnesses and instances of self-representation in the prohibitions of subsections (a) and (b). Title V would add a new subsection (c) to 18 U.S.C. 207, which would provide that, for a 1-year period following separation, a former top-level employee cannot appear before or have any contact with the former agency on any particular matter pending before the agency. According to the Senate Committee, the new subsection (c) differs from the two preceding subsections in that

--the restriction applies regardless of the degree of association the former official had with a particular matter,

--it covers all matters including general rulemaking and formulations of general standards,

--it includes new matters that arose after the official left the department or agency,

--it applies only to contacts with the agency or department where the former official was employed,

--it applies only to top-level officials, and

--it authorizes the Director of the Office of Ethics to limit the scope of particular departments or bureaus within a former employee's agency, thereby allowing contact with the rest of the agency.

An important element of S. 555, in light of the Government's limited success in prosecuting violations of 18 U.S.C. 207 is that administrative sanctions are provided. An agency head may ban a former employee found guilty of a violation from participating in agency matters for up to 5 years, or may take disciplinary action such as issuing a formal reprimand. Also, all provisions in subsections (a), (b), and (c) could be waived if it is determined that the national interest would be served.

SENATE COMMITTEE RECOMMENDATIONS
ON POST-FEDERAL EMPLOYMENT PRACTICES

The Senate Committee on Governmental Affairs, as part of its overall study of regulatory reform, sought to determine whether former regulators who leave to enter the regulated industry maintain arms-length relationships with their former agency after Government service. As a result, the Committee developed 11 recommended changes, all but one to existing legislation and regulations designed to remedy certain problems which surfaced during their study. (See app. III.) In May 1977, Senator Percy, the ranking minority member on the Committee, asked us to conduct a study to analyze the likely effects of five of these proposals. (See app. IV.)

The remainder of this chapter is the results of our work to satisfy this request. We expanded the scope of our analysis to include the post-Federal employment provisions of S. 555 (see app. V) since such provisions were developed in part based on the Committee's recommendations. For our analysis, we relied heavily on agencies' responses to a questionnaire soliciting their views on the five proposals. While we were able to draw from agency experience in cases in which there were existing regulations or statutes which were similar to the Committee's proposals, agency responses are largely conjectural.

Proposal 1

"FOR A PERIOD OF ONE YEAR FOLLOWING TERMINATION OF SERVICE WITH AN AGENCY OR DEPARTMENT, A FORMER OFFICIAL OR EMPLOYEE SHALL HAVE NO CONTACT FOR COMPENSATION OR FINANCIAL GAIN, WITH THAT AGENCY OR ITS PERSONNEL ON ANY MATTER OF BUSINESS THEN PENDING BEFORE THE AGENCY."

Committee intent

The Committee recognized that 18 U.S.C. 207 allows a former regulator to have private business contacts with his former employing agency on certain matters the day after he or she leaves office--at a time when their contacts and influence with the agency are fresh and familiar. With this proposal, the Committee intended to provide a "cooling off period" between the time a regulator leaves office and reappears before the same agency by precluding all contacts on behalf of a private client on any matter for a period of 1 year. This recommendation is considerably more restrictive than 18 U.S.C. 207 in that the term "contacts" includes any and all contacts

made with the agency, or agency personnel, on any matter of business on behalf of private clients, whether it occurred before or after the person left the agency. As written, this proposal would overlap section (b) of 18 U.S.C. 207, since both section (b) and the proposal provide a restriction applicable to an identical time frame--the first year after leaving the agency. However, this prohibition, as incorporated in S. 555, only applies to top-level officials, thereby supplementing section (b) of 18 U.S.C. 207 rather than replacing it.

Agency views

Agencies commented on this prohibition as it reads in the Committee's recommendation and not as it was subsequently included in S. 555. They therefore found the proposal to be overly broad, unnecessary, and unreasonably restrictive. Some commented that there was little justification since they have not experienced problems, and that existing restrictions appear to adequately meet their needs. Also, some noted that the proposal ignores the relevant factor of whether or not the employee has any knowledge of the matter at hand. For example, the Interstate Commerce Commission (ICC) felt that the proposal amounted to an "overkill" and specifically for ICC prohibited contact on any of approximately 13,000 proceedings pending at the time of the employee's termination of service.

Several agencies believed that it would be more reasonable to limit the prohibition to persons who were in significant policymaking positions such as was included in S. 555. It should be noted that S. 555 also authorizes the proposed Office of Ethics to limit the scope of prohibitions on an individual agency basis, depending upon circumstances involved.

Enforceability--Agencies were concerned about their ability to monitor and enforce the ban. One agency suggested that to make this proposal effective, policing and enforcement mechanisms, such as the registration of a former employee's employment status and a systematic procedure to record and report all contact made by former employees would have to be established. This could be a rather severe problem in large agencies such as the Department of Agriculture (USDA), with about 105,000 personnel--especially if the scope of the prohibition is not limited.

Recruitment and retention--Agencies commented that the ban could conceivably make Government employment less attractive and therefore would negatively affect recruitment. In addition, agencies commented that in anticipation of the ban's enactment, some employees might leave the Government to avoid its effects. This could be especially true in very specialized or technical agencies such as NRC and FDA. Specialists in these areas might not want to jeopardize future employment opportunities in private industry, and therefore would be reluctant to accept Government employment.

IRS officials stated this provision would have a very definite impact on IRS's recruiting program. They stated that they compete with law firms for top law graduates. IRS generally offers lower salaries, but a major selling point is that a lawyer can come to IRS and acquire a tax expertise which commands a higher salary when leaving IRS to go to a law firm. A 1-year ban would eliminate this incentive.

Our observations

In 1962, the Senate Committee Report on the bill establishing 18 U.S.C. 207 cited as an example of "overprotection of the Government's interest" a similar prohibition that was in effect at that time. This prohibition precluded former executive branch employees for a period of 2 years after employment from prosecuting a claim which was pending during the period of his or her incumbency, either at that or in any other department, even though he or she was totally unaware of the claim during that period. The Committee Report cited this as lacking reasonable justification.

There has been some recent support for a ban on contacts from the business sector. In June 1978, the Business Roundtable, made up of chief executive officers of some 120 leading corporations, submitted a report to Members of Congress entitled "Statement of the Business Roundtable on Regulatory Appointments." The report recommended, among other things, that:

> "Restrictions on the subsequent activities of government officials should be enacted that require: (a) a ban on a former official's ever acting on specific cases in which he/she was personally and substantially involved while in government service; and (b) a one-year cooling-off period during which a top official will have no contact with his/her former agency; and
>
> "To prevent the necessity of job hunting while still in office, exiting commissioners should have a three-months reallocation period at full pay after leaving office."

We appreciate agencies' concern over the proposal's scope of applicability and enforceability. However, these concerns are substantially relieved in S. 555 which limits the ban to employees in GS-16 through GS-18 grades and political appointees. Also, by reducing the scope of applicability, the burdens of enforcement mechanisms such as registration of former employees' employment status and cataloging contacts made by former employees could be relieved to a great extent.

Proposal 2

"AS RELATED TO POST-AGENCY PRACTICE, THE REGULATORY AGENCIES SHOULD CONSIDER ADOPTING THE ENFORCEMENT MECHANISMS IN EFFECT AT THE FEDERAL TRADE COMMISSION. IN ANY EVENT, ALL AGENCIES SHOULD DEVELOP SOME METHODS FOR ENFORCEMENT OF 18 U.S.C. 207."

Committee intent

The Federal Trade Commission enforcement system requires former employees who wish to appear before the agency in any proceeding which was pending before the agency while the employee worked at FTC to file an application requesting a waiver to appear. FTC conducts an investigation to determine whether the employee ever participated in the matter while an FTC employee.

The Committee believed that the FTC system was an example of an effective enforcement system.

Agency views

Agencies did not raise significant concerns over how reasonable this proposal was, how much it would cost, or how it would affect recruiting. However, they did raise two issues on the proposal's enforceability.

First, if each agency is left to its own devices, there is a likelihood that some may not implement an enforcement mechanism, and in those cases in which mechanisms are implemented, they may be so varied as to provide inconsistent and

unequal treatment of former employees. This concern is consistent with current evidence of the various degrees and methods by which agencies enforce post-Federal employment restrictions.

Therefore, it was suggested that the Congress by statute make enforcement an agency responsibility and it should be applicable to all Federal agencies subject to 18 U.S.C. 207 and not just regulatory agencies.

Second, it was felt that any enforcement system established should be tailored to the special operating circumstances of the department or agency. USDA pointed out that from a perspective of a large department with about 105,000 employees, it does not believe it could effectively administer the system as is contained in FTC's regulations. They questioned whether any department with large numbers of employees, widely diverse program responsibilities, and substantial geographic dispersion of employees could enforce or police such an enforcement system.

IRS officials commented that they did not know how they would implement an FTC type enforcement system, and they felt it may be too costly and impractical to do so. They advised us that about 900-1,000 persons leave IRS annually and the Service is extremely decentralized (58 offices). IRS officials stated they rely mainly on a "complaint system" to detect violations.

Our observations

Experience has shown that agencies, without an expressed responsibility to do so, generally have not established adequate enforcement systems to ensure compliance with post-Federal employment laws and regulations.

Therefore, if the Congress intends to implement this proposal it may have to be more specific in its attempts to ensure increased agency enforcement activities. Several modifications to this proposal should be considered.

First, the Committee should make this proposal a statutory requirement which would apply to all Federal agencies. Second, a Government office should be assigned responsibility to oversee the development of enforcement standards and mechanisms tailored to individual agency needs. Finally, the

Committee should consider setting down minimum levels of enforcement, such as:

--A requirement that agencies adopt the FTC indepth clearance review process or some variation thereof.

--A requirement that all former employees file for a clearance rather than allowing the individual to decide whether or not he should apply. This would require the monitoring of all former employees to ensure that all persons who may require screening are screened.

Proposal 3

"EACH AGENCY SHOULD ADOPT RULES REQUIRING FORMER OFFICERS AND EMPLOYEES WHO HAVE SERVED IN SIGNIFICANT DECISION-MAKING POSITIONS TO REGISTER FOR A PERIOD OF TWO YEARS ANY SUBSEQUENT EMPLOYMENT WITH COMPANIES OR FIRMS THAT MAY BE SUBJECT TO REGULATION BY THE SAME AGENCY. THE FIRM OFFICIAL OR EMPLOYEE SHALL ALSO STATE, AS PART OF THAT REGISTRATION, THE NATURE OF THE EMPLOYMENT AND ANY MEASURES TAKEN TO AVOID THE APPEARANCE OF UNETHICAL PRACTICES. DURING THE TWO YEAR PERIOD, ANY CHANGES IN EMPLOYMENT SHOULD BE UPDATED WITH THE AGENCY."

Committee intent

In addition to proposal 2, the Committee, in its attempt to increase the enforcement of 18 U.S.C. 207, proposed that a reporting requirement be implemented.

Agency views

Two agencies felt that this proposal would strengthen enforcement of post-Federal employment restrictions, while others questioned its usefulness in precluding post-employment violations and its necessity. In neither case was there an overwhelming argument to support or reject the proposal. It was suggested that if the purpose was to increase the employees' awareness of their post-employment responsibilities, it could be achieved more directly, through techniques such as exit conferences.

Enforceability--The proposed reporting requirement leaves it to former employees to determine if they need to report their employment status. DOD, which already has a reporting system in effect (see ch. 3) noted that since it is the former

employee's decision to report, the agency is not assured that all persons who should file do so. Agencies also commented that to provide the necessary authority to impose such a requirement and to ensure consistent Government-wide implementation, the reporting requirement should be required by statute, rather than by agency rule.

Both IRS and USDA questioned their ability to enforce a reporting requirement as suggested by this proposal since they would have no authority over the employee once he or she left the service.

CPSC and FCC pointed out that the reporting system should be related to prohibited conduct. Currently, 18 U.S.C. 207 (b) only restricts activities for 1 year, as does the 1-year ban on contacts included in S. 555. CPSC felt that consideration should be given to limiting the reporting requirement to 1 year.

Legal question--FTC, Justice, FCC, and IRS all expressed concern over this proposal's violating attorney-client privileges. FTC suggested that an attorney who accepts employment with a law firm should be required to disclose the identity of the firm only, in light of the possible infringement of the attorney-client relationship if all clients, or even those for which the former employee directly worked, were required to be disclosed.

Cost and recruitment--Two agencies, NRC and USDA, expressed doubt that the benefit from the reporting requirement would be worth the cost in terms of paperwork, manpower, or the invasion of privacy. Other agencies did not mention any concern about costs associated with this requirement. However, there was no evidence that agencies and departments considered the costs associated with satisfying the administrative requirements of the Privacy Act, which could be substantial.

Only one agency specifically commenting on this proposal felt that it would inhibit recruiting personnel. FRB commented that since the registration would extend to areas that are in some instances held to be personal or private, its provisions may be construed as an invasion of privacy. Accordingly, it felt that such rules could well make it more difficult to attract high-level professionals.

Vagueness of terms--Agencies commented on the vagueness of the term "appearance of unethical practices." They found a problem in the requirement that former employees state

"any measures taken to avoid the appearance of unethical practices." They considered this to be self-serving and troublesome because such "appearances" would be extremely difficult to define, particularly when the former employee worked for an agency with broad jurisdiction.

Our observations

As discussed in chapter 3, DOD and NASA have similar reporting systems in effect. The Department of Energy is subject to a similar statutory reporting requirement for which implementing regulations have yet to be developed. In addition, CPSC is in the process of amending its regulations to include a reporting requirement. However, little experience can be drawn from the existing systems since they merely catalogue employee movement without evaluating such movement in terms of restricted activities.

If this proposal is to be implemented, we encourage consideration of the following modifications:

--Establishing this requirement by statute to provide agencies with a clear authority to require such information.

--Specifying personnel positions subject to this requirement, limiting it to positions that reasonably can be expected to be involved in conflict-of-interest situations, and providing a compliance mechanism by requiring all persons in these positions to report, regardless of whether they are employed or not.

--Linking the reporting period to a prohibited conduct, such as 1 year as in 18 U.S.C. 207, or the Committee-proposed ban on contacts.

--Providing sanctions for not filing. Consideration should be given to civil and administrative sanctions, as opposed to criminal sanctions, for not filing.

Proposal 4

"EACH AGENCY SHOULD PROCEED TO DEVELOP AND IMPLEMENT REGULATIONS FOR THE DETERMINATION OF WHETHER AND UNDER WHAT CIRCUMSTANCES A LAW FIRM MAY PARTICIPATE IN AN AGENCY MATTER EVEN THOUGH A PARTNER OF THAT SAME FIRM IS DISQUALIFIED DUE TO EITHER 18 U.S.C. 207 (A) OR (B). THE CRITERIA SHOULD

INSULATE THE PARTNER/FORMER OFFICIALS FROM PARTICIPATION AND KNOWLEDGE OF THAT MATTER: THERE SHOULD BE NO CONSULTATION WITH OTHER MEMBERS OF THE FIRM AND NO ACCESS TO ANY FILES OR INFORMATION CONCERNING THE MATTER; AND NO PART OF THE FEES ATTRIBUTABLE TO IT SHOULD BE SHARED BY THE FORMER OFFICIAL."

Committee intent

The issue of whether an entire law firm should be disqualified if one of the firm's members, a former agency employee, is disqualified was considered in 1962 at the time 18 U.S.C. 207 was formulated. At that time, it was decided that the American Bar Association's (ABA's) code of ethics gave the matter adequate coverage. This issue has resurfaced.

ABA's code of professional responsibility, as interpreted in ABA Formal Opinion 342, requires that a firm's affiliated lawyers be barred when one of the firm's lawyers is barred from involvement in a matter pending before an agency. However, a waiver can be obtained if proper "screening" of the former employee from participation in the case is guaranteed. The law firm must establish proper screening measures, but only the Government agency can authorize the firm's participation.

The Legal Ethics Committee of the District of Columbia Bar Association, however, recently proposed that a law firm must withdraw from a case if any member of the firm, while a public official, had a substantial role in the matter. Many agencies and law firms and the Federal Bar Association have expressed opposition to the Ethics Committee proposal. The Senate Committee felt that the Ethics Committee proposal would have a detrimental effect on the Government's ability to recruit and felt that matters such as these are best resolved in a case-by-case fashion by the individual agencies. The Senate Committee developed this recommendation apparently in support of the ABA position.

Agency views

Agencies and departments generally did not object to proposal 4. However, there were several dissenting comments that deserve mentioning:

--FCC did not favor the proposal, stating that its effect would be to involve agencies in overseeing the ethical and professional responsibility of law firms to consider their responsibilities under the relevant

statutory provisions, thus potentially involving the agencies in internal law firm affairs. It suggested that a law firm should be allowed to follow a case-by-case method of screening former Government employees from casework, with minimum governmental interference.

--FRB lent support to the FCC position by stating that since the adequacy of any proposed screening method is likely to depend on the circumstances of individual cases, this area would not readily lend itself to the mandate of formal criteria.

--Agencies suggested refinements such as the proposal being promulgated by statute or Government-wide regulation to enhance uniformity. For example, FDA recommended that CSC develop draft regulations, in collaboration with organizations such as ABA, for all Federal regulatory agencies.

--Agencies also commented that it would be virtually impossible to police such a prohibition.

Our observations

The Committee's proposal indicates a belief that the ABA rule, as interpreted by ABA Formal Opinion 342, should apply to both subsections (a) and (b) of 18 U.S.C. 207. We believe this is a reasonable approach to solving this problem. Our concern is, however, that this proposal may require a Federal agency to become involved in the internal working of law firms to the extent of not only developing regulations but also policing law firm compliance with such regulations.

Proposal 5

"THE ACTS CREATING CERTAIN MULTIMEMBER REGULATORY COMMISSIONS SHOULD BE AMENDED TO INCLUDE THE FOLLOWING PROVISIONS:

"(A) A COMMISSIONER SHALL NOT ACCEPT ANY EMPLOYMENT OR COMPENSATION, EITHER DIRECT OR INDIRECT, FROM ANY PARTY OTHER THAN THE UNITED STATES, ACTUALLY THE SUBJECT OF REGULATION BY THE COMMISSION DURING HIS OR HER TENURE FOR A PERIOD EXTENDING UNTIL THE EXPIRATION OF THE TERM TO WHICH THE COMMISSIONER WAS APPOINTED, EXCEPT THAT THIS PROVISION SHALL NOT APPLY TO ANY COMMISSIONER (i) WHO SERVES FOR A TOTAL OF YEARS EQUAL TO ONE FULL TERM FOR A MEMBER OF THAT"

"AGENCY OR FOR A PERIOD OF SEVEN YEARS, WHICHEVER IS SHORTER, OR (ii) IS REMOVED FROM OFFICE AS EITHER MEMBER OR CHAIRMAN BY THE PRESIDENT, OR (iii) WHO CERTIFIABLY RESIGNS FROM OFFICE ON ACCOUNT OF ILL HEALTH.

"(B) EACH AGENCY SHALL FORMULATE RULES TO INSURE THAT COMMISSIONERS WHO RESIGN PRIOR TO THE EXPIRATION OF THEIR TERMS OF OFFICE REPORT ANY EMPLOYMENT FOR THE PERIOD OF RESTRICTION WHICH APPLIES."

"(C) UPON ADOPTION OF THE FOREGOING, PRESENT RESTRICTIONS ON POST-EMPLOYMENT PRACTICES CONTAINED IN THE FEDERAL RESERVE ACT, COMMUNICATIONS ACT, AND THE CONSUMER PRODUCT SAFETY ACT ARE TO BE REPEALED."

Committee intent

The Committee's proposal would impose added restrictions on Commissioners who resign before their terms expire. The Committee felt such restrictions would help to eliminate potential post-Federal employment improprieties by discouraging regulators from serving short terms, resigning, and then using expertise acquired while in Government service for personal gain. However, the thrust of the proposal is to encourage Commissioners to serve full terms in order to maximize their contribution to the agency's effectiveness by restricting their employment options if they do not complete their full term.

Agency views

In its report on regulatory agencies, the Committee cites the Federal Reserve Act, which restricts subsequent employment as having substantial merit and proposed the FRB approach, "with modification." However, FRB commented that the Committee's proposal is overly severe. FRB stated that the proposal could prevent Board members from obtaining employment not only in member banks and holding companies, but also with certain retailers, finance companies, savings and loan associations, travel and entertainment card issuers, credit card issuers, mortgage companies, securities brokers, and a host of other entities. They felt that the proposal's scope, which includes any institution subject to regulation, would be overly broad in view of the Board's substantial regulatory responsibilities. FTC also noted that the proposal would be too restrictive for agencies like itself, whose scope of responsibility covered major segments of the economy.

Two agencies, CPSC and ICC, commented on the logic in the Committee's intent in recommending this proposal and suggested changes:

--CPSC stated that if the real objective of this proposal is to induce Commissioners to serve their full terms, fairness and impartiality seems to dictate that former Commissioners be precluded from accepting employment with any entity that has or could have business before the agency, including consumer groups.

--ICC questioned why restrictions should be placed on Commissioners serving less than a full term, while Commissioners serving full terms would be able to accept immediate employment with regulated firms. ICC did not regard length of service or completion or noncompletion of term, as stated in the provisions, as a determining factor in whether or not a Commissioner should accept employment with a regulated firm.

Several agencies felt that the proposal did not account for a large number of legitimate reasons for resigning. The proposal excludes removal from office by Presidential mandate or illness from the prohibition. Agencies suggested that the proposal should provide dispensation for a wider range of reasons for resignation.

Recruitment--Only a few agencies commented on this proposal's likely effect on recruitment and retention of qualified personnel. However, most of these agencies felt that recruitment would be detrimentally affected. Likewise, agencies commented that it might make Commissioners less likely to resign their positions. But it may not be in the Government's best interest to have persons in these positions who are simply marking time until their terms have ended.

Vagueness of terms--Agencies felt that certain terms should be more clearly defined or explained. For example, one agency questioned whether the word "indirect" would prohibit acceptance of employment with a law firm that has a regulated firm as a client, even though the former Commissioner would not have dealings with that particular client. Also, this same agency commented that without clarification, salary may be considered indirect compensation, coming from fees paid to the law firm by regulated firms.

Another phrase pointed out as unclear was "actually the subject of regulation by the Commission during his or her tenure." Two agencies were unsure whether this restriction referred to individually identified firms that had received specific commission action rather than classes of entities like manufacturers, subject to broad regulation, or companies who may be subject to regulation because of some activity tangential to their principal lines of business.

Our observations

Common Cause, in its study "Serving Two Masters," noted a tendency of former Commissioners to take jobs with regulated companies or law firms that represent them in Government proceedings. Their test of nine agencies for the 1971-75 period showed that 17 of 35 Commissioners who left their agencies took such jobs.

An April 1976 study, published by the Senate Commerce Committee, "Appointments to the Regulatory Agencies," conducted under the auspices of the Institute for Public Interest Representation, Georgetown University Law Center, concluded that the majority of regulators end up in the employ of the regulated. According to the study, weak restrictions on subsequent practice by former Commissioners contribute significantly to this result.

On June 23, 1978, Senators Glenn, Percy, and Ribicoff introduced the "Independent Regulatory Commission Act" (S. 3240). This bill contains sections (see app. VI) which in essence incorporate the Committee's recommendation.

One issue which was not addressed by agency comments but deserves mention is the enforcement requirements. To be effective, the proposal may require a reporting system whereby Commissioners who do not fulfill their terms of office are required to report their employment for the period over which these restrictions apply. This is similar to the reporting requirement in the Committee's third proposal, except that it would affect fewer individuals.

In examining the Committee's intent behind this proposal, two issues surface:

1. This proposal is intended in part to preclude actual conflict-of-interest situations or appearances of such situations. Implicit in this is the rationale that a specific post-employment action by a Commissioner can be (or can appear to be)

both ethical and unethical depending upon whether or not the Commissioner has fulfilled his or her term of office.

2. In attempting to preclude a Commissioner from resigning, the proposal intimates an acceptance of the detriments from a passive, disinterested individual in an important decisionmaking position. It is of questionable benefit, in terms of work productivity, for the Government to encourage a Commissioner to remain in office, especially those in positions that carry high decision significance. These problems can especially be compounded if the appointee knows he or she will be taking a position in the regulated industry when leaving office, and may be much more disposed to the industry in decisions during the remainder of his or her term.

While legislation has already been introduced to include this proposal, we encourage consideration of the following issues during the hearings on S. 3240:

--Providing increased dispensation when a Commissioner resigns from office for other reasons.

--Increasing prohibited employment to all organizations, such as public interest groups, that could have dealings with the agency.

--The relevance of the various constraints to enforcement necessitating, in our opinion, the need for specific statutory authority to institute a reporting system, including appropriate sanctions for noncompliance.

--Further defining terms which the agencies consider somewhat vague (e.g., indirect compensation) and more closely defining the scope of the restrictions.

CONCLUSIONS

There has been recent concern over actual and apparent ethical consequences of the "revolving door" syndrome of public employment. Existing legislation now pending in the Congress reflects executive and legislative branch concerns.

Our analysis was derived from agency comments on the Committee's proposals and a review of pending legislation in the Congress. Agency comments provided a broad perspective of the likely effects of the proposals, were consistent in

many respects with one another, and raised issues essential to analyzing the viability of such proposals. However, these concerns are based on limited experience.

It is apparent that legislation now pending in the Congress will strengthen post-Federal employment prohibitions. This includes the establishment of an Office of Ethics which, in our opinion, is a significant step toward addressing the post-Federal employment issue.

CHAPTER 5

POST-EMPLOYMENT RESTRICTIONS

ADOPTED BY OTHER COUNTRIES

As part of our review, we discussed post-employment matters with officials in Canada, the United Kingdom, the Federal Republic of Germany, France, and Japan. While post-employment issues and restrictions varied according to country, in general we found:

--Officials did not consider post-employment to be a serious problem, yet all governments have imposed certain restrictions on a former employee's post-employment activities.

--Foreign government programs did not include enforcement and monitoring mechanisms and relied upon the integrity of the employee and the present employer for monitoring and enforcing post-employment prohibitions.

--Criminal sanctions were imposed sparingly.

No comparisons of the post-employment practices of foreign governments to those in the United States could be made because of differences in civil service employment philosophies, differing government-industry relationships and the absence, to a large degree, of regulatory agencies in the foreign governments.

IS POST-EMPLOYMENT AN ISSUE IN FOREIGN COUNTRIES?

Most country officials did not consider post-employment a significant problem. There appear to be two key reasons why this attitude prevails. First, there is little movement between government service and industry. This results from a civil service system in which

--jobs are secure and are held in high esteem by the public;

--salaries are commensurate with private industry;

--pension plans are highly desirable; and,

--sufficient opportunities exist for advancement.

The second major reason is the close relationship between the government and industry. The European governments have a closer working relationship with private industry. To a greater degree than in the United States, host governments provide a support function, and in many cases either heavily subsidize their industries or own them.

RESTRICTIONS AFFECTING POST-EMPLOYMENT

Post-employment restrictions of the foreign governments are intended to prevent former employees from improperly using government-obtained information, firms from influencing government staff decisions with promise of future jobs, and preferential treatment by former colleagues still at the agency. Restrictions vary with regard to the employees covered, activities prohibited, and sanctions imposed for violations.

Canada

In December 1976, Canada adopted post-employment guidelines as a result of alleged improper post-employment activities by two former high-level government officials. This allegation had made it obvious that post-employment standards were not available to protect the employee and the government in post-employment conflict-of-interest situations.

The guidelines prohibit, for 2 years, former ministers, heads of agencies, senior-level exempt staff--and for 1 year, parliamentary secretaries, full-time Governor-in-Council appointees, and senior-level public servants--from

--accepting an appointment to the board of directors of a commercial corporation with which they dealt during the course of government service;

--changing sides to act on a particular matter with which there was "personal and substantial" involvement while in public service; and

--lobbying on particular matters before the agency for which they worked or another agency with which they dealt within 2 years prior to termination of public service.

In addition, these employees are prohibited for 1 year and 6 months, respectively, from

--accepting employment with a private company with which they had significant direct dealings during the last year of public service;

--changing sides to act on a particular matter which was within the realm of official responsibility during the last year of public service; and

--giving counsel concerning programs or policies of an agency with which they were once employed or to which they were officially related during the last year of public service.

An advisory committee is responsible for determining the specific application of the guidelines and recommending exemptions if they would be in the public interest.

These restrictions contain a "grandfather clause" in that they apply only to persons entering new positions; however, officials expect that current employees will comply with their guidelines as a matter of honor and of personal choice. The employees entering new positions will be asked to agree in writing to comply with the restrictions as a condition of employment, but there are no sanctions for violation of these restrictions.

United Kingdom

Since 1937, civil service employees roughly equivalent to GS-16 and above for the first 2 years after they leave have been required to obtain government permission before accepting employment in businesses that have contractual relationships with, receive capital assistance and subsidies from, or are owned by the government. Decisions as to whether the person's private employment could cause public concern or criticism or whether the employee could disclose trade secrets about his prospective employer's competitors are made generally at the agency level; however, those which are not resolved at this level are referred to the Prime Minister. The decision can be a refusal, an unqualified approval, or an approval subject to

--a 2-year waiting period on the employee's acceptance of the position;

--a ban on involvement by the former employee in dealings between the prospective employer and the government lasting for up to 2 years;

--a ban on involvement by the former employee in dealings between the prospective employer and the named competitors for up to 2 years; or

--the approval of the prospective employer's competitors for the proposed appointment.

There are no sanctions to ensure compliance with the government's decision.

France

The French Penal Code prohibits former government officials for 5 years from working with, counseling, or investing in the private enterprises over which they performed surveillance or control, approved agreements or contracts, or expressed advisory opinions. Such participation is punishable with imprisonment and a fine ranging from $74 to $374.

Japan

In post-war Japan, government agencies exercised considerable authority over the private sector of the economy. Therefore, in 1947 the Japanese National Public Service Law was enacted to separate government staff from related industries' influence.

The law prohibits all National Public Service employees, for a period of 2 years after leaving the government, from accepting or serving in a position with a profit-making enterprise closely connected to any agency at which the employee was formerly employed within 5 years prior to separation. Employees who want to work for these enterprises must obtain written approval from the National Personnel Authority. Because the law applies to approximately 540,000 employees, the Authority has delegated some approval authority (depending on the employee's grade) to the individual ministries and has provided them with evaluation criteria. The penalties for a violation are imprisonment for up to 1 year or a fine not to exceed $115.

Federal Republic of Germany

The Federal Republic of Germany prohibits former civil servants from using the knowledge gained during their government career after their employment. The penalty for violation is loss of pension and/or criminal prosecution. Officials do not believe that additional post-employment restrictions are necessary because individuals rarely leave civil service.

Also, it was felt that post-employment restrictions may violate the German Constitution, which guarantees the individual the freedom to pursue whatever occupation he chooses.

EFFECTS OF POST-EMPLOYMENT RESTRICTIONS ON RECRUITMENT

Officials expressed mixed feelings regarding the effects of post-employment restrictions on recruitment. United Kingdom officials stated that they did not believe their restrictions deterred people from entering government service. Canadian officials stated that they believe the quality of individuals attracted to public service would be affected by their restrictions more than the quantity. However, any effect on recruitment would be minor. The effect of post-employment restrictions on recruitment is not an issue in Japan. Japanese officials stated that they have no recruiting program for government positions. The Japanese use a series of qualification and entrance exams to select qualified individuals and there is always heavy competition.

NO RECOGNIZED NEED FOR AN ENFORCEMENT MECHANISM

In these countries, there are no enforcement or monitoring mechanisms in effect. Foreign officials stated that their current restrictions are adequate and that enforcement and monitoring mechanisms to ensure compliance are not needed. However, by virtue of not having a monitoring system, these countries are not informed as to whether or not a problem actually exists and if enforcement procedures are needed.

Canadian officials believe that the success of their post-employment restrictions will rely on the integrity of the public to comply with them and the press and other public servants to expose noncompliance. Japanese officials believe that there is no need for monitoring the actions of employees who have left government service. Current and potential employees are fully aware of the restrictions of the law and therefore will try to avoid the disgrace that is associated with being caught violating the law. The Japanese government also relies on other government officials to detect violations. A United Kingdom official felt that it would be too expensive to monitor, particularly since the United Kingdon has had very few post-employment problems. Finally, because the Federal Republic of Germany does not interfere with an individual's freedom to pursue whatever occupation he or she chooses, it has not developed a system for monitoring the activities of its former employees.

CONCLUSIONS

Although host-country officials did not consider post-employment to be a problem, each government does impose certain restrictions on the post-employment activities of former public employees. Foreign governments apparently are not prepared to enforce such restrictions and are content to rely almost solely on former employees' integrity to self-enforce the restrictions.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

In past years, concern over conflict-of-interest situations has been centered on the financial interests of Federal employees during their Government employment. More recently, however, the "revolving door" syndrome has received increased attention. Yet, the Government's concern over post-Federal employment activities has been the subject of legislation for well over 100 years, and former Government officials are subject to statutes and regulations restricting appearances before the former employing agency or future employment in the private sector.

While Federal agencies have an implicit responsibility to enforce post-Federal employment laws and regulations, executive branch initiatives and agency efforts to enforce 18 U.S.C. 207 and corollary statutes and regulations have been limited.

--Since 1963, there has only been one Government-wide Presidential initiative concerning post-Federal employment (the proposed "Ethics in Government Act of 1977").

--For the most part, the Department of Justice has played a reactive role in enforcing existing laws and regulations and providing assistance and guidance to Government agencies in post-Federal employment matters.

--Department of Justice prosecutions of post-Federal employment violation referrals have met limited success.

--The Civil Service Commission does not play a role in post-Federal employment matters.

--The executive branch and independent agencies do not know how many former employees go to work for regulated industries or the extent to which post-Federal employment violations occur.

--Agencies are not thoroughly advising employees of their post-Federal employment responsibilities at recruitment, during employment, or at termination of service.

The extent to which a post-Federal employment problem exists is not known, appropriate levels of enforcement have not been determined, and little hard data is available to determine whether or not existing statutes and regulations are adequate to preclude post-Federal employment problems or the appearance of such problems.

There is a complex series of interrelated reasons why executive branch enforcement of post-Federal employment statutes and regulations is limited. The problem seems to originate from the absence of specific or general language in legislation establishing enforcement responsibilities. Also, there is no single Government agency with a responsibility to address the problems of administration and enforcement of a program designed to minimize post-Federal employment problems or the appearance of problems.

Other contributing reasons are:

--Agencies' uncertainty about their authority to enforce post-Federal employment restrictions, including the absence of administrative or civil remedies to facilitate the Government's enforcement.

--Vague statutory language, loopholes in the law, and a difficulty in establishing a former official's intent to violate the law and demonstrate actual adverse consequences from the violation, which make agency authority unclear and discourage prosecutions by the Department of Justice.

--Many agencies, perhaps as a result of having no monitoring systems, do not view post-Federal employment as a problem and therefore do not see the reason for increased enforcement.

We believe the executive branch experience with enforcement of post-Federal employment regulations closely parallels that of enforcement of other ethics regulations. There have been (1) little guidance to agencies and (2) limited enforcement. Attempting to restrict post-Federal employment practices so that the Government is protected and the employee is not unduly restricted in career opportunities will involve overcoming the administrative and legal problems of developing effective enforcement systems that do not invade an individual's privacy, create a lot of paperwork, or require a large agency staff.

In our February 28, 1977, report, "Action Needed To Make the Executive Branch Financial Disclosure System Effective" (FPCD-77-23), we stated that the effectiveness of the executive branch's system depends heavily on strong administration and enforcement by a central office. We had found that enforcement of ethics and financial disclosure regulations could no longer be managed on an ad hoc basis with limited support and insufficient resources. We recommended that an Office of Ethics be established in the executive branch either as an independent agency or within another agency, to address the problems of enforcement and compliance with ethics regulations. We believe this recommendation also applies to post-Federal employment issues.

Legislation currently before the Congress may provide the key to solving the post-Federal employment dilemma. An Office of Ethics is already included in S.555 and H.R. 13676 which could serve as the basic vehicle through which to determine appropriate Government action needed to balance the evils of post-Federal employment activities against benefits of exchanges of expertise between the private and public sectors and protect the rights of individuals to seek and obtain employment.

This Office can, among other things, serve to

--oversee an agency-by-agency study of post-Federal employment problems with a view toward determining what enforcement mechanism(s) is best suited for each individual agency;

--establish, in collaboration with individual agencies, agency enforcement strategies and tactics and monitor agency efforts to implement them;

--provide a continuing program of information and education for Federal officers and employees; and

--provide leadership and guidance to Federal agencies and recommend to the President and the Congress strategies and tactics required to minimize actual post-Federal employment conflict-of-interest situations or appearances of such situations.

RECOMMENDATIONS

We endorse the enactment of pending legislation (S. 555, H.R. 1, and H.R. 13676) which would establish, within the executive branch, an Office of Ethics. We recommend, however, that specific language be added to this legislation to

establish within this Office the responsibility for the Government's efforts to administer post-Federal employment laws and regulations. This Office, in collaboration with other executive branch departments and agencies, should be directed to develop and implement a system to determine the extent to which post-Federal employment activities of former Government officials may be a problem. Based on information developed, the Office should (1) recommend either to the President or the Congress necessary action to enforce post-Federal employment prohibitions and (2) act as the central administrating authority to ensure successful implementation of such recommended action by individual Government agencies.

Notwithstanding the establishment of an Office of Ethics, the Congress should amend 18 U.S.C. 207 to remedy certain shortcomings and to provide additional guidance to executive agencies in enforcing post-Federal employment statutes and regulations. Specific issues which should be addressed include

--requiring executive agencies to take action to determine the extent to which post-Federal employment may be a problem;

--establishing specific agency responsibility and authority to enforce post-Federal employment prohibitions;

--defining terms in existing legislation which now are subject to interpretation and inhibit enforcement;

--encouraging Government-wide dissemination of post-Federal employment advisory information by assigning such responsibility to a single agency;

--supplementing existing criminal sanctions with civil remedies; and

--requiring agencies to develop and implement information programs to ensure their employees are aware of their post-Federal employment responsibilities.

CHAPTER 7

SCOPE

Our review was made pursuant to a request from Senator Charles H. Percy, ranking minority member, Senate Committee on Governmental Affairs. (See app. IV.) The review was conducted at 12 regulatory agencies, 2 nonregulatory agencies, 6 executive branch departments and offices (see app. VII), and in 5 foreign countries.

We were asked to examine

--the effects of statutory post-employment restrictions contained in the Federal Reserve Act, the Federal Communications Act, and the Consumer Product Safety Act;

--post-employment statutes and regulations applicable to other regulatory agencies;

--the executive branch departments' involvement in post-employment matters; and

--the involvement in post-employment matters by the governments of Canada, the United Kingdom, the Federal Republic of Germany, France, and Japan.

The Senate Committee on Governmental Affairs, in a study of the regulatory appointments process, had sought to determine whether former employees of regulatory agencies who leave to enter the regulated industry maintain arms-length relationships with their former agencies. This study resulted in 11 recommendations; all but 1 are intended to strengthen existing post-employment legislation and regulations. In addition to the above mandate, we were asked to analyze the likely effects of five of these recommendations.

Information developed during our review was obtained from a variety of Federal personnel including General Counsels, ethics counselors, recruiters, and personnel officers. Most of the information used in our analysis of the likely effects of the Committee's five recommendations was obtained from questionnaire responses. Also, when applicable, actual agency experience was used as a predictive tool and information from interviews with various officials was used to supplement data obtained from the questionnaire responses.

COMPTROLLER GENERAL'S REPORT TO THE CONGRESS

ACTION NEEDED TO MAKE THE EXECUTIVE BRANCH FINANCIAL DISCLOSURE SYSTEM EFFECTIVE

D I G E S T

The system requiring Federal employees to report their financial interests is not working as it should.

Operation of the system was delegated to the Civil Service Commission by the President, who in 1965, prescribed under Executive Order 11222, the standards of ethical conduct.

On the basis of GAO's 18 previous reviews on financial disclosure systems in Federal departments and agencies, GAO recommends that an office of ethics be established in the executive branch with administrative and enforcement authority strong enough to carry out the multiple responsibilities involved in operating a sound financial disclosure system. The executive branch conflict-of-interest program can no longer be managed on an ad hoc basis with limited support and insufficient resources.

GAO came to this conclusion after finding numerous cases in which employees owned stock or had other financial interests in companies that could conflict with their official duties. Many of these potential conflicts were obvious, yet those who reviewed the statements either did not question them or, if they did, failed to resolve the potential conflicts.

Many employees who were required to file statements failed to do so or filed late. Many others had filed but their statements were missing. Many were not even required to file, although they should have been.

In addition, GAO found problems in the:

FPCD-77-23

--Criteria for reviewing financial disclosure statements and for determining who should file.

--Procedures for collecting, processing, and controlling the financial disclosure statements.

--Methods for exacting timely remedial action to resolve conflicts that are detected.

--Procedures to ascertain that employees who have been required to disqualify themselves on matters affecting their financial holdings have, in fact, done so.

Some agencies have strengthened their systems in line with GAO's recommendations. However, departments and agencies will have to obtain more information from their employees if the appearances of conflicts of interest are to be avoided.

GAO recommends that the President:

1. Issue a clear statement to the heads of all executive departments and agencies setting forth a firm commitment to the highest standards of ethical conduct. Such statement should indicate the need for (a) each agency to promulgate ethics regulations that include compliance with regulations and laws applying to the functions and activities of the agency and (b) more stringent enforcement and evaluation of conflict-of-interest regulations.

2. Establish an executive branch office of ethics with adequate resources to address the problems of enforcement and compliance. The office should have the following responsibilities, among others:

   --Issuing uniform and clearly stated ethical standards of conduct and financial disclosure regulations as discussed in this report.

--Developing financial disclosure forms so that all relevant information is obtained concerning employee interests needed to enforce conflict-of-interest matters.

--Making periodic audits of the effectiveness of agency financial disclosure systems on a sample basis to see that they include appropriate procedures for collecting and reviewing statements and followup procedures to preclude possible conflicts of interest.

--Establishing a formal advisory service to render opinions on matters of ethical conduct so that all agencies are advised of such opinions.

--Providing criteria for positions requiring financial disclosure statements.

--Investigating and resolving ethical conduct matters unresolved at the agency level, including allegations against a Federal employee or officer.

--Providing a continuing program of information and education for Federal officers and employees.

--Administering the financial disclosure system for Presidential appointees under section 401 of Executive Order 11222.

--Reporting annually to the President and the Congress on the effectiveness of the ethics program and recommending changes or additions to applicable laws as appropriate.

3. Amend Executive Order 11222 to clearly define the terms "conflict substantially" and "substantially affected" so that all parties have an understanding of what is meant by these terms.

4. Amend Executive Order 11222 to (a) require all employees designated to file to disclose the types of data discussed in chapter 4 of this report and (b) require the collection of information necessary to enforce agency conflict-of-interest laws and administrative prohibitions.

18 U.S.C. 207

§207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners.

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for 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, or

(b) Whoever, having been so employed, within one year after his employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any 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 directly and substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of one year prior to the termination of such responsibility—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both: *Provided*, That nothing in subsection (a) or (b) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from acting as attorney or agent or appearing personally in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the Federal Register, that the national interest would be served by such action or appearance by the former officer or employee.

(c) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States, 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 in which the United States is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility—

Shall be fined not more than $5,000, or imprisoned not more than one year, or both.

A partner of a present or former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia or of a present or former special Government employee shall as such be subject to the provisions of sections 203, 205, and 207 of this title only as expressly provided in subsection (c) of this section (Added Pub. L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1123.)

COMMITTEE PROPOSALS

1. A new Executive Order should be promulgated concerning negotiations for post-agency service employment in the private sector. We propose that the Order incorporate the following provisions:

(a) Contracts or understandings for future employment by any officer or employee with significant decision-making authority of any agency or department with any party subject to regulation, or any firm or individual representing such party, are prohibited at any time except within 60 days of departure.

(b) Any officer or employee with significant decision-making authority who enters into any serious discussion concerning future employment outside of the Government with any interest subject to regulation shall, within twenty four hours, notify a designated person within the office of the General Counsel for that department or agency. The matter shall then be reviewed to determine whether any real or potential conflict of interest may exist.

(c) Information concerning such discussions shall be kept strictly confidential, and shall not be released without the express, written consent of the officer or employee.

(d) Such information shall be maintained in the office of the General Counsel of that agency or department for a period of twelve months after the employee has terminated Government service, and during that time any information relating to employment offers that have been accepted will be available for public inspection.

(e) No officer or employee of any department or agency shall undertake to act on behalf of the Government in any capacity in any matter that, to his or her knowledge, affects even indirectly any person outside the Government with whom he is discussing or entertaining any proposal for future employment.

(f) Each department and agency shall issue procedures implementing these provisions.

2. 18 USC 207(a) should be amended to define the term, "personally and substantially" to mean: "to participate as a Government officer or employee through approval, disapproval, decision, recommendation, the rendering of advice or investigation."

3. 18 USC 207(a) should be amended to define the term, "personal appearance" as meaning: "appearance or attendance before, or personal communication, either written or oral, with the agency, or any member or employee thereof, or personal participation in the formulation or preparation of any material presented or communication to, or filed with, the agency, in connection with any application or interpretation arising under the statutes or regulations administered by the agency, except that requests for general information or explanations of agency policy or interpretation shall not be construed to be a personal appearance."

4. 18 USC 207 (a) and (b) should be amended to delete "agent or attorney" and insert "in any professional capacity".

5. 18 USC 207(b) should be amended to delete the words, "such responsibility", and insert "government service with that agency".

6. That the meaning of 18 USC 207(a) should be clarified to include a lifetime prohibition against a former official aiding or assisting on any matter covered by the terms of that section.

7. That a new subsection should be added to 18 USC 207, providing: For a period of one year following termination of service with an agency or department, a former official or employee shall have no contact, for compensation or financial gain, with that agency or its personnel on any matter of business then pending before the agency.

8. As related to post-agency practice, the regulatory agencies should consider adopting the enforcement mechanisms in effect at the Federal Trade Commission. In any event, all agencies should develop some methods for enforcement of 18 USC 207.

9. Each agency should adopt rules requiring former officers and employees who have served in significant decision-making positions to register for a period of two years any subsequent employment with companies or firms that may be subject to regulation by the same agency. The former official or employee shall also state, as part of that registration, the nature of the employment and any measures taken to avoid the appearance of unethical practices. During the two year period, any changes in employment should be updated with the agency

10. Each agency should proceed to develop and implement regulations for the determination of whether and under what circumstances a law firm may participate in an agency matter even though a partner of that same firm is disqualified due to either 18 USC 207 (a) or (b). The criteria should insulate the partner/former official from participation and knowledge of that matter: there should be no consultation with other members of the firm and no access to any files or information concerning the matter; and no part of the fees attributable to it should be shared by the former official.

11. The acts creating certain multi-member regulatory commissions should be amended to include the following provisions:

(a) A Commissioner shall not accept any employment or compensation, either direct or indirect, from any party other than the United States, actually the subject of regulation by the Commission during his or her tenure for a period extending until the expiration of the term to which the Commissioner was appointed, except that this provision shall not apply to any Commissioner (i) who serves for a total of years equal to one full term for a member of that agency or for a period of seven years, whichever is shorter, or (ii) is removed from office as either member or chairman by the President, or (iii) who certifiably resigns from office on account of ill health.

(b) Each agency shall formulate rules to insure that commissioners who resign prior to the expiration of their terms of office report any employment for the period of restriction which applies.

RICHARD A. WEGMAN
CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON
GOVERNMENT OPERATIONS
WASHINGTON, D.C. 20510

May 20, 1977

BY HAND

The Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
Washington, D. C. 20548

Dear Mr. Staats:

Reform of the nation's regulatory agencies is one of the principal concerns facing this Congress. In February, 1977, the Senate Committee on Governmental Affairs, on which I serve as the ranking minority member, released volumes 1 and 2 of a 6-volume study on federal regulation called for by S. Res. 71. Volume 1, The Regulatory Appointments Process, contains the following five recommendations concerning restrictions on officials who leave regulatory agency employment:

> That a new subsection should be added to 18 USC 207, providing: For a period of one year following termination of service with an agency or department, a former official or employee shall have no contact, for compensation or financial gain, with that agency or its personnel on any matter of business then pending before the agency.
>
> As related to post-agency practice, the regulatory agencies should consider adopting the enforcement mechanisms in effect at the Federal Trade Commission. In any event, all agencies should develop some methods for enforcement of 18 USC 207.
>
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nature of the employment and any measures taken to avoid the appearance of unethical practices. During the two year period, any changes in employment should be updated with the agency.

Each agency should proceed to develop and implement regulations for the determination of whether and under what circumstances a law firm may participate in an agency matter even though a partner of that same firm is disqualified due to either 18 USC 207 (a) or (b). The criteria should insulate the partner/former official from participation and knowledge of that matter: there should be no consultation with other members of the firm and no access to any files or information concerning the matter; and no part of the fees attributable to it should be shared by the former official.

The acts creating certain multi-member regulatory commissions should be amended to include the following provisions:

(a) A Commissioner shall not accept any employment or compensation, either direct or indirect, from any party other than the United States, actually the subject of regulation by the Commission during his or her tenure for a period extending until the expiration of the term to which the Commissioner was appointed, except that this provision shall not apply to any Commissioner (i) who serves for a total of years equal to one full term for a member of that agency or for a period of seven years, whichever is shorter, or (ii) is removed from office as either member or chairman by the President, or (iii) who certifiably resigns from office on account of ill health.

(b) Each agency shall formulate rules to insure that commissioners who resign prior to the expiration of their terms of office report any employment for the period of restriction which applies.

(c) Upon adoption of the foregoing, present restrictions on post-employment practices contained in the Federal Reserve Act, Communications Act, and the Consumer Product Safety Act are to be repealed.

The above-mentioned Consumer Product Safety Act (Public Law 92-573) requires that:

> No full-time officer or employee of the (Consumer Product Safety) Commission who was at any time during the 12 months preceding the termination of his employment with the Commission compensated at a rate in excess of the annual rate of basic pay in effect for grade GS-14 of the General Schedule, shall accept employment or compensation from any manufacturer subject to this Act, for a period of 12 months after terminating employment with the Commission.

In general, post-regulatory employment restrictions can do much to end patent examples of conflict of interest (or the appearance thereof), agency partiality, or an unhealthy coziness between the regulators and the regulated. They may also help to retain individuals trained at government expense. At the same time, however, such restrictions may inhibit qualified and honest persons from accepting regulatory employment in the first place. The degree of restrictiveness we desire in such rules on post-regulatory employment involves a weighing and balancing of these countervailing factors. In order to best understand the ramifications of such restrictions, I am requesting that GAO conduct an extensive study of their effects.

The GAO should analyze the likely effects on our regulatory system of the five recommendations of the Governmental Affairs Committee. Specifically, the following issues should be addressed:

(i) How major an effect would these restrictions have on the post-agency employment patterns of regulatory officials?

(ii) Are the restrictions likely to make agency officials any more or less inclined to leave agency employment?

(iii) How likely are such restrictions to inhibit well-qualified individuals from accepting regulatory employment?

(iv) Are there other benefits or costs, pecuniary or otherwise, to be derived from such restrictions? Please analyze their likely effects on the regulatory system in general and on the so-called "independent" regulatory commissions.

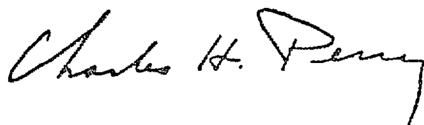
In this context, the GAO should examine the effects of the post-regulatory employment restrictions contained in Public Law 92-573 on officials of the Consumer Product Safety Commission. How do they affect post-Commission employment patterns? Are Commission officials more or less likely to leave Commission employment? Are experts inhibited from accepting Commission employment? A similar analysis should be made of the post-agency employment restrictions contained in the Federal Reserve Act and the Federal Communications Act.

Are there other comparable restrictions in enabling acts or regulations of other regulatory agencies? How do the Executive Departments handle post-government employment? How do other major industrialized nations (for example, Canada, Great Britain, West Germany, France, and Japan) deal with post-government employment at their respective regulatory agencies? How well do these restrictions at other U.S.-government agencies and at foreign regulatory agencies operate?

In addition to the survey and report requested above, any recommendations you may make as a result of your inquiry concerning post-regulatory employment restrictions would be welcomed.

Should any questions arise in the course of your inquiry, Barry Breen, on the staff of the Committee, is available to lend assistance and can be reached at 224-9157.

Sincerely,



Charles H. Percy
United States Senator

CHP:rll

APPENDIX V

TITLES IV AND V—S. 555

TITLE IV—OFFICE OF GOVERNMENT ETHICS

OFFICE OF GOVERNMENT ETHICS

SEC. 401. (a) There is established in the United States Civil Service Commission (hereinafter referred to as the "Commission") an office to be known as the Office of Government Ethics (hereinafter referred to as the "Office").

(b) There shall be at the head of the Office a Director

(hereinafter referred to as the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate.

AUTHORITY AND FUNCTIONS

SEC. 402. (a) The Director shall provide, under the general supervision of the Commission, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency, as defined in section 105 of title 5, United States Code, except the General Accounting Office.

(b) The responsibilities of the Director shall include—

(1) developing and recommending to the Commission, in consultation with the Attorney General, rules and regulations to be promulgated by the President of the Commission pertaining to conflicts of interest and ethics in the executive branch, including rules and regulations establishing procedures for the filing, review, and public availability of financial statements filed by officers and employees in the executive branch as required by title III of this Act;

(2) developing and recommending to the Commission, in consultation with the Attorney General, rules and regulations to be promulgated by the President or the Commission pertaining to the identification and resolution of conflicts of interest;

(3) monitoring and investigating compliance with the public financial disclosure requirements of title III of this Act by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available such statements;

(4) establishing a system whereby each financial disclosure statement filed, whether public or confidential, is promptly reviewed by the Director, an ethics counselor, or a reviewing official under the supervision thereof, and that the individual conducting the review signs and dates the financial disclosure statement and indicates on the statement that it has been reviewed and that no conflicts exist or indicates the action taken to eliminate any conflicts which do exist;

(5) conducting the random audits required by title III of this Act of financial disclosure statements to determine whether such statements are complete and accurate;

(6) conducting a random annual review of not less than five per centum of the financial statements filed by officers and employees in the executive branch as required by title III of this Act to determine whether such statements reveal possible violations of applicable conflict of interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such review;

(7) monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch;

(8) interpreting rules and regulations issued by the President or the Commission governing conflict of interest and ethical problems and the filing of financial statements;

(9) consulting, when requested, with agency ethics counselors and other responsible officials regarding the resolution of conflict of interest problems in individual cases;

(10) establishing a formal advisory opinion service whereby advisory opinions which the Director renders on matters of general applicability or on important matters of first impression are rendered after, to the extent practicable, providing interested parties with an opportunity to transmit written comments to the Director with respect to the request for such advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public;

(11) ordering corrective action on the part of agencies and employees which the Director deems necessary;

(12) requiring such reports from executive agencies as the Director deems necessary;

(13) assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending appropriate legislative action;

(14) evaluating, with the assistance of the Attorney General, the need for changes in rules and regulations issued by the Commission and the agencies regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws;

(15) cooperating with the Attorney General in developing an effective system for reporting allegations of violations of conflict of interest laws to the Attorney General, as required by section 535 of title 28, United States Code;

(16) providing information on and promoting understanding of ethical standards in executive agencies;

(17) reporting to the Commission recommendations which shall be submitted to the Congress no later than February 1, 1979, as to which additional executive branch employees, if any, should be covered by the requirements for public financial disclosure and a report on which executive branch officials are required to file confidential financial disclosure statements under any Executive order, rules, or regulations; and

(18) reporting to the Commission, which report shall be submitted to the President and the Congress at least annually, on the activities of the Office and the effectiveness of the executive branch system for the prevention of conflicts of interest; with recommendations for changes or additions to applicable laws as necessary. Such report shall include the number of financial disclosure statements annually audited by the Office pursuant to title III of this Act.

(c) In the development of policies, rules, regulations, procedures, and forms to be recommended, authorized, or prescribed by him, the Director shall consult, when appropriate, with the executive agencies affected and the Attorney General.

ADMINISTRATIVE PROVISIONS

SEC. 403. (a) Upon the request of the Director, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Director to the greatest practicable extent for the performance of functions under this Act; and

(2) except when prohibited by law, furnish to the Director all information and records in its possession which the Director may determine to be necessary for the performance of his duties.

APPENDIX V

(b) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following:

"(141) Director, Office of Government Ethics, Civil Service Commission".

AUTHORIZATION OF APPROPRIATIONS

SEC. 404. There are authorized to be appropriated to carry out the provisions of this title—

(1) not to exceed $3,000,000 for the fiscal year ending September 30, 1978;

(2) not to exceed $3,000,000 for each of the fiscal years 1979, 1980, 1981, and 1982.

SEPARABILITY

SEC. 405. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance, is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

TITLE V—GOVERNMENT PERSONNEL; RESTRICTIONS ON POST SERVICE ACTIVITIES

SEC. 501. Title 18 of the United States Code is amended by deleting section 207 and inserting in lieu thereof the following:

APPENDIX V

"§ 207. Disqualification of former officers and employees; disqualification of partners of current officers and employees

"(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly aids, assists, or represents any one 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 or the District of Columbia 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, or

"(b) Whoever, having been so employed, within two years after his employment has ceased, knowingly—

"(1) acts as agent or attorney for or otherwise represents anyone other than the United States in any formal or informal appearance before, or

APPENDIX V

"(2) makes any written or oral communication on behalf of anyone other than the United States to, and with the intent to influence the action of,

any court or department or agency, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest and which was under his official responsibility as an officer or employee within a period of one year prior to the termination of such resp nsibility, or,

"(c) Whoever, other than a special Government employee, having been so employed—

"(i) at a rate of pay specified in subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater pay rate under another authority; or

"(ii) in a position classified at GS-16, GS-17, or GS-18 of the General Schedule prescribed by section 5332 to title 5, United States Code; in a position classified at O-7 or above under section 1009 of title 37, United States Code; or in a comparable executive branch position under another authority, as defined by the Direc-

tor of the Office of Government Ethics, Civil Service Commission,

within one year after his employment with the department or agency has ceased, knowingly—

"(1) makes any appearance or attendance before, or

"(2) makes any written or oral communication to, and with the intent to influence the action of,

the department or agency in which he served, or any officer or employee thereof, if such appearance or communication relates to any particular matter which is pending before such department or agency: *Provided*, That the prohibition of this subsection shall not apply to appearances or communication by the former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits: *Provided further*, That for the purposes of this subsection, whenever the Director of the Office of Government Ethics of the Civil Service Commission determines that a separate statutory agency or bureau within a department exercises functions which are distinct and separate from the remaining functions of the department, the Director shall by rule designate such agency or bureau, as a separate 'department or agency', except that this shall not apply to former officers and employ-

ees of the department whose official responsibilities included supervision of said agency or bureau—

"Shall be fined not more than $10,000 or imprisoned for not more than two years, or both. In addition, if the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that said former officer or employee violated subsection (a), (b), or (c) of this section, he may prohibit that person from making any appearance or attendance before that department or agency for a period not to exceed five years, or may take other appropriate disciplinary action: *Provided*, That nothing in subsection (a), (b), or (c) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from making any appearance, attendance, or written or oral communication in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the Federal Register, that the national interest would be served by such action or appearance by the former officer or employee.

"(d) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States or of the Dis-

trict of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission, of the United States or of the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility—

"Shall be fined not more than $5,000, or imprisoned for not more than one year, or both.".

Passed the Senate June 27 (legislative day, May 18), 1977.

Attest: J. S. KIMMITT,

Secretary.

INDEPENDENT REGULATORY COMMISSION ACT

S. 3240

RESTRICTION ON EMPLOYMENT PRIOR TO COMPLETION OF TERM

SEC. 11. (a) A member of an independent regulatory commission who resigns before the expiration of his or her term of office shall not, during the remainder of the term to which such member was appointed, accept any employment or compensation, either directly or indirectly, from any firm, company or association (other than the United States) directly and significantly affected by regulation by such commission during his or her service as a member. This subsection shall not apply to any member--

(1) who serves for a total number of years equal to one full term for a member of such commission; or

(2) who resigns on account of ill-health.

(b) An independent regulatory commission shall prescribe rules or regulations to insure that a member who resigns prior to the expiration of his or her term of office reports any employment or compensation for the period during which, subsection (a) applies.

RESTRICTION ON POST-SERVICE ACTIVITIES

SEC. 12. No individual who is appointed as a member of an independent regulatory commission after the date of the enactment of this Act, and no officer or employee of any such commission holding a position classified as GS-16 or higher under chapter 51 of title 5, United States Code, shall, for a period of one year beginning on the last day of service as such member or employee--

(1) make any appearance before; or

(2) make any written or oral communication to such commission, or any member or employee thereof on behalf of any person (other than the United States) on any matter which is before such commission. This section shall not apply to any matter of an exclusively personal and individual nature.

U.S. GOVERNMENT ORGANIZATIONS

INCLUDED IN THE REVIEW

Regulatory agencies

Consumer Product Safety Commission
Federal Reserve Board
Federal Communications Commission
Civil Aeronautics Board
Federal Power Commission
Federal Maritime Commission
Nuclear Regulatory Commission
Federal Trade Commission
Food and Drug Administration
Interstate Commerce Commission
Security and Exchange Commission
Commodity Futures Trading Commission

Executive departments

Department of Agriculture
Department of Defense
Department of Energy
Department of the Treasury (IRS)
Department of Justice
Office of Counsel of the President

Other organizations

Civil Service Commission
National Aeronautics and Space Administration

(18581)