

LOBBYING DISCLOSURE ACT OF 1995

NOVEMBER 14, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CANADY of Florida, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 2564]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2564) to provide for the disclosure of lobbying activities to influence the Federal Government, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The “Lobbying Disclosure Act of 1995,” H.R. 2564, provides for the disclosure of efforts by paid lobbyists to influence the decision-making process and actions of Federal legislative and executive branch officials while protecting the constitutional right of the people to petition the government for a redress of their grievances.

The Act is designed to strengthen public confidence in government by replacing the existing patchwork of lobbying disclosure laws with a single, uniform statute which covers the activities of all professional lobbyists. The Act streamlines disclosure requirements to ensure that meaningful information is provided and requires all professional lobbyists to register and file regular, semi-annual reports identifying their clients, the issues on which they lobby, and the amount of their compensation. It also creates a more effective and equitable system for administering and enforcing the disclosure requirements.

BACKGROUND AND NEED FOR LEGISLATION

Four primary statutes require individuals or entities to disclose efforts to influence the Federal government: The 1946 Federal Regulation of Lobbying Act (the Lobbying Regulation Act)(2 U.S.C. 261–270); the Foreign Agents Registration Act (FARA)(22 U.S.C. 611 et seq.); The 1989 Byrd Amendment (31 U.S.C. 1352); and Section 112 of the HUD Reform Act (42 U.S.C. 3537b). The HUD Reform Act applies to the Department of Housing and Urban Development and the Farmers Home Administration (the HUD disclosure statutes).¹

These statutes set forth different and sometimes conflicting disclosure requirements for lobbyists. While some lobbyists are required to register under two or three of the statutes at the same time, major segments of the lobbying community are excluded from coverage altogether.

H.R. 2564 rectifies the inconsistencies and loopholes of current law by creating a uniform standard that strengthens and streamlines disclosure and reporting requirements. A review of the difficulties in interpreting and enforcing current lobbying disclosure statutes will clarify the need for this legislation.

THE LOBBYING REGULATION ACT

The Federal Regulation of Lobbying Act, enacted as part of the Legislative Reauthorization Act of 1946, requires registration by any person who is engaged for pay for the “principal purpose” of attempting to influence the passage or defeat of legislation in the Congress.

Lobbyists covered under the 1946 Act are required to disclose their name and address; the name and address of the client for whom they work; how much they are paid and by whom; all contributors to the lobbying effort and the amount of their contribution; an accounting of all monies received and expended, specifying to whom the money was paid and for what purposes; the names of any publications in which the lobbyist has caused articles or editorials to be published; and the particular legislation they have been hired to support or oppose.

Registration forms must be filed with the Clerk of the House of Representatives and the Secretary of the Senate prior to engaging

¹ Two other provisions require registration of lobbyists who seek to influence the activities of specific agencies. Section 12(i) of the Public Utility Holding Company Act covers lobbying of the Federal Energy Regulatory Commission and Section 1225 of Title 46 addresses lobbying of the Federal Maritime Commission.

in lobbying. These forms must be updated in the first ten days of each calendar quarter so long as the lobbying activity continues. Violation of the 1946 Act is a misdemeanor punishable by a fine of up to \$5,000 or a jail sentence of up to 12 months and a three year prohibition on lobbying.

Coverage of the Lobbying Regulation Act

In 1954, in *United States v. Harriss*, 347 U.S. 612, the United States Supreme Court narrowed the scope and application of the Lobbying Regulation Act in order to avoid finding that it was unconstitutionally void for vagueness. The Court ruled that the Act applied only to paid lobbyists who directly communicate with Members of Congress on pending or proposed Federal legislation.

The Court's construction of the Act in *Harriss* has created significant gaps in coverage. According to the Court, the Act only covers efforts to influence the passage or defeat of legislation in Congress and excludes other Congressional activities. Coverage extends to the lobbying of Members of Congress, but not Congressional staffs. The Act is also limited to persons whose "principal purpose" is lobbying, so that individuals who spend less than half of their time lobbying are not covered.

Taken as a whole, the Act has been construed to require registration by lobbyists who spend a majority of their time in direct contact with Members of Congress. Not surprisingly, there are a significant number of people who engage in activities that the general public would view as lobbying who do not register at all—and are probably not required to do so.

In 1991, the General Accounting Office (GAO) found that almost 10,000 of the 13,500 individuals and organizations listed in the book "Washington Representatives" were not registered under the 1946 Act.² GAO interviewed a small sample of the unregistered Washington representatives listed. Three-quarters of those interviewed contacted both Members of Congress and their staffs, dealt with Federal legislation, and sought to influence the actions of Congress or the executive branch.

The fact that individuals and organizations who have not registered can hold themselves out as "Washington Representatives" without violating current lobbying disclosure law underscores the need for this legislation.

Information disclosed

The Lobbying Regulation Act requires "a detailed report under oath of all money received and expended by [a lobbyist]" during each calendar quarter, to whom it is paid, and for what purpose. A lobbyist must also disclose specific line items of an organization's expenditures—such as printed or duplicated matter; office overhead (rent, supplies, utilities, etc.); telephone and telegraph; travel, food, lodging, and entertainment; wages, salaries, fees, and commissions; and public relations and advertising.

Each lobbyist is required to attach an addendum to his disclosure statement listing the recipient, date, and amount of each such ex-

²"Federal Lobbying: Federal Regulation of Lobbying Act of 1946 is Ineffective," GAO Report, July 1991.

penditure. Lobbyists who comply with this requirement file sheets of paper listing expenditures such as \$45 phone bills, \$6 cab fares, \$16 messenger fees, and even prorated salaries, in one case for as little as \$1.31. Some lobbyists provide lists of restaurants where they have paid for lunch.³

At the same time, however, the Act falls short of requiring disclosure of what the Act seeks most to know about lobbying—how much is spent overall and for what purpose. For example, a 1990 “Legal Times” review of the filings of ten of the biggest and best-known Washington lobbying firms showed that the firms reported very low lobbying income and expenses.⁴

There are two reasons for low levels of reported income and expenses. First, many lobbyists do not report income or expenses because they do not believe the Act, narrowly construed, covers their activities. Second, many lobbyists who are covered by the Act do not fully comply. Since the Lobbying Regulation Act is generally considered to cover only meetings with Members of Congress, many lobbyists disclose only income and expenses directly associated with such meetings.

The General Accounting Office reviewed more than a thousand lobbying reports filed in 1989, and learned that few lobbyists fully comply with the disclosure requirements. The GAO found that:

Fewer than 20 percent of the lobbyists included the required attachments detailing expenditures.

Almost 90 percent reported no expenditures for wages, salaries, fees, or commissions.

More than 95 percent reported no expenditures for public relations and advertising services.

More than 60 percent of the lobbyists reported no expenditures at all in the period covered.

In any given case, the *Harriss* definition of a “lobbyist” means that disclosure, even when in full compliance with the law, is simply not very revealing.

There are similar problems with the disclosure of the lobbyists’ activities and objectives. The registration forms require each lobbyist to state the general legislative interests of the person filing and set forth the specific legislative interests by reciting: (a) short titles of statutes and bills; (b) House and Senate bill numbers, where known; (c) citations of statutes, where known; and (d) whether they are lobbying for or against such statutes and bills.

While many lobbyists provide lists of specific bills that are of interest in each quarterly reporting period, others provide descriptions of their areas of interest that are so general that they reveal virtually nothing. Overall, the GAO found that only 32 percent of the reports reviewed stated the titles and numbers of statutes and bills as required by the Act.

³“The Federal Lobbying Disclosure Laws: Hearings on Oversight of Legislative and Executive Branch Lobbying Disclosure Before the Subcomm. on Oversight of Government Management of the Senate Comm. on Governmental Affairs,” 102d Cong., 1st Sess., 72–73 (1991).

⁴Judy Sarasohn, “Survey Finds a Lucrative Cottage Industry,” *Legal Times*, Feb. 5, 1990, at S6.

The Act in practice

The absence of an effective administration and enforcement mechanism is another major reason for non-compliance with the 1946 Act. As administered the Act has three flaws: (1) there is little guidance given to lobbyists to indicate who is required to register and what is required to be disclosed; (2) registrations are not reviewed to determine if they are accurate and complete; and (3) a violation of the Act can only be prosecuted as a crime—there are no civil penalties.

Under current law, lobbyists must register with both the Clerk of the House and the Secretary of the Senate. However, the Act gives neither office the authority to review registrations to ensure that they are current, accurate and complete. Moreover, the two offices have taken the position that they are not authorized to provide definitive interpretations of the Lobbying Regulation Act—there are no published regulations or guidelines on how to comply with the Act.

The Act's exclusive reliance on criminal penalties has left it virtually unenforced. Although the Department of Justice may initiate investigations on its own authority under the Act, since the 1954 *Harriss* decision the Department has "shifted the focus of its principal efforts from prosecution to promoting voluntary compliance by bringing the act to the attention of those to whom it is potentially applicable."⁵

In short, the Lobbying Regulation Act has failed to work as intended. Its provisions are unclear, confusing, and unenforced. Most importantly, the Act has failed to ensure the public disclosure of meaningful information about individuals who attempt to influence the conduct of officials of the Federal government.

THE FOREIGN AGENTS REGISTRATION ACT

The Foreign Agents Registration Act was passed in 1938 to require public disclosure of the activities of Nazi propagandists. As the Supreme Court explained in 1943—

[FARA] was a new type of legislation adopted in the critical period before the outbreak of the war. The general purpose of the legislation was to identify agents of foreign principals who might engage in subversive acts or in spreading foreign propaganda and to require them to make public record of the nature of their employment.⁶

In 1966, in response to lobbying by foreign sugar companies, FARA was amended to cover a broader range of foreign activities and interests. The focus of the Act has shifted from the regulation of subversive political activities to the disclosure of lobbying on behalf of foreign business and governmental interests.

FARA requires any person who become an "agent of a foreign principal" to register with the Attorney General within 10 days. The term "agent of a foreign principal" includes any person, subject to certain exemptions, who engages in political activities on behalf

⁵ S. Rep. No. 161, 99th Cong., 2d Sess. 52–53 (1986).

⁶ *Vierick v. United States*, 318 U.S. 236, 241 (1943).

of a foreign government, political party, individual, corporation, partnership, association or organization.

Each FARA registration statement must include, among other information, a comprehensive statement of the registrant's business; a complete list of employees and the nature of their work; the name and address of every foreign principal for whom the registrant is acting; the nature, ownership, and control of the business of each foreign principal; and copies of each agreement with a foreign principal.

In addition, each registrant is required to file a supplemental disclosure statement every six months, updating the registration and detailing all past and proposed activity on behalf of foreign principals. Supplemental statements must include a detailed accounting of income and expenses, in addition to a list of all meetings with federal officials on behalf of foreign principals.

The Coverage of the Act

FARA requires persons who act "as an agent of a foreign principal" to register with the Attorney General and disclose their activities. However, broad exemptions to FARA's registration requirements have resulted in spotty disclosure of foreign lobbying activities. The two most frequently cited exemptions apply to: (a) the practice of law in formal or informal proceedings before U.S. courts and agencies; and (b) activities on behalf of a foreign-owned company in the United States that are in furtherance of the bona fide commercial, industrial, or financial interests of the U.S. company.

The "lawyers' exemption"

The so-called "lawyers' exemption" to FARA exempts attorneys who provide "legal representation" to foreign principals in the course of "established agency proceedings, whether formal or informal." This exemption was adopted because the Congress determined that disclosure under FARA serves no useful purpose in legal proceedings where full disclosure of the agent's status and the identity of his client is required. Terms such as "legal representation" and "established proceedings" are not defined in the statute or in the implementing regulations, and therefore the applicability of this exemption has been left to case-by-case determinations by the Justice Department's Registration Unit and to prospective registrants themselves.

The Justice Department has stated that the lawyers' exemption applies only to services that can be performed by an attorney and only in proceedings established pursuant to statute or regulation. However, the Justice Department has not provided any other written guidance which reflects its interpretation of these issues. This may be the reason that the Justice Department's interpretation of the lawyers' exemption does not appear to be widely known or followed by attorneys who represent foreign clients.

The "domestic subsidiary" exemption

The "domestic subsidiary" exemption to FARA excludes from coverage any activities in furtherance of the bona fide commercial, industrial or financial interests of a domestic company engaged in substantial operations in the United States, even if the company is

foreign-owned and the activities also benefit the foreign parent corporation. Little formal guidance on the application of this exemption is available.

The Justice Department's test for this provision is whether the presence of the domestic entity is real or ephemeral. In short, their test asks whether the domestic entity is a viable working entity, or a so-called "front" or "shell." The lack of clear written guidance from the Justice Department and the confusion over the proper application of FARA exemptions has allowed representatives of foreign principals to reach their own conclusions as to whether registration is required.

Disclosure requirements

FARA registration statements must include a comprehensive statement of the registrant's business, a complete list of the registrant's employees and the nature of the work they perform, the name and address of every foreign principal for whom the registrant is acting, the nature of the business and the ownership and control of each foreign principal, and copies of each agreement with a foreign principal.

Additionally, registrants must file a supplemental disclosure statement every six months, updating the initial registration and detailing all past and proposed activity on behalf of foreign principals. Like the Lobbying Regulation Act, FARA requires detailed accounting of *de minimis* expenses such as cab fare and photocopying. But unlike the Lobbying Regulation Act, FARA requires a complete listing of each federal official with whom the registrant has met during the reporting period.

The Justice Department interprets FARA's disclosure provisions to require that registrants detail all activities performed on behalf of the foreign principal—even when unrelated to their registrations. Such activities include providing legal representation or advice on matters that would not otherwise require registration. Therefore, engaging in a single "registrable" activity exposes the entire scope of a registrant's activities to public disclosure requirements.

A General Accounting Office study found that half of the registered foreign agents did not fully disclose their activities on behalf of foreign principals as required under the Department of Justice interpretation. Furthermore, more than half of all registrants under FARA fail to meet statutory filing deadlines.⁷

FARA in practice

The Department of Justice enforces FARA largely by sending letters and making phone calls to registrants and potential registrants. The Department's Registration Unit estimated that eight formal notices of deficiency were sent out from 1988 to 1991. This compares to 62 deficiency notices sent out by the Unit over a similar period in the early 1970's. The Department has both criminal and civil injunctive enforcement authority under the statute. However, civil monetary penalties and administrative fines are not au-

⁷"Foreign Agent Registration: Justice Needs to Improve Program Administration," GAO Report, July 1990, p. 5.

thorized under FARA. As a result, few court cases have been initiated under the Act.

The Registration Unit also conducts inspections to review the files of registrants to confirm that they have accurately disclosed their activities. Inspections are non-confrontational—they are always announced in advance and some registrants are given an opportunity to amend their filings prior to the inspection. Remedial action, if necessary, generally requires that the registrant amend his registration statement.

The incentive for representatives of foreign interests to avoid the burden of registration under FARA is exacerbated by the Justice Department's inability to investigate those who are not registered. Those who register under the Act are required to make extensive disclosure of all activities whether or not those activities are subject to registration. Registrants are subject to Justice Department inspection of their books and records to verify the information they have disclosed. Those who do not register, however, are not subject to any review of their records short of a criminal investigation.

THE BYRD AMENDMENT AND THE HUD DISCLOSURE LAWS

The Byrd Amendment⁸ prohibits the expenditure of appropriated funds to influence the award of a Federal contract, grant, or loan. Subject to certain exceptions, any payment for such lobbying out of non-appropriated funds must be disclosed by the recipient of the contract, grant or loan. The recipient is required to disclose the name and address of each person paid to influence the award, the amount of the payment, and the activity for which the person was paid. Regulations implementing the Byrd Amendment require the disclosure of each contact made with a Federal official to influence the award of the contract, grant, or loan.

At the time the contract, grant or loan is requested or received, the disclosure must be filed with the awarding agency. Each agency head is required to compile the information collected and submit it to the Clerk of the House of Representatives and the Secretary of the Senate twice a year. Those who fail to file a disclosure form are subject to a civil penalty of \$10,000 to \$100,000, to be levied under the procedures of the Program Fraud Civil Remedies Act.

Section 112 of the Housing and Urban Development Reform Act⁹ imposes disclosure requirements on individuals who make expenditures to influence the decisions of HUD employees with respect to the award of HUD contracts, grants or loans. Section 112 goes beyond the Byrd Amendment by covering any other management actions of HUD that affect the conditions or status of HUD assistance, and by requiring disclosure by lobbyists as well as clients.

Section 112 requires disclosure of the income and expenses of lobbyists, to whom the money was paid, and for what purposes. Section 112, unlike the Byrd Amendment, does not require the disclosure of specific contacts with Federal officials. A knowing failure to disclose under Section 112 is subject to a civil monetary penalty of up to \$10,000 or the amount of the payment to the consultant, whichever is greater. If a civil monetary penalty is imposed under

⁸ 31 U.S.C. §1352. Offered by Senator Robert C. Byrd of West Virginia, the legislation was enacted in October 1989 as an amendment to an Interior Appropriations bill.

⁹ 42 U.S.C. §3537b.

this Section, the person subject to the fine is barred from receiving any payment in connection with an application for HUD contracts, grants or loans for a period of three years.

Section 401 of the HUD Reform Act¹⁰ requires disclosure of persons attempting to influence financial assistance awarded by the Farmers Home Administration. Under Section 401, lobbyists are required to register and disclose their name and address, the nature and duration of any previous Federal employment, and the name of their clients. Lobbyists are then required to file, on a quarterly basis, a detailed report of all money received and expended, persons to whom payments were made, and any contacts with Federal employees for the purpose of attempting to influence any award or allocation of assistance by the Farmers Home Administration.

Potential penalties for violating Section 401 include rescission of the assistance, debarment of the violator, and a civil penalty of up to \$100,000 in the case of an individual or \$1,000,000 in the case of an applicant other than an individual. Despite these strong penalties, the provision is so obscure that the Department of Agriculture failed to identify it in response to a Congressional Research Service request to identify any statute requiring persons representing private interests before the Department to register or otherwise disclose their lobbying activities and or contacts with agency officials.

Numerous exceptions and limitations on coverage have severely limited lobbying disclosure covered by the Byrd Amendment and the HUD disclosure laws. For instance, these provisions cover only lobbying by “outside lobbyists” as opposed to lobbying by regular employees of the client. Therefore, full-time in-house lobbyists are not required to disclose their activities. Moreover, these provisions do not apply to lobbying on programs or budgets, only to efforts to influence specific awards of Federal assistance. The Byrd Amendment by its terms excludes lobbying prior to the issuance of a solicitation and routine agency and legislative liaison activities.

Some of these exceptions and limitations are derived from the legislative language of the statutes themselves, while others have been added or expanded by the Office of Management and Budget and agency implementing guidance. Regardless of the source of the limitations, they have had the effect of excluding the vast majority of lobbying from the coverage of the disclosure requirements. And although the HUD disclosure provisions resulted in a significant number of registrations the first year it was in effect, there has been virtually no meaningful disclosure of lobbying activities under the Byrd Amendment.

For those few areas that are covered by these statutes, the existing laws create an overlapping patchwork of provisions imposing different sets of requirements on the same lobbying activities. For example, compare the Byrd Amendment to Sections 112 and 401 of the HUD Reform Act—those who seek Federal assistance from either HUD or the Farmers’ Home Administration are required to disclose lobbying activities on two separate forms under two dif-

¹⁰42 U.S.C. §1490p.

ferent statutes, each with its own reporting dates, disclosure requirements, and exceptions.

HEARINGS

The Committee's Subcommittee on the Constitution held one day of hearings on the need to reform the laws governing lobbying disclosure on September 7, 1995. Testimony was received from 12 witnesses: Representative Christopher Shays; Representative Paul McHale; Representative Michael N. Castle; Representative Scott Klug; Representative John Bryant; Senator Carl Levin; Timothy W. Jenkins, Partner, O'Connor & Hannan, L.L.P.; Deborah Lewis, Legislative Counsel, the Alliance for Justice; Jeffrey H. Joseph, Vice President of Domestic Policy, U.S. Chamber of Commerce; Susan Bitter Smith, Chairman-elect, American Society of Association Executives; Ann McBride, President, Common Cause; and David M. Mason, Vice President of Government Relations, The Heritage Foundation.

COMMITTEE CONSIDERATION

On November 2, 1995, the Subcommittee on the Constitution met in open session and ordered reported the bill H.R. 2564 to the Full Committee by a voice vote, a quorum being present. On November 8, 1995, the Committee met in open session and ordered reported the bill H.R. 2564 without amendment by a recorded vote of 30 to 0, with one Member voting present, quorum being present.

VOTE OF THE COMMITTEE

The vote of the Committee to report the bill favorably, without amendment, was as follows:

AYES ¹	PRESENT
Mr. Hyde	Mr. Moorhead
Mr. Sensenbrenner	
Mr. McCollum	
Mr. Gekas	
Mr. Coble	
Mr. Smith (TX)	
Mr. Schiff	
Mr. Gallegly	
Mr. Canady	
Mr. Inglis	
Mr. Goodlatte	
Mr. Buyer	
Mr. Bono	
Mr. Heineman	
Mr. Bryant (TN)	
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	
Mr. Conyers	
Mrs. Schroeder	
Mr. Frank	
Mr. Boucher	

Mr. Bryant (TX)
Mr. Reed
Mr. Nadler
Mr. Scott
Mr. Watt
Mr. Becerra
Mr. Serrano
Ms. Lofgren

¹ Had Mr. Hoke been present he would have voted "aye." Had Ms. Jackson-Lee been present she would have voted "aye."

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2564, the following estimate and comparison prepared by the Director of the Congressional Budget Office under Section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 9, 1995.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2564, the Lobbying Disclosure Act of 1995, as ordered reported by the House Committee on the Judiciary on November 8, 1995. CBO estimates that enacting this legislation would result in additional costs to the federal government of less than \$500,000 annually, assuming appropriations of the necessary amounts, and no costs to state and local governments. Because enacting H.R. 2564 could affect receipts, pay-as-you-go procedures would apply to the bill.

H.R. 2564 would amend and consolidate the current requirements for lobbyists to register and file reports with the Secretary

of the Senate and the Clerk of the House of Representatives. The bill would make other changes to the current laws regulating lobbying, would amend the Ethics in Government Act, and would repeal the Ramspeck Act. Violators of the bill's provisions would be subject to a civil fine of up to \$50,000.

Enacting H.R. 2564 would increase the responsibilities of the Secretary of the Senate and the Clerk of the House and probably would result in more registrations by lobbyists. However, based on information from these offices, we estimate that their additional administrative costs would be less than \$500,000 annually. Enacting the bill could increase governmental receipts from additional collection of fines, but we estimate that any such increase would be less than \$500,000 annually.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, *Director*).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 2564 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short title

This Act may be cited as the "Lobbying Disclosure Act of 1995."

Sec. 2. Findings

This Act is based on the three Congressional findings. First, that responsible representative government requires public awareness of the efforts of paid lobbyists to influence the public decision making process in both the legislative and executive branches of the Federal government. Second, existing lobbying disclosure statutes have been ineffective because of unclear statutory language, weak administrative and enforcement provisions, and an absence of clear guidance as to who is required to register and what they are required to disclose. And third, the effective public disclosure of the identity and extent of the efforts of paid lobbyists to influence Federal officials in the conduct of government actions will increase public confidence in the integrity of government.

Sec. 3. Definitions

This Section defines key terms used in the Act.

Paragraph (1) defines the term "agency" to have the same meaning as under the Administrative Procedure Act.¹¹ There, "agency" is defined to include each authority of the Government of the United States, whether or not it is within or subject to review by another agency, subject to certain exceptions.

¹¹ 5 U.S.C. § 551(1).

Paragraph (2) defines “client” as any person or entity who employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of such person or entity. An organization whose employees conduct lobbying activities on its own behalf is both a client and an employer of the lobbyists. An organization whose employees conduct lobbying activities on behalf of others in an employer, but not a client, of the lobbyists.

In the case of a coalition or association that employs or retains lobbyists on behalf of its membership, the client is the coalition or association and not the individual members. Under the Act, there is no requirement that coalitions or associations disclose contributions or dues from the individual membership of such groups. The only time that the identity of an individual member must be disclosed is when such a member has become a client, as provided in Section 4(b)(3).

Paragraph (3) defines the term “covered executive branch officials” to include the President; the Vice President; officers or employees of the Executive Office of the President; any official serving in an Executive Level I–V position, a “Schedule C” position, or a position in the Senior Executive Service; any member of the uniformed services serving at grade 0–7 or above; or any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character.

Paragraph (4) defines a “covered legislative branch official” as a Member of Congress; an elected officer of either House of Congress; and any employee of the House or the Senate, including employees of Members, committees, joint committees, leadership, and working groups or caucuses organized to provide legislative services or other assistance to Members of Congress.

Paragraph (5) defines “employee” to include any individual who is an officer, employer, partner, director, or a proprietor of a person or entity. The definition excludes independent contractors and other agents who are not regular employees, and volunteers who receive no financial or other compensation from the person or entity for their services.

Paragraph (6) defines “foreign entity” to mean a foreign government or a foreign political party, a person outside the United States other than a U.S. citizen or a U.S. corporation, and a foreign partnership, association, corporation, or organization. Under this Act, a representative of a foreign government or a foreign political party would register under the Foreign Agents Registration Act, while a lobbyist for any other foreign entity would register under the Lobbying Disclosure Act.

Paragraph (7) defines “lobbying activities” as lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

Under this definition, activities in support of lobbying contacts would be “lobbying activities,” even if they also support communications that are excluded from the definition of “lobbying contacts.” For example, if an organization prepares an extensive issue brief for presentation to Members of Congress and their staffs both

through formal testimony and in informal meetings, the effort of preparing that brief would be a “lobbying activity.”

However, the effort that goes into preparing materials for purposes other than lobbying would not become a lobbying activity simply because the materials are subsequently used in the course of lobbying activities. For example, consistent with regulations defining lobbying expenditures for purposes of the Internal Revenue Code,¹² this definition excludes the preparation of non-partisan analysis, study, or research and examinations of broad social, economic, and other similar communications that are not specifically directed to covered legislative or executive branch officials. If such materials are subsequently presented to covered officials, the presentation of those materials to covered officials is a lobbying activity.

Paragraph (8)(A) defines “lobbying contact” as a communication with a covered legislative or executive branch official made on behalf of a client with regard to—

- (i) the formulation, modification, or adoption of Federal legislation and legislative proposals;
- (ii) the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the U.S. Government;
- (iii) the administration or execution of a Federal program or policy; or
- (iv) the nomination or confirmation of a person for a position subject to confirmation by the Senate.

Paragraph (8)(B) provides specific exceptions to the definition of “lobbying contact,” either because they are not lobbying at all, they are routine in nature, they are inherently confidential, they are subject to formal procedural safeguards, or because there is already a separate public record of the proceedings involved. These nineteen exceptions are:

- (i) Communications made by “public officials” acting in their official capacity are excluded. Federal, State, and local officials participate in a single system of Government which requires that they maintain a close, working relationship. For this reason, public officials at one level of government should not be required to register as lobbyists when they express their views to public officials at another level of government. This exclusion covers lobbying by officials of state and local government, but it does not cover outside lobbyists who are not government officers or employees lobbying federal officials on behalf of state and local government officials.
- (ii) Communications made by representatives of media organizations are excluded. This exception is necessary to ensure that reporters who contact federal officials on matters of public policy will not be required to register as lobbyists. The phrase “representative of a media organization” is intended to have the same meaning as the phrase

¹² 26 C.F.R. § 56.4911.

“representative of the news media” in the Administrative Procedures Act.¹³

(iii) Communications made in speeches, articles, or through any other medium of mass communication are excluded.

(iv) Communications made on behalf of a government or political party of a foreign country are disclosed under the Foreign Agents Registration Act of 1938 and are excluded here. Under this exception, representatives of foreign entities must register under either FARA or the Lobbying Disclosure Act, but not under both statutes.

(v) Requests for meetings, or for the status of an action, are excepted as ministerial communications if there is no attempt to influence covered legislative or executive branch officials under the Act.

(vi) Communications made in the course of participation in an advisory committee subject to the Federal Advisory Committee Act are excluded.

(vii) Testimony given before a committee, subcommittee, or task force of Congress, or submitted for inclusion in the public record of a congressional hearing, is excluded.

(viii) Information provided in writing in response to an oral or written request by a covered legislative or executive branch official for specific information is excluded, as long as it is provided to the same federal official who makes the request.

(ix) Communications that are required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of the Congress or a Federal agency are excluded.

(x) Communications are excluded if they are made in response to a notice in the Federal Register, Commerce Business Daily, or other similar publication soliciting communications from the public and directed to the agency official specifically designated in the notice to receive such communications. For the purpose of this exception, if the specified official in the notice is not available and another agency employee in the same office receives the communication, this exception still applies.

(xi) If a communication could not be reported without disclosing information, the unauthorized disclosure of which is prohibited by law, then that communication is excluded from the definition of a lobbying contact. This exception applies only to those cases where it is impossible to report the issue being lobbied, as required by the Act, without the disclosure of classified information or other information protected by statute. This exception does not extend to most communications that include classified information, because most such lobbying could be addressed in a report meeting the requirements of this bill without any disclosure of the classified information itself.

¹³ 5 U.S.C. § 552(a)(4)(A)(2)(ii).

(xii) Communications made to officials in an agency with regard to judicial proceedings, civil or criminal law enforcement, and filings required by statute or regulation are excluded if the agency has responsibility for such proceedings or filings. This law enforcement exception covers communications regarding inquiries and investigations involving specific parties even before they reach the stage of formal proceedings. This exception extends only to the discussion of specific cases involving particular parties. Lobbying on overall agency policy or procedures does not fall within the scope of this exception. Unlike the “lawyers’ exemption” under FARA, the applicability of this exception is based only on the nature of the communication, and not on the status of the person making the communication.

(viii) Communications are excluded if made in compliance with written agency procedures regarding an adjudication conducted pursuant to the Administrative Procedures Act.¹⁴ Broad discussions of overall agency policy or procedures do not fall within the scope of this exception. This exception is intended to cover only communications regarding specific cases involving particular parties.

(xiv) Written comments filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding are not lobbying contacts under the Act. Procedural protections available in such cases ensure that all parties have an equal opportunity to comment, and such protections ensure that there is a public record of all comments.

(xv) A written petition for agency action where agency procedures require that the petition be a matter of public record are excluded.

(xvi) Communications are excluded if they are made on behalf of an individual with regard to that individual’s benefits, employment, or other personal matters involving only that individual. Discussions between an individual and his elected Member of Congress fall within this exception, even with respect to proposed changes in legislation for private relief. This exception does not apply to any communication involving proposed changes in legislation that are discussions with covered executive branch officials or covered legislative branch officials other than the individual’s elected Member of Congress.

(xvii) Communications are excluded if they are disclosures by an individual pursuant to applicable whistleblower statutes. Applicable whistleblower statutes include the Whistleblower Protection Act,¹⁵ the Inspector General Act¹⁶ and other similar provisions.

(xviii) Communications made by churches and synagogues, their integrated auxiliaries, or a convention or association of churches that are exempt from filing a Federal income tax return under paragraph 2(A)(i) of Section

¹⁴ 5. U.S.C. § 554.

¹⁵ 5. U.S.C. § 1201 et seq.

¹⁶ 5. U.S.C. App.

6033(a) of the Internal Revenue Code of 1986 are not lobbying contacts under this Section. Religious orders that are exempt from filing a Federal income tax return under paragraph 2(A)(iii) of such Section 6033(a) also fall within this exception.

(xix) Communications relating to the regulatory responsibilities under the Securities Exchange Act between officials of a self-regulatory organization that is registered with or established by the Securities and Exchange Commission or a similar organization that is designated by or registered with the Commodities Future Trading Commission and the Securities Exchange Commission or the Commodities Future Trading Commission is an exception to the definition of a lobbying contract under this Section.

Paragraph (9) defines the term “lobbying firm” to mean a person or entity that has one or more employees who are lobbyists on behalf of a client other than that person or entity. Self-employed individuals who are lobbyists are included under this definition as well.

Paragraph (10) defines the term “lobbyist” to mean any individual who is paid by another to make “lobbying contacts,” other than an individual whose “lobbying activities” constitute less than twenty percent of the time spent on providing services to a particular client over a six month period.

Paragraph (11) defines the term “media organization” to mean a person or entity engaged in disseminating information to the general public through any medium of mass communication.

Paragraph (12) defines the term “Member of Congress” to mean a Representative or Senator in, or Delegate or Resident Commissioner to, the Congress.

Paragraph (13) defines the term “organization” to mean a person or entity other than an individual.

Paragraph (14) defines the term “person or entity” to mean any individual, corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or State or local government.

Paragraph (15) defines the term “public official” to mean any elected or appointed official who is a regular employee of a Federal, State, or local unit of government, any organization of State or local elected or appointed officials, any Indian tribe, any national or State political party, or any Federal, State, or local unit of a foreign government. The term does not include outside lobbyists of a Federal, State, or local unit of government who are not regular employees of that government.

Paragraph (16) defines the term “State” to mean each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

Sec. 4. Registration of lobbyists

Subsection (a) requires lobbyists to register with the Clerk of the House of Representatives and the Secretary of the Senate within 45 days after making or agreeing to make a lobbying contact. A lobbyist whose total income from a particular client does not exceed or is not expected to exceed \$5,000 (in the case of a lobbying firm) during a semiannual period is exempt from this registration re-

quirement. Moreover, an exemption from registration is provided to a lobbyist (in the case of in-house lobbyists) whose total expenses do not exceed or are not expected to exceed \$20,000 during a semi-annual period.

Subsection (b) sets forth the contents of the registration. Each registration will include:

(1) The name, address, business telephone number, and principal place of business of the registrant, and a general description of its business or activities.

(2) The name, address, and principal place of business of the registrant's client, and a general description of its business activities.

(3) The name, address, and principal place of business of any organization, other than the client, that makes a substantial contribution (in excess of \$10,000 in a semiannual period) toward the lobbying activities, and who in whole or in major part plans, supervises, or controls such lobbying activities. This requirement is intended to preclude evasion of the disclosure requirements of the Act through the creation of ad hoc lobbying coalitions behind which real parties in interest can hide. However, in no way should this registration requirement be construed to require the disclosure of members or contributors to establish organizations that lobby on behalf of a broad membership. Such an action is clearly unconstitutional under *NAACP v. Alabama*, 357 U.S. 449 (1958).

(4) The name, address, principal place of business, amount of any contribution of more than \$10,000 to the lobbying activities of the registrant, and approximate percentage of equitable ownership in the client (if any) of any foreign entity that holds at least 20 percent equitable ownership in the client or any organization identified under paragraph (3); or is an affiliate of the client (such as the foreign subsidiary of a domestic company) with a direct financial interest in the outcome of the lobbying activity.

(5) A statement of the general issue areas in which the registrant expects to lobby and, to the extent practicable, specific issues that have already been lobbied.

(6) The name of each employee of the registrant who has acted or whom the registrant expects to act as a lobbyist on behalf of the client. If any such employee has served as a covered executive branch official or a covered legislative branch official in the two years prior to the date first lobbied on behalf of the client, that former position must be disclosed as well. When a new or additional employee who was formerly employed as a covered official act as a lobbyist on behalf of a client, information about such prior governmental employment shall be included in a report under Section 5 of this Act.

Subsection (c) provides guidelines for the registration process.

Paragraph (1) provides that when a registrant represents more than one client, a separate registration must be filed for each client represented.

Paragraph (2) requires any organization that has one or more employees who are lobbyists to file a single registration covering all its employee-lobbyists acting on behalf of a particular client.

Sec. 5. Reports by registered lobbyists

Subsection (a) requires each registrant to file a report on its lobbying activities during a semiannual period no later than 45 days after the end of such period.

Subsection (b) sets forth the contents of semiannual reports. Semiannual reports shall include:

(1) The names of the registrant and the client, and any changes or updates in the initial registration.

(2) For each general issue area in which the registrant engaged in lobbying activities, a list of the specific issues that were the subject of specific significant lobbying activities; a statement of the Federal agencies and the Houses of Congress contacted; a list of the employees of the registrant who acted as lobbyists on behalf of the client; and a description of the interest, if any, of any foreign entity in the issue.

(3) In the case of outside lobbyists, a good faith estimate of the total amount of all income from the clients during the semiannual period, other than income for matters that are unrelated to lobbying activities.

(4) In the case of in-house lobbyists, a good faith estimate of the total expenses that the organization and its employees incurred in connection with lobbying activities during the semiannual period. In general, an organization that employs its own lobbyists will be deemed to have made a "good faith estimate" of the organization's expenditures for lobbying activities if: (1) the organization has its professional employees make a regular periodic estimate of the percentage of time the employee spends on lobbying activities and uses that percentage to compute both its salary costs and general overhead costs (rent utilities, salaries of no professional support staff, etc.) assignable to lobbying activities; and (2) then adds to that figure all direct costs attributable to lobbying activities (third-party payments for media, printing, mailings, postage, expense reimbursements and other costs activity). In other words, where an organization follows such a system and where the professional staff's estimates are done carefully and in good faith, the only major obligation imposed by this reporting requirement is the preparation and submission of such estimates.

Subsection (c) sets forth specific rules regarding estimates of income and expenses.

Paragraph (1) requires estimates which exceed \$10,000 be rounded to the nearest \$20,000.

Paragraph (2) requires that if income or expenses do not exceed \$10,000, a statement to that effect must be included for the reporting period.

Paragraph (3) provides that registrants who are already required to disclose their lobbying expenditures under the Internal Revenue Code do not have to make separate estimate under this Act. If such registrants do not make a separate estimate, they can comply with the requirements of Subsection (b)(3) or (b)(4) by including in their reports the same amounts disclosed to the Internal Revenue Service. This provision provides for a good faith estimate of amounts reported to the IRS which will arise due to a difference in reporting periods.

Sec. 6. Disclosure and enforcement

Section 6 enumerates the responsibilities of the Clerk of the House of Representatives and the Secretary of the Senate under the Act.

Paragraph (1) directs the Clerk of the House and Secretary of the Senate to provide guidance and assistance on the registration and reporting requirements of the Act, and to that end, to provide common standards, rules, and procedures for compliance with the Act.

Paragraph (2) provides that the Clerk of the House and the Secretary of the Senate will review, and where necessary, verify and inquire to ensure the accuracy, completeness, and timeliness of registration and reports.

Paragraph (3) provides that the Clerk of the House and Secretary of the Senate will develop a system of filing, coding, and cross-indexing systems to carry out the purposes of the Act. This will include a list available to the public of all registered lobbyists, lobbying firms, and their clients and the development of computerized systems designed to minimize the burden of filing and maximize public access to materials filed under the Act.

Paragraph (4) provides that the Clerk of the House and the Secretary of the Senate will make available all registrations and reports filed under the Act of public inspection and copying.

Paragraph (5) provides that the Clerk of the House and the Secretary of the Senate will retain registrations for a period of at least six years after they are terminated and reports for a period of at least six years after they are filed.

Paragraph (6) provides that the Clerk of the House and the Secretary of the Senate will compile and summarize, for every semi-annual period, the information contained in registrations and reports filed with respect to such period in a clear and complete manner.

Paragraph (7) requires the Clerk of the House and the Secretary of the Senate to notify any lobbying firm in writing that may be in noncompliance with the Act.

Paragraph (8) provides that the Clerk of the House and the Secretary of the Senate will notify the U.S. Attorney for the District of Columbia when lobbyist or lobbying firm has been notified in writing and has failed to provide an appropriate response within 60 days to the Clerk or Secretary after notification, or when a lobbyist or lobbying firm has failed to comply with any other provision of this Act.

Sec. 7. Penalties

Section 7 provides that a maximum fine of \$50,000 can be imposed under the Act, depending on the extent and gravity of the violation.

Under Section 7, there are two ways in which a registrant is subject to potential penalties. If no appropriate response has been provided upon receipt of a notice of a defective filing but the registrant did know of the potential violation after a period of 60 days elapses, a registrant is subject to penalties under this Section. Moreover, if a registrant fails to comply with any other provision of this Act—refusing to register or report under the Act for example—the registrant is also subject to penalties under this Section. This Section provides that any violation under this Act must be proved by a preponderance of the evidence, the standard burden of proof in civil litigation.

Sec. 8. Rules of construction

This Section provides three rules of construction for the Act.

Subsection (a) provides that nothing in the Act shall be construed to prohibit or interfere with the rights guaranteed by the First Amendment to the U.S. Constitution including: the right to petition the government for a redress of grievances; the right to express a personal opinion; and the right of association.

Subsection (b) provides that nothing in the Act shall be construed to prohibit or authorize any court to prohibit any individual or entity's right to petition the government, regardless of whether the individual or entity is in compliance with the requirements of the Act.

Subsection (c) provides that nothing in the Act shall be construed to grant to the Clerk of the House of Representatives or the Secretary of the Senate audit or investigative authority.

Sec. 9. Amendments to the Foreign Agents Registration Act

The Foreign Agents Registration Act of 1938 (FARA) is amended in four ways:

(1) FARA is limited to agents of foreign governments and political parties. Lobbyists of foreign corporations, partnerships, associations, and individuals are required to register under the Lobbying Disclosure Act, where applicable, but not under FARA.

(2) The so-called "U.S. subsidiary exemption" is eliminated from FARA. This Subsection grants an exemption to activities on behalf of a foreign-owned company in the United States that further the bona fide commercial, industrial, or financial interests of the U.S. subsidiary.

(3) The applicability of the so-called "lawyers' exemption" is clarified by changing the exemption's application only to communications with agency officials in the context of those specific instances set out in this amendment. These include judicial proceedings, law enforcement proceedings, and agency proceedings required by statute or regulation to be conducted on the record.

(4) The term "political propaganda" is eliminated from the Act, and replaced by the term "informational materials."

Under this Section, a lobbyist for a foreign commercial entity is required to register under the Lobbying Disclosure Act and a lobbyist for a foreign government or foreign political party is required to register under FARA. With this distinction, agency law as currently applied to FARA remains unchanged. For example, a lobbyist for a foreign corporation that is owned by a foreign government will register under the Lobbying Disclosure Act, rather than under FARA, so long as the lobbyist's political activities are in furtherance of the bona fide commercial, industrial or financial operations of the foreign corporation.¹⁷

Sec. 10. Amendments to the Byrd Amendment

This Section amends the Byrd Amendment¹⁸ to eliminate separate lobbying disclosure provisions in that statute. Applicants for Federal contracts, grants, and loans are still required to certify that they had not lobbied for such contract, grant or loan with appropriated funds. In addition to the Byrd Amendment requirements, applicants for contracts, grants or loans are required to name any registrant under the Lobbying Disclosure Act who had made lobbying contacts with regard to such contract, grant or loan on behalf of the applicant.

Sec. 11. Repeal of certain lobbying provisions

Obsolete lobbying provisions are repealed under this Section including the Federal Regulation of Lobbying Act,¹⁹ and the HUD lobbying disclosure provisions.²⁰

Sec. 12. Conforming amendments to other statutes

Conforming amendments are made to other statutes under this Section to ensure that changes to the definitions of "foreign agents" and "foreign principals" under the Foreign Agents Registration Act do not result in any other changes to other statutes that make reference to these definitions. The statutes amended by this provision are the Competitiveness Policy Council Act,²¹ the foreign Service Act of 1980,²² and Section 219(a) of the Criminal Code.²³

Sec. 13. Severability clause

This Section establishes that if any provision of the Lobbying Disclosure Act is found to be unconstitutional, such provision would be treated as severable from the Act, and the balance of the Act would remain in effect.

Sec. 14. Identification of clients and covered officials

Under paragraph (a), if a covered legislative or executive branch official so requests during an oral lobbying contact, the lobbyist

¹⁷This section would also govern the case of a lobbyist for a trade association whose membership includes foreign corporations owned by foreign governments so long as the lobbyist's political activities are in furtherance of the bona fide commercial, industrial or financial operations of the member foreign corporation. In such a situation, the lobbyist for a trade association would register under the Lobbying Disclosure Act as opposed to FARA.

¹⁸ 31 U.S.C. § 1352.

¹⁹ 2 U.S.C. § 261 et seq.

²⁰ 42 U.S.C. § 1490p(d) and 42 U.S.C. § 3537b.

²¹ 15 U.S.C. § 4804(e).

²² 22 U.S.C. § 4002(c).

²³ 18 U.S.C. § 219(a).

must state whether he is registered under the Act, identify his client, and state whether the client is a foreign entity required to be disclosed under the Act's registration requirements.

Paragraph (b) provides that any registrant under the Act that makes a written lobbying contact with a covered official must identify a client if the client is a foreign entity. If the client is a foreign entity, then the client, the client's status as a foreign entity, and whether the lobbyist making the contact is registered under Section 4 of the Act must be disclosed. Any other foreign entity having a direct interest in the outcome of the lobbying activity under Section 4(b)(4) must also be disclosed.

Paragraph (c) provides that covered legislative and executive branch officials under the Act must indicate their status as a covered official if requested by a person making a lobbying contract.

Sec. 15. Estimates based on tax reporting system

Subsection (a) provides that entities organized under Section 501(c)(3) of the Internal Revenue Code are allowed to estimate the applicable amounts that would be required to be disclosed under Sections 4(a)(3), 5(b)(3), and 5(b)(4) of the Act. Moreover, these non-profit organizations may continue to use the tax code's definition of "influencing legislation" under Section 4911(d) in lieu of the definition of "lobbying activities" under Section 3(7) of this Act. Under this exception, non-profits will not have to maintain two sets of records of lobbying activities (one under the Internal Revenue Code, and one under the Lobbying Disclosure Act).

Subsection (b) provides that registrants subject to Section 162(e) of the tax code are allowed to estimate the applicable amounts that would not be deductible pursuant to Section 162(e) to meet the requirements of Sections 4(a)(3), 5(b)(3), and 5(b)(4) of the Act. In addition, these entities may continue to use the tax code's definition of "lobbying activities" under Section 162(e) in lieu of the definition of "lobbying activities" under Section 3(7) of this Act.

Subsection (c) requires registrants who elect to make estimates under this Section to do so on a calendar year basis and to inform the Clerk of the House and the Secretary of the Senate of the registrant's election to make its estimates under these procedures.

Subsection (d) directs the Comptroller General to study the differences between the definitions of "lobbying activities" of this Act, and the tax code's definitions of "lobbying expenditures," "influencing legislation," and related terms in Sections 162(e) of 4911 of the Internal Revenue Code and recommend changes to harmonize these definitions. The Comptroller General must report to Congress by March 31, 1997.

Sec. 16. Repeal of Ramspeck Act

The Ramspeck Act²⁴ makes a special exception to certain competitive requirements for civil service positions within the Federal Government for individuals who have served three years in the legislative branch or four years in the judicial branch. The Ramspeck Act waives any competitive examination which ranks applicants for jobs for individuals who are former legislative or judicial branch

²⁴ 5 U.S.C. § 3304(c).

employees. Moreover, individuals appointed under Ramspeck become career employees in the civil service without any regard to the tenure requirements that exist for other civil service employees. The Ramspeck Act repeal and the amendment made by this Section will take effect two years after the date of enactment of this Act.

Sec. 17. Excepted service and other experience considerations for competitive service appointments

This Section adds a new Subsection (d) after the above changes of Section 16 of this Act. The new Subsection (d) instructs the Office of Personnel Management (OPM) to promulgate regulations on the manner and extent that experience of an individual in the legislative or judicial branch, or in any private or nonprofit enterprise, may be considered in making appointments to a position in the competitive service. In promulgating these regulations, the OPM must not grant any preference based on the fact of service in the legislative or judicial branch. Moreover, OPM will promulgate these regulations consistent with the principles of equitable competition and merit-based appointments. The amendment made by this Section shall take effect two years after the date of enactment of this Act.

Sec. 18. Exempt organizations

This Section provides that organizations described in Section 501(c)(4) of the Internal Revenue Code which engage in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant, loan or any other form. Under this provision, 501(c)(4) organizations may form affiliate organizations in which to carry on their lobbying activities with non-Federal funds. The affiliate organization could then make its views known on matters of public importance known without losing Federal grants for the 501(c)(4) organization.

Sec. 19. Amendment to the Foreign Agents Registration Act (P.L. 75-583)

The requirement that the Justice Department report to Congress on the administration of FARA is changed from “time to time” to “every 6 months.” Such reports should now include registrations filed pursuant to the Act and the types of foreign political propaganda being disseminated and distributed subject to FARA registration.

Sec. 20. Disclosure of the value of assets under the Ethics in Government Act of 1978

Subsection (a) provides for greater disclosure of the income of Members of Congress. Under current law, the largest amount of income that must be disclosed is “greater than \$1,000,000.” The following categories of income derived during the preceding calendar year are added to the Ethics in Government Act:²⁵ \$1,000,000–\$5,000,000, and greater than \$5,000,000.

Subsection (b) provides for greater disclosure of the assets and liabilities of Members. The following ranges are added to the Act:

²⁵ 2 U.S.C. § 702(a)(1)(B).

\$1,000,000–\$5,000,000; \$5,000,000–\$25,000,000; \$25,000,000–\$50,000,000; and greater than \$50,000,000.

Subsection (c) provides for an exception to this Section of the Ethics in Government Act that states when the categories with amounts or values greater than \$1,000,000 are applicable, disclosure of income, assets, or liabilities of spouses or dependent children shall be categorized only as an amount or value greater than \$1,000,000. However, if the income, assets, or liabilities of spouses and dependent children are held jointly with the reporting individual, then such income, assets, or liabilities must be disclosed in the applicable category.

Sec. 21. Ban on Trade Representative representing or advising foreign entities

Subsection (a) bans the United States Trade Representative and the Deputy United States Trade Representative from representing, aiding or advising a foreign entity on matters before any officer or employee (in carrying out that officer's or employee's official duties) of any department or agency of the United States for life. Current law provides for a three year ban after the termination of that individual's service as Trade Representative.²⁶

Subsection (b) amends the Trade Act of 1974²⁷ to provide that persons who have directly represented, aided, or advised a foreign entity in any trade negotiation, or trade dispute, with the United States may not be appointed as U.S. Trade Representative or as Deputy U.S. Trade Representatives.

Subsection (c) provides that this Section shall be applied only to those individuals appointed after the date of enactment of this Act.

Sec. 22. Financial disclosure of interest in qualified blind trust

This Section amends the Ethics in Government Act of 1978²⁸ to require disclosure of the total cash value of a qualified blind trust of a Member of Congress. If the trust instrument was executed prior to July 24, 1995, and precludes the beneficiary from receiving information on the total cash value of any interest in the qualified blind trust, such information need not be disclosed.

Sec. 23. Sense of the Senate that lobbying should remain non-deductible

This provision is not binding as a matter of law. It states that the Senate finds that ordinary Americans generally are not allowed to deduct the costs of communicating with their elected representatives and that lobbying expenses should not be tax deductible. Lobbying expenses are not currently deductible under the Internal Revenue Code.²⁹

Sec. 24. Effective dates

This Section sets forth the effective dates of the Act.

Subsection (a) provides that the Act will take effect on January 1, 1996, except as otherwise provided.

²⁶ 18 U.S.C. § 207(f)(2).

²⁷ 19 U.S.C. § 2171(b).

²⁸ 2 U.S.C. § 702(a).

²⁹ 26 U.S.C. § 162(e).

Subsection (b) and the amendments made by this Act take effect on January 1, 1996. The repeal and amendments made under Sections 9, 10, 11, and 12 take effect on January 1, 1996, but they shall not affect any proceeding or suit, including appeals taken and judgments rendered, that is commenced before January 1, 1996. Moreover, the repeals and amendments from Sections 9, 10, 11, and 12 will not affect the requirements of Federal agencies to compile, publish, and retain information filed or received before the effective date of such repeals and amendments.³⁰

AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, November 7, 1995.

Hon. HENRY HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This provides the views of the Department of Justice on S. 1060, the "Lobbying Disclosure Act of 1995," as passed by the Senate. We understand that the House may act on this legislation later this year.

The Department strongly supports the purpose of this bill and its central provisions. It will ensure that federal officials are aware of the outside sources of information and opinion made available to them and will significantly enhance public understanding of the lobbying process.

Certain features of the bill, however, present difficulties that can and should be remedied.

First, the Department has constitutional concerns about the role the bill gives to the Secretary of the Senate and the Clerk of the House; the bill's disqualification of certain persons from serving as United States Trade Representative or Deputy United States Trade Representative; and the specific manner in which the bill seeks to protect the exercise of religion, a goal with which the Administration strongly agrees.

Second, the Department has policy concerns about the relationship between the bill and the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (FARA)

Accordingly, we recommend that Congress pass this legislation with certain changes to ensure that it is both constitutional and effective.

³⁰The Committee is aware of technical amendments and corrections that need to be made in the following sections of the bill: on page 23, line 18, Section 6(8) should cross-reference Section 6(7), not Section 6(6); on page 27, line 23, Section 9(9) is a conforming amendment that should be deleted from the bill in view of Section 19; on page 30, line 12, Section 12(c) should cross-reference Section 3(6) instead of 3(7); on page 32, line 17, Section 15(a)(2) should cross-reference Section 3(7) instead of 3(8) of this Act; on page 33, line 5, Section 15(b)(1) should delete the cross-reference to Section 5(a)(2); on page 33, line 7, Section 15(b)(2) should cross-reference Section 3(7) instead of 3(8) this Act; and on page 40, line 19, Section 24 should cross-reference Sections 9, 10, 11, and 12 instead of Sections 13, 14, 15, and 16. It is the intention of the Committee to pass H.R. 2564 without amendment. The Committee intends to make these technical and conforming changes after passage.

Constitutional concerns

1. The bill provides that lobbyists would need to file disclosure statements with the Secretary of the Senate and the Clerk of the House of Representatives. If those officials determined that a lobbyist's statement did not comply with the law, they would notify the lobbyist. If the lobbyist did not correct the deficiency to their satisfaction, they could forward the matter to the United States Attorney for the District of Columbia, who could bring an action for a civil file. See §§ 4–7, S. 1060. The bill would define a civil offense consisting of the knowing failure to “remedy a defective filing within 60 days after notice of such a defect by the Secretary of the Senate or the Clerk of the House of Representatives.” See § 7(2).

This arrangement would raise serious constitutional problems. Congress may not provide for its agents to execute the law. *Bowsher v. Synar*, 478 U.S. 714, 726, 733–34 (1986); see also *Metropolitan Washington Airports Authority v. Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252 (1991). Here, in contrast to the current law that gives agents of the Congress the responsibility only to collect and publish information, see 2 U.S.C. §§ 261–70, the bill would provide that an action for one type of civil offense could be initiated against a lobbyist only if the congressional agents, pursuant to their interpretation of the statute, issued a notice finding the lobbyist's filing to be deficient.¹ The Secretary of the Senate and the Clerk of the House of Representatives thus would be performing executive functions of *Buckley v. Valeo*, 424 U.S. 1, 140–41 (1976) (executive functions include giving “advisory opinions” and making “determinations of eligibility for funds and even for federal elective office itself”), even though Congress may vest such functions only in officials in the executive branch.

2. The bill would forbid the appointment, as United States Trade Representative or Deputy United States Trade Representative, of anyone who had ever “directly represented, aided, or advised * * * a foreign [government or political party] in any trade negotiation or trade dispute with the United States.” This provision, too, would raise serious constitutional concerns. The Department of Justice has long opposed broad restrictions on the President's constitutional prerogative to nominate persons of his choosing to senior executive branch positions. The restriction in the bill is particularly problematic because it operates in an area in which the Constitution commits special responsibility to the President, who “is the constitutional representative of the United States in its dealings with foreign nations.” See, e.g., *United States v. Louisiana*, 363 U.S. 1, 35 (1960). The officers in question perform diplomatic functions as the direct representative of the President, a fact that Congress itself has recognized by providing that they should enjoy the rank of ambassador, 19 U.S.C. § 2171(b). Regardless of whether the President would, as a policy matter, be willing to accept this particular restriction, Congress would exceed its constitutionally assigned role by setting such a broad disqualification. See, e.g., *Civil Service Commission*, 13 Op. Att'y Gen. 516, 520–21 (1871).

¹The Secretary of the Senate and the Clerk of the House of Representatives would also “develop common standards, rules, and procedures for compliance” with the Act.

3. Section 3(8)(B)(xviii) would exempt lobbying contacts by churches and other religious organizations from the registration requirements. The Administration supports the strongest possible protection for the exercise of religion. We are concerned however, that the exemption now included in the bill could be susceptible to valid constitutional challenge in the courts. The Supreme Court has held that the Establishment Clause of the First Amendment prohibits the government from singling out religious organizations for especially favorable treatment, whether in the form of an exemption from a government requirement or in the form of a direct benefit. See, e.g., *Board of Educ. of Kiryas Joel v. Grumet*, 114 St. Ct. 2481, 2487 (1994) (plurality opinion) (invalidating creation of a special school district for religious community) (Establishment Clause requires that the government “pursue a course of neutrality toward religion, favoring neither one religion over others nor religious adherents collectively over nonadherents”) (internal quotation omitted). In *Texas Monthly v. Bullock*, 489 U.S. 1 (1989), for instance, the Supreme Court held that the Establishment Clause prohibits a state from exempting certain periodicals distributed by religious organizations, and no other periodicals, from its sales and use tax.

At the same time, the Court has permitted the government in certain circumstances to provide an exclusive “accommodation” to religion. See *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327 (1987) (upholding exemption of secular nonprofit activities of religious organization from Title VII prohibition on employment discrimination based on religion). The accommodation doctrine permits the government to provide religion with an exclusive exemption from a regulatory scheme when the exemption would “remov[e] a significant state-imposed deterrent to the free exercise of religion” *Texas Monthly*, 489 U.S. at 15 (plurality opinion); see also *Amos*, 483 U.S. AT 335 (government may act to “alleviate significant governmental interference” with religious exercise). Under the Court’s accommodation doctrine, section 3(8)(B)(xviii) would be far less susceptible to constitutional challenge if it were rewritten to apply only when the operation of the Act would in fact burden the exercise of religion. Specifically, we recommend the following language, which tracks the standards enunciated by the Supreme Court and incorporated in the Religious Freedom Restoration Act, 42 U.S.C. 2000bb–2000bb–4:

(B) The term “lobbying contract” does not include a communication that is * * *

(xviii) of such a nature that its coverage under this Act would substantially burden any person’s exercise of religion. In determining whether coverage under this Act of any lobbying contact would substantially burden a person’s exercise of religion, the standards of the Religious Freedom restoration Act, 42 U.S.C. 2000bb–2000bb–4, shall apply.

The bill could also include a provision that “any regulation promulgated hereunder shall incorporate the maximum protection under the Constitution and laws of the United States for the exercise of religion by lobbyists or clients.”

Alternatively, a more general exemption, reaching non-religious as well as religious organizations, would not raise Establishment Clause problems. See *Texas Monthly*, 489 U.S. at 15–16 (plurality opinion); *id.* at 27–28 (Blackmun, J., concurring). The Establishment Clause would not be implicated by a provision permitting churches and religious organizations to use the narrower definition of lobbying contained in 26 U.S.C. §499(d), which would relieve them of some of the burdens of the legislation in a manner similar to that afforded other non-profit organizations.

Relationship to Foreign Agents Registration Act

In addition to these constitutional concerns, we are concerned about the relationship between the bill and FARA set forth in sections 3(8)(B)(iv) and 9(3) of S. 1060. Exempting from registration under FARA all agents of foreign principals who register under this bill would significantly reduce public disclosure about such agents. It would also reduce the Department's receipts under its FARA user fees program, which may implicate the "Pay-As-You-Go" provisions of the Omnibus Budget Reconciliation Act of 1990.

FARA reflects a judgment that broad disclosure is particularly important with respect to foreign influences on the political process. Accordingly, the extent of disclosure with respect to activities, receipts and disbursements, including political contributions, required of agents of foreign principals under FARA is significantly more detailed than that required of all lobbyists under S. 1060. FARA also covers a broader range of political activities than this bill, including advertising, public relations activities and political fund-raising. The result of enactment of section 9(3) of the bill would be to exempt many agents of foreign principals from the wider and more detailed disclosure of their activities FARA intended, whenever they make a covered "lobbying contract" under this bill.

The Department recommends, therefore, that agents of foreign principals who are required to register under FARA, and who in fact do so, be exempted from registration under the Lobbying Disclosure Act. This approach would maintain the higher scrutiny Congress has historically applied to foreign influences on the domestic political process. It also has the advantage of maintaining government "user fee" revenues, because FARA recovers the costs of its administration from the agent population, and the present bill has no comparable revenue producing mechanism.

In summary, we strongly support the laudable goals of S. 1060 and its central provisions. We stand ready to assist in the important effort to achieve reform in this area. Please do not hesitate to contact us if we may be of additional assistance in connection with this or any other matter. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FOREIGN AGENTS REGISTRATION ACT OF 1938

* * * * *

DEFINITIONS

SECTION 1. As used in and for the purposes of this Act—

(a) * * *

* * * * *

[(j) The term “political propaganda” includes any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence. As used in this section 1(j) the term “disseminating” includes transmitting or causing to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce or offering or causing to be offered in the United States mails;]

* * * * *

(o) The term “political activities” means [the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence] *any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party;*

(p) The term “political consultant” means any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party[;].

[(q) For the purpose of section (3)(d) hereof, activities in furtherance of the bona fide commercial, industrial or financial interests of a domestic person engaged in substantial commercial, industrial or financial operations in the United States shall not be deemed to serve predominantly a foreign interest because such activities also benefit the interests of a foreign person engaged in bona fide trade or commerce which is owned or controlled by, or which owns or controls, such domestic person: *Provided*, That (i) such foreign person is not, and such activities are not directly or indirectly supervised, directed, controlled, financed or subsidized in whole or in substantial part by, a government of a foreign country or a foreign political party, (ii) the identity of such foreign person is disclosed to the agency or official of the United States with whom such activities are conducted, and (iii) whenever such foreign person owns or controls such domestic person, such activities are substantially in furtherance of the bona fide commercial, industrial or financial interests of such domestic person.]

* * * * *

EXEMPTIONS

SEC. 3. The requirements of section 2(a) hereof shall not apply to the following agents of foreign principals:

(a) * * *

* * * * *

(g) Any person qualified to practice law, insofar as he engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States: *Provided*, That for the purpose of this subsection legal representation does not include attempts to influence or persuade agency personnel or officials other than in the course of [established agency proceedings, whether formal or informal.] *judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulation to be conducted on the record.*

(h) *Any agent of a person described in section 1(b)(2) or an entity described in section 1(b)(3) if the agent is required to register and does register under the Lobbying Disclosure Act of 1995 in connection with the agent's representation of such person or entity.*

FILING AND LABELING POLITICAL PROPAGANDA

SEC. 4. (a) Every person within the United States who is an agent of a foreign principal and required to register under the provisions of this Act and who transmits or causes to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any [political propaganda] *informational materials* for or in the interests of such foreign principal (i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons shall, not later than forty-eight hours after the beginning of the transmittal thereof, file with the Attorney General two copies thereof [and a statement, duly signed by or on behalf of such agent, setting

forth full information as to the places, times, and extent of such transmittal].

(b) It shall be unlawful for any person within the United States who is an agent of a foreign principal and required to register under the provisions of this Act to transmit or cause to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any [political propaganda] *informational materials* for or in the interests of such foreign principal [(i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons, unless such political propaganda is conspicuously marked at its beginning with, or prefaced or accompanied by, a true and accurate statement, in the language or languages used in such political propaganda, setting forth the relationship or connection between the person transmitting the political propaganda or causing it to be transmitted and such propaganda; that the person transmitting such political propaganda or causing it to be transmitted is registered under this Act with the Department of Justice, Washington, District of Columbia, as an agent of a foreign principal, together with the name and address of such agent of a foreign principal and of such foreign principal; that, as required by this Act, his registration statement is available for inspection at and copies of such political propaganda are being filed with the Department of Justice; and that registration of agents of foreign principals required by the Act does not indicate approval by the United States Government of the contents of their political propaganda. The Attorney General, having due regard for the national security and the public interest, may by regulation prescribe the language or languages and the manner and form in which such statement shall be made and require the inclusion of such other information contained in the registration statement identifying such agent of a foreign principal and such political propaganda and its sources as may be appropriate.] *without placing in such informational materials a conspicuous statement that the materials are distributed by the agent on behalf of the foreign principal, and that additional information is on file with the Department of Justice, Washington, District of Columbia. The Attorney General may by rule define what constitutes a conspicuous statement for the purposes of this subsection.*

(c) The copies of [political propaganda] *informational materials* required by this Act to be filed with the Attorney General shall be available for public inspection under such regulations as she may prescribe.

* * * * *

PUBLIC EXAMINATION OF OFFICIAL RECORD

SEC. 6. (a) The Attorney General shall retain in permanent form one copy of all registration statements [and all statements concerning the distribution of political propaganda] furnished under this Act, and the same shall be public records and open to public examination and inspection at such reasonable hours, under such regulations, as the Attorney General may prescribe, and copies of the

same shall be furnished to every applicant at such reasonable fee as the Attorney General may prescribe. The Attorney General may withdraw from public examination the registration statement and other statement of any agent of a foreign principal whose activities have ceased to be of a character which requires registration under the provisions of this Act.

(b) The Attorney General shall, promptly upon receipt, transmit one copy of every registration statement filed hereunder and one copy of every amendment or supplement thereto[, and one copy of every item of political propaganda] filed hereunder to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States. Failure of the Attorney General so to transmit such copy shall not be a bar to prosecution under this Act.

(c) The Attorney General is authorized to furnish to departments and agencies in the executive branch and committees of the Congress such information obtained by him in the administration of this Act, including the names of registrants under this Act, copies of registration statements, or parts thereof, [copies of political propaganda,] or other documents or information filed under this Act, as may be appropriate in the light of the purposes of this Act.

* * * * *

ENFORCEMENT AND PENALTIES

SEC. 8. (a) Any person who—

(1) willfully violates any provisions of this Act or any regulations thereunder, or

(2) in any registration statement or supplement thereto [or in any statement under section 4(a) hereof concerning the distribution of political propaganda] or in any other documents filed with or furnished to the Attorney General under the provisions of this Act willfully makes a false statement of a material fact or willfully omits any material fact required to be stated therein or willfully omits a material fact or a copy of a material document necessary to make the statements therein and the copies of documents furnished therewith not misleading, shall, upon conviction thereof, be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both, except that in case of a violation of subsection (b), (e), or (f) of section 4 or of subsection (g) or (h) of this section the punishment shall be a fine of not more than \$5,000 or imprisonment for not more than six months, or both.

* * * * *

[(d) The Postmaster General may declare to be nonmailable any communication or expression falling within clause (2) of section 1(j) hereof in the form of prints or in any other form reasonably adapted to, or reasonably appearing to be intended for, dissemination or circulation among two or more persons, which is offered or caused to be offered for transmittal in the United States mails to any person or persons in any other American republic by any agent of a foreign principal, if the Postmaster General is informed in writing by the Secretary of State that the duly accredited diplomatic rep-

representative of such American republic has made written representation to the Department of State that the admission or circulation of such communication or expression in such American republic is prohibited by the laws thereof and has requested in writing that its transmittal thereto be stopped.]

* * * * *

REPORTS TO THE CONGRESS

SEC. 11. The Attorney General shall, from time to time, make a report to the Congress concerning the administration of this Act[, including the nature, sources, and content of political propaganda disseminated or distributed].

* * * * *

SECTION 1352 OF TITLE 31, UNITED STATES CODE

§ 1352. Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions

(a) * * *

(b)(1) Each person who requests or receives a Federal contract, grant, loan, or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency, in accordance with paragraph (4) of this subsection—

- (A) a written declaration described in paragraph (2) or (3) of this subsection, as the case may be; and
- (B) copies of all declarations received by such person under paragraph (5).

(2) A declaration filed by a person pursuant to paragraph (1)(A) of this subsection in connection with a Federal contract, grant, loan, or cooperative agreement shall contain—

- [(A) a statement setting forth whether such person—
 - [(i) has made any payment with respect to that Federal contract, grant, loan, or cooperative agreement, using funds other than appropriated funds, which would be prohibited by subsection (a) of this section if the payment were paid for with appropriated funds; or
 - [(ii) has agreed to make any such payment;
- [(B) with respect to each such payment (if any) and each such agreement (if any)—
 - [(i) the name and address of each person paid, to be paid, or reasonably expected to be paid;
 - [(ii) the name and address of each individual performing the services for which such payment is made, to be made, or reasonably expected to be made;
 - [(iii) the amount paid, to be paid, or reasonably expected to be paid;
 - [(iv) how the person was paid, is to be paid, or is reasonably expected to be paid; and
 - [(v) the activity for which the person was paid, is to be paid, or is reasonably expected to be paid; and

[(C) a certification that the person making the declaration has not made, and will not make, any payment prohibited by subsection (a).]

(A) the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of the person with respect to that Federal contract, grant, loan, or cooperative agreement; and

(B) a certification that the person making the declaration has not made, and will not make, any payment prohibited by subsection (a).

(3) A declaration filed by a person pursuant to paragraph (1)(A) of this subsection in connection with a commitment providing for the United States to insure or guarantee a loan shall contain[—

[(A) a statement setting forth whether such person—

[(i) has made any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guaranty; or

[(ii) has agreed to make any such payment; and

[(B) with respect to each such payment (if any) and each such agreement (if any), the information described in paragraph (2)(B) of this subsection.] *the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of the person in connection with that loan insurance or guaratee.*

* * * * *

[(6)(A) The head of each agency shall collect and compile the information contained, pursuant to paragraphs (2)(B) and (3)(B) of this subsection, in the statements filed under this subsection and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained, pursuant to such paragraphs, in the statements received during the six-month period ending on March 31 or September 30, respectively, of that year. The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

[(B) Notwithstanding subparagraph (A)—

[(i) information referred to in subparagraph (A) that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees;

[(ii) information referred to in subparagraph (A) that is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, is classified in accordance with such order, and is available only by special access shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the

House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees; and

[(iii) information reported in accordance with this subparagraph shall not be available for public inspection.]

[(7)] (6) The Director of the Office of Management and Budget, after consulting with the Secretary of the Senate and the Clerk of the House of Representatives, shall issue guidance for agency implementation of, and compliance with, the requirements of this section.]

* * * * *

[(d)(1) The official of each agency referred to in paragraph (3) of this subsection shall submit to Congress each year an evaluation of the compliance of that agency with, and the effectiveness of, the requirements imposed by this section on the agency, persons requesting or receiving Federal contracts, grants, loans, or cooperative agreements from that agency, and persons requesting or receiving from that agency commitments providing for the United States to insure or guarantee loans. The report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

[(2) The report of an agency under paragraph (1) of this subsection shall include the following:

[(A) All alleged violations of the requirements of subsections (a) and (b) of this section, relating to the agency's Federal actions referred to in such subsections, during the year covered by the report.

[(B) The actions taken by the head of the agency in such year with respect to those alleged violations and any alleged violations of subsections (a) and (b) of this section that occurred before such year, including the amounts of civil penalties imposed by the head of such agency in such year, if any.

[(3) The Inspector General of an agency shall prepare and submit the annual report of the agency required by paragraph (1) of this subsection. In the case of an agency that does not have an inspector general, the agency official comparable to an inspector general shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit such annual report.]

[(e)] (d)(1)(A) Subsection (a)(1) of this section does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement to the extent that the payment is for agency and legislative liaison activities not directly related to a Federal action referred to in subsection (a)(2) of this section.

* * * * *

[(f)] (e) The Secretary of Defense may exempt a Federal action described in subsection (a)(2) from the prohibition in subsection (a)(1) whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit

a copy of each such written exemption to Congress immediately after making such determination.

[(g)] (f) The head of each Federal agency shall take such actions as are necessary to ensure that the provisions of this section are vigorously implemented and enforced in such agency.

[(h)] (g) As used in this section:

(1) * * *

* * * * *

THE FEDERAL REGULATION OF LOBBYING ACT

[TITLE III—REGULATION OF LOBBYING ACT

[SHORT TITLE

[SEC. 301. This title may be cited as the “Federal Regulation of Lobbying Act”.

[DEFINITIONS

[SEC. 302. When used in this title—

[(a)] The term “contribution” includes a gift, subscription, loan, advance, or deposit of money or anything of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution.

[(b)] The term “expenditure” includes a payment, distribution, loan advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

[(c)] The term “person” includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

[(d)] The term “Clerk” means the Clerk of the House of Representatives of the United States.

[(e)] The term “legislation” means bills, resolutions, amendments nominations, and other matters pending or proposed in either House of Congress, and includes any other matter which may be the subject of action by either House.

[DETAILED ACCOUNTS OF CONTRIBUTIONS

[SEC. 303. (a) It shall be the duty of every person who shall in any manner solicit or receive a contribution to any organization or fund for the purposes hereinafter designated to keep a detailed and exact account of—

[(1)] all contributions of any amount or of any value whatsoever;

[(2)] the name and address of every person making any such contribution of \$500 or more and the date thereof;

[(3)] all expenditures made by or on behalf of such organization or fund; and

[(4)] the name and address of every person to whom any such expenditure is made and the date thereof.

[(b)] It shall be the duty of such person to obtain and keep a receipted bill, stating the particulars, for every expenditure of such

funds exceeding \$10 in amount, and to preserve all receipted bills and accounts required to be kept by this section for a period of at least two years from the date of the filing of the statement containing such items.

【RECEIPTS FOR CONTRIBUTIONS】

【SEC. 304. Every individual who receives a contribution of \$500 or more for any of the purposes hereinafter designated shall within five days after receipt thereof rendered to the person or organization for which such contribution was received a detailed account thereof, including the name and address of the person making such contribution and the date on which received.

【STATEMENTS TO BE FILED WITH CLERK OF HOUSE】

【SEC. 305. (a) Every person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307 shall file with the Clerk between the first and tenth day of each calendar quarter, a statement containing complete as of the day next preceding the date of filing—

【(1) the name and address of each person who has made a contribution of \$500 or more not mentioned in the preceding report; except that the first report filed pursuant to this title shall contain the name and address of each person who has made any contribution of \$500 or more to such person since the effective date of this title;

【(2) the total sum of the contribution during the calendar year and not stated under paragraph (1);

【(3) the total sum of all contributions made to or for such person during the calendar year;

【(4) the name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of \$10 or more has been made by or on behalf of such person, and the amount, date, and purpose of such expenditure;

【(5) the total sum of all expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (4);

【(6) the total sum of expenditures made by or on behalf of such person during the calendar year.

【(b) The statements required to be filed by subsection (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward.

【STATEMENT PRESERVED FOR TWO YEARS】

【SEC. 306. A statement required by this title to be filed with the Clerk—

【(a) shall be deemed properly filed when deposited in an established post office within the prescribed time, duly stamped, registered, and directed to the Clerk of the House of Representatives of the United States, Washington, District of Columbia, but in the event it is not received, a duplicate of such state-

ment shall be promptly filed upon notice by the Clerk of its nonreceipt;

[(b) shall be preserved by the Clerk for a period of two years from the date of filing, shall constitute part of the public records of his office, and shall be open to public inspection.

【PERSONS TO WHOM APPLICABLE

【SEC. 307 The provisions of this title shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which is to aid, in the accomplishment of any of the following purposes:

【(a) The passage or defeat of any legislation by the Congress of the United States.

【(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

【REGISTRATION WITH SECRETARY OF THE SENATE AND CLERK OF THE HOUSE

【SEC. 308. (a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each such person so registering shall, between the first and tenth day of each calendar quarter, so long as his activity continues, file with the Clerk and Secretary a detailed report under oath of all money received and expended by him during the preceding calendar quarter in carrying on his work; to whom paid; for what purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before a committee of the Congress of the United States in support of or opposition to legislation; nor to any public official acting in his official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or periodical) which in the ordinary course of business, publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical, or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a

committee of the Congress of the United States in support of or in opposition to such legislation.

[(b) All information required to be filed under the provisions of this section with the Clerk of the House of Representatives and the Secretary of the Senate shall be compiled by said Clerk and Secretary, acting jointly, as soon as practicable after the close of the calendar quarter with respect to which such information is filed and shall be printed in the Congressional Record.

[REPORTS AND STATEMENTS TO BE MADE UNDER OATH

[SEC. 309. All reports and statements required under this title shall be made under oath, before an officer authorized by law to administer oaths.

[PENALTIES

[SEC. 310. (a) Any person who violates any of the provisions of this title, shall, upon conviction, be guilty of a misdemeanor, and shall be punished by a fine of not more than \$5,000 or imprisonment for not more than twelve months, or by both such fine and imprisonment.

[(b) In addition to the penalties provided for in subsection (a), any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of, or opposition to, proposed legislation; and any person who violates any provision of this subsection shall, upon conviction thereof, be guilty of a felony, and shall be punished by a fine of not more than \$10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

[EXEMPTION

[SEC. 311. The provisions of this title shall not apply to practices or activities regulated by the Federal Corrupt Practices Act nor be construed as repealing any portion of said Federal Corrupt Practices Act.]

**SECTION 13 OF THE DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT ACT**

[REGISTRATION OF CONSULTANTS

[SEC. 13. (a) RECORD OF EXPENDITURES.—

[(1) REQUIREMENT TO MAINTAIN.—Each person who makes an expenditure to influence the decision of any officer or employee of the Department, through communication with such officer or employee, with respect to—

[(A) the award of any financial assistance within the jurisdiction of the Department, or

[(B) any management action involving a change in the terms and conditions or status of financial assistance awarded to any person,

shall keep records, as required by this section. The preceding sentence shall not apply to expenditures incurred in complying with conditions, requirements, or procedures imposed by the Secretary in connection with any financial assistance.

[(2) COVERED INFORMATION.—Each person referred to in paragraph (1) shall keep a detailed and exact account of—

[(A) all such expenditures made by or on behalf of such person; and

[(B) the name and address of every person to whom any such expenditure is made and the date of the expenditure.

[(3) MAINTENANCE OF RECORDS.—Each person making such an expenditure shall obtain a bill, stating the particulars, for every such expenditure, and shall retain all records required by this section for not less than the 2-year period beginning on the date of the filing of the report required by subsection (b), which shall include the information under paragraph (2).

[(4) LIMITATION OF FEES.—Any person engaged for pay or other consideration for the purpose of attempting to influence any award or allocation of financial assistance within the jurisdiction of the Department shall not seek or receive any fee that is—

[(A) based on the amount of assistance or number of units that may be provided by the Secretary, or

[(B) contingent on an award of assistance by the Secretary, except where—

[(i) services are provided to a nonprofit entity applying for such award or allocation of assistance; and

[(ii) professional services related to a project are donated in whole or in part to a nonprofit entity in the event assistance for a project is not awarded.

[(b) REPORTS OF EXPENDITURES FILED WITH THE SECRETARY.—

[(1) REPORT.—Each person making an expenditure for the purposes designated in subsection (a)(1) shall file with the Secretary, between the 1st and 10th day of each calendar year, a report specifying the total expenditures made by or on behalf of such person during the year and the information required by subsection (a)(2)(B).

[(2) REGULAR EMPLOYEES.—The requirements of this subsection shall not apply in the case of a payment of reasonable compensation made to any regularly employed officer or employee of the person who requests or receives assistance within the jurisdiction of the Department, or who is involved in any management action with respect to such assistance.

[(3) MINIMUM DOLLAR REQUIREMENTS.—The requirements of this subsection shall not apply to any person whose total expenditures for purposes described in subparagraphs (A) and (B) of subsection (a)(1) are less than \$10,000 in any calendar year.

[(4) FILING AND RETENTION.—A report required by this subsection—

[(A) shall be considered properly filed when deposited in a post office within the prescribed time, stamped, registered, and addressed to the Secretary, but if the Secretary does not receive the report, the person shall prompt-

ly file a duplicate report when the Secretary notifies the person that the original report has not been received; and

[(B) shall be retained by the Secretary for the 2-year period beginning on the date of filing, shall constitute part of the public records of the Department, and shall be open to public inspection.

[(5) PUBLICATION OF INFORMATION.—The Secretary shall compile all expenditure information as soon as practicable after the close of the calendar year with respect to which the information is filed and shall publish it as a notice in the Federal Register.501

[(c) REGISTRATION BY PERSONS ATTEMPTING TO INFLUENCE DEPARTMENT DECISIONS.—

[(1) REQUIREMENT AND INFORMATION.—Each person receiving payment or any consideration for the purpose described in subsection (a)(1), shall, not later than 14 days after being retained for such purpose, register with the Secretary. The registration shall be in writing and shall include the name and business address of the registrant, the name and address of the registrant's employer and of any person or entity in whose interest the registrant appears or works, and a statement of whether the registrant has been employed by the Federal Government during the 2-year period ending on the date of the registration and in what capacity. Each registrant shall, between the 1st and 10th day of each calendar year, file with the Secretary a detailed report of all money received and expended by the registrant during the preceding year in carrying out the work, including information as to whom money was paid, and for what purposes.

[(2) MINIMUM DOLLAR REQUIREMENT.—The requirements of the last sentence of paragraph (1) shall not apply with respect to any calendar year to any person whose total compensation for attempting to influence a decision with respect to assistance within the jurisdiction of the Department or a management action with respect to such assistance is less than \$10,000 in such year.

[(3) PUBLICATION OF INFORMATION.—The Secretary shall compile all registration information as soon as practicable after the close of the calendar year with respect to which the information is filed and shall publish it annually as a notice in the Federal Register.

[(d) CIVIL MONEY PENALTIES.—

[(1) AUTHORITY.—Whenever any person knowingly fails to file a report required under subsection (b), or any person knowingly fails to register and file a report required under subsection (c), the Secretary may impose a civil money penalty on that person in accordance with the provisions of this subsection. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.

[(2) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Secretary, shall not exceed the greater of—

[(A) \$10,000 for each violation; or

[(B) the total amount received for any services performed for any applicant to which the violation under paragraph (1) relates.

[(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under this subsection, consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before enactment of this section), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

[(4) AGENCY PROCEDURES.—

[(A) ESTABLISHMENT.—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under paragraph (1). These standards and procedures shall—

[(i) provide for the Secretary or other department official to make the determination to impose the penalty or for use of an administrative entity to make the determination;

[(ii) provide for the imposition of a penalty only after the person has been given an opportunity for a hearing on the record; and

[(iii) provide for review of any determination or order, or interlocutory ruling, arising from a hearing.

[(B) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

[(C) REVIEWABILITY OF IMPOSITION OF PENALTY.—The Secretary's determination or order imposing a penalty under paragraph (1) shall not be subject to review, except as provided in paragraph (5).

[(5) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

[(A) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under paragraph (4)(A), a person against whom the Secretary has imposed a civil money penalty under paragraph (1) may obtain a review of the penalty and such ancillary issues as may be addressed in the notice of determination to impose a penalty under paragraph (4)(A)(i) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

[(B) OBJECTIONS NOT RAISED IN HEARING.—The court shall not consider any objection that was not raised in the hearing conducted pursuant to paragraph (4)(A) unless a demonstration is made of extraordinary circumstances

causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at the hearing is material and that there are reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

[(C) SCOPE OF REVIEW.—The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

[(D) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

[(6) ACTION TO COLLECT PENALTY.—If any person fails to comply with the Secretary's determination or order imposing a civil money penalty under paragraph (1), after the determination or order is no longer subject to review as provided by paragraphs (4)(A) and (5), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the person and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys' fees and other expenses incurred by the United States in connection with the action. In an action under this paragraph, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

[(7) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this subsection.

[(8) DEPOSIT OF PENALTIES.—The Secretary shall deposit all civil money penalties collected under this subsection into miscellaneous receipts of the Treasury.

[(e) PROHIBITION ON CONSULTING ACTIVITIES.—

[(1) IN GENERAL.—Whoever is fined under subsection (d) may be prohibited, for the 3-year period beginning on the date of the imposition of the fine, from receiving any payment or thing of value for performing any services (with respect to any application for financial assistance within the jurisdiction of the Department) for any applicant.

[(2) CRIMINAL PENALTY.—Whoever violates the prohibition under paragraph (1) shall, upon conviction, be guilty of a felony and shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

[(f) DEFINITIONS.—For purposes of this section:

[(1) The term "person" means an individual (including a consultant, lobbyist, or lawyer), corporation, company, association, firm, partnership, society, or any other organization or group of people, but does not include a State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government.

[(2) The term “expenditure” includes a payment, distribution, loan, advance, deposit, gift of money, or anything else of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.]

[(3) The term “financial assistance within the jurisdiction of the Department” includes any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages.]

[(4) The term “knowingly” means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.]

[(5) The term “reasonable compensation” means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to or not furnished in cooperation with the Department.]

[(6) The term “regularly employed” means, with respect to an officer or employee of a person requesting or receiving assistance within the jurisdiction of the Department or who is involved in a management action with respect to such assistance, an officer or employee who is employed by such person for at least 130 working days within one year immediately before the date of the submission that initiates departmental consideration of such person for receipt of such assistance, or the date of initiation of any management action.]

[(g) REGULATIONS.—The Secretary shall issue any regulations necessary to implement this section.]

[(h) EFFECTIVE DATE.—This section shall take effect on the date specified in regulations implementing this section that are issued by the Secretary after notice and public comment. The regulations shall establish standards that include determinations of what types of activities constitute influence with respect to the decisions of the Department described in subsection (a)(1) (A) and (B).]

SECTION 536 OF THE HOUSING ACT OF 1949

SEC. 536. (a) * * *

* * * * *

[(d) REGULATION OF LOBBYISTS AND CONSULTANTS.—

[(1) LIMITATION OF FEES.—Any person who is engaged for pay or for any consideration for the purpose of attempting to influence any award or allocation of assistance by the Secretary shall not seek or receive any fee that is—

[(A) based on the amount of assistance or number of units that may be provided by the Secretary, or

[(B) contingent on an award of assistance by the Secretary, except that professional services related to a project may be donated in whole or in part to a community housing development organization in the event assistance for a project is not awarded.]

[(2) REGISTRATION.—Any person who will be engaged for pay or for any consideration for the purpose of attempting to influence any award or allocation of assistance by the Secretary

shall, before doing anything in furtherance of such object, register by submitting to the Secretary a sworn statement containing—

- [(A) such person's name and business address,
- [(B) the nature and duration of any previous Federal employment,
- [(C) the name and address of the person by whom such person is employed, and in whose interest such person appears or works,
- [(D) the duration of such employment,
- [(E) how much such person is paid and is to receive,
- [(F) by whom such person is paid or is to be paid,
- [(G) how much such person is to be paid for expenses,
- and
- [(H) what expenses are to be included.

For purposes of this paragraph, ownership by an individual of a single family home financed under section 502 does constitute pay or consideration.

[(3) REPORTING.—Each person registering under paragraph (2) shall, between the first and tenth day of each calendar quarter, so long as such person's activity continues, file with the Secretary a detailed report under oath setting forth—

- [(A) all money received and expended by such person during the preceding calendar quarter in carrying on such person's work;
- [(B) an identification of the person or persons to whom funds were paid and the purposes of such payments;
- [(C) all awards or allocations of assistance under this title that the person attempted to influence; and
- [(D) any contacts with any employee of the Department for the purpose of attempting to influence any award or allocation of assistance by the Secretary.]

* * * * *

SECTION 5206 OF THE COMPETITIVENESS POLICY COUNCIL ACT

SEC. 5206. EXECUTIVE DIRECTOR AND STAFF.

(a) * * *

* * * * *

(e) CONFLICT OF INTEREST.—A member of the Council shall not serve as an agent for a foreign principal or a lobbyist for a foreign entity (as the terms 'lobbyist' and 'foreign entity' are defined under section 3 of the Lobbying Disclosure Act of 1995).

* * * * *

**CHAPTER 11 OF TITLE 18, UNITED STATES CODE
CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST**

* * * * *

§ 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches

(a) * * *

* * * * *

(f) RESTRICTIONS RELATING TO FOREIGN ENTITIES.—

(1) * * *

(2) SPECIAL RULE FOR TRADE REPRESENTATIVE.—With respect to a person who is the United States Trade Representative *or Deputy United States Trade Representative*, the restrictions described in paragraph (1) shall apply to representing, aiding, or advising foreign entities [within 3 years] *at any time* after the termination of that person's service as the United States Trade Representative.

* * * * *

§ 219. Officers and employees acting as agents of foreign principals

(a) Whoever, being a public official, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938[, as amended,] *or a lobbyist required to register under the Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity, as defined in section 3(7) of that Act* shall be fined under this title or imprisoned for not more than two years, or both.

* * * * *

SECTION 602 OF THE FOREIGN SERVICE ACT OF 1980

SEC. 602. SELECTION BOARDS.—(a) * * *

* * * * *

(c) No public members appointed pursuant to this section may be, at the time of the appointment or during their appointment, an agent of a foreign principal (as defined by section 1(b) of the Foreign Agents Registration Act of 1938) *or a lobbyist for a foreign entity (as defined in section 3(7) of the Lobbying Disclosure Act of 1995)* or receive income from a government of a foreign country.

SECTION 3304 OF TITLE 5, UNITED STATES CODE

§ 3304. Competitive service; examinations

(a) * * *

* * * * *

[(c) Notwithstanding a contrary provision of this title or of the rules and regulations prescribed under this title for the administration of the competitive service, an individual who served—

[(1) for at least 3 years in the legislative branch in a position in which he was paid by the Secretary of the Senate or the Clerk of the House of Representatives; or

[(2) for at least 4 years as a secretary or law clerk, or both, to a justice or judge of the United States;

acquires a competitive status for transfer to the competitive service if he is involuntarily separated without prejudice from the legislative or judicial branch, passes a suitable noncompetitive examination, and transfers to the competitive service within 1 year of the separation from the legislative or judicial branch. For the purpose of this subsection, an individual who has served for at least 2 years in a position in the legislative branch described by paragraph (1) of this subsection and who is separated from that position to enter the armed forces is deemed to have held that position during his service in the armed forces.】

【(d)】(c)(1) For the purpose of this subsection, the term “technician” has the meaning given such term by section 8337(h)(1) of this title.

(2) Notwithstanding a contrary provision of this title or of the rules and regulations prescribed under this title for the administration of the competitive service, an individual who served for at least 3 years as a technician acquires a competitive status for transfer to the competitive service if such individual—

(A) is involuntarily separated from service as a technician other than by removal for cause on charges of misconduct or delinquency;

(B) passes a suitable noncompetitive examination; and

(C) transfers to the competitive service within 1 year after separating from service as a technician.

(d) *The Office of Personnel Management shall promulgate regulations on the manner and extent that experience of an individual in a position other than the competitive service, such as the excepted service (as defined under section 2103) in the legislative or judicial branch, or in any private or nonprofit enterprise, may be considered in making appointments to a position in the competitive service (as defined under section 2102). In promulgating such regulations OPM shall not grant any preference based on the fact of service in the legislative or judicial branch. The regulations shall be consistent with the principles of equitable competition and merit based appointments.*

* * * * *

SECTION 102 OF THE ETHICS IN GOVERNMENT ACT OF 1978

CONTENTS OF REPORTS

SEC. 102. (a) Each report filed pursuant to section 101 (d) and (e) shall include a full and complete statement with respect to the following:

(1)(A) * * *

(B) The source and type of income which consists of dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds \$200 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within:

(i) not more than \$1,000,

* * * * *

- (vii) greater than \$100,000 but not more than \$1,000,000, **[or**
- [(viii) greater than \$1,000,000.]**
- (viii) greater than \$1,000,000 but not more than \$5,000,000, or*
- (ix) greater than \$5,000,000.*

* * * * *

(8) The category of the total cash value of any interest of the reporting individual in a qualified blind trust, unless the trust instrument was executed prior to July 24, 1995 and precludes the beneficiary from receiving information on the total cash value of any interest in the qualified blind trust.

* * * * *

(d)(1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4), **[and (5)]** (5), and (8) of subsection (a) are as follows:

(A) * * *

* * * * *

(F) greater than \$500,000 but not more than \$1,000,000; **[and**

[(G) greater than \$1,000,000.]

- (G) greater than \$1,000,000 but not more than \$5,000,000;*
- (H) greater than \$5,000,000 but not more than \$25,000,000;*
- (I) greater than \$25,000,000 but not more than \$50,000,000; and*
- (J) greater than \$50,000,000.*

* * * * *

(e)(1) Except as provided in the last sentence of this paragraph, each report required by section 101 shall also contain information listed in paragraphs (1) through (5) of subsection (a) of this section respecting the spouse or dependent child of the reporting individual as follows:

(A) * * *

* * * * *

(F) For purposes of this section, categories with amounts or values greater than \$1,000,000 set forth in sections 102(a)(1)(B) and 102(d)(1) shall apply to the income, assets, or liabilities of spouses and dependent children only if the income, assets, or liabilities are held jointly with the reporting individual. All other income, assets, or liabilities of the spouse or dependent children required to be reported under this section in an amount or value greater than \$1,000,000 shall be categorized only as an amount or value greater than \$1,000,000.

* * * * *

SECTION 141 OF THE TRADE ACT OF 1974

SEC. 141. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

(a) * * *

(b)(1) The Office shall be headed by the United States Trade Representative who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rule-making power of the Senate, any nomination of the United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. The United States Trade Representative shall hold office at the pleasure of the President, shall be entitled to receive the same allowances as a chief of mission, and shall have the rank of Ambassador Extraordinary and Plenipotentiary.

* * * * *

(3) LIMITATION ON APPOINTMENTS.—A person who has directly represented, aided, or advised a foreign entity (as defined by section 207(f)(3) of title 18, United States Code) in any trade negotiation, or trade dispute, with the United States may not be appointed as United States Trade Representative or as a Deputy United States Trade Representative.

* * * * *

