PUBLIC CITIZEN

July 15, 2015 www.citizen.org

Financial Services Conflict of Interest Act

Outlining the need for increased revolving-door and reverse revolving-door legislation

Acknowledgments

This report was written by Craig Holman, Ph.D., government affairs lobbyist, and Emma Stein, researcher, Public Citizen's Congress Watch division, and edited by Lisa Gilbert, director, Public Citizen's Congress Watch division.

About Public Citizen

Public Citizen is a national non-profit organization with more than 400,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, worker safety, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.

Public Citizen's Congress Watch
215 Pennsylvania Ave. S.E
Washington, D.C. 20003
P: 202-546-4996
F: 202-547-7392
http://www.citizen.org

The problem of the revolving door, the movement of officials in a conflict of interest situation from government positions and into the same private sector they had previously regulated, is one of the most pernicious factors that erodes the public's trust in American government. As of April 2014, only 40 percent of American's trusted the government to do what was right a majority of the time.[1] The American people see the conflicts of interest and opportunities for corruption that are introduced as scores of officials leave government to work for and/or lobby for the industry that they used to oversee.[2] Federal examiners whose job it is to inspect large financial institutions, as well as the officials who supervise the examiners, routinely take jobs in the same industry and sometimes with the same banks once they revolve out of government, raising questions of partiality.[3] These former officials use their knowledge from years of public service to help banks influence agency rules, counter investigations of suspected misconduct, and win exemptions from federal law.[4]

This problem can also be seen in the movement of people from the private sector to positions of power within the government, known to some as "the reverse revolving door." President Obama's 2009 Ethics Executive Order 13490 applied strict restrictions for people going into and out of government and has made Obama's Administration arguably one of the cleanest in recent history. However, the executive order applies only to presidential appointees, so federal agencies continue to recruit Wall Street veterans with obvious conflicts of interest. Even still, some of these revolvers are presidential appointees who recuse themselves from official actions that directly and substantially affect their former employers. Alumni from Citigroup, for example, head the Treasury Department and Office of U.S. Trade Representatives.

Presidential appointees subject to the recusal requirement need to excuse themselves only from a "particular matter involving specific parties" – in other words, "contracts, grants,

[1] Gallup Poll, 2014.

[2] Center for Responsive Politics and Public Citizen, BANKING ON CONNECTIONS: FINANCIAL SERVICES SECTOR HAS DISPATCHED NEARLY 1,500 "REVOLVING DOOR" LOBBYISTS SINCE 2009 (June 3, 2010), http://bit.ly/1CzNg2H.; Megan R. Wilson, *Dodd-Frank army skips to K Street,* THE HILL (March 25, 2014), http://bit.ly/1glPQD9.; and Alan Zibel, *Consultants Snap Up Alumni of Consumer Watchdog Agency*, THE WALL STREET JOURNAL(July 3, 2013), http://on.wsj.com/1CzNve7.

[3] Matthew Boesler and Jeff Kearns, *'Revolving Door' Between Fed and Banks Spins Faster,* BLOOMBERG (January 30, 2015), http://bloom.bg/1CiUrBK [hereinafter Revolving Door Spins Faster].; Tom Braithwaite, Gina Chon, and Henny Sender, *Banking: Firefighting at the NY Fed,* FINANCIAL TIMES (December 4, 2014), http://on.ft.com/1FFLRMC.; and Shannon D. Harrington and Matthew Leising, *New York Fed Swaps Reformer Lubke Joins Goldman Sachs*, BLOOMBERG (December 14, 2010), http://bloom.bg/1FFLX71.

[4] Project On Government Oversight, DANGEROUS LIAISONS: REVOLVING DOOR AT SEC CREATES RISK OF REGULATORY CAPTURE (February 11, 2013), http://bit.ly/1GtXpWi.

licenses, product approval applications, investigations, [or] litigation" – if it is likely to affect a former employer or client. However, the definition of "particular matter involving specific parties" does not cover "rulemaking, legislation, or policy-making of general applicability." Some of these officials have even taken advantage of an ethics loophole that allows them to write industry-wide rules that benefit their former employer after recently lobbying the government on that industry's behalf.[5]

Other former Wall Street executives and lobbyists serve as senior economic policymakers and close aides to presidential appointees and members of Congress, and thus are not subject to the ethics executive order.[6] Nevertheless, these key players in the government and regulatory agencies yield considerable influence and can also be part and parcel of the capture of government by Wall Street. This is also why some employers, including Citigroup and JP Morgan Chase, have offered their employees large "golden parachute" bonuses if they are able to secure full time government employment at a high level.

Solving the problem of the revolving door is no easy task because of the overlap that exists between government and financial interests. A coalition of civic organizations is working hand-in-hand with members of Congress committed to passing an ethics reform package specifically for the financial services sector. The package will ensure that the ethics policies enacted by President Obama will last long after 2016, and to expand these policies to reach beyond presidential appointees. The Financial Services Conflict of Interest Act contains five distinct legislative sections that cover entering government service, serving in the public interest, and leaving government to return to the private sector. This report documents the nature of the problems that have been reported under each section in order to shine light on the importance of a strong conflict of interest and revolving door code covering financial services regulatory agencies.

SECTION 1: PROHIBITION OF BONUSES FOR GOVERNMENT SERVICE

A number of powerhouse Wall Street banks, including Goldman Sachs, JPMorgan, and Citigroup, have provided special financial rewards to their company executives who

---

[5] Project On Government Oversight, WRINKLES IN THE ETHICS RULES (February 11, 2013), http://bit.ly/1Jtc5TV.

[6] Stephanie Armour and Shayndi Raice, *Citi Alumni Are Force in Nation's Capital,* THE WALL STREET JOURNAL, (February 25, 2014), http://on.wsj.com/1CZxX6R.; Ted Kaufman, *To Police Banks, Obama Spins Revolving Door To Bring In More of Wall Street's Own,* FORBES(July 23, 2013), http://onforb.es/1CzO6fR.; and Jean Eaglesham and Jessica Holzer, *Tangle of Ties Bind SEC's Top Ranks,* THE WALL STREET JOURNAL (February 4, 2013), http://on.wsj.com/1FFMdD3.

become senior government officials, known as the "golden parachute."[7] Recently appointed officials to the Department of the Treasury, the State Department, and other agencies cashed in on rewards when they joined the Obama administration.[8] Current Treasury Secretary Jack Lew received an exit package worth over $1 million from Citigroup shortly before joining the Obama administration in 2009. His exit package explicitly stated that the bonus was contingent on his securing a high-level position within a government regulatory body.[9] Imagine a company paying its employees to leave. This odd phenomenon highlights the value to Wall Street of getting senior and loyal employees posted in the financial services regulatory agencies.

"Only in the Wonderland of Wall Street logic could one argue that this looks like anything other than a bribe."

—FDIC Chair Sheila Bair (December 2014)

When news of Lew's golden parachute originally broke, it was touted by Wall Street as being a singular case. It quickly became apparent that the Lew case was not unique. These bonuses recently received more public attention when Antonio Weiss, a former investment banker at Lazard who now serves as counselor to Mr. Lew, acknowledged in financial disclosures that he would be paid $21 million in unvested income and compensation upon exiting Lazard for a full-time job in government.[10]

Stanley Fischer, currently the vice chair of the Federal Reserve, had a similar clause in his Citigroup employment contract. Citigroup also paid U.S. Trade Representative Michael Froman over $4 million in exit payments when he left for the Obama Administration.[11] Morgan Stanley's executives have been eligible to receive a bonus — one that they would

[7] Jonathan Weil, *Citigroup's Man Goes to the Treasury Department*, BLOOMBERG (February 22, 2013), http://bloom.bg/1CuFYNS.; Project On Government Oversight, BIG BUSINESSES OFFER REVOLVING DOOR REWARDS (March 21, 2013), http://bit.ly/1clXQEq.; and Letter from Craig Holman and Bartlett Naylor, Congress Watch, Public Citizen, to the Honorable Eric Holder, Attorney General, Department of Justice, and the Honorable Walter Shaub, Director, U.S. Office of Government Ethics, requesting formal review of contract between Citigroup and Jack Lew, February 27, 2013. http://bit.ly/1IOenvL

[8] Lee Fang, *Obama Admin's TPP Trade Officials Received Hefty Bonuses From Big Banks,* REPUBLIC REPORT (February 17, 2014), http://bit.ly/1JtcMwn.; and Susanne Craig, *Windfalls for Wall Street Executives Taking Jobs in Government,* NEW YORK TIMES: DEALBOOK (March 21, 2013), http://nyti.ms/1CmBI3K.

[9] Lee Fang, *The Reverse Revolving Door: How Corporate Insiders are Rewarded Upon Leaving Firms for Congress,* THE NATION (May 4, 2013), http://bit.ly/1Lwy0vB [hereinafter Reverse Revolving Door].

[10] David Dayen, *Wall Street Pays Bankers to Work in Government and it Doesn't Want Anyone to Know,* NEW REPUBLIC (February 4, 2015), http://bit.ly/1v1nHp4 [hereinafter Wall Street Pays].

[11] *Id.*

ordinarily forfeit for leaving the company prematurely — if they go to work for a "governmental department or agency, self-regulatory agency or other public service employer," according to a company pay-plan filed in 2012.[12]

The same can be said of The Blackstone Group, JPMorgan Chase, Goldman Sachs and Northern Trust; all four companies offer stock awards and other types of compensation to employees who choose to accept a full-time government position.[13] Goldman Sachs' employment policy, found in filings from the Security and Exchange Commission (SEC), even offers "a lump cash payment" for government service.[14] "Only in the Wonderland of Wall Street logic could one argue that this looks like anything other than a bribe," wrote Sheila Bair, former Chair of the Federal Deposit Insurance Corporation.[15]

Craig Aaron, president and CEO of Free Press, stated that he couldn't see how "a bonus equal to or several times a person's salary as a government employee wouldn't impact [their] judgment."[16] Richard Painter, the chief ethics counsel to President George Bush, wrote that he sees these corporate bonuses as a "great strategy" for planting the company's alumnus in key government jobs so that the staffers are able to have influence over matters that affect their previous employers. The bonuses are sometimes defended as acting as a supplementary income so that people are able to leave their much higher paying private sector jobs to work in government agencies in the first place.[17] But the impact is precisely the same: company executives are encouraged to leave the company and take over a financial services regulatory agency and, with no small level of expectation, that extra bonus will buy some loyalty from the new regulator, often called "regulatory capture." The golden parachute must be ended for the integrity of financial regulatory agencies.

There are several ways to end the golden parachute. The Financial Services Conflict of Interest Act opts to prohibit any bonus from a company specifically awarded for government service. Companies, of course, could still offer bonuses to their employees, so long as that bonus is not contingent on taking government service. It is very unlikely any Wall Street firm would structure their general bonus system to reward those who leave

---

[12] Michael Smallberg, BIG BUSINESSES OFFER REVOLVING DOOR*,* Project on Government Oversight (March 21, 2013), http://bit.ly/1clXQEq.

[13] *Id.*

[14] Wall Street Pays.

[15] Sheila Bair, *Obama's treasury pick is another bank watchdog straight from Wall Street*, FORTUNE, December 5, 2014. http://for.tn/1tRPcjW

[16] Reverse Revolving Door.

[17] Reverse Revolving Door.

prematurely, or even those who leave to work for a competitor. By prohibiting the practice for these cases, the problem of a special golden parachute for those entering government service would come to an end.

SECTION 2: RESTRICTIONS ON THE REVERSE REVOLVING DOOR

The Obama Administration has been plagued with far fewer conflict of interest scandals than the administrations of Presidents George W. Bush or Bill Clinton at least in part because of his 2009 Executive Order 13490 that set restrictions on presidential appointees entering government through the reverse revolving door. Thus far President Obama has had only one major conflict of interest scandal, which involved Terence F. Flynn, one of the five members of the National Labor Relations Board in 2012. Flynn allegedly used his position of power to feed information back to his previous employers, the National Association of Manufacturers.[18]

According to data compiled and analyzed by Public Citizen, the number of Reverse Revolvers that have been appointed by the past three presidents is documented. Public Citizen looked at 137 of the most influential positions within the executive branch and the people who have held those positions over the past two decades. These presidential appointees have a great deal of autonomy in decision-making and are entrusted with a high degree of regulatory and contract-granting authority. This means that there can be large monetary and political consequences when conflicts of interest are unchecked in these high-level offices.

Public Citizen researchers investigated each position-holder's employment history for the two years prior to their appointment to see if they would be considered Reverse Revolvers under President Obama's definition. If the person had worked for, lobbied on behalf of, or represented the same industry during the previous two years, they would be considered Reverse Revolvers because of the perceived conflict of interest. Stefan Selig, the Executive Vice Chairman of Global Corporate & Investment Banking at Bank of America, who became the Undersecretary for International Trade under President Obama, is an example of a Reverse Revolver who has a significant conflict of interest.

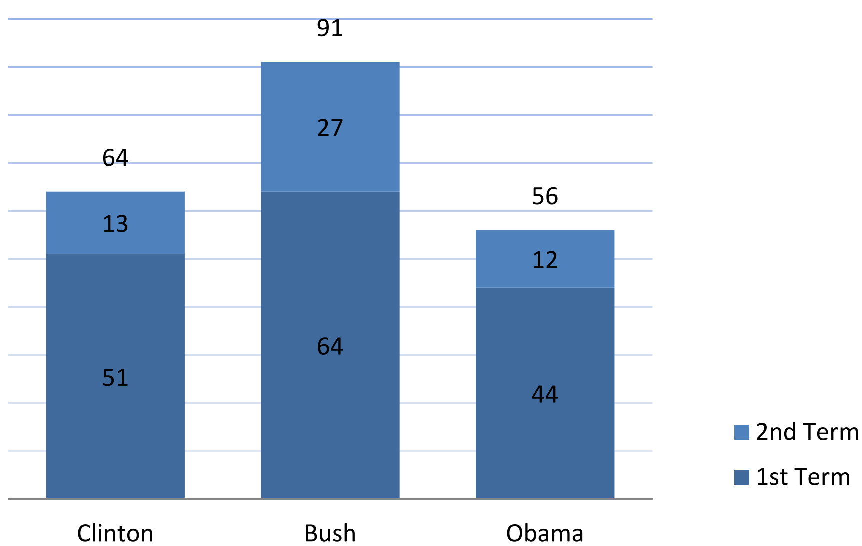
Obama included the reverse revolving door provision in Executive Order 13490 in an effort to prevent appointees with conflicts of interest from participating in matters directly and substantially relating to their former employer or clients. The executive order created an

[18] Kevin Bogardus, *NLRB Member caught in Ethics Probe Resigns*, THE HILL (May 27, 2012), http://bit.ly/1HxNX5r.

ethics pledge wherein appointees pledge to abstain from matters relating to their previous employer or clients within two years following their appointment. Executive Order 13490 requires appointees to pledge under oath not to participate in matters that might pose a direct and substantial conflict of interest. It is inevitable that many appointees will have such conflicts of interests – a Treasury Secretary, for example, will likely come from the financial services industry – but the objective of the executive order is to manage these conflicts of interest so they do not unduly influence official actions.

Upon examining the 137 high-level Executive Branch positions, it is evident that President Obama has appointed somewhat fewer people that pose a reverse revolving door conflict of interest than his two predecessors. Obama appointed 44 people who could be categorized as Reverse Revolvers during his first term, and thus far he has appointed 12 such individuals during his second term, for a total of 56 appointees who have potential conflicts of interest between their governmental position and the industries they oversee. President Clinton appointed 51 Reverse Revolvers during his first term and 13 during his second term, for a total of 64 Reverse Revolvers. And President Bush made 64 reverse revolving door appointments during his first term and 27 during his second term, for a total 91 Reverse Revolvers (*see* Figure 1).

Figure 1. Number of Reverse Revolvers by Administration



More importantly, however, is the behavior of these Reverse Revolvers. Under previous administrations, appointees could, and often did, take official actions that directly and substantially benefitted former employers or clients. Under the Obama administration, Reverse Revolvers are required to recuse themselves from such official actions. While the reverse revolving door phenomenon continues to exist under the Obama Administration the conflicts of interest inherent in the practice are managed to minimize abuses.

Though some might say Obama has relied too heavily on representatives from Wall Street to guide his financial services policies, the ethics pledge has helped prevent appointees from rewarding their former firms. Evidence presented by the *Wall Street Journal* gives a compelling case study of conflicts of interest in the SEC and the way that President Obama's 2009 ethics executive order has helped manage these conflicts. All five board members, including Chairwoman Mary Jo White, have conflicts of interest with several financial institutions, including J.P. Morgan Chase and Bank of America. The new rules put into place by Executive Order 13490 made it so that SEC commissioners must abstain from votes that directly and substantially impact their previous employers within the past two years (and some choose to abstain from votes regarding their previous employers within the past 5-10 years). The ethics rules are "critically important, as is avoiding even the appearance of a conflict of interest," said former SEC Chairwoman Mary Schapiro, who had to recuse herself from at least four dozen enforcement actions because of conflicts of interest.[19]

Unfortunately, the ethics pledge applies only to presidential appointees (though agencies may extend the recusal requirements beyond appointees). In recent years, the SEC has become ground zero in the revolving door debate. In addition to many of the commissioners coming from Wall Street – even though their conflicts of interest are managed by the ethics pledge – senior staffers tend to come from and go to major Wall Street firms as well, sometimes without any comparable recusal requirement.

Obama's ethics executive order additionally bars the appointment of registered lobbyists to agencies that they had lobbied within the past two years, unless granted a waiver. President Obama has been cautious about whom he grants these waivers to in order to avoid public outcry; he has granted only six waivers since he signed the ethics executive order in 2009. Obama even barred Defense Secretary Robert Gates from hiring a highly qualified former lobbyist in an effort to abide by the spirit of the pledge.[20]

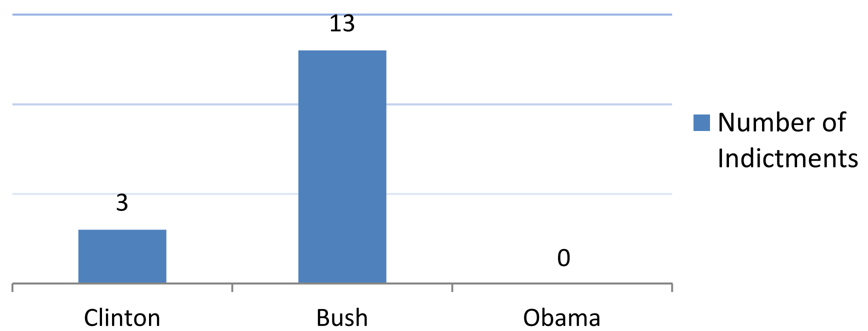
Whatever problems or shortcomings may exist with the Obama Administration, conflicts of interest is not a major one of them. Somewhat indicative of the effectiveness of Obama's ethics Executive Order in managing conflicts of interest is the number of criminal

[19] Jean Eaglesham and Jessica Holzer, *Tangle of Ties Bind SEC's Top Ranks,* WALL STREET JOURNAL (February 4, 2013), http://on.wsj.com/1FFMdD3.

[20] Juliet Eilperin, *Obama Promised to Curb the Influence of Lobbyists. Has he succeeded?* WASHINGTON POST (March 22, 2015), http://wapo.st/1LO6c8w.

indictments across administrations. While there have been no criminal indictments of executive branch officials in the Obama Administration, there have been 13 such indictments of officials in the Bush Administration and three indictments in the Clinton Administration (*see* Figure 2).

Figure 2.
Executive Branch Indictments Per Administration



The Financial Services Conflict of Interest Act would apply to senior financial service regulators, including those employed by the Comptroller of Currency, Federal Reserve, Bureau of Consumer Financial Protection, the Securities and Exchange Commission and others. The Act would prohibit these regulators from taking any official action that directly and substantially benefits their former private sector employers or clients over the previous two years beyond benefits provided to the public generally. When such a conflict of interest arises with a former private sector employer or client, the regulator shall be recused from participating in the official action.

Under the Act, a financial services supervisor/regulator seeking private sector employment shall notify the Office of Government Ethics (OGE) of such negotiations, which shall then be made public record. The supervisor/regulator must then be recused from taking official actions involving all such potential employers in which negotiations for future employment are taking place, unless OGE issues a waiver.

SECTION 3. ADDITIONAL PROVISIONS RELATING TO PROCUREMENT OFFICIALS

The best example of the need for additional legislation regarding procurement officials is the case of former Pentagon procurement official turned Boeing Deputy General Manager for Missile Defense Systems, Darleen Druyun. A scandal followed her move to the private sector once federal prosecutors realized that Druyun was now officially an employee of the company whose interests she "so ardently championed while she was supposedly representing the interests of the taxpayers."[21] Druyun was one of the major proponents of a large deal with Boeing that was estimated to be worth nearly $30 billion. Subsequent disclosures showed that she was negotiating the terms of future Boeing employment while she was still handling the Boeing contracts.[22]

Several other procurement officials also spun through the revolving door to companies for which they previous procured federal contracts. The Project on Government Oversight outlines cases from the end of the Clinton Administration and the early Bush Administration, including two involving procurement officials moving to high level positions within Lockheed Martin, an airplane and ship manufacturer for the U.S. navy, and the federal government's top contractor. Bobby Floyd and Peter Aldridge both approved contracts for Lockheed Martin before accepting positions on their board of directors. Aldridge ensured that the Department of Defense would continue funding the development of their large F-22 fighter jets, and Floyd worked on an investigation that helped free the company of any blame for a fatal crash in 1997. Floyd was already in discussions with the company about employment while he was working on the investigation that ended up saving the company millions of dollars in legal fees. Aldridge and Floyd both agreed to employment contracts with Lockheed Martin just two months after granting them contracts.[23]

This problem still exists today. In 2014, a scandal emerged with the Deputy Chief Procurement Officer at the U.S Department of Veterans Affairs, Susan Taylor. It was discovered that she "engaged in a conflict of interest when she improperly acted as an agent of FedBid Inc. (a privately owned online marketplace) in matters before the Government, improperly disclosed non-public VA information to unauthorized persons, [and] misused her position and VA resources for private gain."[24] This personifies the fears of the Revolving Door Working Group of 2005, who wrote that when a federal official is

---

21 Scott H. Amey J.D, THE POLITICS OF CONTRACTING, Project on Government Oversight (POGO), June 29, 2004, http://bit.ly/1y9af9r

22 *Id.*

23 Stuart Nibley, *Jamming the Revolving Door,* The Procurement Lawyer, Vol. 41, No. 4, Summer 2006, http://bit.ly/1HW1GyZ

24 Matthew York, *Veterans Affairs Procurement Officer "Retires" Amid Corruption Scandal,* CPO RISING, October 20, 2014, http://bit.ly/1Iwxg9T

looking forward to a new position in the private sector, he or she "may manipulate a contract or regulatory process to benefit [that] specific future employer."[25]

While federal conflicts of interest law bars procurement officials from accepting employment with a company that they awarded a federal contract of $10 million or more within one year after the award, the law and regulations are so narrowly construed as to make evasion rather common.[26] A procurement officer is allowed to accept employment immediately with a "division or affiliate" of the contractor as long as the entity "does not produce the same or similar products or services" as the barred contracting division. In other words, a procurement official can, for example, immediately accept employment with a contractor's audit division even if the official had recently awarded a federal contract to a different division of the same firm.

The Financial Services Conflict of Interest Act would expand the current restriction by banning procurement officers from accepting employment with any division, affiliate or subcontractor of a company that received a contractual arrangement over the past two years under the direction of the procurement officer.

SECTION 4. SLOWING THE REVOLVING DOOR FROM FINANCIAL SERVICES REGULATORY AGENCIES INTO PRIVATE-SECTOR REPRESENTATIONAL ACTIVITIES

The regular revolving door in the financial services sector – moving from government service into lobbying the government on behalf of private business – is also spinning out of control.

According to a 2005 study conducted by the Center for Public Integrity, about a quarter of senior level administrators left public service for lobbying careers between 1998 and 2004, including 42 former agency heads.[27] At least 17 top Clinton staffers took lobbying jobs on behalf of corporate clients, including former Deputy Secretary of Treasury Stuart Eizenstat and former Director of White House Legislative Affairs Charles Brain. Another 10 joined law firms that actively lobby the federal government, including three former Cabinet

---

[25] Revolving Door Working Group, A MATTER OF TRUST: HOW THE REVOLVING DOOR UNDERMINES PUBLIC CONFIDENCE IN GOVERNMENT, AND WHAT TO DO ABOUT IT, October 2005, Pg. 14, http://bit.ly/1bFdkgK

[26] 41 U.S.C. §423(d)(2); and 5 C.F.R. §§2635.402(c)(1)-(2), 2653.604(b)-(c).

[27] Elizabeth Brown, MORE THAN 2,000 SPIN THROUGH THE REVOLVING DOOR, Center for Public Integrity (2005), http://bit.ly/1IOflrQ [hereinafter More than 2,000 Spin].

members: Agriculture Secretary Dan Glickman, Interior Chief Bruce Babbitt, and Transportation Secretary Rodney Slater.[28]

"Of the 64 posted WKSI (Well-known Seasoned Issuer) waivers granted from 2006 through 2012, more than half were requested by SEC alumni."
—*Michael Smallberg, Project on Government Oversight (February 2013)*

A 2009 report from Public Citizen found that more than 900 ex-government officials, including 70 former members of Congress, have lobbied for the financial services sector. These officials move from government service to lobbying for companies like Visa, Goldman Sachs, the Private Equity Council and Citigroup, among others.[29] The revolving door from financial regulatory agencies to the private sector is problematic for three reasons:

1. Financial service regulators may be influenced by the promise of a lucrative lobbying job in the private sector with a bank or investment firm seeking to shape financial services regulations while the person is still in office.
2. Public officials-turned-lobbyists will have access and connections to decision makers that are not available to others.
3. At a time when the nation is losing confidence in the integrity of our financial system, the appearance of the undue influence of lobbyists "casts an even darker cloud on whether our government is up to the task of properly regulating the financial services industry."[30]

A recent scandal that highlights the first in the list of problems focuses on Mike Silva, one of the Fed's leading regulators for Goldman Sachs in 2012. He told colleagues that he was going to press Goldman hard on a deal that they were making with a Spanish bank, but in the end he behaved in a very timid manner. Then just one year later, Silva left the New York Fed to join GE Capital. David Beim, who has written several reports about the Fed's regulatory practices, asked "how could the possibility of an opportunity like this not have been in the back of his mind when making decisions on how tough to be with banks?"[31]

---

[28] Revolving Door Working Group, A MATTER OF TRUST, pg. 43.

[29] Public Citizen, CASHING IN: MORE THAN 900 EX-GOVERNMENT OFFICIALS, INCLUDING 70 FORMER MEMBERS OF CONGRESS, HAVE LOBBIED FOR THE FINANCIAL SERVICES SECTOR IN 2009 (November 19, 2009), http://bit.ly/1Gu07uN.

[30] Craig Holman, *A Matter of Trust Broken: The Revolving Door into the Financial Services Industry,* CITIZEN VOX (November 2009), http://bit.ly/1aaWRX2.

[31] Greg Robb, *The Fed: Congress Should End Revolving Door Between Fed Bank Examiners and Wall Street*, MARKET WATCH (November 21, 2014), http://on.mktw.net/1Iwxuhn.

The revolving door problem becomes compounded when former employees of financial service regulatory agencies leave public service to work as lobbyists and strategic consultants to influence governmental actions on behalf of private banks and companies. They may use their knowledge of the inner-workings of the SEC, for example, to further the goals of their private sector employers. Most recently the Swiss bank UBS AG was granted Well-known Seasoned Issuer (WKSI) status. The company was represented by SEC alumni. This raises the specter that SEC alumni were able to obtain waivers and settle charges for the bank because they understood the mechanism behind it; many of them even helped to codify the WKSI system. In fact, of the 64 WKSI waivers granted to banks from 2006 to 2012, more than half were requested by SEC alumni.[32]

SEC alumni have unfair insight into the workings of the commission which has allowed banks like UBS AG to unduly influence their regulators. Because of the alumni's connection to the SEC, the bank was able to "mis[lead] tens of thousands of customers about the risks of investing in products" and they were able to get off of the hook with virtually no repercussions.[33] This highlights how indispensable these former government officials are to Washington's lobbying firms because of the unique understanding of government and the connections to key decision-makers that "only an insider can develop."[34] Their prior service in government gives them a leg-up on other lobbyists, and often allows them to get preferential treatment for their current employers. This does not bode well for a financial industry that is often accused of illegality and cheating the system.

Under current law former officials are allowed to engage in "lobbying activity" during their cooling-off period after leaving government service. They simply are prohibited from making a "lobbying contact" with their former colleagues in government. They are allowed to develop lobbying strategy, organize the lobbying team, and supervise the lobbying effort; "they merely are prohibited from picking up the telephone to call a former colleague."[35] These officials' ability to help organize and coordinate lobbying efforts has much the same impact as direct lobbying – they are able to use their connections and knowledge to impact their former bureau and colleagues.

[32] Michael Smallberg, SEC ALUMNI HELP FIRMS GET A BREAK, Project on Government Oversight (February 11, 2013) http://bit.ly/1GPQzsy [hereinafter SEC Alumni].

[33] Smallberg, SEC ALUMNI.

[34] More than 2,000 Spin.

[35] Public Citizen, *Testimony of Craig Holman Before the House Committee on Oversight and Government Reform on the Subject of the Executive Branch Reform Act of 2007*at 3(Feb. 13, 2007), http://bit.ly/1OeRXYe.

For most executive branch officials the cooling off period banning lobbying contacts is one year. For very senior officials, the cooling off period is two years. The one-year period is too short. According to the Center for Public Integrity, 82 percent of revolving door lobbyists have reported lobbying their former agency or government office since becoming a lobbyist one year later.[36] With very little turnover in a short year, this means they are directly lobbying their former colleagues and friends.

The Financial Services Conflict of Interest Act would apply the revolving door restrictions both to "lobbying activity" as well as "lobbying contacts." It would expand the cooling off period from one year to two years and prevent former officials from being involved in any lobbying activity at all during that time. The two-year cooling off period will further slow the impact of the revolving door and make this residual influence less pronounced.

SECTION 5. RESTRICTIONS ON FEDERAL EXAMINERS AND SUPERVISORS OF FINANCIAL INSTITUTIONS

In 2011, Columbia University finance professor David Beim conducted a study on bank examination practices and later testified before Congress. Beim found an excessively close relationship between Federal Reserve Bank examiners and big banks. He concluded that a large portion of examiners had been captured by the interests of big banks and commented that "bright examiners in mid-career all harbor some hope they will be offered a good job with one of the regulated companies" because of the higher salaries offered by banks.[37] This creates a powerful incentive for examiners as well as regulators to behave in a deferential manner toward these banks so that they are well regarded enough to be offered a job in the future.[38]

This conflict of interest contributes to a lack of reporting and a lack of questioning the actions of big banks within the Federal Reserve. Beim observed that many bank examiners did not call attention to problems that they saw with the activities of Goldman Sachs, for example – instead they called upon a precedent of "no objection."[39] Much of this, he believed, stemmed from the examiners apprehension to make enemies within the financial industry that they hoped to enter in the future. One New York Fed employee, a supervisor,

---

36 More than 2,000 Spin.

37 *Id.*

38 *Id.*

39 Jake Bernstein, *Inside the New York Fed: Secret Clash*, PROPUBLICA (September 26, 2014), http://bit.ly/1rxJTso.

described his experience in terms of regulatory capture when he stated that "within three weeks on the job, [he] saw the capture set in."[40]

Conflicts of interest like these were evident at a Nov. 21, 2014, Senate hearing when Carmen Segarra, a former New York Fed examiner said that her colleagues were too deferential to Goldman Sachs.[41] Segarra captured 40 hours of audio recording during her tenure as an examiner that she believed proved that her colleagues were not properly reporting on the practices they witnessed. Instead, they were loyally following the actions of the bank.

These problems have arisen despite a current law on the books designed to mitigate them. Similar to procurement officials, bank examiners are subject to unique conflict of interest laws. Under the Federal Deposit Insurance Act, bank examiners for the Fed are prohibited from accepting any compensated employment with the private banks they examined for one year after leaving federal service.[42] This restriction applies to the senior examiner who exercised "continuing, broad responsibility for the examination" of a depository institution or holding company. Most bank examiners are responsible for just a small handful of banks. The restriction does not apply to the supervisors of bank examiners, such as Mike Silva discussed above.

The Financial Services Conflict of Interest Act would expand the prohibition of bank examiners accepting employment with any financial institution they oversaw from one year to two years after leaving public service. The prohibition also applies to accepting employment with any firm or trade association that represents the financial institution. It also extends the prohibition to supervisors of bank examiners. Supervisors responsible for overseeing more than five financial institutions would be prohibited from accepting employment with any institution designated as a Systemically Important Financial Institution for two years after leaving public service.

CONCLUSION

The Financial Services Conflict of Interest Act provides necessary and sweeping conflict of interest reforms upon the financial services sector – a sector that is uniquely plagued with the scandals and corruption associated with the revolving door and lavish salaries and bonuses. These ethics reforms for financial services regulators are desperately needed to ensure that the reforms of the industry made since 2009 do not go to waste. Without

[40] *Id.*

[41] Revolving Door Spins Faster.

[42] 12 U.S.C. §1820(k).

effective conflict of interest and revolving door restrictions on regulators, big banks are likely to whittle away at the reforms that have been achieved so far.

President Obama's ethics Executive Order 13490 provides a framework for many of the principles that can help restore integrity to the financial services regulatory system. The executive order has caused the Obama Administration to be among the most ethical in recent years, and that precedent needs to be continued, especially for the troubled financial services sector.

Now is our chance to slow down the revolving door in the financial services sector and work toward ensuring that conflicts of interest within our financial services regulatory agencies are reined in to the greatest extent possible. By working to ban golden parachutes, prevent regulatory capture, strengthen restrictions on procurement officers, slow the revolving door from regulatory agencies to the private sector, and expand the restrictions on private sector employment by former bank examiners and their supervisors, the Financial Services Conflict of Interest Act provides the reforms necessary to ensure fewer conflicts of interest in the regulation of financial services.