

110TH CONGRESS
1ST SESSION

H. R. 984

To provide for reform in the operations of the executive branch.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 2007

Mr. WAXMAN (for himself and Mr. TOM DAVIS of Virginia) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To provide for reform in the operations of the executive branch.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Executive Branch Re-
5 form Act of 2007”.

6 **SEC. 2. REQUIREMENTS RELATING TO SIGNIFICANT CON-**
7 **TACTS.**

8 (a) IN GENERAL.—The Ethics in Government Act of
9 1978 (5 U.S.C. App. 4) is amended by adding at the end
10 the following new title:

1 **“TITLE VI—EXECUTIVE BRANCH**
2 **DISCLOSURE OF SIGNIFICANT**
3 **CONTACTS**

4 **“SEC. 601. RECORDING AND REPORTING BY CERTAIN EXEC-**
5 **UTIVE BRANCH OFFICIALS OF SIGNIFICANT**
6 **CONTACTS MADE TO THOSE OFFICIALS.**

7 “(a) IN GENERAL.—Not later than 30 days after the
8 end of a calendar quarter, each covered executive branch
9 official shall make a record of, and file with the Office
10 of Government Ethics a report on, any significant contacts
11 during the quarter between the covered executive branch
12 official and any private party relating to an official govern-
13 ment action. If no such contacts occurred, each such offi-
14 cial shall make a record of, and file with the Office a re-
15 port on, this fact, at the same time.

16 “(b) CONTENTS OF RECORD AND REPORT.—Each
17 record made, and each report filed, under subsection (a)
18 shall contain—

19 “(1) the name of the covered executive branch
20 official;

21 “(2) the name of each private party who had a
22 significant contact with that official; and

23 “(3) for each private party so named, a sum-
24 mary of the nature of the contact, including—

25 “(A) the date of the contact;

1 “(B) the subject matter of the contact and
2 the specific executive branch action to which the
3 contact relates; and

4 “(C) if the contact was made on behalf of
5 a client, the name of the client.

6 “(c) WITHHOLDING FOIA-EXEMPT INFORMATION.—
7 This section does not require the filing with the Office of
8 Government Ethics of information that is exempt from
9 public disclosure under section 552(b) of title 5, United
10 States Code (popularly referred to at the “Freedom of In-
11 formation Act”).

12 **“SEC. 602. AUTHORITIES AND RESPONSIBILITIES OF OF-
13 FICE OF GOVERNMENT ETHICS.**

14 “(a) IN GENERAL.—The Director of the Office of
15 Government Ethics shall—

16 “(1) promulgate regulations to implement this
17 title, provide guidance and assistance on the record-
18 ing and reporting requirements of this title, and de-
19 velop common standards, rules, and procedures for
20 compliance with this title;

21 “(2) review, and, where necessary, verify the ac-
22 curacy, completeness, and timeliness of reports;

23 “(3) develop filing, coding, and cross-indexing
24 systems to carry out the purpose of this title, includ-
25 ing—

1 “(A) a publicly available list of all private
2 parties who made a significant contact; and

3 “(B) computerized systems designed to
4 minimize the burden of filing and maximize
5 public access to reports filed under this title;

6 “(4) make available for public inspection and
7 copying at reasonable times the reports filed under
8 this title;

9 “(5) retain reports for a period of at least 6
10 years after they are filed;

11 “(6) compile and summarize, with respect to
12 each reporting period, the information contained in
13 reports filed with respect to such period in a clear
14 and complete manner;

15 “(7) notify any covered executive branch official
16 in writing that may be in noncompliance with this
17 title; and

18 “(8) notify the United States Attorney for the
19 District of Columbia that a covered executive branch
20 official may be in noncompliance with this title, if
21 the covered executive branch official has been noti-
22 fied in writing and has failed to provide an appro-
23 priate response within 60 days after notice was
24 given under paragraph (7).

1 **“SEC. 603. PENALTIES.**

2 “(a) VIOLATION.—Whoever violates this title shall be
3 subject to administrative sanctions, up to and including
4 termination of employment.

5 “(b) DELIBERATE ATTEMPT TO CONCEAL.—Who-
6 ever deliberately attempts to conceal a significant contact
7 in violation of this title shall upon proof of such deliberate
8 violation by a preponderance of the evidence, be subject
9 to a civil fine of not more than \$50,000, depending on
10 the extent and gravity of the violation.

11 **“SEC. 604. DEFINITIONS.**

12 “In this title:

13 “(1) COVERED EXECUTIVE BRANCH OFFI-
14 CIAL.—The term ‘covered executive branch official’
15 means—

16 “(A) any officer or employee serving in a
17 position in level I, II, III, IV, or V of the Exec-
18 utive Schedule, as designated by statute or Ex-
19 ecutive order;

20 “(B) any member of the uniformed serv-
21 ices whose pay grade is at or above O–7 under
22 section 201 of title 37, United States Code;

23 “(C) any officer or employee serving in a
24 position of a confidential, policy-determining,
25 policy-making, or policy-advocating character

1 described in section 7511(b)(2)(B) of title 5,
2 United States Code;

3 “(D) any noncareer appointee, as defined
4 by section 3132(a)(7) of title 5, United States
5 Code; and

6 “(E) any officer or employee serving in a
7 position of a confidential, policy-determining,
8 policy-making, or policy advocating character,
9 or any other individual functioning in the ca-
10 pacity of such an officer or employee, in the Ex-
11 ecutive Office of the President or the Office of
12 the Vice President, but does not include the
13 President or Vice President or the chief of staff
14 of the President or Vice President.

15 “(2) SIGNIFICANT CONTACT.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), the term ‘significant contact’
18 means oral or written communication (including
19 electronic communication) that is made by a
20 private party to a covered executive branch offi-
21 cial in which such private party seeks to influ-
22 ence official action by any officer or employee
23 of the executive branch of the United States.

24 “(B) EXCEPTION.—The term ‘significant
25 contact’ does not include any communication

1 that is an exception to the definition of ‘lob-
2 bying contact’—

3 “(i) under clauses (i) through (vii) or
4 clauses (ix) through (xix) of subparagraph
5 (B) of paragraph (8) of section 3 of the
6 Lobbying Disclosure Act of 1995 (2 U.S.C.
7 1602(8)(i)–(vii) or (ix)–(xix)); or

8 “(ii) with respect to publically avail-
9 able information only, under clause (viii) of
10 subparagraph (B) of paragraph (8) of sec-
11 tion 3 of the Lobbying Disclosure Act of
12 1995 (2 U.S.C. 1602(8)(viii)).

13 “(3) PRIVATE PARTY.—The term ‘private party’
14 means any person or entity, but does not include a
15 Federal, State, or local government official or a per-
16 son representing such an official.”.

17 (b) EFFECTIVE DATE.—

18 (1) IN GENERAL.—Title VI of the Ethics in
19 Government Act of 1978, as added by this section,
20 takes effect 1 year after the date of the enactment
21 of this Act, except as provided in paragraph (2).

22 (2) INITIAL REGULATIONS.—The initial regula-
23 tions required by section 602 of that Act shall be
24 promulgated—

1 (A) in draft form, not later than 270 days
2 after the date of the enactment of this Act; and

3 (B) in final form, not later than 1 year
4 after the date of the enactment of this Act.

5 **SEC. 3. REQUIREMENTS RELATING TO STOPPING THE RE-**
6 **VOLVING DOOR.**

7 The Ethics in Government Act of 1978 (5 U.S.C.
8 App. 4) is amended by adding at the end the following
9 new title:

10 **“TITLE VII—STOPPING THE**
11 **REVOLVING DOOR**

12 **“SEC. 701. TWO-YEAR COOLING-OFF PERIOD FOR PERSONS**
13 **LEAVING GOVERNMENT SERVICE.**

14 “(a) IN GENERAL.—For a period of two years after
15 the termination of his employment, a covered executive
16 branch official—

17 “(1) shall not engage in any conduct that would
18 be prohibited under subsection (c) of section 207 of
19 title 18, United States Code, if it occurred within
20 one year after the termination of his employment;
21 and

22 “(2) shall not, if his position is described in
23 subsection (d)(1) of section 207 of title 18, United
24 States Code, engage in any conduct that would be
25 prohibited under subsection (d) of section 207 of

1 title 18, United States Code, if it occurred within
2 one year after the termination of his employment.

3 “(b) NO EFFECT ON SECTION 207.—This section
4 does not expand, contract, or otherwise affect the applica-
5 tion of any waiver or criminal penalties under section 207
6 of title 18, United States Code.

7 **“SEC. 702. PROHIBITION ON NEGOTIATION OF FUTURE EM-**
8 **PLOYMENT.**

9 “(a) PROHIBITION.—A covered executive branch offi-
10 cial shall not participate in any official matter in which,
11 to the official’s knowledge, a person or organization with
12 whom the official is negotiating or has any arrangement
13 concerning prospective employment has a financial inter-
14 est, unless a waiver has been granted under subsection (b).

15 “(b) WAIVERS ONLY WHEN EXCEPTIONAL CIR-
16 CUMSTANCES EXIST.—A waiver to subsection (a) is not
17 available, and shall not be granted, to any individual ex-
18 cept in a case which the Government official responsible
19 for the individual’s appointment as a covered executive
20 branch official determines that exceptional circumstances
21 exist. Whenever such a determination is made, the Direc-
22 tor of the Office of Government Ethics shall review the
23 circumstances relating to the determination, and the wai-
24 ver shall not take effect until the date on which the Direc-

1 tor certifies in writing that exceptional circumstances
2 exist.

3 **“SEC. 703. COOLING-OFF PERIOD FOR CERTAIN PERSONS**
4 **ENTERING GOVERNMENT SERVICE.**

5 “(a) IN GENERAL.—A covered executive branch offi-
6 cial shall not participate in any particular matter involving
7 specific parties that would affect the financial interests of
8 a covered entity.

9 “(b) WAIVER.—An agency’s designated ethics officer
10 may waive the prohibition in subsection (a) with respect
11 to a covered executive branch official of that agency upon
12 a determination that the relationship between the covered
13 executive branch official and the covered entity is not so
14 substantial as to be deemed likely to affect the integrity
15 of the services that the Government may expect from the
16 official. Whenever such a determination is made, the Di-
17 rector of the Office of Government Ethics shall review the
18 circumstances relating to the determination, and the waiv-
19 er shall not take effect until the date on which the Direc-
20 tor approves the determination in writing.

21 “(c) DEFINITION.—In this section, the term ‘covered
22 entity’ means an entity—

23 “(1) in which the official, within the previous 2
24 years, served as an officer, director, trustee, general
25 partner, or employee; or

1 “(2) for which the official, within the previous
2 2 years, worked as a lobbyist, lawyer, or other rep-
3 resentative.

4 “(d) NO EFFECT ON SECTION 208.—This section
5 does not expand, contract, or otherwise affect the applica-
6 tion of any criminal penalties under section 208 of title
7 18, United States Code.

8 **“SEC. 704. PENALTIES.**

9 “Whoever violates section 701, 702, or 703 of this
10 title shall, upon proof of such knowing violation by a pre-
11 ponderance of the evidence, be subject to a civil fine of
12 not more than \$100,000, depending on the extent and
13 gravity of the violation.

14 **“SEC. 705. DEFINITION.**

15 “In this title, the term ‘covered executive branch offi-
16 cial’ means—

17 “(1) any officer or employee serving in a posi-
18 tion in level I, II, III, IV, or V of the Executive
19 Schedule, as designated by statute or Executive
20 order;

21 “(2) any member of the uniformed services
22 whose pay grade is at or above O–7 under section
23 201 of title 37, United States Code;

24 “(3) any officer or employee serving in a posi-
25 tion of a confidential, policy-determining, policy-

1 making, or policy-advocating character described in
2 section 7511(b)(2)(B) of title 5, United States Code;

3 “(4) any noncareer appointee, as defined by
4 section 3132(a)(7) of title 5, United States Code;

5 “(5) any officer or employee serving in a posi-
6 tion of a confidential, policy-determining, policy-
7 making, or policy advocating character, or any other
8 individual functioning in the capacity of such an of-
9 ficer or employee, in the Executive Office of the
10 President or the Office of the Vice President; and

11 “(6) the Vice President.”

12 **SEC. 4. ADDITIONAL PROVISIONS RELATING TO PROCURE-**
13 **MENT OFFICIALS.**

14 (a) **ELIMINATION OF LOOPHOLES THAT ALLOW**
15 **FORMER FEDERAL OFFICIALS TO ACCEPT COMPENSA-**
16 **TION FROM CONTRACTORS OR RELATED ENTITIES.**—Sec-
17 tion 27(d) of the Office of Federal Procurement Policy
18 Act (41 U.S.C. 423(d)) is amended—

19 (1) in paragraph (1)—

20 (A) by striking “or consultant” and insert-
21 ing “consultant, lawyer, or lobbyist”;

22 (B) by striking “one year” and inserting
23 “two years”; and

24 (C) in subparagraph (C), by striking “per-
25 sonally made for the Federal agency—” and in-

1 serting “participated personally and substan-
2 tially in—”; and

3 (2) by amending paragraph (2) to read as fol-
4 lows:

5 “(2) Paragraph (1) shall not prohibit a former
6 official of a Federal agency from accepting com-
7 pensation from any division or affiliate of a con-
8 tractor that does not produce the same or similar
9 products or services as the entity of the contractor
10 that is responsible for the contract referred to in
11 subparagraph (A), (B), or (C) of such paragraph if
12 the agency’s designated ethics officer determines
13 that—

14 “(A) the offer of compensation is not a re-
15 ward for any action described in paragraph (1);
16 and

17 “(B) acceptance of the compensation is ap-
18 propriate and will not affect the integrity of the
19 procurement process.”.

20 (b) REQUIREMENT FOR FEDERAL PROCUREMENT
21 OFFICERS TO DISCLOSE JOB OFFERS MADE ON BEHALF
22 OF RELATIVES.—Section 27(c)(1) of such Act (41 U.S.C.
23 423(c)(1)) is amended by inserting after “that official”
24 the following: “or for a relative of that official (as defined
25 in section 3110 of title 5, United States Code),”.

1 (c) REQUIREMENT ON AWARD OF GOVERNMENT
2 CONTRACTS TO FORMER EMPLOYERS.—Section 27 of
3 such Act (41 U.S.C. 423) is amended by adding at the
4 end the following new subsection:

5 “(i) PROHIBITION ON INVOLVEMENT BY CERTAIN
6 FORMER CONTRACTOR EMPLOYEES IN PROCURE-
7 MENTS.—An employee of the Federal Government who is
8 a former employee of a contractor with the Federal Gov-
9 ernment shall not be personally and substantially involved
10 with any award of a contract to the employee’s former em-
11 ployer, or the administration of such a contract, for the
12 two-year period beginning on the date on which the em-
13 ployee leaves the employment of the contractor.”.

14 (d) REGULATIONS.—Section 27 of such Act (41
15 U.S.C. 423) is further amended by adding at the end of
16 the following new subsection:

17 “(j) REGULATIONS.—The Administrator, in consulta-
18 tion with the Director of the Office of Government Ethics,
19 shall—

20 “(1) promulgate regulations to carry out and
21 ensure the enforcement of this section; and

22 “(2) monitor and investigate individual and
23 agency compliance with this section.”.

1 **SEC. 5. PROHIBITION ON UNAUTHORIZED EXPENDITURE**
2 **OF FUNDS FOR PUBLICITY OR PROPAGANDA**
3 **PURPOSES.**

4 (a) PROHIBITION.—Chapter 13 of title 31, United
5 States Code, is amended by adding at the end the fol-
6 lowing new section:

7 **“§ 1355. Prohibition on unauthorized expenditure of**
8 **funds for publicity or propaganda pur-**
9 **poses**

10 “An officer or employee of the United States Govern-
11 ment may not make or authorize an expenditure or obliga-
12 tion of funds for publicity or propaganda purposes within
13 the United States unless authorized by law.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 for chapter 13 of such title is amended by adding at the
16 end the following new item:

“1355. Prohibition on unauthorized expenditure of funds for propa-
ganda purposes.”.

17 **SEC. 6. REQUIREMENT FOR DISCLOSURE OF FEDERAL**
18 **SPONSORSHIP OF ALL FEDERAL ADVER-**
19 **TISING OR OTHER COMMUNICATION MATE-**
20 **RIALS.**

21 (a) REQUIREMENT.—Each advertisement or other
22 communication paid for by an Executive agency, either di-
23 rectly or through a contract awarded by the Executive
24 agency, shall include a prominent notice informing the tar-

1 get audience that the advertisement or other communica-
2 tion is paid for by that Executive agency.

3 (b) ADVERTISEMENT OR OTHER COMMUNICATION.—

4 In this section, the term “advertisement or other commu-
5 nication” includes—

6 (1) an advertisement disseminated in any form,
7 including print or by any electronic means; and

8 (2) a communication by an individual in any
9 form, including speech, print, or by any electronic
10 means.

11 (c) EXECUTIVE AGENCY.—In this section, the term
12 “Executive agency” has the meaning provided in section
13 105 of title 5, United States Code.

14 **SEC. 7. ELIMINATION OF “PSEUDO” CLASSIFICATION.**

15 (a) REPORTS ON THE PROLIFERATING USE OF
16 “PSEUDO” CLASSIFICATION DESIGNATIONS.—

17 (1) REPORT BY FEDERAL AGENCIES.—Not later
18 than six months after the date of the enactment of
19 this Act, each federal agency shall submit to the Ar-
20 chivist of the United States and the congressional
21 committees described in subsection (d) a report de-
22 scribing the use of “pseudo” classification designa-
23 tions.

24 (2) MATTERS COVERED.—Each such agency
25 shall report on, at a minimum, the following:

1 (A) The number of “pseudo” classification
2 designation policies used by the agency.

3 (B) Any existing guidance, instruction, di-
4 rective, or regulations regarding the agency’s
5 use of “pseudo” classification designations.

6 (C) The number and level of experience
7 and training of Federal agency, office, and con-
8 tractor personnel authorized to make “pseudo”
9 classification designations.

10 (D) The cost of placing and maintaining
11 information under each “pseudo” classification
12 designation.

13 (E) The extent to which information
14 placed under “pseudo” classification designa-
15 tions has subsequently been released under sec-
16 tion 552 of title 5, United States Code (popu-
17 larly known as the Freedom of Information
18 Act).

19 (F) The extent to which “pseudo” classi-
20 fication designations have been used to withhold
21 from the public information that is not author-
22 ized to be withheld by Federal statute, or by an
23 Executive order relating to the classification of
24 national security information.

1 (G) The statutory provisions described in
2 subsection (c).

3 (3) REPORT BY THE ARCHIVIST OF THE
4 UNITED STATES.—Not later than 9 months after the
5 date of the enactment of this Act, the Archivist of
6 the United States shall issue to the congressional
7 committees described in subsection (d) a report on
8 the use of “pseudo” classification designations
9 across the executive branch that is based on the in-
10 formation provided by agencies, as well as input
11 from the Director of National Intelligence, Federal
12 agencies, offices, and contractors. All federal agen-
13 cies, offices, and contractors shall cooperate fully
14 and promptly with all requests by the Archivist in
15 the fulfillment of this paragraph.

16 (4) NOTICE AND COMMENT.—The Archivist
17 shall provide notice and an opportunity for public
18 comment on the report.

19 (b) ELIMINATION OF “PSEUDO” CLASSIFICATION
20 DESIGNATIONS.—

21 (1) REGULATIONS.—Not later than 15 months
22 after the date of the enactment of this Act, the Ar-
23 chivist of the United States shall promulgate regula-
24 tions banning the use of “pseudo” classification des-
25 ignations.

1 (2) STANDARDS FOR INFORMATION CONTROL
2 DESIGNATIONS.—If the Archivist determines that
3 there is a need for some agencies to use information
4 control designations to safeguard information prior
5 to review for disclosure, beyond those designations
6 established by statute or by an Executive Order re-
7 lating to the classification of national security infor-
8 mation, the regulations under paragraph (1) shall
9 establish standards for the use of those designations
10 by agencies. Such standards shall address, at a min-
11 imum, the following issues:

12 (A) Standards for utilizing the information
13 control designations in a manner that is nar-
14 rowly tailored to maximize public access to in-
15 formation.

16 (B) Procedures for providing specified
17 Federal officials with authority to utilize the in-
18 formation control designations, including train-
19 ing and certification requirements.

20 (C) Categories of information that may be
21 assigned the information control designations.

22 (D) The duration of the information con-
23 trol designations and the process by which they
24 will be removed.

1 (E) Procedures for identifying, marking,
2 dating, and tracking information assigned the
3 information control designations, including the
4 identity of officials making the designations.

5 (F) Specific limitations and prohibitions
6 against using the information control designa-
7 tions.

8 (G) Procedures for members of the public
9 to challenge the use of the information control
10 designations.

11 (H) The manner in which the use of the
12 information control designations relates to the
13 procedures of each agency or office under sec-
14 tion 552 of title 5, United States Code.

15 (3) REGULATION TO CONSTITUTE SOLE AU-
16 THORITY.—A regulation promulgated pursuant to
17 this subsection shall constitute the sole authority by
18 which Federal agencies, offices, or contractors are
19 permitted to control information for the purposes of
20 safeguarding information prior to review for disclo-
21 sure, other than authority granted by Federal stat-
22 ute or by an Executive order relating to the classi-
23 fication of national security information.

24 (c) REVIEW OF STATUTORY BARRIERS TO PUBLIC
25 ACCESS INFORMATION.—

1 (1) REVIEW OF STATUTES.—As part of the re-
2 port required under subsection (a)(3), the Archivist
3 shall examine existing Federal statutes that allow
4 Federal agencies, offices, or contractors to control,
5 protect, or otherwise withhold information based on
6 security concerns.

7 (2) RECOMMENDATIONS.—The report shall
8 make recommendations on potential changes to the
9 Federal statutes examined under paragraph (1) that
10 would improve public access to information governed
11 by such statutes.

12 (d) DEFINITIONS.—In this section:

13 (1) The term “congressional committees”
14 means the Committees on Government Reform, Ju-
15 diary, Homeland Security, and Appropriations of
16 the House of Representatives and the Committees
17 on Homeland Security and Governmental Affairs,
18 Judiciary, and Appropriations of the Senate.

19 (2) The term “‘pseudo’ classification designa-
20 tions” means information control designations, in-
21 cluding “sensitive but unclassified” and “for official
22 use only”, that are not defined by Federal statute,
23 or by an Executive order relating to the classifica-
24 tion of national security information, but that are
25 used to manage, direct, or route Government infor-

- 1 mation, or control the accessibility of Government
- 2 information, regardless of its form or format.

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