

GAO

Briefing Report to
Representative Marcy Kaptur
Representative Howard Wolpe

July 1986

FOREIGN
REPRESENTATION

Former High-Level
Federal Officials
Representing Foreign
Interests



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National Security and
International Affairs Division

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July 11, 1986

The Honorable Marcy Kaptur
The Honorable Howard Wolpe
House of Representatives

Your November 7, 1985, letter requested us to review the extent to which high-level federal officials, Members of Congress, and senior congressional staff who leave government service take positions representing foreign interests before the U.S. government. At about the same time, you introduced a bill (H.R.3733) that would amend the U.S. Criminal Code to prohibit any former high-level federal government official for at least 10 years after leaving public service from representing or advising a foreign interest in connection with any transaction with the U.S. government. The bill generally defined high-level officials as Executive Level V or higher and General and Flag Officers of the uniformed services. Neither this bill nor existing laws related to employment following government service cover former members or staff of the Congress.

As agreed in our February 28, 1986, letter to you, we have assessed the current reporting requirements and statutes relevant to the issue (see app. II) and have compiled information from publicly available sources to identify high-level officials who left government service during fiscal years 1980-85 and the representational activities they subsequently carried out on behalf of foreign interests. (See apps. III and IV.)

U.S. statutes relevant to your concern generally fall into two categories: (1) registration or reporting requirements for representational activities and (2) post-employment conflict of interest laws (18 U.S.C. 207) that preclude some forms of employment activities. The first category includes (1) the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611 et seq.), which requires agents of foreign principals to report their relationship to the Attorney General, (2) Section 951 of Title 18, U.S. Code, which prohibits anyone (with certain diplomatic and commercial exceptions) from acting in the United States as an agent of a foreign government without prior notification to the Attorney General, and (3) the Federal Regulation of Lobbying Act (2 U.S.C. 261 et seq.), which requires a lobbyist to file a detailed registration statement with the Secretary of the Senate and the Clerk of the House of Representatives. These statutes do not focus on former government officials and do not, per se, preclude their employment on behalf of foreign interests.

The post-employment conflict of interest laws applicable to former federal employees consist of four separate restrictions on representational activities before non-legislative components of the

federal government. Two restrictions, applicable to all former officers and employees of the executive branch, independent agencies, and the government of the District of Columbia, are limited to matters in which such employees played some role while employed by the government. There is a lifetime restriction on representing any other person before the government in connection with a "particular matter involving specific parties" if the former employee participated "personally and substantially" in that same matter as a government employee. There is a 2-year restriction for similar representational activity if that particular matter was "actually pending under [a former employee's] official responsibility" within one year prior to the termination of that responsibility.

A former senior employee is subject to additional restrictions. That employee who participated "personally and substantially" in a "particular matter involving specific parties" may not represent or aid, counsel, advise, consult, or assist in representing any other person by his personal presence at any appearance before the federal government concerning that same matter for 2 years. There is also a one-year restriction on a former senior employee's representation of anyone before his/her former department or agency on any "particular matter" pending before that agency or in which that agency has a direct and substantial interest.

Since 1974, we have carried out several studies and issued reports recommending improvements in the administration of statutes that require registration of persons acting as foreign agents and of statutes concerning post-employment conflict of interest. The reports are discussed in appendix II.

Our current study identified 76 former high-level federal officials, including former Members of Congress and senior congressional staff, who represented foreign interests before the U.S. government after leaving office during fiscal years 1980-85. We would like to emphasize that the 76 individuals we identified represent the number of former officials engaged in such activity that we were able to identify from the available incomplete data sources and that the actual number is likely to be greater.

As we stated in our February 28, 1986, letter to you, technical and methodological difficulties associated with the data available to carry out the study would not permit a more complete identification. The difficulties relate to the accuracy and completeness of data bases used to identify both foreign representational activities and former high-level officials. For example, the Foreign Agents Registration Act does not require registrations for persons engaged in some categories of representation, notably commercial and legal. To compile information on these types of activities, we attempted to obtain supplemental information from several government agencies where significant foreign representation takes place. We did obtain information from the Department of Commerce, the International Trade Commission, and the Office of the U.S. Trade Representative. However, some agencies, including the Departments of Agriculture and Defense, did not have records from which we could obtain data on possible foreign

representation. We also found that the principal source for identifying former high-level officials--the Office of Personnel Management's Central Personnel Data File--was not fully reliable, and consequently there are likely to be omissions in our list. These and other difficulties are discussed in appendix I.

The 76 former federal officials we identified had diverse federal service and included 6 Senators, 9 Members of the House of Representatives, 17 senior congressional staff, 4 General military officers, 18 White House officials and 22 other executive branch officials. These former federal officials carried out representational activities on behalf of interests from 52 countries.

We did not obtain official comments on this report from any of the agencies involved, because we did not examine their operations but simply used their data. The former officials identified in the report were notified by mail of the information we proposed to report on their activities, and we called or attempted to call each one to verify the accuracy of the data, all of which was obtained from publicly available sources.

As arranged with your office, unless you publicly announce its contents earlier, we will make no further distribution of this report until July 16, 1986. At that time, we will send copies to interested parties and make copies available to others upon request. If there are any questions regarding the contents of this briefing report, please call me on (202) 275-4812.



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