

104TH CONGRESS
1ST SESSION

S. 129

To amend section 207 of title 18, United States Code, to tighten the restrictions on former executive and legislative branch officials and employees

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1995

Mr. MCCAIN (for himself and Mr. FEINGOLD) introduced the following bill;
which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend section 207 of title 18, United States Code, to tighten the restrictions on former executive and legislative branch officials and employees

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 “Ethics in Government
5 Reform Act of 1995”.

6 **SEC. 2. SPECIAL RULES FOR HIGHLY PAID EXECUTIVE AP-**
7 **POINTEES AND MEMBERS OF CONGRESS AND**
8 **HIGHLY PAID CONGRESSIONAL EMPLOYEES.**

9 (a) IN GENERAL.—

1 (a) APPEARANCES BEFORE AGENCY.—(A) Sec-
2 tion 207(d) of title 18, United States Code, is
3 amended by adding at the end thereof the following:

4 “(3) RESTRICTIONS ON POLITICAL AP-
5 POINTEES.—(A) In addition to the restrictions set
6 forth in subsections (a), (b), and (c) and paragraph
7 (1) of this subsection, any person who—

8 “(i) serves in the position of Vice President
9 of the United States; or

10 “(ii) is a full-time noncareer Presidential,
11 Vice Presidential, or agency head appointee in
12 an executive agency whose rate of basic pay is
13 not less than \$80,000 (adjusted for any COLA
14 after the date of enactment of the Ethics in
15 Government Reform Act of 1995) and is not an
16 appointee of the senior foreign service or solely
17 an appointee as a uniformed service commis-
18 sioned officer,

19 and who, after the termination of this or her service
20 or employment as such officer or employee, know-
21 ingly makes, with the intent to influence, any com-
22 munication to or appearance before any officer or
23 employee of a department or agency in which such
24 person served within 5 years before such termi-
25 nation, during a period beginning on the termination

1 of service or employment as such officer or employee
2 and ending 5 years after the termination of service
3 in the department or agency, on behalf of any other
4 person (except the United States), in connection
5 with any matter on which such person seeks official
6 action by any officer or employee of such depart-
7 ment or agency, shall be punished as provided in
8 section 216 of this title.

9 “(B) In addition to the restrictions set forth in
10 subsections (a), (b), and (c) and paragraph (1) of
11 this subsection, any person who is listed in Schedule
12 I under section 5312 of title 5, United States Code,
13 or is employed in a position in the Executive Office
14 of the President and is a full-time, noncareer Presi-
15 dential, Vice Presidential or agency head appointee
16 in an executive agency whose rate of basic pay is not
17 less than \$80,000 (adjusted of and COLA after the
18 date of enactment of the Ethics in Government Re-
19 form Act of 1995) and is not an appointee of the
20 senior foreign service or solely an appointee as a
21 uniform service commissioned officer and who—

22 “(i) after the termination of this or her
23 service or employment as such employee, know-
24 ingly makes, with the intent to influence, any
25 communication to or appearance before any of-

1 ficer or employees of a department or agency
2 with respect to which the person participated
3 personally and substantially within 5 years be-
4 fore such termination, during a period begin-
5 ning on the termination of service or employ-
6 ment as such employee and ending 5 years after
7 the termination of substantial personal respon-
8 sibility with respect to the department or agen-
9 cy, on behalf on any other person (except the
10 United States), in connection with any matter
11 on which such person seeks official action by
12 any officer or employee of such department or
13 agency; or

14 “(ii) within 2 years after the termination
15 of his or her service or employment as such em-
16 ployee, knowingly makes, with the intent to in-
17 fluence, any communication to or appearance
18 before any person described in paragraph
19 (2)(B) on behalf of any other person (except
20 the United States), in connection with any mat-
21 ter on which such person seeks official action by
22 the person described in paragraph (2)(B)

23 shall be punished as provided in section 216 of this
24 title.”.

1 (B) The first sentence of section 207(h)(1) of
2 title 18, United States Code, is amended by insert-
3 ing after “subsection (c)” the following: “and sub-
4 section (d)(3)”.

5 (2) FOREIGN AGENTS.—Section 207(f) of title
6 18, United States Code, is amended by—

7 (A) redesignating paragraph (2) as para-
8 graph (4);

9 (B) adding after paragraph (1) the follow-
10 ing:

11 “(2) SPECIAL RESTRICTIONS.—Any person
12 who—

13 “(A)(i) serves in the position of Vice Presi-
14 dent of the United States;

15 “(ii) is a full-time, noncareer Presidential,
16 Vice Presidential, or agency head appointee in
17 an executive agency whose rate of basic pay is
18 not less than \$80,000 (adjusted for any COLA
19 after the date of enactment of the Ethics in
20 Government Reform Act of 1995) and is not an
21 appointee of the senior foreign service or solely
22 an appointee as a uniformed service commis-
23 sioned officer;

24 “(iii) is employed in a position in the Exec-
25 utive Office of the President, and is a full-time,

1 noncareer Presidential, Vice Presidential, or
2 agency head appointee in an executive agency
3 whose rate of basic pay is not less than \$80,000
4 (adjusted for any COLA after the date of en-
5 actment of the Ethics in Government Reform
6 Act of 1995) and is not an appointee of the
7 senior foreign service or solely an appointee as
8 a uniformed service commissioned officer; or

9 “(iv) is a Member of Congress or employed
10 in a position by the Congress at a rate of pay
11 equal to or greater than \$80,000 (adjusted for
12 any COLA after the date of enactment of the
13 Ethics in Government Reform Act of 1995);
14 and

15 “(B) knowingly after such service or em-
16 ployment—

17 “(i) represents a foreign national (as
18 defined in section 319(b) of the Federal
19 Election Campaign Act of 1971 (2 U.S.C.
20 441e(b)) before any officer or employee of
21 any department or agency of the United
22 States with the intent to influence a deci-
23 sion of such officer or employee in carrying
24 out his or her official duties; or

1 (ii) aids or advises a foreign national
2 (as defined in section 319(b) of the Fed-
3 eral Election Campaign Act of 1971) with
4 the intent to influence a decision of any of-
5 ficer or employee of any department or
6 agency of the United States, in carrying
7 out his or her official duties,
8 shall be punished as provided in section 216 of this
9 title.”.

10 “(3) GIFTS FROM A FOREIGN GOVERNMENT OR
11 FOREIGN POLITICAL PARTY.—Any person who—

12 “(A)(i) serves in the position of President
13 or Vice President of the United States;

14 “(ii) is a full-time, noncareer Presidential,
15 Vice Presidential, or agency head appointee in
16 an executive agency whose rate of basic pay is
17 not less than \$80,000 (adjusted for any COLA
18 after the date of enactment of the Ethics in
19 Government Reform Act of 1995) and is not an
20 appointee of the senior foreign service or solely
21 an appointee as a uniformed service commis-
22 sioned officer;

23 “(iii) is employed in a full-time, noncareer
24 position in the Executive Office of the President
25 whose rate of basic pay is not less than \$80,000

1 (adjusted for any COLA after the date of en-
2 actment of the Ethics in Government Reform
3 Act of 1995) and is not an appointee of the
4 senior foreign service or solely an appointee as
5 a uniformed service commissioned officer;

6 “(iv) is a Member of Congress; or

7 “(v) is employed in a position by the Con-
8 gress at a rate of pay equal to or greater than
9 \$80,000 (adjusted for any COLA after the date
10 of enactment of the Ethics in Government Re-
11 form Act of 1995); and

12 “(B) after such service or employment ter-
13 minates, receives a gift from a foreign govern-
14 ment or foreign political party,

15 shall be punished as provided in section 216 of this
16 title.

17 “(4) DEFINITIONS.—For purposes of this sub-
18 section—

19 “(A) the term ‘foreign national’ means—

20 “(i) a government of a foreign country
21 as defined in section 1(e) of the Foreign
22 Agents Registration Act of 1938, as
23 amended, or a foreign political party as de-
24 fined in section 1(f) of that Act;

1 “(ii) a person outside of the United
2 States, unless such person is an individual
3 and a citizen of the United States, or un-
4 less such person is not an individual and is
5 organized under or created by the laws of
6 the United States or of any state or other
7 place subject to the jurisdiction of the
8 United States and has its principal place
9 of business within the United States;

10 “(iii) a partnership, association, cor-
11 poration, organization, or other combina-
12 tion of persons organized under the laws of
13 or having its principal place of business in
14 a foreign country; and

15 “(iv) a person any of whose activities
16 are directly or indirectly supervised, di-
17 rected, controlled, financed, or subsidized
18 in whole or in major part by an entity de-
19 scribed in clause (i), (ii), or (iii); and

20 “(B) the term ‘gift’—

21 “(i) includes any gratuity, favor, dis-
22 count, entertainment, hospitality, loan, for-
23 bearance, or other item having monetary
24 value greater than \$20; and

25 “(ii) does not include—

1 “(I) modest items of food and re-
2 freshments offered other than as part
3 of a meal;

4 “(II) greeting cards and items of
5 little intrinsic value which are in-
6 tended solely for presentation;

7 “(III) loans from banks and
8 other financial institutions on terms
9 generally available to the public;

10 “(IV) opportunities and benefits,
11 including favorable rates and commer-
12 cial discounts, available to the public;
13 or

14 “(V) travel, subsistence, and re-
15 lated expenses in connection with the
16 person’s rendering of advice or aid to
17 a government of a foreign country or
18 foreign political party, if the Secretary
19 of State certifies in advance that such
20 activity is in the best interests of the
21 United States.”.

22 (3) TRADE NEGOTIATORS.—Section 207(b)(1)
23 of title 18, United States Code, is amended by—

24 (A) inserting “(A)” after “IN GENERAL.—
25 ”; and

1 (B) adding at the end thereof the follow-
2 ing:

3 “(B) For any person who—

4 “(i) is a full-time, noncareer Presidential,
5 Vice Presidential, or agency head appointee in
6 an executive agency whose rate of basic pay is
7 not less than \$80,000 (adjusted for any COLA
8 after the date of enactment of the Ethics in
9 Government Reform Act of 1995) and is not an
10 appointee of the senior foreign service or solely
11 an appointee as a uniformed service commis-
12 sioned officer;

13 “(ii) is employed in a position in the Exec-
14 utive Office of the President, and is a full-time,
15 noncareer Presidential, Vice Presidential, or
16 agency head appointee in an executive agency
17 whose rate of basic pay is not less than \$80,000
18 (adjusted for any COLA after the date of en-
19 actment of the Ethics in Government Reform
20 Act of 1995) and is not an appointee of the
21 senior foreign service or solely an appointee as
22 a uniformed service commissioned officer; or

23 “(iii) is a Member of Congress or employed
24 in a position by the Congress at a rate of pay
25 equal to or greater than \$80,000 (adjusted for

1 any COLA after the date of enactment of the
2 Ethics in Government Reform Act of 1995),
3 the restricted period after service referred to in sub-
4 paragraph (A) shall be permanent.”.

5 (4) CONGRESS.—Section 207(e) of title 18,
6 United States Code, is amended—

7 (A) in paragraph (1) (A) by striking
8 “within 1 year” and inserting “within 2 years”;

9 (B) in paragraph (1) by adding at the end
10 thereof the following:

11 “(D) Any person who is a Member of Con-
12 gress and who, within 5 years after leaving the
13 position, knowingly makes, with intent to influ-
14 ence, any communication to or appearance be-
15 fore any committee member or a staff member
16 of any committee over which the Member had
17 jurisdiction, on behalf of any other person (ex-
18 cept the United States) in connection with any
19 matter on which such former Member seeks ac-
20 tion by the committee member or a staff mem-
21 ber of the committee in his or her official ca-
22 pacity, shall be punished as provided in section
23 216 of this title.”;

24 (C) by redesignating paragraphs (6) and
25 (7) as paragraphs (7) and (8), respectively; and

1 (D) by inserting after paragraph (5) the
2 following new paragraph;

3 “(6) HIGHLY PAID STAFFERS.—For any person
4 described in paragraph (2), (3), (4), or (5), em-
5 ployed in a position at a rate of pay equal to or
6 greater than \$80,000 (adjusted for any COLA after
7 the date of enactment of the Ethics in Government
8 Reform Act of 1995)—

9 “(A) the restriction provided in paragraph
10 (1)(A) shall apply; and

11 “(B) the restricted period after termi-
12 nation in paragraph (2), (3), (4), or (5), appli-
13 cable to such person shall be 5 years.”.

14 (b) PENALTIES.—

15 (1) FUTURE ACTIVITIES.—Section 216 of title
16 18, United States Code, is amended by adding at
17 the end thereof the following:

18 “(d) In addition to the penalties provided in sub-
19 sections (a), (b), and (c), the punishment for violation of
20 section 207 may include a prohibition on the person know-
21 ingly, with the intent to influence, communicating to or
22 appearing before any employee of the executive or legisla-
23 tive branch, for a period of not to exceed 5 years.”.

24 (2) USE OF PROFITS.—Section 216(b) of title
25 18, United States Code, is amended by inserting

1 after the first sentence the following: “Any amount
2 of compensation recovered pursuant to the preceding
3 sentence for a violation of section 207 shall be de-
4 posited in the general fund of the Treasury to re-
5 duce the deficit.”.

6 (c) EXCEPTIONS.—Section 207(j) of title 18, United
7 States Code, is amended by adding at the end thereof the
8 following:

9 “(7) NON-INFLUENTIAL CONTACTS.—Nothing
10 in this section shall prevent an individual from mak-
11 ing requests for appointments, requests for the sta-
12 tus of Federal action, or other similar ministerial
13 contacts, if there is no attempt to influence an offi-
14 cer or employee of the legislative or executive
15 branch.

16 “(8) TESTIMONY TO THE CONGRESS.—Nothing
17 in this section shall prevent an individual from testi-
18 fying or submitting testimony to any committee or
19 instrumentality of the Congress.

20 “(9) COMMENTS.—Nothing in this section shall
21 prevent an individual from making communications
22 in response to a notice in the Federal Register,
23 Commerce Business Daily, or other similar publica-
24 tion soliciting communications from the public and

1 directed to the agency official specifically designated
2 in the notice to receive such communications.

3 “(10) ADJUDICATION.—Nothing in this section
4 shall prevent an individual from making communica-
5 tions or appearances in compliance with written
6 agency procedures regarding an adjudication con-
7 ducted by the agency under section 554 of title 5,
8 United States Code, or substantially similar provi-
9 sions.

10 “(11) COMMENTS FOR THE RECORD.—Nothing
11 in this section shall prevent an individual from sub-
12 mitting written comments filed in a public docket
13 and other communications that are made on the
14 record.”.

15 **SEC. 3. EFFECTIVE DATE.**

16 The restrictions contained in section 207 of title 18,
17 United States Code, as added by section 2 of this Act—

18 (1) shall apply only to persons whose service as
19 officers or employees of the Government, or as Mem-
20 bers of Congress terminates on or after the date of
21 the enactment of this Act; and

22 (2) in the case of officers, employees, and Mem-
23 bers of Congress described in section 207(b)(1)(B)
24 of title 18, United States Code (as added by section
25 2 of this Act), shall apply only with respect to par-

1 ticipation in trade negotiations or treaty negotia-
2 tions, and with respect to access to information, oc-
3 ccurring on or after such date of enactment.

4 **SEC. 4. SEVERABILITY.**

5 If any provision of this Act, or the application there-
6 of, is held invalid, the validity of the remainder of this
7 Act and the application of such provision to other persons
8 and circumstances shall not be affected thereby.

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