

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1395

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 1993

Mr. BACCHUS of Florida (for himself, Mr. ZIMMER, Mr. KREIDLER, Mr. BARRETT of Wisconsin, Mr. PAXON, Mr. CAMP, Mr. GREENWOOD, Mr. KLUG, Mr. LEWIS of Florida, Mr. THOMAS of Wyoming, Mr. PETRI, Mr. GENE GREEN of Texas, and Mr. GUTIERREZ) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend section 207 of title 18, United States Code, to tighten 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 1993”.

1 **SEC. 2. SPECIAL RULES FOR HIGHLY PAID EXECUTIVE AP-**  
2 **POINTEES AND MEMBERS OF CONGRESS AND**  
3 **HIGHLY PAID CONGRESSIONAL EMPLOYEES.**

4 (a) IN GENERAL.—

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

8 “(3) RESTRICTIONS ON POLITICAL AP-  
9 POINTEES.—(A) In addition to the restrictions set  
10 forth in subsection (a), (b), and (c) and paragraph  
11 (1) of this subsection, any person who—

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

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 \$70,000 (adjusted for any COLA  
18 after the date of enactment of the Ethics in  
19 Government Reform Act of 1993) and is not an  
20 appointee of the senior foreign service or solely  
21 an appointee as a uniformed service commis-  
22 sioned officer, and who, after termination of his  
23 or her service or employment as such officer or  
24 employee, knowingly makes, with the intent to  
25 influence, any communication to or appearance  
26 before any officer or employee of a department

1 or agency in which such person served within 5  
2 years before such termination, during the pe-  
3 riod beginning on the termination of service or  
4 employment as such officer or employee and  
5 ending 5 years after the termination of service  
6 in the department or agency, on behalf of any  
7 other person (except the United States), in con-  
8 nection with any matter on which such person  
9 seeks official action by any officer or employee  
10 of such department or agency, shall be punished  
11 as provided in section 216 of this title.

12 “(B) In addition to the restrictions set forth in  
13 subsections (a), (b), and (c) and paragraph (1) of  
14 this subsection, any person whose position is listed  
15 under section 5312 of title 5, or is employed in a  
16 full-time, noncareer position in the Executive Office  
17 of the President and whose rate of basic pay is not  
18 less than \$70,000 (adjusted for any COLA after the  
19 date of enactment of the Ethics in Government Re-  
20 form Act of 1993) and is not an appointee of the  
21 senior foreign service or solely an appointee as a  
22 uniformed service commissioned officer or is a full-  
23 time, noncareer Presidential, Vice Presidential, or  
24 agency head appointee in an executive agency whose  
25 rate of basic pay is not less than \$70,000 (adjusted

1 for any COLA after the date of enactment of the  
2 Ethics in Government Reform Act of 1993) and is  
3 not an appointee of the senior foreign service or  
4 solely an appointee as a uniformed service commis-  
5 sioned officer, and who, within 2 years after the ter-  
6 mination of his or her service or employment as such  
7 officer or employee, knowingly makes, with the in-  
8 tent to influence, any communication to or appear-  
9 ance before any person described in paragraph  
10 (2)(B) on behalf of any other person (except the  
11 United States), in connection with any matter on  
12 which such person seeks official action by the person  
13 described in paragraph (2)(B), shall be punished as  
14 provided in section 216 of this title.

15 “(C) In addition to the restrictions set forth in  
16 subsections (a), (b), and (c) and paragraph (1) of  
17 this subsection, any person whose position is listed  
18 under section 5312 of title 5, or is employed in the  
19 Executive Office of the President and whose basic  
20 rate of pay is not less than \$70,000 (adjusted for  
21 any COLA after the date of enactment of the Ethics  
22 in Government Reform Act of 1993) and is not an  
23 appointee of the senior foreign service or solely an  
24 appointee as a uniformed service commissioned offi-  
25 cer, and who, after the termination of his or her

1 service or employment as such officer or employee,  
2 knowingly makes, with the intent to influence, any  
3 communication to or appearance before any officer  
4 or employee of a department or agency with respect  
5 to which the person had personal and substantial re-  
6 sponsibility within 5 years before such termination,  
7 during the period beginning on the termination of  
8 service or employment as such officer or employee  
9 and ending 5 years after the termination of personal  
10 and substantial responsibility with respect to the de-  
11 partment or agency, on behalf of any other person  
12 (except the United States), in connection with any  
13 matter on which such person seeks official action by  
14 any officer or employee of such department or agen-  
15 cy, shall be punished as provided in section 216 of  
16 this title.

17 “(D) For purposes of this paragraph, the term  
18 “personal and substantial responsibility” means,  
19 with respect to a department or agency, ongoing de-  
20 cision-making involvement in the budget, major pro-  
21 grams, or personnel actions of the department or  
22 agency, when acting both personally and substan-  
23 tially.

24 “(E) This paragraph shall not apply to an offi-  
25 cer or employee who has served less than 90 days

1 before his or her service or employment as such offi-  
2 cer or employee terminates.”.

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

7 (C) Section 207(d)(1)(A) of title 18, United  
8 States Code, is amended to read as follows:

9 “(A) serves in the position of President or  
10 Vice President of the United States,”.

11 (2) FOREIGN AGENTS.—Section 207(f) of title  
12 18, United States Code, is amended—

13 (A) by striking “foreign entity” each place  
14 it appears and inserting “foreign national”; and

15 (B) by striking paragraph (2) and insert-  
16 ing the following:

17 “(2) SPECIAL RESTRICTIONS.—Any person  
18 who—

19 “(A)(i) serves in the position of President  
20 or Vice President of the United States,

21 “(ii) is a full-time, noncareer Presidential,  
22 Vice Presidential, or agency head appointee in  
23 an executive agency whose rate of basic pay is  
24 not less than \$70,000 (adjusted for any COLA  
25 after the date of enactment of the Ethics in

1 Government Reform Act of 1993) and is not an  
2 appointee of the senior foreign service or solely  
3 an appointee as a uniformed service commis-  
4 sioned officer,

5 “(iii) is employed in a full-time, noncareer  
6 position in the Executive Office of the President  
7 whose rate of basic pay is not less than \$70,000  
8 (adjusted for any COLA after the date of en-  
9 actment of the Ethics in Government Reform  
10 Act of 1993) and is not an appointee of the  
11 senior foreign service or solely an appointee as  
12 a uniformed service commissioned officer, or

13 “(iv) is a Member of Congress or employed  
14 in a position by the Congress at a rate of pay  
15 equal to or greater the \$70,000 (adjusted for  
16 any COLA after the date of enactment of the  
17 Ethics in Government Reform Act of 1993),  
18 and

19 “(B) knowingly, after such service or em-  
20 ployment terminates—

21 “(i) represents, directly or indirectly,  
22 a foreign national before any officer or em-  
23 ployee of any department or agency of the  
24 United States with the intent to influence  
25 a decision of such officer or employee in

1 carrying out his or her official duties and  
2 receives compensation for such representa-  
3 tion, or

4 “(ii) aids or advises, directly or indi-  
5 rectly, a foreign national with the intent to  
6 influence a decision of any officer or em-  
7 ployee of any department or agency of the  
8 United States in carrying out his or her of-  
9 ficial duties and receives compensation for  
10 such aid or advice,

11 shall be punished as provided in section 216 of  
12 this title.

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

15 “(A)(i) serves in the position of President  
16 or Vice President of the United States,

17 “(ii) is a full-time, noncareer Presidential,  
18 Vice Presidential, or agency head appointee in  
19 an executive agency whose rate of basic pay is  
20 not less than \$70,000 (adjusted for any COLA  
21 after the date of enactment of the Ethics in  
22 Government Reform Act of 1993) and is not an  
23 appointee of the senior foreign service or solely  
24 an appointee as a uniformed service commis-  
25 sioned officer,

1           “(iii) is a full-time, noncareer Presidential,  
2 Vice Presidential, or agency head appointee in  
3 an executive agency whose rate of basic pay is  
4 not less than \$70,000 (adjusted for any COLA  
5 after the date of enactment of the Ethics in  
6 Government Reform Act of 1993) and is not an  
7 appointee of the senior foreign service or solely  
8 an appointee as a uniformed service commis-  
9 sioned officer,

10           “(iv) is employed in a full-time, noncareer  
11 position in the Executive Office of the President  
12 whose rate of basic pay is not less than \$70,000  
13 (adjusted for any COLA after the date of en-  
14 actment of the Ethics in Government Act of  
15 1993) and is not an appointee of the senior for-  
16 eign service or solely an appointee as a uni-  
17 formed service commissioned officer,

18           “(v) is a Member of Congress, or

19           “(vi) is employed in a position by the Con-  
20 gress at a rate of pay equal to or greater than  
21 \$70,000 (adjusted for any COLA after the date  
22 of enactment of the Ethics in Government  
23 Reform Act of 1993), and

1           “(B) after such service or employment ter-  
2           minates, receives a gift from a foreign govern-  
3           ment or foreign political party,  
4           shall be punished as provided in section 216 of this  
5           title.

6           “(4) DEFINITIONS.—For purposes of this sub-  
7           section—

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

9                   “(i) a government of a foreign country  
10                   as defined in section 1(e) of the Foreign  
11                   Agents Registration Act of 1938, as  
12                   amended, or a foreign political party as de-  
13                   fined in section 1(f) of that Act;

14                   “(ii) a person outside of the United  
15                   States, unless such person is an individual  
16                   and a citizen of the United States, or un-  
17                   less such person is not an individual and is  
18                   organized under or created by the laws of  
19                   the United States or of any State or other  
20                   place subject to the jurisdiction of the  
21                   United States and has its principal place  
22                   of business within the United States;

23                   “(iii) a partnership, association, cor-  
24                   poration, organization, or other combina-  
25                   tion of persons organized under the laws of

1 or having its principal place of business in  
2 a foreign country; and

3 “(iv) a person any of whose activities  
4 are directly or indirectly supervised, di-  
5 rected, controlled, financed, or subsidized  
6 in whole or in major part by an entity de-  
7 scribed in clause (i), (ii), or (iii); and

8 “(B) the term ‘gift’—

9 (i) includes any gratuity, favor, dis-  
10 count, entertainment, hospitality, loan, for-  
11 bearance, or other item having monetary  
12 value greater than \$20; and

13 “(ii) does not include—

14 “(I) modest items of food and re-  
15 freshments offered other than as part  
16 of a meal;

17 “(II) greeting cards and items of  
18 little intrinsic value which are in-  
19 tended solely for presentation;

20 “(III) loans from banks and  
21 other financial institutions on terms  
22 generally available to the public;

23 “(IV) opportunities and benefits,  
24 including favorable rates and commer-

1                   cial discounts, available to the public;  
2                   or

3                   “(V) travel, subsistence, and re-  
4                   lated expenses in connection with the  
5                   person’s rendering of advice or aid to  
6                   a government of a foreign country or  
7                   foreign political party, if the Secretary  
8                   of State certifies in advance that such  
9                   activity is in the best interests of the  
10                  United States.”.

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

13                         (A) by inserting “(A)” after “IN GEN-  
14                         ERAL.—”; and

15                         (B) by adding at the end thereof the fol-  
16                         lowing:

17                         “(B) For any person who—

18                                 “(i) is a full-time, noncareer Presidential,  
19                                 Vice Presidential, or agency head appointee in  
20                                 an executive agency whose rate of basic pay is  
21                                 not less than \$70,000 (adjusted for any COLA  
22                                 after the date of enactment of the Ethics in  
23                                 Government Reform Act of 1993) and is not an  
24                                 appointee of the senior foreign service or solely

1 an appointee as a uniformed service commis-  
2 sioned officer,

3 “(ii) is employed in a full-time, noncareer  
4 position in the Executive Office of the Presi-  
5 dent, whose rate of basic pay is not less than  
6 \$70,000 (adjusted for any COLA after the date  
7 of enactment of the Ethics in Government Re-  
8 form Act of 1993) and is not an appointee of  
9 the senior foreign service or solely an appointee  
10 as a uniformed service commissioned officer, or

11 “(iii) is a Member of Congress or employed  
12 in a position by the Congress at a rate of pay  
13 equal to or greater than \$70,000 (adjusted for  
14 any COLA after the date of enactment of the  
15 Ethics in Government Reform Act of 1993),

16 the restricted period after the termination of service  
17 or employment that is referred to in subparagraph  
18 (A) shall be permanent.”.

19 (4) LEGISLATIVE BRANCH.—Section 207(e) of  
20 title 18, United States Code, is amended—

21 (A) by striking paragraph (1) and insert-  
22 ing the following:

23 “(1) MEMBERS OF CONGRESS, ELECTED OFFI-  
24 CERS, AND HIGHLY-PAID STAFFERS.—(A) Any per-  
25 son who is a Member of Congress, an elected officer

1 of either House of Congress, or employed in a posi-  
2 tion by the Congress at a rate of pay equal to or  
3 greater than \$70,000 (adjusted for any COLA after  
4 the date of enactment of the Ethics in Government  
5 Reform Act of 1993) and who, within 2 years after  
6 that person leaves his or her employment, knowingly  
7 makes, with the intent to influence, any communica-  
8 tion to or appearance before any Member, officer,  
9 employee of either House of Congress, or any em-  
10 ployee of any other legislative office of the Congress  
11 on behalf of any other person (except the United  
12 States) in connection with any matter on which such  
13 former Member, elected officer, or employee seeks  
14 action by a Member, officer, or employee of either  
15 House of Congress, in his or her official capacity,  
16 shall be punished as provided in section 216 of this  
17 title.

18 “(B) Any person who is a Member of Congress  
19 and who, after that person leaves office, knowingly  
20 makes, with the intent to influence, any communica-  
21 tion to or appearance before any member or em-  
22 ployee of a committee of Congress on which the  
23 Member served within 5 years before that person left  
24 office, during the period beginning on the date that  
25 person leaves office and ending 5 years after the ter-

1 mination of that person’s service on that committee,  
2 on behalf of any other person (except the United  
3 States) in connection with any matter on which such  
4 former Member seeks action by the member or em-  
5 ployee of the committee in his or her official capac-  
6 ity, shall be punished as provided in section 216 of  
7 this title.”;

8 (B) by redesignating paragraphs (6) and  
9 (7) as paragraphs (7) and (8), respectively; and

10 (C) by inserting after paragraph (5) the  
11 following new paragraph:

12 “(6) HIGHLY PAID STAFFERS.—For any person  
13 to whom the restrictions in paragraph (2), (3), (4),  
14 or (5) apply, and who is employed in a position at  
15 a rate of pay equal to or greater than \$70,000 (ad-  
16 justed for any COLA after the date of enactment of  
17 the Ethics in Government Reform Act of 1993) the  
18 restricted period after termination of employment in  
19 paragraph (2), (3), (4), or (5) that applies to such  
20 person shall be 5 years.”.

21 (5) GOVERNMENTWIDE COOLING OFF PE-  
22 RIOD.—

23 (A) EXECUTIVE BRANCH.—Subsection (c)  
24 of section 207 of title 18, United States Code,  
25 is amended—

1 (i) by amending the caption for such  
2 subsection to read as follows:

3 “(c) ONE-YEAR RESTRICTION ON ALL OFFICERS AND  
4 EMPLOYEES OF THE EXECUTIVE BRANCH AND CERTAIN  
5 OTHER AGENCIES.—”;

6 (ii) in paragraph (1) by striking “who  
7 is referred to in paragraph (2)” and insert-  
8 ing “who is subject to the restrictions con-  
9 tained in subsection (a)(1)”; and

10 (iii) by striking paragraph (2) and in-  
11 sserting the following:

12 “(2) EXCEPTIONS.—(A) Paragraph (1) shall  
13 not apply to a special Government employee who  
14 serves less than 90 days in the 1-year period before  
15 his or her service or employment as such employee  
16 terminates.

17 “(B) At the request of a department or agency,  
18 the Director of the Office of Government Ethics may  
19 waive the restrictions contained in paragraph (1)  
20 with respect to any position, or category of positions,  
21 referred to in subsection (a)(1), in such department  
22 or agency if the Director determines that—

23 “(i) the imposition of the restrictions with  
24 respect to such position or positions would cre-  
25 ate an undue hardship on the department or

1 agency in obtaining qualified personnel to fill  
2 such position or positions, and

3 “(ii) granting the waiver would not create  
4 the potential for use of undue influence or un-  
5 fair advantage.”.

6 (B) CONGRESS.—Section 207(e) of title  
7 18, United States Code, is amended by striking  
8 paragraph (6) and inserting the following:

9 “(6) LIMITATION ON RESTRICTIONS.—(A) The  
10 restrictions contained in paragraphs (2), (3), (4),  
11 and (5) apply only to acts by a former employee who  
12 was employed for at least 90 days, in the aggregate,  
13 during the 1-year period before that former employ-  
14 ee’s service as such employee terminated.”.

15 (b) PENALTIES.—

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

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

1           (2) USE OF PROFITS.—Section 216(b) of title  
2           18, United States Code, is amended by inserting  
3           after the first sentence the following: “Any amount  
4           of compensation recovered pursuant to the preceding  
5           sentence for a violation of section 207 shall be de-  
6           posited in the general fund of the Treasury to re-  
7           duce the deficit.”.

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

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

18           “(8) COMMENTS.—Nothing in this section shall  
19          prevent an individual from making communications  
20          in response to a notice in the Federal Register,  
21          Commerce Business Daily, or other similar publica-  
22          tion soliciting communications from the public and  
23          directed to the agency official specifically designated  
24          in the notice to receive such communications.

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

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

12 **SEC. 3. EFFECTIVE DATE.**

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

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

19           (2) in the case of officers, employees, and Mem-  
20 bers of Congress described in section 207(b)(1)(B)  
21 of title 18, United States Code (as added by section  
22 2 of this Act), shall apply only with respect to par-  
23 ticipation in trade negotiations or treaty negotia-  
24 tions, and with respect to access to information, oc-  
25 ccurring on or after such date of enactment.



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