

# A Matter of Trust Fighting the “Capture” of Federal Government

by Craig Holman

On the first full day of his Administration, President Obama issued Executive Order 13490, entitled “Ethics Commitments by Executive Branch Personnel.” It is a policy that needs to be codified into law by Congress or it could be gone soon. The Executive Order went further than any previous President had on ethics and lobbying reforms and established the toughest and most far-reaching revolving door provisions ever adopted. The Executive Order was soon followed by a series of White House memoranda and guidelines re-shaping the relationship between special interests, their lobbyists and the federal government, including restrictions on business interests seeking earmarks from executive agencies and banning registered lobbyists from serving on federal advisory panels.

Obama’s revolving door restrictions are two-fold. First, in terms of the traditional concept of the revolving door, where government officials move into the private sector taking lucrative jobs as lobbyists, the executive order expressly prohibits any former senior employee of the executive branch from lobbying the Obama Administration for the duration of the Administration. This is effectively an eight-year ban on former federal employees lobbying the executive branch.

Second, the most dynamic – and consequently the most controversial – ethics policy of the Obama Administration is the nation’s first-ever “reverse” revolving door restriction: screening out conflicts of interest among appointees into the federal government so as to prevent special interests from “capturing” the agencies that regulate them.

Industries frequently “capture” regulatory agencies by securing appointments of their representatives to the agencies themselves — in effect, getting the fox to guard the henhouse. Under the Bush Administration, reverse revolving door abuses reached new heights. Bush installed more than 100 top officials in regulatory agencies who were lobbyists or representatives of the industries they oversaw. J. Stevens Griles, a coal industry lobbyist, was appointed Deputy Secretary of Interior, where he worked on energy-related issues of keen interest to his former clients (from whom he continued to receive a salary). He was complemented in government service by Philip Cooney, a lobbyist at the American Petroleum Institute, who promptly began editing government climate research studies to downplay the dangers of global warming. These are just a few examples of regulatory capture in the Bush Administration.



graphic: Mother Jones

Obama is pursuing a very different path in forming his Administration. The reverse revolving door policy adapts established conflicts of interest rules to the appointment process. It is not really intended to ban former lobbyists from moving into the Administration. It is intended to manage conflicts of interest that may arise when anyone — lobbyist or CEO — moves into an agency that oversees their former employers or clients.

Obama’s policy does in fact ban the appointment of a lobbyist who lobbied the same agency within two years (unless a waiver is granted), but much more importantly, the policy requires that appointees sign a written agreement to recuse themselves from matters affecting their former employers or clients. This recusal arrangement provides the means to manage conflicts of interest and avert the ability of special interests to capture our government on their own behalf. If recusals are expected to be so common, then the potential appointee should be reconsidered. The Administration is posting all waivers to the recusal arrangements on-line for public scrutiny. As should be, very few waivers have been granted by the White House or executive agencies.

This policy is desperately needed to restore independence in our regulatory agencies and confidence that these agencies will act in the public’s interest. However, there is no doubt that these revolving door restrictions, especially the controversial reverse revolving door policies, will end when the Obama Administration comes to an end — unless the executive order is codified into law for all future administrations. This is our next legislative priority at Public Citizen.

*Craig Holman, Ph.D., is the Government Affairs Lobbyist for Public Citizen.*

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