Camera dei deputati

XV LEGISLATURA

SERVIZIO BIBLIOTECA

Materiali di legislazione comparata

CONFLITTO DI INTERESSI E CARICHE DI GOVERNO

N. 3 - Settembre 2006

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Indice

Décret n°95-168 du 17 février 1995

Décret n°96-763 du 1 septembre 1996

germania

Costituzione federale (*Grundgesetz*), articolo 66

Gesetz über die Rechtsverhältnisse der Mitglieder der Bundesregierung - Bundesministergesetz

regno unito

Ministerial Code: A Code of Ethics and Procedural Guidance for Ministers (2005)

spagna

Costituzione spagnola del 27 dicembre 1978 - Artículo 98

Ley 5/2006, de 10 de abril, de regulación de los conflictos de intereses de los miembros del Gobierno y de los Altos Cargos de la Administración General del Estado

canada

Conflict of Interest and Post-Employment Code for Public Office Holders 2006

stati uniti

Codice della legislazione federale (U.S. Code) - Titolo 5 (Organizzazione del Governo e dipendenti pubblici) – Appendice (Ethics in Government Act of 1978)

Codice della legislazione federale (U.S. Code) - Titolo 18 (Reati e procedura penale) - Parte I (Reati) - Capitolo 11 – (Corruzione, concussione e conflitti d'interesse)

Schede di sintesi

francia

Riferimenti normativi

Non esiste nell'ordinamento francese una regolamentazione organica dei conflitti tra interessi privati e cariche e interessi pubblici. Le principali disposizioni in materia sono contenute nelle seguenti fonti:

Art. 23 della Costituzione che dispone l'incompatibilità tra mandato parlamentare e incarichi di Governo, cariche pubbliche, incarichi professionali e **ordinanza 58-1099** del 17 novembre 1958 recante la legge organica di applicazione;

Art. LO145 e **LO146 Code électoral** disposizioni sulle incompatibilità parlamentari, applicabili ai membri del Governo**;**

Art. 432-12 e **432-13 del codice penale** sul reato di "*Prise illégale d'intérêts*";

Loi 95-126 dell'8 febbraio 1995 norme relative alle dichiarazioni patrimoniali dei membri del Governo**;**

Decreto 95-168 del 17 febbraio 1995 contenente misure applicative in materia di incompatibilità successive.

Le incompatibilità ex art. 23 della Costituzione

L'art. 23 della Costituzione del 4 ottobre 1958 recita: "Le funzioni di membro del Governo sono incompatibili con l'esercizio del mandato parlamentare, delle funzioni di rappresentanza professionale a carattere nazionale, di ogni impiego pubblico o attività professionale. Una legge organica stabilisce la sostituzione dei titolari di tali mandati funzioni o impieghi".

La norma individua due incompatibilità fondamentali: la prima con l'esercizio del mandato parlamentare, la seconda con qualsivoglia impiego pubblico o attività privata a carattere professionale.

L'incompatibilità delle cariche di Governo con il mandato parlamentare colloca la Francia in una posizione singolare rispetto ad altri regimi parlamentari, nei quali si tende a considerare l'incarico governativo una sorta di prosecuzione del mandato elettorale. Il fatto va collegato alla rigida separazione tra i poteri (esecutivo e legislativo) voluta dal gen. De Gaulle e testimonia la preoccupazione di assicurare all'esecutivo un'indipendenza assoluta, ponendolo al di fuori della dialettica delle parti che si svolge in Parlamento. Il deputato che diviene ministro viene sostituito in Parlamento dal suo supplente. La sostituzione è definitiva e il ministro che lascia il Governo non può tornare al suo seggio parlamentare se non in occasione di nuove elezioni. La disposizione prevista dall'art. 23 della Costituzione contribuisce alla stabilità di governo, sia perché i ministri sono meno disponibili ad accettare le eventuali indicazioni dei partiti di provenienza volte a ottenere le loro dimissioni per far cadere il Governo, sia perché profondono un maggiore impegno nel mantenere stabile la compagine governativa. La norma costituzionale è stata tuttavia mitigata dalla prassi delle dimissioni anticipate del deputato supplente e della conseguente nuova elezione parziale che consente di ridiventare parlamentare all'ex-ministro, cessato dall'incarico prima della conclusione della legislatura.

L'incompatibilità dei membri del Governo con il mandato parlamentare non si estende agli altri mandati elettivi – ad esempio a quello di sindaco - e ciò ha portato spesso al "cumulo" tra le funzioni di ministro e le responsabilità locali.

La seconda importante incompatibilità prevista dall'art. 23 della Costituzione è di carattere generale: gli incarichi di Governo sono incompatibili con qualsivoglia impiego pubblico e con ogni tipo di attività professionale. L'estrema generalità di questa previsione viene interpretata nel senso più restrittivo e cioè come incompatibilità con ogni tipo di attività pubblica e privata, in quanto la partecipazione al Governo è un atto politico importante che esige un impegno esclusivo.

La legge organica prevista dal comma 2 dell'art. 23 è stata emanata con l'ordinanza 58-1099 del 17 novembre 1958. Essa prevede che le incompatibilità stabilite dall'art. 23 abbiano effetto a distanza di un mese dalla nomina, che in questo periodo il parlamentare membro del Governo non possa prendere parte a votazioni (art. 1) e che la sostituzione del parlamentare divenuto ministro avvenga secondo le condizioni previste dalle leggi organiche sulla composizione delle Assemblee parlamentari (art. 2). L'ordinanza prevede inoltre che la sostituzione nelle altre funzioni (rappresentanza professionale nazionale, impiego pubblico) avvenga nel rispetto degli statuti delle organizzazioni o amministrazioni interessate (art. 3-4). L'art. 5 dell'ordinanza stabilisce che ai membri del Governo cui siano state applicate le disposizioni degli arti 2, 3 e 4 sia corrisposta al momento della cessazione un'indennità di ammontare corrispondente al trattamento ad essi spettante in qualità di membri del Governo. Tale indennità viene corrisposta per sei mesi e solo nel caso che l'interessato non riprenda un'attività retribuita.

Di particolare rilievo è l'articolo 6 dell'ordinanza del 1958, in base al quale coloro che abbiano rivestito incarichi governativi non possono occupare incarichi e funzioni per i quali sia prevista l'incompatibilità con il mandato parlamentare se non sono trascorsi almeno sei mesi dalla cessazione dell'incarico, fatta eccezione per i casi in cui tali funzioni erano esercitate già prima della nomina a membro del Governo. Viene in tal modo implicitamente disposta l'estensione delle incompatibilità parlamentari ai membri del Governo (v. infra).

Le incompatibilità professionali applicabili ai membri del Governo

L'art. 6 dell'ordinanza 1099 del 1958 già citato stabilisce l'applicabilità delle incompatibilità parlamentari ai membri dell'esecutivo nei sei mesi successivi alla cessazione dell'incarico. Il regime delle incompatibilità previsto per i parlamentari viene dunque esteso ai membri del governo: non può infatti essere consentito nel corso del mandato ciò che viene esplicitamente vietato nei sei mesi successivi alla cessazione dall'incarico e in ragione dell'incarico stesso.

Non tutte le incompatibilità parlamentari sono applicabili ai membri del Governo. L'articolo 6 dell'ordinanza del 1958 indica infatti specificamente "le funzioni menzionate negli articoli 14 e 15 dell'ordinanza recante legge organica relativa alle condizioni di eleggibilità e alle incompatibilità parlamentari". Tali articoli corrispondono agli attuali articoli **LO145, LO146** del **codice elettorale[1].**

L'art. LO145 dispone l'incompatibilità con il mandato parlamentare delle funzioni di presidente, membro del consiglio di amministrazione, direttore generale e direttore generale aggiunto esercitate in imprese, enti e istituti pubblici nazionali, vale a dire organismi strettamente dipendenti dalle amministrazioni centrali. Uguale incompatibilità è prevista per tutte le funzioni di consulente di queste imprese ed enti esercitate in modo permanente. Una deroga a questa incompatibilità è prevista per i parlamentari che siano stati designati nel consiglio di amministrazione di uno degli organismi citati in applicazione di norme organizzative (es. parlamentari nei consigli di amministrazione delle televisioni pubbliche).

L'art. **LO146** dispone l'**incompatibilità** con il mandato parlamentare delle funzioni direttive in alcune imprese e società private. Si tratta in particolare **delle funzioni di direttore d'impresa** (*chef d'entreprise*), **presidente del consiglio di amministrazione, presidente e membro del comitato esecutivo** (*directoire*), **presidente del consiglio di vigilanza** (*conseil de surveillance*), **direttore generale, direttore generale aggiunto** esercitate nelle seguenti tipologie di imprese:

società, imprese o istituti che godono di sovvenzioni sotto forma di garanzie di interessi o di agevolazioni sotto forma equivalente assicurate **dallo Stato** o da una collettività pubblica. Sono eccettuati i casi in cui le agevolazioni derivino "dall'applicazione automatica di una legislazione generale o di una regolamentazione generale"

società aventi attività esclusivamente finanziarie che "facciano pubblicamente appello al risparmio" e le società semplici (*sociétés civiles*) autorizzate a fare pubblicamente appello al risparmio. Si tratta sostanzialmente delle societàfinanziarie **quotate in borsa**. Sulla fattispecie si è pronunciato il *Conseil constitutionnel* (decisione 89-9 I del 6 marzo 1990) esaminando il caso del deputato Bernard Tapie, presidente e direttore generale della "*Bernard Tapie Finance*", società quotata in borsa. Il *Conseil* ha dichiarato compatibili col mandato di deputato le funzioni esercitate, poiché la società non esercitava attività esclusivamente finanziarie, ma deteneva anche partecipazioni in attività industriali e commerciali

società o imprese la cui attività consista principalmente nell'**esecuzione di lavori, prestazione di forniture o di servizi per conto dello Stato** o sotto il suo controllo, o per conto di una colletività o di un'impresa pubblica o di un'impresa nazionale di uno stato estero

società e imprese **immobiliari** o di costruzione di immobili destinati alla vendita

infine, tutte le **società** in cui **più della metà del capitale** sia costituita da **partecipazioni nelle società, enti o imprese** citate nei paragrafi precedenti.

Tutte le disposizioni dell'art. LO146 sono dichiarate applicabili anche nei casi in cui la direzione delle imprese, enti e società citate sia esercitata per interposta persona.

Le altre incompatibilità pubbliche e le incompatibilità temporanee successive

L'incompatibilità generale per i funzionari pubblici viene enunciata nella **legge 83-634** del 13 luglio 1983 (detta *Loi Le Pors*) sui diritti e gli obblighi dei pubblici funzionari, modificata da ultimo dalla legge 2001-2 del 3 gennaio 2001. L'**art**. **25** (che vieta ogni attività privata ai funzionari pubbliciconsentendola solo a chi abbia un impiego *part-time*) stabilisce: "*I funzionari non possono prendere, direttamente o per interposta persona, in un'impresa sottoposta al controllo dell'amministrazione alla quale essi appartengono o in relazione con quest'ultima, degli interessi di natura tale da compromettere la loro indipendenz*a".

Il legislatore francese è stato poi particolarmente attento nel disciplinare una serie di interdizioni per gli incarichi assunti successivamente alla cessazione di un mandato o incarico pubblico. Questa attenzione sottolinea un fenomeno peculiare dell'ordinamento e della società francese. Si tratta del c.d. **pantouflage**, ovvero il passaggio di alti funzionari dello Stato ad incarichi più remunerativi nel settore privato. Il fenomeno si comprende meglio inquadrandolo nel sistema francese di formazione del personale politico, degli alti burocrati e delle *élites*nelle grandi scuole di amministrazione (ENA in primo luogo), che crea una sorta di circuito di collegamento tra queste grandi scuole, i *"grands corps"* dello Stato e i più importanti incarichi del settore privato. La regolamentazione di questo fenomeno mira alla prevenzione delle pratiche di assunzione di incarichi o collaborazioni, da parte degli ex-titolari di incarichi pubblici, presso società sottoposte in precedenza alla loro sfera di attribuzioni.

In questa logica si colloca anche la disposizione già esaminata dell'art. 6 dell'ordinanza 58-1099 che vieta ai membri del Governo cessati dall'incarico di esercitare, nei sei mesi successivi alla cessazione, le attività professionali per le quali è prevista l'incompatibilità con il mandato parlamentare (v. *supra*).

Gli articoli **432-12** e **432-13** del Nuovo **codice penale** disciplinano il reato di ***"Prise illégale d'interêts"*** (reato che veniva definito "*d'ingérence*" nell'art. 175-1 del vecchio codice penale). L'art. 432-12 punisce con la pena di cinque anni di prigione e di 75.000 euro di ammenda *"Il fatto, da parte di una persona depositaria dell'autorità pubblica o incaricata di una missione di servizio pubblico o da parte di una persona investita di un mandato elettivo pubblico, di prendere, ricevere o conservare, direttamente o indirettamente, un qualsiasi interesse in un'impresa o in un'operazione sulla quale la persona stessa ha, al* *momento dell'atto, in tutto o in parte, l'incarico di assicurare la sorveglianza, l'amministrazione, la liquidazione o il pagamento"*.

L'art. 432-13prevede una pena di due anni di prigione e 30.000 euro di ammenda per "Il fatto, da parte di una persona che sia stata incaricata in qualità di funzionario pubblico o di agente o preposta ad un'amministrazione pubblica, in ragione della sua funzione, sia di assicurare la vigilanza o il controllo di un'impresa privata, sia di concludere contratti di qualsivoglia natura con un'impresa privata, sia di esprimere il suo parere sulle operazioni effettuate da un'impresa privata, di prendere o ricevere una partecipazione di lavoro, di consulenza o di capitali in una di queste imprese prima che siano trascorsi cinque anni dalla cessazione di questa funzione."

E' punita con le stesse pene qualsiasi partecipazione di lavoro, di consulenza o di capitali in una impresa privata che possieda almeno il 30% di capitale comune o che abbia concluso un contratto che comporta una esclusività di diritto o di fatto con una delle imprese menzionate al comma precedente.

Ai sensi del presente articolo è assimilata ad un'impresa privata ogni impresa pubblica che eserciti la sua attività in un settore concorrenziale e in conformità alle regole di diritto privato.

(...)

L'infrazione non si verifica in caso di partecipazione al capitale di società quotate in borsa o allorché i capitali vengono ricevuti per devoluzione successoriale".

Si tratta come si vede di previsioni molto rigide, tanto che taluno ritiene che possano risultare di difficile applicabilità.

L'**art. 72** della **legge 84-16** (Statuto della funzione pubblica statale) dispone che il Consiglio di Stato individui con proprio decreto i casi e le funzioni per i quali possono essere introdotte limitazioni all'attività successiva ad incarichi pubblici, con la previsione di un'interdizione limitata nel tempo per i funzionari cessati definitivamente dalle funzioni. Per le violazioni è prevista la sanzione di trattenute sul trattamento pensionistico.

In applicazione di queste e di analoghe disposizioni (art. 95 legge 84-53 e art. 90 legge 86-33) è stato emanato il **decreto 95-168** il cui **art. 1** individua le **attività private interdette ai funzionari cessati** definitivamente o temporaneamente dal mandato. Si tratta essenzialmente di:

Attività professionali in imprese private sottoposte nei cinque anni precedenti ad attività di controllo o vigilanza, o con la quale siano stati conclusi contratti, di cui sia stato incaricato il funzionario interessato

Attività a scopo di lucro, salariate o non, presso un organismo o impresa o attività che per loro natura o condizioni di esercizio possano attentare alla dignità delle funzioni precedentemente ricoperte dal funzionario interessato o rischino di compromettere il normale funzionamento, l'indipendenza o la neutralità del servizio.

Come nelle previsioni dell'art. 432-13 del codice penale, queste interdizioni si applicano per la durata di **cinque anni** in caso di cessazione definitiva, o per la durata della messa in disponibilità in caso di cessazione temporanea.

Il citato decreto 95-168 detta anche le norme applicative per l'istituzione delle Commissioni previste dall'art. 87 della legge 93-122del 29 gennaio 1993 (c.d. *Loi Sapin*) recante misure per la prevenzione della corruzione e la trasparenza della vita economica e delle procedure pubbliche**.** Tali commissioni sono incaricate di apprezzare la compatibilità delle attività che i funzionari cessati dal servizio intendono intraprendere con le funzioni precedentemente esercitate.

Le dichiarazioni patrimoniali dei membri del Governo

La **legge 95-126** dell'8 febbraio 1995 ha disposto la presentazione delle dichiarazioni patrimoniali dei membri del Governo. Essa ha modificato la legge 88-227dell'11 marzo 1988 sulla trasparenza finanziaria della vita politica che già prevedeva la presentazione delle dichiarazioni patrimoniali per i parlamentari.

Ciascun membro del Governo è tenuto a presentare entro due mesi dalla sua nomina una **dichiarazione** della sua situazione **patrimoniale** alla *Commissione per la trasparenza finanziaria della vita politica*. La stessa dichiarazione deve essere resa nei due mesi successivi alla cessazione dell'incarico (esclusi i casi in cui una precedente dichiarazione sia stata presentata da meno di sei mesi) per dar modo alla Commissione di apprezzare eventuali variazioni patrimoniali. I membri del Governo possono comunicare alla Commissione le variazioni significative del loro patrimonio tutte le volte che lo giudichino utile nel corso del mandato. La Commissione è tenuta a mantenere il carattere riservato dei dati contenuti nelle dichiarazioni presentate e non ha poteri per verificarne in alcun modo la veridicità. Essa redige almeno ogni tre anni un rapporto sulle variazioni patrimoniali dei membri del Governo e dei parlamentari che viene pubblicato sul *Journal Officiel*, ma senza alcuna indicazione nominativa.

Organi di controllo

La **Commission pour la transparence financière de la vie politique** è stata istituita dall'art. 3 della citata legge 88-227 dell'11 marzo 1987, modificato da ultimo dall'art. 1 della legge 96-5.

La Commissione è composta da quindici membri provenienti dal Consiglio di Stato, dalla Corte di Cassazione e dalla Corte dei Conti, tra i quali tre membri di diritto – il Vice-Presidente del Consiglio di Stato, il Primo Presidente della

Corte di Cassazione e il Primo Presidente della Corte dei Conti -, sei titolari e sei supplenti. Essa è incaricata di:

ricevere le dichiarazioni patrimoniali dei membri del Governo, dei membri del Parlamento e di una serie di altri soggetti (parlamentari europei, presidenti di consigli regionali, presidenti dell'Assemblea e del Consiglio esecutivo della Corsica, presidenti di assemblee e consigli esecutivi dei territori d'oltremare etc.);

informare le autorità competenti del mancato rispetto dell'obbligo di presentare le dichiarazioni patrimoniali (per i membri del Governo l'autorità competente è il Primo Ministro);

apprezzare le variazioni delle situazioni patrimoniali e redigere un rapporto su tali variazioni ogni volta che lo giudichi utile e comunque almeno ogni tre anni (attualmente la Commissione pubblica rapporti annuali). Qualora la Commissione rilevi evoluzioni patrimoniali inspiegabili, dopo aver messo l'interessato in condizioni di fare le sue osservazioni, trasmette il dossier alla procura.

Il Decreto n. 96-763 del 1° settembre 1996 ne disciplina il funzionamento e prevede che la Commissione possa invitare a comparire davanti ad essa i soggetti tenuti alla presentazione delle dichiarazioni patrimoniali laddove evntuali elementi in esse contenuti o le precisazioni presentate per iscritto non siano sufficienti a spiegare la variazione della loro situazione patrimoniale (art. 3). Il soggetto invitato a comparire può farsi accompagnare da una persona a sua scelta.

Qualora continui a ritenere non adeguatamente chiarite determinate variazioni patrimoniali del soggetto interessato, la Comissione mette l'interessato in condizioni di presentare le sue osservazioni, oralmente e per iscritto, e, in un momento successivo, trasmette alla procura il dossier contenente anche le osservazioni scritte dell'interessato e l'estratto del processo verbale della seduta nel corso della quale si è tenuta l'audizione orale (art. 4).

La Commissione è sempre tenuta al rispetto della riservatezza delle dichiarazioni patrimoniali.

Le già citate **Commissioni istituite dall'art. 87 della legge 93-122** (modificato dall'art. 4 della legge 94-530) ed entrate in funzione col decreto 95-168, hanno come si è visto il compito di **apprezzare la compatibilità** delle attività che i funzionari cessati dal servizio intendono intraprendere **con le funzioni esercitate in precedenza**. Esse devono essere **consultate obbligatoriamente** dalle Amministrazioni interessate e sono in numero di tre, una per ciascuna funzione pubblica (statale, territoriale, ospedaliera). Sono composte (art. 5, 6 e 7 del decreto 95-168) ciascuna da: un consigliere di Stato, che le presiede, un consigliere della Corte dei conti, tre personalità qualificate, il direttore generale dell'amministrazione e della funzione pubblica di volta in volta interessata e il direttore del personale del ministero o dell'ente pubblico (o l’autorità investita del potere di nomina nella collettività territoriale o il direttore dell’ospedale) cui appartiene il soggetto interessato. Nella commissione competente per la funzione pubblica territoriale è previsto inoltre un rappresentante delle associazioni di eletti locali alle quali appartiene la categoria di collettività di cui fa parte il soggetto interessato. Le commissioni sono alle dipendenze del Primo Ministro ed ognuna di esse redige un rapporto annuale.

E’ infine opportuno citare anche il **Service central de prévention de la corruption** istituito dall'art. 1 della citata legge 93-122 le cui misure applicative sono contenute nel decreto 93-232 del 22 febbraio 1993. Il Servizio è posto alle dipendenze del Ministro della giustizia ed è incaricato tra l'altro dicentralizzare le informazioni necessarie al rinvenimento e alla prevenzione dei fatti di corruzione attiva e passiva e di "*trafic d'influence*" commessi da persone che esercitano una funzione pubblica.Il Servizio è organo di consulenza delle autorità giudiziarie e delle amministrazioni sui reati di corruzione.

germania

Riferimenti normativi

Costituzione federale (*Grundgesetz*), articolo 66;

Legge sui rapporti giuridici dei componenti del Governo federale del 17 giugno 1953 (*Gesetz über die Rechtsverhältnisse der Mitglieder der Bundesregierung - Bundesministergesetz*), nel testo aggiornato alle ultime modifiche introdotte dalla legge del 15 dicembre 2004.

Disciplina delle incompatibilità connesse all’esercizio di cariche di governo

Le disposizioni in materia di inconciliabilità (*Unvereinbarkeit*), ovvero di incompatibilità (*Inkompatibilität*), tra la carica di Ministro federale o Cancelliere e l'esercizio di attività diverse, sono contenute nell'articolo 66 della Legge Fondamentale (*Grundgesetz*) del 1949:

“Il Cancelliere federale ed i ministri federali non possono esercitare nessun altro ufficio remunerativo, nessun mestiere o professione, così come non possono appartenere né alla direzione, né, senza l'approvazione del

Bundestag, al consiglio di amministrazione di un'impresa istituita a scopo di lucro".

In applicazione di tale principio è stata successivamente emanata la Legge sui rapporti giuridici dei componenti del Governo federale del 17 giugno 1953 (*Gesetz über die Rechtsverhältnisse der Mitglieder der Bundesregierung - Bundesministergesetz*), da ultimo modificata con legge del 15 dicembre 2004.

In riferimento agli incarichi accessori e alle attività parallele (*Nebenämter und Nebentätigkeit*) dei membri del Governo, l'articolo 5 della legge stabilisce che il Cancelliere e i Ministri non possono esercitare, parallelamente al loro ufficio, nessun altro incarico (*Amt*) remunerativo, alcun mestiere (*Gewerbe*) o professione (*Beruf*). Durante la loro permanenza in carica non possono appartenere né alla direzione, né al consiglio d'amministrazione o di vigilanza di un'impresa istituita a scopo di lucro o svolgere dietro compenso attività arbitrali o di consulenza extra-giudiziarie, a meno che il *Bundestag* non approvi espressamente una deroga al divieto di appartenenza ad un Consiglio di vigilanza o di amministrazione. I membri del Governo non possono inoltre rivestire cariche onorifiche pubbliche, salvo deroghe approvate dal Governo federale.

L'articolo 66 della Legge fondamentale ha un corrispettivo in quanto disposto dal precedente articolo 55 in materia di incompatibilità tra la carica di Presidente Federale ed altre attività, con l'unica eccezione che per i componenti del Governo è stata prevista la possibilità di rivestire cariche e di svolgere attività diverse da quelle istituzionali previa approvazione del *Bundestag.*

Le incompatibilità messe in evidenza dagli articoli sopra citati riguardano le attività remunerative di tipo pubblico e privato. Il comma 1 dell'articolo 5 della *Bundesministergesetz* è in tal senso chiarissimo, poiché utilizza i sostantivi "mestiere" e "professione", terminologicamente riferibili ad un'attività dipendente o autonoma ma comunque legata ad un lavoro retribuito. Laddove si parla di carica/ufficio (*Amt*), termine utilizzato per indicare anche attività istituzionali, il legislatore specifica e definisce il sostantivo con l'aggettivo "remunerativo" (*besoldetes Amt*), che non lascia margini interpretativi. Le incompatibilità di tipo politico, ovvero pluralità di incarichi ed uffici in ambito istituzionale, appaiono quindi escluse dalle incompatibilità enumerate dagli articoli citati.

La direzione di un'impresa rientra in tal senso nella fattispecie di incompatibilità assoluta, mentre la partecipazione ad organi di gestione è ammessa soltanto se approvata dal Bundestag con voto di maggioranza. La deroga è stata interpretata da gran parte della dottrina come uno strumento funzionale in grado di permettere, ove richiesta, la partecipazione dei membri del Governo agli organi di gestione delle imprese economiche di proprietà pubblica o a capitale misto. La Camera bassa viene in tal modo investita dei poteri di controllo necessari a derogare alla disciplina in materia, come dimostra anche una recente mozione (stampato BT n. 16/524 del 31 gennaio 2006) inviata al Presidente del *Bundestag* dal Sottosegretario presso la Cancelleria federale e approvata dall'Assemblea nella seduta del 9 febbraio 2006. La mozione riguardava una richiesta di deroga per tre ministri (Michael Glos, Wolfgang Tiefensee und Sigmar Gabriel, rispettivamente Ministro dell'economia e della tecnologia, Ministro della circolazione stradale, dell'edilizia e dello sviluppo urbanistico, Ministro dell'ambiente) designati dal Governo federale in seno al Consiglio di vigilanza dell'Agenzia tedesca dell'energia (*Deutschen Energie-Agentur GmbH*), società a responsabilità limitata con sede a Berlino.

Non prevedendo un apparato di carattere sanzionatorio né alcun procedimento dinanzi al Tribunale costituzionale federale o ad altri organismi, la disciplina in materia è stata definita da una parte dei costituzionalisti "*lex imperfecta*". Una parte residuale della dottrina ha invece interpretato la norma partendo dagli articoli 63 e 64 della Legge Fondamentale, attribuendo al Presidente Federale la competenza ad accertare l'esistenza di un conflitto di interessi, nell'ambito del procedimento di formazione del Governo.

Poiché i divieti espressi dall'articolo 66 hanno inizio dall'entrata in carica, tale dottrina configura un diritto e dovere del Presidente federale di non procedere alla nomina di un componente del Governo che si trovi in una situazione di conflitto di interessi accertato.

Nel caso in cui l'incompatibilità dovesse ravvisarsi dopo l'entrata in carica, sempre secondo questa linea interpretativa, spetterebbe al Cancelliere federale proporre al Presidente le dimissioni del Ministro la cui posizione non risulta conforme ai criteri stabiliti dall'articolo 66.

Ai componenti del Governo che siano anche membri del Bundestag (non vi è infatti incompatibilità tra le due cariche) si applicano inoltre alcune delle disposizioni contenute nella Legge sullo stato giuridico dei deputati (*Abgeordnetengesetz*), da ultimo modificata con legge del 22 agosto 2005, nonché nelle Regole di condotta (*Verhaltensregeln*), di cui all'Allegato 1 del Regolamento del Bundestag, in particolare per quanto riguarda i dati e le indicazioni che i deputati sono obbligati a notificare per iscritto al Presidente del Bundestag.

regno unito

Riferimenti normativi

Ministerial Code: A Code of Ethics and Procedural Guidance for Ministers (2005)[2]

La disciplina del conflitto di interessi relativo all'assunzione e all'esercizio di cariche di Governo è, nel Regno Unito, di fonte non legislativa bensì deontologica e autoregolamentare, secondo un tratto tipico di quell'ordinamento che ampiamente si avvale, nelle più diverse materie, di regole informali e prive di sanzione giuridica, ciò nonostante considerate pienamente cogenti dall'opinione comune.

Il *Ministerial Code* fu adottato già dal *Cabinet Office* nel luglio del 2001[3], con l'intento di introdurre criteri ai quali devono attenersi i titolari di cariche ministeriali nei loro rapporti istituzionali e con i corpi sociali (i rispettivi Dipartimenti, il Parlamento, la pubblica amministrazione, i partiti e i collegi elettorali); un nuovo *Ministerial Code* è stato pubblicato nel luglio del 2005, esso contiene, nella *section* 5, le previsioni relative agli interessi privati dei membri del Governo (*Ministers' Private Interests*).

Le richiamate previsioni si affiancano alle regolamentazioni già vigenti in materia di conflitti di interesse dei membri delle Assemblee legislative, in maniera che al cumularsi delle cariche - governativa e parlamentare - corrisponde la convergente applicazione delle rispettive discipline, i cui contenuti presentano note di sostanziale omogeneità. Benché di natura diversa (l'uno avente carattere informale, l'altro recepito negli *interna corporis acta* delle Camere), i due corpi normativi condividono infatti il principio della doverosa pubblicità degli interessi *(disclosure of interests*), perseguito, nella sfera parlamentare, attraverso l'obbligatoria *declaration and registration of interests* presso l'ufficio del *Register*istituito in ciascuna Camera[4], e in ambito governativo - precedentemente all'adozione del *Ministerial Code* - mediante le direttive contenute nelle *Questions of Procedure* delineate dal *Cabinet Office*.

L'enunciazione del canone fondamentale della trasparenza e il suo generalizzato radicamento (presso gli organi rappresentativi e l'Esecutivo, come anche nei settori preposti alla cura di interessi pubblici, siano essi parte del *Civil Service* oppure *quangos* e *agencies*) possono essere fatti risalire al rapporto conclusivo, pubblicato nel 1995, di una commissione appositamente insediata (inizialmente nota come *Nolan Committee*, dal nome del presidente) e successivamente rinnovata. Dei basilari *Seven Principles* che presiedono all'esercizio di cariche pubbliche, posti sotto la vigilanza della *Committee on Standards in Public Life* per quanto attiene alla loro effettività, vengono in rilievo particolare per il tema in rassegna quelli riferiti alla *Selflessness*, alla *Integrity* e alla *Honesty*; in virtù del primo principio "I detentori di cariche pubbliche devono agire solamente in nome del pubblico interesse, e non al fine di perseguire benefici economici o di altra natura per se stessi o i loro familiari o amici"; alla stregua del secondo, essi "non devono assumere obblighi di natura economica o di altro tipo verso persone od organizzazioni esterne che potrebbero tentare di influenzarli nello svolgimento del loro ufficio". Il terzo, infine, fa obbligo ai medesimi di "dichiarare ogni privato interesse correlato alle loro cariche pubbliche, e di adoperarsi per risolvere ogni conflitto in maniera da tutelare l'interesse pubblico".[5]

I principi generali del codice di condotta

Date queste brevi premesse, utili a delineare il più ampio contesto in cui si inscrive il *Ministerial Code*, è ora possibile dar conto del suo contenuto.

Vi è posto, innanzitutto, il principio generale in base al quale "i ministri devono assicurare che nessun conflitto insorga, o sembri insorgere, tra le loro cariche pubbliche (*public duties*) e i loro interessi privati, finanziari o di altro genere" (par. 5.1). È, tuttavia, rimesso alla personale responsabilità di ciascun Ministro di "decidere se e quale azione sia necessaria per evitare un conflitto o la percezione di un conflitto, e di sostenere la decisione assunta, se necessario rispondendone dinanzi al Parlamento". Al *Permanent Secretary*, che presiede il *Central Secretariat* costituito presso il *Cabinet Office*, è assegnato il compito di prestare consiglio e assistenza al Ministro che ne faccia richiesta, sulla base dei precedenti ed eventualmente coinvolgendo a tale scopo altri esponenti del *Cabinet*, oppure avvalendosi dell'ausilio di consulenti professionali anche esterni al Governo. In caso di grave dubbio, la questione relativa al conflitto può essere sottoposta al vaglio del Primo Ministro: ma - viene precisato - "è responsabilità individuale dei Ministri porre ordine nella loro sfera privata affinché siano evitate critiche, ed è a loro rimessa la decisione finale al riguardo" (par. 5.2).

Finalità del codice, dunque, non è (come vi è espressamente affermato, par. 5.7) quella di precludere l'assunzione di cariche ministeriali a persone con notevole esperienza nell'industria, nelle professioni o in altri ambiti, ma di garantire che siano in tale evenienza adottate misure organiche (*systemic steps*) idonee ad evitare il rischio di un conflitto di interessi, effettivo o percepito come tale.

Aspetti procedurali

Nel codice di condotta è delineata la procedura che ciascun Ministro ha facoltà di perseguire per addivenire alla soluzione del conflitto di interessi che lo riguardi. È previsto, in particolare, che al momento della loro nomina i Ministri comunichino, su base volontaria e per iscritto, al *Permanent Secretary*, una lista completa dei loro interessi che possono dare origine ad un conflitto, siano essi di natura finanziaria, immobiliare o di natura professionale. A tal fine rilevano, sotto il profilo soggettivo, gli interessi imputabili non soltanto in via diretta al titolare della carica ministeriale, ma anche quelli del coniuge o del convivente, dei figli anche se minori, di persone giuridiche (*trusts*) nelle quali il Ministro o suoi parenti o conviventi abbiano ruoli significativi (di amministratore o di beneficiario) (par.5.3).

Ricevuta la lista degli interessi, il *Permanent Secretary* valuta assieme al Ministro l'insorgenza di situazioni di conflitto, i possibili rimedi o l'opportunità di eventuali integrazioni, e ne riceve le spontanee dichiarazioni in ordine alle iniziative assunte (par. 5.4). Le informazioni e le dichiarazioni fornite dal Ministro hanno natura strettamente confidenziale e non possono essere diffuse senza il suo consenso, né possono ricevere smentita o conferma da parte del *Secretary* in caso di critiche mosse al Ministro, essendo comunque rimessa all'autonoma determinazione di quest'ultimo la diffusione al pubblico della lista dei propri interessi e delle iniziative conseguenti.

Qualora il Ministro continui ad essere titolare di interessi di natura privata, ed ogni volta che decisioni del Governo possano incidere su di essi, è regola che egli dichiari tali interessi agli altri Ministri e che rimanga estraneo (*entirely detached*) alle deliberazioni. Analogo contegno il Ministro è tenuto ad assumere nell'ambito del suo Dipartimento, qualora insorgano situazioni di conflitto, attuale o potenziale, tra i suoi interessi privati e il *public business* (par. 5.5).

Casi di conflitto

Nel codice sono esposte in dettaglio talune misure risolutive dei casi di conflitto, fondate sulle precedenti esperienze dei Governi.

È previsto, in particolare, che al momento della nomina i Ministri lascino ogni altra carica pubblica eventualmente detenuta, o altrimenti sottopongano al vaglio del Primo Ministro la propria decisione di mantenerla (par. 5.8). Spetta ai Ministri, inoltre, assicurarsi di non avere partecipazioni in enti privati le cui finalità possano determinare un conflitto di interessi con la politica del Governo, e astenersi dal dare il proprio patrocinio o sostegno a iniziative promosse da gruppi di pressione o da organizzazioni beneficiarie di finanziamenti pubblici. L'eventuale sostegno che il Ministro voglia dare a fondazioni o a enti assistenziali (*charities*) non deve porlo nella condizione, ancorché apparente, di assumere obblighi verso tali enti (e sono pertanto sconsigliati espressamente i contatti diretti e personali tra i Ministri e le persone fisiche o giuridiche interessate). I membri del Governo possono mantenere, una volta assunta la carica ministeriale, la propria adesione a organizzazioni sindacali purché, anche in questo caso, ciò non dia adito a situazioni di conflitto reali o apparenti, ed avendo cura di non prendere parte attiva nella loro attività, di non ricevere remunerazioni da quella fonte (eccettuati gli eventuali accantonamenti previdenziali) e di evitare ogni rapporto che possa apparire condizionante e foriero di un'indebita ingerenza (*undue influence*) sulla propria attività (parr. 5.9, 5.10).

Interessi finanziari

Il *Ministerial Code* dedica ulteriori paragrafi al tema degli interessi privati di natura finanziaria che possano venire in contrasto con la carica pubblica ricoperta; alle regole di tenore deontologico, in questo caso, si accompagna l'esplicito richiamo a norme generali di diritto positivo.

Dopo aver ribadito, anche con riferimento a questo specifico aspetto, il principio in base al quale i Ministri devono scrupolosamente evitare l'insorgenza di tali conflitti, reali o apparenti, adottando le misure idonee a risolverli o a prevenirli, le previsioni del codice di condotta assegnano un più marcato rilievo al parere del *Permanent Secretary*, data la sua veste istituzionale di *Accounting Officer* responsabile dinanzi al *National Audit Office* (organo indipendente di vigilanza sulla spesa pubblica).

In particolare, sono "tipizzate" nel codice due principali modalità attraverso le quali può determinarsi (o si può supporre che si determini) il conflitto: esso può derivare dall'esercizio di poteri o di influenza che venga ad incidere sul valore degli interessi detenuti, oppure dall'impiego di particolari conoscenze acquisite nel corso dell'attività istituzionale e che possa arrecare benefici o evitare perdite agli interessi finanziari privati del Ministro (parr. 5.11, 5.12).

In tali ipotesi, a prescindere dal rischio - puntualmente richiamato nel codice - che ciò comporta per la reputazione del Ministro, si prospettano due rilevanti implicazioni giuridiche. In primo luogo, il compimento o l'omissione di atti da parte del Ministro (in quanto pubblico ufficiale) in ambiti rispetto ai quali il medesimo abbia interessi pecuniari possono essere portati alla cognizione dei giudici (il cui scrutinio in materia di conflitto di interessi, come *per incidens* avvertono gli estensori del codice, è sempre più stringente) ed essere invalidati. In secondo luogo, si richiamano le norme penalistiche del *Criminal Justice Act* del 1993 concernenti l'uso o la comunicazione di informazioni economiche confidenziali (cosiddette "*price-sensitive*") ottenute in virtù dell'ufficio ministeriale (par. 5.13).

Sono altresì segnalati criteri di soluzione alternativi alla dismissione (*disposal*) dei beni alla base degli interessi privati in conflitto; il Ministro che non voglia o non possa alienare tali beni può infatti - avvalendosi del consiglio del *Permanent Secretary* e degli esperti esterni eventualmente coinvolti tramite il *Cabinet* - adottare misure relative ai beni in sé considerati, oppure concernenti le decisioni ad essi relative (par. 5.14).

In particolare, il Ministro incorso nel conflitto di interessi può devolvere i propri investimenti finanziari ad un *blind trust*, in modo che la gestione dei beni sia separata dalla titolarità e temporaneamente rimessa ad un soggetto indipendente, al quale siano preclusi l'informazione o il rendiconto verso il titolare circa le variazioni patrimoniali. Tale soluzione, tuttavia, è nel codice reputata idonea nel solo caso in cui gli interessi finanziari in questione siano molto variegati e distribuiti, stante la regola di trasparenza societaria posta dal *Companies Act* del 1985, che abilita le società a conoscere l'identità dei propri azionisti (par. 5.15). Una soluzione alternativa è quella concernente l'obbligo, pubblicamente assunto dal Ministro, di astenersi dall'operare sul mercato azionario rilevante per un determinato periodo (par. 5.16).

In mancanza di questi o di altri accorgimenti, devono essere adottate misure, dallo stesso Ministro e dal Dipartimento cui è preposto, dirette a precludergli l'accesso a determinati documenti e la partecipazione a determinate discussioni o deliberazioni. In concreto, l'attuazione di queste misure è variabile in funzione delle specifiche competenze (del *junior Minister* rispetto al Ministro a capo del Dipartimento, e viceversa: par. 5.17). Qualora sussistano dubbi - per l'impraticabilità delle accennate soluzioni, per le natura dei compiti del Dipartimento, per la qualità o l'ampiezza degli investimenti implicati - sulla possibilità di porre efficace rimedio al conflitto, della questione è investito il Primo Ministro, e possono rendersi in tal caso necessarie le dimissioni del Ministro (par. 5.18).

Ulteriori e puntuali previsioni del codice sono dedicate alle partecipazioni dei membri del Governo in studi professionali (*partnerships*), in aziende, gruppi immobiliari, enti pubblici e privati nei quali essi ricoprano posizioni direttive (*directorships*), nonché in imprese assicurative (*membership of Lloyd's*). In tutti i casi è ribadito il doveroso contegno finalizzato a scongiurare l'insorgenza, anche apparente, di conflitti di interesse, ed è affermata la necessità di adottare spontaneamente misure idonee a separare gli interessi privati dalle mansioni di Governo (parr. 5.19, 5.20, 5.21).

Attività successive all'incarico ministeriale

Coerentemente con un sistema giuridico nel quale non sono infrequenti le “incompatibilità successive” e le cosiddette *post-office employment restrictions* per i titolari di cariche pubbliche, nel presupposto che tali preclusioni possano rafforzarne l’autonomia e l’indipendenza durante l’espletamento del loro mandato, il *Ministerial Code* si preoccupa di disciplinare anche l’assunzione di nuovi incarichi da parte degli ex Ministri.

È previsto, in particolare, che una volta lasciata la carica di Governo e per i due anni successivi, gli ex Ministri in procinto di assumere nuovi incarichi di rilievo economico e sociale (eccettuati quelli onorifici o non retribuiti) richiedano previamente il parere della *Independent Advisory Committee on Business Appointments*, affinché sia salvaguardato l’interesse pubblico e non sorga nell’opinione comune il sospetto che decisioni adottate durante il mandato ministeriale siano state influenzate da aspettative circa i futuri incarichi professionali (par. 5.29).

Altre disposizioni

Alcune previsioni riguardano le limitazioni che gravano sul Ministro in carica rispetto al suo personale sostegno affinché siano conferiti premi od onorificenze a terze persone (par. 5.23), nonché la regola generale che impone al *public servant* e al Ministro di non accettare doni (par. 5.24). Il Ministro può comunque trattenere i doni di modico valore (fino a 140 sterline) (par. 5.25). I doni ricevuti dai Ministri nell’esercizio delle loro funzioni diventano proprietà del Governo (par. 5.26), che pubblica annualmente una lista dei doni ricevuti di valore superiore alle 140 sterline (par. 5.27).

spagna

Riferimenti normativi

Costituzione, art. 98, comma 3

*Ley 5/2006, de 10 de abril, de regulación de los conflictos de intereses de los miembros del Gobierno y de los Altos Cargos de la Administración General del Estado***[6]**

Il dettato costituzionale e le leggi attuative

L'art. 98, comma 3, della Costituzione spagnola del 1978 vieta ai membri del Governo l'esercizio di altre funzioni rappresentative, al di fuori di quelle proprie del mandato parlamentare, e di qualunque altra funzione pubblica non inerente all'incarico. Non è inoltre permesso l'esercizio di attività professionali o commerciali. Il comma successivo riserva alla legge la disciplina dettagliata di tali incompatibilità.

Più volte il legislatore è intervenuto in materia, la prima legge attuativa, adottata cinque anni dopo l'entrata in vigore della Costituzione, è stata *la Ley 25/1983 de 26 de diciembre*, modificata dalla *Ley 9/1991 de 22 de marzo*.

Nel 1995 il legislatore spagnolo ha riformato la legislazione sull'incompatibilità delle alte cariche dello Stato, al fine di rendere più efficaci i meccanismi di controllo ed il regime sanzionatorio, con l'approvazione della *Ley 12/1995*, *de 11 de mayo, de Incompatibilidades de los Miembros del Gobierno de la Nación y de los Altos Cargos de la Administración General del Estado*.

A distanza di dieci anni il Governo attualmente in carica ha varato un ampio programma di misure per il c.d. "buon governo", che ha portato all'approvazione del "codice del buon governo"[7] ed ad una nuova sostanziale riforma della disciplina finalizzata a prevenire i conflitti di interesse per i membri del Governo e le più alte cariche dell'amministrazione statale. La *Ley 5/2006, de 10 de abril,* non si limita, infatti, a perfezionare il precedente regime delle incompatibilità ma introduce nuove misure cautelative a garanzia dell’oggettività, dell’imparzialità e dell’indipendenza delle più alte cariche dello Stato.

Le "alte cariche" dello Stato e la definizione di conflitto di interessi

La legge 5/2006 elenca tassativamente le “alte cariche” destinatarie della nuova disciplina (art. 3, comma 2, lettere a-m) e cioè:

membri del Governo e Segretari di Stato;

sottosegretari, segretari generali, delegati del Governo nelle Comunità Autonome, in Ceuta e Melilla, nelle isole e negli enti di diritto pubblico, capi e direttori generali di missioni diplomatiche permanenti e capi di rappresentanze permanenti presso organizzazioni internazionali;

i direttori generali dell’Amministrazione statale;

il direttore generale dell'ente pubblico Radiotelevisione spagnola, i presidenti, i direttori generali, esecutivi, tecnici o di dipartimento, ed altre cariche assimilabili, con riferimento ad enti di diritto pubblico legati o dipendenti dall'Amministrazione generale dello Stato, la cui nomina sia effettuata su decisione del Consiglio dei Ministri, o dei propri organi di governo, e compresi, in ogni caso, i Presidenti e i direttori generali degli enti di gestione e dei servizi comuni della Sicurezza Sociale;

il Presidente e i consiglieri del Tribunale per la Difesa della Libera Concorrenza;

il Presidente ed i direttori generali dell'Istituto Ufficiale di Credito;

i Presidenti e gli amministratori delegati di società commerciali se designati previo accordo in Consiglio dei Ministri o in altri organi di governo, nel caso in cui l’Amministrazione generale dello Stato sia azionista di maggioranza o abbia comunque una posizione dominante nel consiglio di amministrazione;

membri di gabinetto della Presidenza e della Vicepresidenza del Consiglio nominati dal Consiglio dei Ministri e i direttori dei gabinetti ministeriali;

i presidenti, i direttori ed i gestori delle fondazioni pubbliche statali, a condizione che percepiscano una retribuzione per lo svolgimento dell'incarico;

il presidente e i consiglieri della *Comisión Nacional del Mercado de Valores* (organismo omologo alla Consob), della Commissione del mercato delle telecomunicazioni, della Commissione nazionale dell'energia, il presidente, i consiglieri ed il Segretario generale del Consiglio di sicurezza nucleare, così come il presidente ed i membri degli organi decisIonali delle auotrità regolatorie;

i direttori generali ed esecutivi, i segretari generali e assimilati delle autorità regolatorie;

i titolari di qualsiaisi altro incarico presso l'Amministrazione generale dello Stato, la cui nomina sia stata effettuata dal Consiglio dei Ministri.

Inoltre, per la nomina de Presidente del Consiglio di Stato il Governo comunicherà al *Congreso de los Diputados* il nome della persona proposta all'incarico, affinché il designato possa essere convocato dall'apposita Commissione del *Congreso*, secondo quanto disposto dal Regolamento stesso. Tale Commissione esaminerà le candidature proposte e formulerà un parere sull'eventuale esistenza di conflitto di interesse. Lo stesso procedimento dovrà essere osservato per la nomina dei massimi responsabili della *Comisión Nacional del Mercado de Valores*, della Commissione per il mercato delle telecomunicazioni, della Commissione nazionale per l'energia, del Consiglio per la sicurezza nucleare, del Presidente del Consiglio Economico e Sociale, del

Tribunale per la difesa della concorrenza, dell’Agenzia EFE (Agenzia nazionale di stampa), del direttore dell’Agenzia per la protezione dei dati e del direttore generale dell’ente pubblico Radiotelevisione spagnola.

L’articolo 4 definisce come conflitto di interesse qualunque intervento dei titolari delle cariche sopraindicate su temi in cui confluiscono interessi pubblici e interessi privati propri o di familiari diretti o condivisi con terzi.

Le incompatibilità pubbliche e private

Già nella legge 12/1995 si affermava il principio della incompatibilità generale con qualsiasi attività pubblica o privata, fatte salve alcune eccezioni esplicitamente elencate dalla legge stessa. La nuova legge conferma tale orientamento, disponendo l’assoluta incompatibilità con qualunque attività, professione o incarico di carattere pubblico o privato, per conto proprio o per conto terzi, fatto salvo quanto disposto dagli artt. 9 e 10, ove sono individuate rispettivamente le attività pubbliche e private compatibili.

In particolare, tra le attività pubbliche compatibili rientrano: lo svolgimento di incarichi a carattere istituzionale o commissionati dal Governo; lo svolgimento di missioni a carattere temporaneo presso altri Stati o presso organizzazioni internazionali; la presidenza di società per azioni di proprietà diretta o indiretta dell’Amministrazione generale dello Stato, quando la natura dei fini perseguiti da tali società sia connessa alle competenze legalmente attribuite all’alta carica; la rappresentanza dell’Amministrazione statale negli organi collegiali e direttivi o nei consigli di amministrazione delle imprese a capitale pubblico o di enti di diritto pubblico. Tuttavia non si potrà appartenere a più di due consigli di amministrazione di tali enti o imprese, salvo diversa autorizzazione del Consiglio dei Ministri. In ogni caso allo svolgimento di tali attività non corrisponderà alcuna remunerazione, ma solo il rimborso delle spese di viaggio e soggiorno. Viene, infine, precisato che i membri del Governo e i Segretari di Stato, conformemente a quanto disposto dalla Legge Organica sul regime elettorale, potranno svolgere l’attività di deputato o senatore.

L’articolo 10 consente ai titolari di alte cariche solo tre tipi di attività private (sempre che non sia compromessa l'imparzialità o l'indipendenza nello svolgimento delle proprie funzioni):

l'amministrazione del proprio patrimonio personale o familiare;

la produzione e creazione letteraria, artistica, scientifica o tecnica e le pubblicazioni che ne possono derivare, compresa la partecipazione occasionale in qualità di relatori a congressi, conferenze, seminari o corsi, purché non si instaurino rapporti di lavoro o di prestazione di servizi;

la partecipazione ad istituti culturali o di beneficenza senza fini di lucro, sempre che non ne derivi alcuna forma di retribuzione personale.

Ulteriori misure finalizzate a prevenire il conflitto di interessi sono contenute nell’articolo 6, comma 1 che stabilisce che i titolari delle alte cariche non potranno detenere partecipazioni dirette o indirette superiori al 10 per cento del capitale di aziende, che abbiano rapporti contrattuali, di qualunque tipo, con il settore pubblico, a livello statale, regionale o locale o che siano subfornitrici di tali aziende o che ricevano finanziamenti pubblici. Tale limite si applica anche nel caso in cui le azioni siano detenute insieme al coniuge, a prescindere dal regime patrimoniale familiare, o ad altra persona convivente in analoga relazione affettiva, ai figli a carico o a persone poste sotto tutela.

Nel caso di società per azioni con capitale sottoscritto superiore a 600.000 euro, tale divieto si applicherà alle partecipazioni patrimoniali, che senza raggiungere il limite del 10 per cento, comportano una posizione societaria, in grado di condizionarne gli assetti in maniera rilevante.

Nel caso in cui il titolare dell’incarico al momento della nomina abbia partecipazioni superiori ai limiti sopraindicati, dovrà privarsene entro il termine di tre mesi. Analogamente se la partecipazione viene acquisita per via ereditaria o ad altro titolo gratuito durante il mandato, il titolare dovrà privarsene entro tre mesi.

L'articolo 7 dispone, inoltre, che chiunque sia chiamato a ricoprire alti incarichi è obbligato a disinteressarsi dagli affari relativi a società in cui ha svolto funzioni direttive o amministrative nei due anni precedenti la nomina. Tale obbligo si estende anche nel caso in cui tali funzioni interessano il coniuge, il convivente o altri familiari entro il secondo grado di parentela. A tale scopo i titolari delle alte cariche devono presentare una dichiarazione particolareggiata relativa alle attività professionali e lavorative svolte nei due anni prima della nomina. In ogni caso ogni qualvolta si configuri tale obbligo, l'astensione dovrà essere formulata per iscritto e notificata al diretto superiore o all'organo designante.

Nei due anni successivi alla cessazione dalla carica, è fatto divieto di svolgere attività in aziende private in rapporto diretto con l'area di competenze della carica ricoperta. Tale rapporto diretto, in base all'articolo 8, comma 1, sussiste nel caso in cui, durante il mandato, le alte cariche, o i superiori su loro proposta, abbiano adottato risoluzioni o abbiano stipulato accordi con tali imprese.

I titolari di cariche pubbliche che intendono tornare a svolgere la propria attività professionale presso imprese private, non incorrono in incompatibilità se l'attività che andranno a svolgere non è direttamente relazionata alle competenze della carica ricoperta. Inoltre, nei due anni successivi al termine della carica non potranno stipulare direttamente o attraverso società di cui fanno parte per una percentuale superiore al 10 per cento, contratti di assistenza tecnica, di servizio o simili con la Pubblica Amministrazione.

Infine, l'articolo 8 dispone che nei due anni successivi alla cessazione dalla carica i titolari prima di avviare nuove attività professionali di natura privata devono dichiararlo alla *Oficina de Conflictos de Intereses*, di cui all'articolo 15. Entro un mese la *Oficina* si pronuncerà sulla compatibilità dell'attività. Se la *Oficina* riscontra motivi di incompatibilità tra l'attività da svolgere ed il precedente incarico, l’interessato o l’impresa potranno fornire ulteriori elementi a supporto, che saranno valutati dalla *Oficina*prima di procedere alla risoluzione definitiva. Coloro i quali, invece, torneranno a lavorare nella funzione pubblica dovranno astenersi da tutte le transazioni correlate al precedente incarico.

Le dichiarazioni richieste ed il ricorso al blind trust"

I titolari di alte cariche dello Stato, entro tre mesi dall'inizio dell'incarico, dovranno presentare due dichiarazioni:

- una relativa alle attività in cui sono impegnati (art. 11)[8] ed
- una di natura patrimoniale (art. 12) contenente tutte le informazioni relative ai beni, diritti ed obbligazioni, compresi i titoli finanziari negoziabili e le partecipazioni societarie. Nella dichiarazione andrà anche indicato l’oggetto sociale di tutte le società in cui il titolare, il coniuge, il convivente o i figli a carico abbiano interessi. Su base volontaria il coniuge o il convivente potranno formulare un’analoga dichiarazione. Il titolare dovrà allegare alla dichiarazione patrimoniale la propria dichiarazione dei redditi, che dovrà essere ripresentata ogni anno. La dichiarazione patrimoniale deve essere ripetuta entro i tre mesi successivi alla cessazione dell'incarico.

La dichiarazione sulle attività sarà inviata al **Registro delle Attività delle Alte Cariche**, che ha carattere pubblico e la seconda al **Registro dei Beni e Diritti Patrimoniali delle Alte Cariche**, che ha, invece, carattere riservato ed al quale possono accedere soltanto il Parlamento, gli organi giudiziari ed il Pubblico Ministero. Un regolamento stabilirà i contenuti della dichiarazione dei beni e diritti patrimoniali dei membri del Governo e dei Segretari di Stato, che saranno pubblicati nella gazzetta ufficiale, salvaguardando la *privacy* e la sicurezza dei soggetti interessati.

La legge 12/1995 aveva introdotto una novità vicina al *blind trust* del diritto nordamericano, che è stata sostanzialmente conservata nella nuova legge del 2006. In caso di forme di partecipazione o controllo di società commerciali che emettono titoli negoziabili (da parte dei titolari delle cariche, ma anche del coniuge, fatto salvo il caso in cui il regime economico sia quello della separazione dei beni, e dei figli minori non emancipati), l'art. 13 della nuova legge dispone che l'amministrazione di tali interessi dovrà essere delegata, a cura degli stessi interessati, ad una entità finanziaria registrata presso la *Comisión Nacional del Mercado de Valores* per tutto il periodo della durata in carica e per i due anni successivi al termine dell'incarico. L'unica modifica concerne l'esclusione di tale obbligo nel caso in cui il valore complessivo di tali titoli non superi i 100.000 euro.

Tale entità svolgerà la sua attività nel rispetto dei principi generali della redditività (*rentabilidad*) e del rischio (*riesgo*) stabiliti nel contratto, con il divieto sia di ricevere indicazioni sugli investimenti da parte degli interessati, sia di comunicare loro la composizione degli investimenti stessi, salvo i casi previsti dalla legge.

Gli organi competenti ed i procedimenti sanzionatori

L'articolo 15 istituisce un organo ad hoc, la *Oficina de Conflictos de Intereses*, preposto ai controlli relativi alle incompatibilità segnalate ed alla tenuta del Registro delle Attività delle Alte Cariche e del Registro dei Beni e Diritti Patrimoniali delle Alte Cariche. Tale organismo sarà incardinato organicamente presso il Ministero dell'Amministrazione Pubblica e opererà in regime di piena autonomia funzionale. Sul personale che presterà servizio presso la *Oficina,* grava l'obbligo permanente di segretezza rispetto a tutte le informazioni di cui venga a conoscenza per motivi di lavoro.

La *Oficina*, con cadenza semestrale, deve inoltre inviare al Governo (art. 16), per la successiva trasmissione al *Congreso de los Diputados*, un'informativa dettagliata sull'attuazione degli adempimenti previsti dalla legge, così come delle eventuali infrazioni rilevate.

Per quanto concerne il regime sanzionatorio, come è consuetudine nel sistema spagnolo, le infrazioni (*infracciones*), che hanno natura di illecito amministrativo, sono divise in tre gradi: molto gravi, gravi e lievi.

Le infrazioni molto gravi alla legge sono tre:

mancato rispetto dei principi generali di incompatibilità, indicati dalla legge;

presentazione di dati e documenti falsi;

mancato rispetto delle disposizioni dell'art. 13 sulla gestione dei titoli quotati in Borsa.

Le infrazioni gravi sono di due tipi:

omissione di dati e documenti da presentare;

mancata dichiarazione di attività e di beni patrimoniali nei rispettivi registri, nonostante un avviso in tal senso.

E' considerata, infine, infrazione lievela mancata dichiarazione di attività e/o di beni patrimoniali nei tempi stabiliti, purché a ciò si rimedi dopo aver ricevuto un apposito avviso.

La legge 5/2006 ha fortemente inasprito le sanzioni applicabili. In particolare le infrazioni molto gravi sono punite con la destituzione dall'incarico, l'obbligo di restituire le somme di denaro percepite indebitamente e la mancata erogazione della pensione a titolo di indennizzo prevista dalla *Ley 74/1980, de 29 de diciembre*. Inoltre i titolari di alte cariche colpevoli di infrazioni molto gravi non potranno accedere alle alte cariche contemplate dalla stessa legge per un periodo che oscilla tra 5 e 10 anni. L'entità di quest'ultima sanzione sarà proporzionata ai danni arrecati ai cittadini da tali comportamenti illeciti. Per le infrazioni lievi è invece previsto un ammonimento (*amonestación*) agli interessati.

Indipendentemente dalle sanzioni imposte, se si configurano ipotesi di responsabilità ulteriori, è competenza della **Direzione del Servizio Giuridico dello Stato** dell'Avvocatura Generale dello Stato avviare le azioni opportune. In presenza di ipotesi di reato, l'amministrazione pubblica trasmetterà tutta la documentazione al Procuratore generale dello Stato e sospenderà ogni procedimento, in attesa del termine del processo penale.

I procedimenti sanzionatori nei confronti dei membri del Governo e dei Segretari di Stato possono essere avviati solo dal Consiglio dei Ministri, su proposta del Ministro per la Pubblica Amministrazione; negli altri casi l'iniziativa spetta direttamente al Ministro per la Pubblica Amministrazione.

La fase istruttoria è di competenza della *Oficina de Conflictos de Intereses*.

Infine, l'imposizione delle sanzioni, in presenza di infrazioni molto gravi e, in ogni caso, nei confronti dei membri del Governo e dei Segretari di Stato, spetta al **Consiglio dei Ministri**; in caso di infrazioni gravi o lievi gli organi competenti sono rispettivamente il Ministro per la Pubblica Amministrazione ed il Segretario di Stato per la Pubblica Amministrazione.

canada

Riferimenti normativi

Conflict of Interest and Post-Employment Code for Public Office Holders (2006)[9]

Introduzione

La duplice materia del conflitto di interessi e del periodo successivo al mandato per i titolari di carica pubblica è disciplinata, a livello federale, dal *Code of Interest and Post-Employment Code for Public Office Holders.* Il testo attualmente vigente è stato emanato dal Primo ministro il 6 febbraio 2006, ai sensi dell'art. 72-061 del *Parliament of Canada Act*, a norma del quale "il Primo ministro stabilisce i principi, le regole e gli obblighi in materia di etica dei titolari di carica pubblica". Il Codice si compone di 32 articoli e di 5 allegati e si suddivide in tre parti: Parte I - Oggetto e principi, Parte II - Misure di attuazione sul conflitto di interessi, Parte III - Misure di attuazione sul periodo successivo al mandato.

Esistono inoltre due altri Codici sul conflitto di interessi, uno per i membri della Camera dei Comuni e uno per i membri del Senato. Essi sono parte integrante dei rispettivi Regolamenti parlamentari. Se una persona è al tempo stesso ministro o segretario parlamentare e membro della Camera dei comuni, si applica il Codice per i titolari di carica pubblica.

Le autorità di gestione dei codici sono due: il Commissario all'etica (*Ethics Commissioner*), che amministra il Codice per i titolari di carica pubblica e il Codice per i membri della Camera dei Comuni e il Consigliere del Senato per l'etica (*Senate Ethics Officer*), che amministra il Codice per i membri del Senato. Entrambe queste autorità sono organismi parlamentari indipendenti che riferiscono direttamente al Parlamento.

Attualmente si trova all'esame delle Camere un disegno di legge, recante il *Federal Accountability Act*, che ha come duplice scopo da un lato di conferire alla materia rango legislativo mediante un *Conflict of Interest Act*, dall'altro di unificare le attuali due autorità competenti in materia di etica in una sola autorità federale (http://www.faa-lfi.gc.ca/faa-lfi/faa-lfi00_e.asp).

Il Codice per i titolari di carica pubblica

Destinatari

Il Codice si applica ai *public office holders* (*titulaires d'une charge publique* in francese), così definiti dall'art. 4:

a) ministro della Corona, ministro di Stato o segretario parlamentare (le funzioni di quest'ultimo sono quelle di un sottosegretario in Italia);

b) chiunque, ad esclusione dei membri del pubblico impiego, lavori per conto di un ministro della Corona o di un ministro di Stato;

c) qualunque titolare nominato dal *Governor in Council* (*Governor in Council appointee*), eccettuati: i *Lieutenant-Governor*, i funzionari e il personale del Senato, della Camera dei comuni e della Biblioteca del Parlamento, i capi missione di cui all'art. 13-1 della Legge sul Ministero degli affari esteri, i giudici retribuiti ai sensi del *Judges Act*, i giudici militari, gli ufficiali della *Royal Canadian Mounted Police* salvo il *Commissioner*;

d) qualunque titolare di una nomina ministeriale (*ministerial appointee*) a tempo pieno designato dal ministro competente come titolare di una carica pubblica.

I ministri e i segretari parlamentari sono soggetti al Codice relativamente all'esercizio delle funzioni e dei poteri che sono stati loro conferiti in qualità di ministri e di segretari parlamentari.

Il personale di autorità, commissioni e tribunali federali come definiti dal *Federal Courts Act*, di datori di lavoro come definiti dal *Public Service Labour Relations Act*, delle Forze armate canadesi e della *Royal Canadian Mounted Police* è soggetto ai Principi enunciati nella Parte I del Codice ed a tutte le altre misure di attuazione che il responsabile dell'organismo in questione può stabilire.

I titolari di carica pubblica che non sono membri del pubblico impiego e che lavorano in media meno di 15 ore settimanali per conto di un ministro, o che sono nominati a tempo parziale dal *Governor in Council* e che non ricevono una retribuzione annuale, o che sono nominati a tempo parziale da un ministro e designati dal ministro stesso come titolari di carica pubblica, sono soggetti ai Principi enunciati nella Parte I del Codice ed a tutte le altre misure di attuazione che il responsabile dell'organismo in questione può stabilire.

Le società pubbliche (*Crown corporations*), quali definite dal *Financial Administration Act*, sono soggette alle misure di attuazione stabilite dalla propria organizzazione conformemente alle pratiche in essa vigenti.

Oltre alla definizione di *public office holder*, l'art. 4 del Codice contiene anche le definizioni di "beni", "partner di fatto", "figlio a carico", "coniuge", "famiglia", "interesse personale" e "parentela".

Principi

La Parte I del Codice definisce dodici principi aventi portata generale ma formulati in modo dettagliato, ai quali ogni titolare di carica pubblica ha l'obbligo di attenersi: 1) comportamento etico elevato per ispirare fiducia nell'integrità, oggettività e imparzialità del governo, 2) sottoposizione al controllo pubblico (*public scrutiny*), 3) conformità delle decisioni al pubblico interesse, 4) divieto di interessi personali che possano essere influenzati da decisioni governative cui il titolare partecipa, salvo quelli autorizzati dal Codice, 5) prevenzione dei conflitti di interesse reali, potenziali o apparenti e prevalenza dell'interesse pubblico in caso di conflitto, 6) divieto di doni, segni di ospitalità e benefici, salvo quelli autorizzati dal Codice, 7) divieto di prestare trattamenti di favore, 8) divieto di *insider information*, 9) divieto di uso diretto o indiretto di beni del governo, salvo quelli autorizzati dal Codice, 10) dopo la fine del mandato, divieto di trarne vantaggio, 11) divieto di sollecitare la corresponsione di fondi privati, se esiste un rischio di incompatibilità con la carica, 12) rispetto degli organi incaricati di amministrare il Codice.

Nomina e funzioni del Commissario all'etica

Ai sensi del *Parliament of Canada Act* (http://lois.justice.gc.ca/en/P-1/index.html) il Commissario all'etica amministra il Codice per i titolari di carica pubblica ed il Codice per i membri della Camera dei comuni. Fra i suoi poteri alcuni rivestono particolare rilevanza.

Egli può fornire consulenza di natura confidenziale a qualsiasi titolare di carica pubblica e al Primo ministro in materia di etica (art. 72-7 *Parliament of Canada Act*).

Egli può condurre inchieste, su richiesta di un parlamentare, in merito a presunte violazioni del Codice da parte di un ministro della Corona, di un ministro di Stato o di un segretario parlamentare (art. 72-8 *Parliament of Canada Act*).

Oltre le misure di attuazione previste dal Codice, il Commissario all'etica può imporre qualunque altra misura di attuazione nei confronti di un bene o di un elemento che, a suo parere, crei un conflitto di interesse o l'apparenza di un tale conflitto (art. 7-1 Codice). In caso di dubbi sul metodo necessario per conformarsi al Codice, il Commissario all'etica stabilirà quello più pertinente e cercherà di raggiungere un accordo con il titolare della carica pubblica a riguardo (art. 7-4). Infine, le disposizioni adottate da quest'ultimo per conformarsi alle misure di attuazione previste dal Codice devono essere approvate dal Commissario all'etica (art. 7-5 Codice). Norme dettagliate regolano la confidenzialità delle informazioni, degli atti e dei documenti nei vari procedimenti di attuazione.

Da ultimo, quando il Commissario all'etica emana un parere secondo il quale il titolare di una carica pubblica non ha rispettato le disposizioni del Codice, il titolare stesso si espone a provvedimenti adottabili dal Primo ministro, ivi compresa, se del caso, la revoca della nomina (art. 23-1 Codice).

Il Commissario all'etica deve presentare annualmente due relazioni di attività alla Camera dei comuni: una relativa all'attuazione del Codice per i titolari di carica pubblica e l'altra relativa all'attuazione del Codice per i membri della Camera dei comuni.

Il Commissario all'etica è un organismo indipendente della Camera dei comuni, finanziato a carico del bilancio dello Stato. Il suo mandato ha una durata di cinque anni ed è rinnovabile a tempo indeterminato per periodi uguali (art. 72-2 *Parliament of Canada Act*).

Egli è nominato dal *Governor in Council* dopo aver consultato i Presidenti dei gruppi parlamentari di ogni partito riconosciuto nella Camera dei comuni e dopo l'approvazione della nomina mediante una risoluzione della stessa Camera (art. 72-1 *Parliament of Canada Act*). Va peraltro ricordato che nel sistema costituzionale canadese il *Governor in Council* sta ad indicare il *Governor general*, rappresentante della Corona in Canada e pertanto capo dello Stato di fatto, quando delibera su parere della sezione consultiva del *Queen's Privy Council.*

Normativa

Oggetto della normativa sono gli elementi che possono dare luogo a conflitto di interessi durante l'esercizio della carica o nel periodo successivo al mandato.

Per quanto riguarda il periodo di esercizio della carica, la Parte II del Codice (*Conflicts of Interest Compliance Measures*) individua quattro tipi di situazioni:

a) disponibilità di beni nonché di attività e passività finanziarie (*assets and liabilities*);

b) attività svolte al di fuori dei compiti e responsabilità ufficiali (*outside activities)*;

c) doni, segni di ospitalità e benefici (*gifts, hospitality and other benefits*);

d) divieto di trattamento preferenziale (*avoidance of preferential treatment)*.

Inoltre, per il periodo successivo alla fine del mandato il Codice detta una disciplina specifica, contenuta nella Parte III (*Post-Employment Compliance Measures*), con l'obiettivo di evitare che, immediatamente prima o dopo la fine della carica, gli interessati agiscano in modo tale da trarne vantaggio.

Beni, attività e passività, attività esterne

Il titolare della carica deve indirizzare al Commissario all'etica un *Confidential report*, entro 60 giorni dalla nomina, nonché una o più *Public declaration* e un *Summary statement*, entro 120 giorni dalla nomina (art. 8 Codice).

Nel *Confidential report* (art. 9)il titolare deve dichiarare l'insieme dei beni e attività (*assets*) e delle passività (*liabilities*) acquisiti negli ultimi 12 mesi prima della nomina ed il reddito che egli ha diritto di ricevere nei 12 mesi seguenti come anche le sue attività esterne nei due anni precedenti l'assunzione della carica, ivi comprese tutte quelle non a fine di lucro.

I ministri e i segretari parlamentari che sono anche membri della Camera dei comuni non devono compilare un *Confidential report* ma soltanto un *Supplementary disclosure supplement* in aggiunta al *Disclosure statement* previsto dal Codice per i membri della Camera dei comuni.

Peraltro, per tutti i ministri e i segretari parlamentari gli obblighi sopra descritti si estendono anche ai membri della loro famiglia. Essi devono inoltre dichiarare qualsiasi vantaggio che loro stessi o le loro famiglie, come anche qualunque società privata nella quale detengano un interesse, hanno il diritto di ricevere nei 12 mesi seguenti per effetto di un contratto concluso con il governo del Canada. Inoltre, tutti i ministri e i segretari parlamentari hanno l'obbligo di comunicare entro 30 giorni al Commissario all'etica eventuali cambiamenti intervenuti nei beni, attività, passività ed attività esterne propri o della loro famiglia, con l'eccezione dei beni esenti a norma del Codice.

Ai fini della redazione del *Confidential report* il Codice passa poi a definire e a disciplinare in dettaglio i già ricordati beni esenti (art. 10), i beni soggetti a dichiarazione (art. 11) e i beni soggetti a controllo (art. 12).

Questi ultimi sono definiti come beni il cui valore può essere influenzato direttamente o indirettamente dalle decisioni o dalle politiche del governo (art. 12-1). Essi comprendono (art. 12-3): le azioni di società e i titoli di governi esteri scambiati pubblicamente sui mercati, che siano detenuti in forma singola o in un portafoglio di investimento; vari tipi di piani e fondi di risparmio pensionistico autoamministrati, in cui sia presente almeno un bene considerato soggetto a controllo se fosse detenuto fuori dal piano o fondo; le merci, i *futures*e la valuta straniera detenuti o negoziati a fini speculativi; le opzioni su azioni, i buoni di sottoscrizione di azioni, i diritti e gli altri effetti analoghi.

I beni soggetti a controllo devono essere ceduti (art. 12-2).

Modalità di cessione

Le modalità di cessione sono disciplinate in dettaglio dall'art. 13 che, oltre alla vendita a condizioni concorrenziali, prevede due possibili soluzioni:

il ***Blind trust agreement****,* in cuiil fiduciario (*trustee*) assume tutte le decisioni di investimento relative ai beni, senza interferenza o influenza di nessun genere da parte del proprietario-beneficiario. Il Commissario all'etica ha la responsabilità esclusiva di dichiarare se l'accordo soddisfa o meno ai requisiti del Codice e di predisporre un modello di *Blind trust agreement* raccomandato per uso generale. Tale modello figura nell'Allegato (*Schedule*) al Codice;

il ***Blind management agreement***, in cui i beni sono affidati ad un gestore indipendente dal proprietario. Questo gestore ha tutti i poteri necessari e non può cercare o ottenere il parere del proprietario-beneficiario, il quale a sua volta deve astenersi da offrirgli consiglio o dal partecipare a qualunque discussione o decisione che possa riguardare i beni soggetti alla gestione. Tuttavia, in questo tipo di accordo è possibile l'intervento personale del proprietario, limitatamente a circostanze eccezionali e qualora un evento societario straordinario possa concretamente influire sui beni (*materially affect the assets*). L'intervento personale del beneficiario è possibile solo dopo che il Commissario all'etica abbia stabilito che tale intervento non dà luogo a conflitto di interessi. Più in generale, questi ha la responsabilità esclusiva di dichiarare se un accordo soddisfa o meno ai requisiti del Codice e di predisporre un modello di *Blind management agreement* raccomandato per uso generale. Tale modello figura nell'Allegato (*Schedule*) al Codice.

Infine, le attività esterne sono suddivise dal Codice in attività proibite (art. 16) e attività consentite (art. 17).

Nel secondo dei documenti sopra menzionati, la *Public declaration*, prevista dagli artt. 11-1 e 18-1 del Codice e che può essere se necessario più di una, il titolare della carica pubblica deve dichiarare i beni soggetti a dichiarazione di cui all'art. 11 nonché le attività esterne consentite di cui all'art. 17. L'interessato può continuare a gestire tali beni e attività, ma essi sono soggetti a vigilanza da parte del Commissario all'etica per garantire che non diano luogo a conflitto di interessi. Il titolare della carica pubblica deve inoltre fare una *Public declaration* entro 60 giorni dal ricevimento di un dono, di un segno di ospitalità o di un altro beneficio quali definiti nel prosieguo del Codice.

Infine, nel *Summary statement* (art. 7) egli deve indicare tutte le misure da lui adottate per attuare le disposizioni del Codice (*compliance arrangements*), concordando inoltre con il Commissario all'etica le misure più appropriate per evitare il verificarsi di un conflitto di interessi in relazione a particolari beni o elementi considerati rischiosi dal Commissario stesso. Tutte queste misure sono soggette a verifica annuale, effettuata congiuntamente dal Commissario all'etica e dal titolare della carica pubblica.

Le *Public declaration* e il *Summary statement*, ma non il *Confidential report*, coperto da riservatezza, vengono depositati nel *Public registry.* Questo è amministrato dal Commissario all'etica e publicato sul suo sito in libera consultazione (http://www.parl.gc.ca/oec/en/).

Doni, segni di ospitalità e altri benefici

Doni, segni di ospitalità e altri benefici che possano influenzare i titolari di cariche pubbliche nel loro giudizio o nell'esercizio dei loro obblighi e responsabilità devono in linea di principio essere declinati (art. 19). Il Codice definisce poi a quali condizioni sono accettabili i doni, segni di ospitalità ed altri benefici nonché gli inviti ad eventi speciali come quelli dello sport, dello spettacolo e dell'arte (art. 20).

In particolare, quando il valore totale dei doni, segni di ospitalità e altri benefici ricevuti, direttamente o indirettamente, da un titolare di carica pubblica o dalla sua famiglia, supera i 200$ e proviene da una stessa fonte diversa dalla parentela e dagli amici intimi lungo un periodo di 12 mesi, il titolare deve darne comunicazione al Commissario all'etica (art. 21).

Infine, quando si tratti di ministri, di segretari parlamentari e delle loro famiglie come anche di staff di ministri, i viaggi a bordo di aerei non commerciali per qualsiasi scopo sono proibiti salvo in circostanze eccezionali e previa approvazione del Commissario all'etica (art. 20-2).

Divieto di trattamento preferenziale

L'art. 22 del Codice detta una serie di norme a questo riguardo, alcune delle quali riguardano specificatamente i ministri.

Un ministro non può stipulare contratti di lavoro con un membro della sua famiglia né può autorizzare il ministero o l'ente di cui è responsabile a farlo (art. 22-6).

Inoltre, un ministro non può stipulare contratti di lavoro con un membro della famiglia di un altro ministro o di un parlamentare dello stesso partito né può autorizzare il ministero o l'ente di cui è responsabile a farlo (art. 22-7).

stati uniti

Riferimenti normativi

Legislazione federale

Ethics in Government Act of 1978, Pub. L. 95-521, 92 Stat. 1824-1867

OGE Reauthorization Act of 1988, Pub. L. 100-598, 102 Stat. 3031

Ethics Reform Act of 1989, Pub. L. 101-194, 202, 103 Stat. 1716, at 1724

Office of Government Ethics Authorization Act of 1996, Pub. L. 104-179, 110 Stat. 1566.

Principali riferimenti nel Codice della legislazione federale (*U.S. Code, USC)*

5 USC Appendix §§ 101 - 505

18 USC §§ 201 - 219

Decretazione dell'Esecutivo federale

Executive Order 12674 of April 12, 1989 -Principles of Ethical Conduct for Government Officers and Employees

Executive Order 12731 of October 17, 1990 - Principles of Ethical Conduct for Government Officers and Employees

Executive Order 12834 of January 20, 1993 - Ethics Commitments by Executive Branch Appointees

Executive Order 13184 of December 28, 2000 - Revocation of Executive Order 12834

Executive Order 13392of June 8, 2006 - Improvement Review Plan/Report

Principali riferimenti nel *Code of Federal Regulations, CFR[10]*

Title 5 (Administrative Personnel), Chapter XVI (Office of Government Ethics), Parts 2600 - 2641[11]

L'esperienza statunitense in materia di prevenzione e risoluzione dei conflitti di interesse connessi all'esercizio di cariche pubbliche si correla ad un quadro normativo particolarmente articolato ed il cui ambito soggettivo di applicazione riguarda non solo le cariche di governo strettamente intese quali vertici politici dell'Esecutivo ma anche i membri del Congresso ed ogni altro funzionario o impiegato pubblico, comprese le figure qualificate come "*special Government employee*" nell'ambito della sec. 202 del Titolo 18 dello U.S.Code[12].

Il modello delineato dalla normativa federale trova peraltro ampio riscontro anche a livello statale (ad es. California[13], Iowa[14], Louisiana[15], Massachusetts[16], Minnesota[17], New York State[18], Texas[19], Washington[20]) e locale (ad es. Chicago Municipal Code, Chapter 2-156; New York City Charter, Chapter 68 – Conflict of Interest; Seattle Municipal Code, Chapter 4.16).

In riferimento all'insieme delle disposizioni federali saranno qui di seguito evidenziate gli aspetti salienti relativi all'ambito soggettivo ed oggettivo di applicazione, agli adempimenti imposti ai soggetti interessati, alle modalità di risoluzione di conflitti eventualmente riscontrati, alle sanzioni irrogabili in caso di mancato adempimento delle direttive formulate dall'Autorità di controllo ed infine alla composizione ed alle modalità operative di quest'ultima.

Il testo integrale in lingua originale della normativa federale di riferimento sulla materia è riportato nell'appendice normativa a questo dossier.

Ambito soggettivo ed oggettivo di applicazione

I soggetti tenuti a dichiarare la propria situazione economico-finanziaria sono dettagliatamente indicati in 5 U.S.C. Appx § 101 e comprendono, in sintesi:

il Presidente, il Vice Presidente ed i membri del Congresso, entro 30 giorni dall'assunzione della carica;

tutti i candidati all'elezione di Presidente, Vicepresidente e membro del Congresso – ad eccezione di quanti già rivestano tali cariche e concorrano per una nuova elezione – entro 30 giorni dalla formale ufficializzazione della candidatura o al più tardi entro il 15 maggio e comunque non oltre 30 giorni prima della data delle elezioni;

tutti i candidati ad un incarico pubblico per la cui nomina sia necessario il previo parere ed assenso del Senato, entro 5 giorni dalla formale comunicazione della proposta di nomina da parte del Presidente degli Stati Uniti al Presidente del Senato.

Successivamente, entro e non oltre il 15 maggio di ogni anno, sono tenuti a presentare analoga dichiarazione i soggetti che nell'anno precedente abbiano esercitato per più di sessanta giorni la carica di Presidente o Vicepresidente degli Stati Uniti o di membro del Congresso; i funzionari ed impiegati dell'Esecutivo e del Congresso, il Ragioniere generale federale ed il suo Vice; ciascun membro del Consiglio dei Governatori del Servizio postale federale ed i soggetti che rivestano le più alte cariche dell'amministrazione postale federale; il Direttore dell'Ufficio federale per l'etica nell'attività di governo (*Office of Government Ethics, OGE*); i magistrati ed i dipendenti degli uffici giudiziari federali e quanti abbiano ricoperto altre particolari cariche pubbliche specificamente indicate dalla legge.

Al riguardo, alcune deroghe sono previste ad es. per gli appartenenti alle Forze Armate che si trovino in particolari condizioni di servizio espressamente indicate (18 U.S.C. § 202 (a)).

I contenuti della dichiarazione che tali soggetti sono tenuti a presentare al rispettivo organo responsabile per l'etica dell'organizzazione di appartenenza (*designatedagency ethics official*)[21] sono prescritti in estremo dettaglio in 5 U.S.C. Appx § 102; in sintesi, tali contenuti riguardano la fonte, la tipologia e l'entità complessiva dei redditi che componevano il patrimonio mobiliare ed immobiliare del dichiarante nell'anno precedente; tutti i doni di valore superiore a 250 dollari ricevuti dal dichiarante nel medesimo periodo a qualsiasi titolo e da parte di chiunque, ad eccezione dei parenti; gli incarichi ricoperti a vario titolo all'atto della presentazione della dichiarazione e durante l'anno di riferimento; i redditi, doni e rimborsi percepiti dal coniuge e dai figli a carico.

Al riguardo, tuttavia, la legge (5 USC Appx § 102, (f) (2))[22]prevede espressamente che l'obbligo di dichiarazione non comprende il patrimonio liberamente conferito ad uno dei seguenti tre tipi di ente:

un particolare tipo di amministrazione fiduciaria (*qualified blind trust*) di cui vengono dettagliatamente specificati i requisiti soggettivi ed oggettivi e la cui costituzione deve essere previamente approvata dall'ufficio competente per la supervisione etica rispetto alla carica ricoperta dal dichiarante;

un *trust* non direttamente istituito dal dichiarante, dal coniuge o da figli a carico e del cui patrimonio e fonti di reddito essi non siano a conoscenza;

un fondo d'investimento ad ampia partecipazione le cui quote siano pubblicamente commerciabili; le cui attività siano ampiamente diversificate e su cui il dichiarante non eserciti o non abbia la possibilità di esercitare alcun controllo.

Analogamente, non rientrano fra i contenuti obbligatori della dichiarazione i finanziamenti relativi alle campagne politiche - il cui regime di pubblicità è disciplinato da altra fonte normativa - ed i redditi percepiti da fondi pensione o altri fondi a carattere previdenziale

La definizione normativa di *qualified blind trust* comprende qualunque amministrazione fiduciaria da cui il dichiarante, il coniuge o i figli minori o a carico traggano redditi o benefici economici e che presenti le seguenti caratteristiche: indipendenza assoluta del gestore rispetto alle parti interessate, piena trasferibilità dei beni e dei titoli conferiti al trust, completa libertà della gestione, senza alcun obbligo di consultazione o notifica rispetto alle parti interessate.

Il soggetto responsabile del trust (o "proprietario fiduciario", *trustee*) e qualunque altro ente legittimato dall'atto istitutivo all'esercizio di funzioni fiduciarie deve essere una istituzione finanziaria, un procuratore legale (*attorney*), un revisore contabile accreditato (*certified public accountant*), un intermediario (*broker*) o un consulente finanziario (*investment advisor*) che

sia indipendente e non associato rispetto alle parti interessate (dichiarante, coniuge, figli minori o a carico) in modo da non poter esserne controllato o influenzato nell'amministrazione del trust;

non sia o non sia stato impiegato o associato ad alcuna delle parti interessate né partecipi o sia coinvolto in alcuna joint venture o altro investimento con alcuna delle parti interessate;

non sia parente di alcuna delle parti interessate.

I medesimi requisiti sono previsti dalla legge per i funzionari e gli impiegati dipendenti dal responsabile del trust o da qualunque altro ente coinvolto nella sua amministrazione o nel suo controllo.

I beni ed i titoli conferiti dalle parti interessate devono essere liberi da qualunque restrizione rispetto al trasferimento o alla vendita a meno che tale restrizione non sia espressamente approvata dal responsabile per l'etica dell'organizzazione di appartenenza del dichiarante.

L’atto istitutivo del trust deve infine esonerare il gestore da qualunque obbligo di consultazione o notifica rispetto alle parti interessate nell’esercizio delle sue funzioni di amministrazione e gestione dei beni conferiti, prevedendo che, ad eccezione di comunicazioni concernenti la richiesta di distribuzione di denaro liquido o di altri beni non specificati del trust, non possa intercorrere alcun altro tipo di comunicazione fra gestore e parti interessate. Al riguardo sono previste specifiche sanzioni in caso di violazione dolosa o colposa degli obblighi di legge[23].

Disposizioni specifiche regolano inoltre il regime di pubblicità delle dichiarazioni fornite sia in generale (5 U.S.C Appx § 105 - *Custody of and public access to reports*) sia con particolare riguardo all'entità del patrimonio conferito ad un trust nonché all'eventuale scioglimento di quest'ultimo[24].

Le dichiarazioni in questione devono essere esaminate entro sessanta giorni dalla presentazione (5 USC Appx § 106). Sono previste apposite sanzioni per la mancata o tardiva presentazione delle dichiarazioni così come per le dichiarazioni non veritiere (5 USC Appx § 104).

Qualora in base alle informazioni contenute nella dichiarazione, la posizione del dichiarante venga ritenuta conforme alla legge, tale conformità viene formalmente attestata sulla dichiarazione medesima dal responsabile dell'esame che vi appone di conseguenza la propria firma. Al riguardo, è espressamente prevista la possibilità di richiedere informazioni aggiuntive e/o chiarimenti rispetto alle informazioni fornite.

Qualora, nonostante tali ulteriori informazioni o chiarimenti, il responsabile dell'esame rimanga dell'avviso che la posizione in questione non è conforme alle prescrizioni di legge, ne trasmette formale notifica all'interessato e, dopo avergli fornito l'opportunità - se praticabile - di una personale consultazione, indica le misure idonee ad assicurare la conformità della posizione dell'interessato alle prescrizioni di legge ed il termine entro il quale tali misure dovranno essere adottate. Ciò costituisce il contenuto saliente di un apposito accordo (*Ethics agreement*) che interviene fra l’interessato e l’organo di supervisione etica che consiste nella promessa orale o per iscritto da parte dell’interessato di adottare determinate misure al fine di attenuare un conflitto d’interessi effettivo o potenziale *(“ … any oral or written promise by a reporting individual to undertake specific actions in order to alleviate an actual or apparent conflict of interest*”) (5 CFR § 2634.802).

Le misure in questione possono anche comprendere, a seconda dei casi (5 USC Appx § 106. (3)):

la vendita (*divestiture*)[25];

la restituzione (*restitution*);

la costituzione di un blind trust (*establishment of a blind trust*);

la richiesta di non applicazione (*request of an exemption* …) delle sanzioni penali previste in base agli articoli 208 (a) e 216 del Titolo 18 U.S. Code, laddove ricorra uno dei casi espressamente indicati dall'articolo 208 (b) del medesimo Titolo 18[26];

la richiesta volontaria di trasferimento, riassegnazione, limitazione di compiti o le dimissioni (*voluntary request for transfer, reassignment, limitation of duties, or resignation*).

Le misure concordate devono essere adottate di regola entro un termine non superiore a tre mesi dalla data dell'accordo, salvo possibili deroghe autorizzate dall'OGE (5 CFR § 2634.802 (b)).

Qualora le misure per assicurare la conformità alle leggi ed ai regolamenti applicabili non vengano adottate entro il termine indicato nella notifica da parte di un soggetto che ricopra un incarico nell'ambito dell'Esecutivo - ad eccezione dell'amministrazione degli affari esteri e delle amministrazioni connesse - per la cui nomina sia necessario il previo parere ed assenso del Senato, la questione viene deferita al Presidente per le iniziative opportune (5 USC Appx § 106 (4)). Qualora invece le medesime misure non vengano adottate da un soggetto facente parte dell'amministrazione degli affari esteri e delle amministrazioni connesse, le correlative iniziative rientrano nella competenza del Segretario di Stato (5 USC Appx § 106 (5)). Per gli altri soggetti, la stessa competenza è assegnata al capo dell'amministrazione di appartenenza o ai particolari organi collegiali competenti in materia in specifici ambiti settoriali (Congressional Ethics Committee; Judicial Conference; Board of Governors of the U.S. Postal Service) (5 USC Appx § 106 (6)). Per il Presidente ed il Vicepresidente non vengono dettate misure specifiche ed ulteriori rispetto alle procedure di conoscibilità ed evidenziazione pubblica del loro stato patrimoniale.

Particolari limitazioni sono infine prescritte per la prevenzione dei conflitti di interesse che possano eventualmente insorgere dopo la fine dell'esercizio di una carica o di un mandato elettivo (18 U.S.C. § Sec. 207 - *Restrictions on former officers, employees, and elected officials of the executive and legislative branches*; 5 C.F.R. §§ 2637.101 - 2637.216).

Riguardo all'ambito oggettivo di applicazione, non si rileva nella legislazione federale una definizione generale della nozione di conflitto d'interessi. L'esigenza di definire i contenuti salienti dell'incompatibilità fra i doveri connessi all'esercizio di una carica pubblica e l'interesse privato ha tuttavia orientato il legislatore federale alla definizione di specifiche tipologie di condotta suscettibili di configurare "atti che abbiano effetto sull'interesse finanziario personale" ("*Acts affecting a personal financial interest*"). E' questa l'epigrafe del'articolo 208 del Titolo 18 U.S. Code, una norma penale il cui ampio contenuto dispositivo include "la partecipazione personale e sostanziale, nella propria veste ufficiale, attraverso la decisione, l'approvazione, il rigetto, la raccomandazione, l'espressione di un parere, l'indagine o in altro modo ad un procedimento giudiziario o di altro genere, istanza, richiesta di regolamentazione o di altra decisione, contratto, ricorso, controversia, accusa, incriminazione, arresto o altra materia particolare in cui, per quanto a sua conoscenza, abbia un interesse finanziario l'interessato stesso, il coniuge, il figlio minore, il socio, l'organizzazione di appartenenza dell'interesato, il direttore, il fiduciario, associato o impiegato o qualunque altra persona od organizzazione con cui abbia in corso negoziati o abbia qualunque accordo riguardo ad un impiego futuro".

Dall'ambito soggettivo di applicazione della norma sono espressamente esclusi solo il Presidente, il Vicepresidente, i membri del Congresso ed i giudici federali (18 U.S. Code 202 (c)).

L'Ufficio federale per l'etica nell'attività di governo: Office of Government Ethics, OGE

Istituito dall' Ethics in Government Act of 1978, l'OGE ha acquisito lo status di Agenzia indipendente a partire dal 1 ottobre 1989 (Office of Government Ethics Reauthorization Act of 1988). La traduzione non ufficiale che qui si è adottata della sua denominazione (Ufficio federale per l'etica nell'attività <u>di</u> governo) potrebbe anche essere riferita più puntualmente all'attività <u>del</u> Governo, in quanto l'OGE si qualifica come autorità di supervisione etica sull'attività dell'Esecutivo. Funzioni decisionali di garanzia in materia di etica per quanto riguarda i parlamentari sono attribuite alle apposite commissioni istituite in ciascuna camera (*Senate Select Committee on Ethics; House Committee on Standards of Official Conduct*) mentre per il potere giudiziario opera un apposito organo collegiale (*Judicial Conference of the United States*).

L'OGE è guidato da un Direttore, nominato per cinque anni dal Presidente degli Stati Uniti e si articola in quattro uffici:

Office of General Counsel and Legal Policy (OGC & LP), responsabile della predisposizione, della complessiva coerenza e dell'interpretazione del quadro normativo federale sulla condotta etica dei dipendenti dell'Esecutivo federale;

Office of Agency Programs (OAP), a sua volta articolato in tre divisioni che provvedono al supporto ed al monitoraggio dei programmi di condotta etica predisposti dalle amministrazioni e dalle agenzie dell'Esecutivo federale;

Office of Administration and Information Management (OAIM), che svolge funzioni trasversali di supporto amministrativo, contabile ed informatico rispetto all'attività complessiva dell'Agenzia;

Office of International Assistance and Governance Initiatives (OIA&GI) che cura la promozione e lo sviluppo dei programmi nazionali ed internazionali di promozione dell'etica pubblica e di lotta alla corruzione.

Le competenze del Direttore e quelle dell'Agenzia sono analiticamente enucleate dalla legge[27] e comprendono lo sviluppo di regole e procedure per il rispetto della normativa sui conflitti di interesse, l'indirizzo e la consulenza sulle modalità di adempimento dei requisiti di condotta etica prescritti dalla legge, la diffusione e la promozione della conoscenza e della comprensione delle norme sui conflitti di interesse, il controllo sull'effettivo sviluppo di standard di condotta etica da parte degli organi a tal fine preposti nelle diverse amministrazioni pubbliche, l'indicazione a tali organi ed ai soggetti interessati delle necessarie misure correttive, l'assistenza al Ministro federale della Giustizia (*Attorney General*) nella valutazione dell'efficacia delle norme vigenti in materia di conflitti di interesse, il monitoraggio e l'indagine sul rispetto di tali norme e la cooperazione con il Ministro federale della Giustizia nello sviluppo di un sistema efficiente di pronta comunicazione a quest'ultimo delle denunce relative alle violazioni di tali norme ("*expeditiously reported to the Attorney General*", 28 U.S.C. § 535).

Al fine di garantire il rispetto delle norme sui conflitti di interesse il Direttore può intervenire sia nei confronti degli organi a tal fine preposti nelle diverse amministrazioni pubbliche sia nei confronti dei singoli soggetti interessati.

In particolare, nei confronti dei soggetti interessati il Direttore può formulare le raccomandazioni ed esprimere i pareri necessari ad assicurare la conformità della loro posizione alle norme in questione e qualora nonostante i chiarimenti richiesti e l'eventuale audizione dell'interessato ritenga configurabili eventuali violazioni può disporre l'adozione di misure correttive ed in caso di mancata ottemperanza darne formale notifica al capo dell'ufficio o amministrazione di appartenenza raccomandando l'adozione delle correlative misure sanzionatorie. In caso di mancata adozione di tali misure, così come nei casi di diretta responsabilità degli organi di vertice degli uffici e delle amministrazioni federali per violazione delle norme sui conflitti di interesse, la legge (5 U.S.C. Appx § 402) riconosce al Direttore dell'OGE la possibilità di diretta notifica al Presidente degli Stati Uniti.

Ogni due anni, non oltre il 30 aprile dell'anno d'inizio della seconda sessione del Congresso, il Direttore dell'Agenzia è tenuto a presentare al Congresso una relazione contenente una sintesi dell'attività svolta e delle iniziative intraprese dall'Agenzia fino al 31 dicembre dell'anno immediatamente precedente, nonché qualunque altra informazione che il Direttore possa ritenere opportuna (5 U.S.C. Appx § 408).

L'OGE pubblica inoltre un rapporto annuale[28] concernente l'effettiva realizzazione degli obiettivi strategici della propria attività.

Documentazione

francia

Constitution du 4 Octobre 1958 – Article 23

Les fonctions de membre du Gouvernement sont incompatibles avec l'exercice de tout mandat parlementaire, de toute fonction de représentation professionnelle à caractère national et de tout emploi public ou de toute activité professionnelle.

Une loi organique fixe les conditions dans lesquelles il est pourvu au remplacement des titulaires de tels mandats, fonctions ou emplois.

Le remplacement des membres du Parlement a lieu conformément aux dispositions de l'article 25.

Articolo 23

Le funzioni di membro del Governo sono incompatibili con l'esercizio del mandato parlamentare, di qualsiasi funzione di rappresentanza professionale a carattere nazionale e di ogni impiego pubblico o attività professionale.

Una legge organica fissa le modalità per la sostituzione dei titolari di tali mandati, funzioni o impieghi.

La sostituzione dei membri del Parlamento ha luogo in conformità alle disposizioni dell'articolo 25.

Ordonnance n°58-1099 du 17 novembre 1958

Ordonnance portant loi organique pour l'application de l'article 23 de la Constitution version consolidée au 18 novembre 1958

Article 1

Pour chaque membre du Gouvernement, les incompatibilités établies à l'article 23 de la Constitution prennent effet à l'expiration d'un délai de un mois à compter de sa nomination. Pendant ce délai, le parlementaire membre du Gouvernement ne peut prendre part à aucun scrutin. Les incompatibilités ne prennent pas effet si le Gouvernement est démissionnaire avant l'expiration dudit délai.

Les mesures nécessaires pour remplacer un membre du Gouvernement dans son mandat, sa fonction ou son emploi sont prises dans le mois qui suit et comme il est dit aux articles 2, 3 et 4 ci-après .

Article 2

Le remplacement d'un membre du Gouvernement dans son mandat parlementaire a lieu dans les conditions prévues par les lois organiques relatives à la composition et à la durée des pouvoirs de l'Assemblée nationale et du Sénat.

Quiconque a été appelé à remplacer, dans les conditions prévues à l'article 5 de chacune desdites lois organiques, un parlementaire nommé membre du Gouvernement ne peut, lors de l'élection suivante, faire acte de candidature contre lui .

Article 3

Le remplacement d'un membre du Gouvernement dans ses fonctions de représentation professionnelle à caractère national a lieu conformément aux statuts de l'organisation professionnelle intéressée .

Article 4

Le membre du Gouvernement titulaire d'un emploi public est remplacé dans ses fonctions et placé en dehors des cadres de l'administration ou du corps auquel il appartient dans les conditions prévues à cet effet par le statut le régissant.

Article 5

Lors de la cessation de ses fonctions gouvernementales le membre du Gouvernement auquel il a été fait application des dispositions des articles 2, 3 et 4 ci-dessus perçoit une indemnité d'un montant égal au traitement qui lui était alloué en sa qualité de membre du Gouvernement.

Cette indemnité est versée pendant six mois , à moins que l'intéressé n'ait repris auparavant une activité rémunérée.

Article 6

Aucune personne ayant eu la qualité de membre du Gouvernement ne peut occuper les fonctions mentionnées aux articles 14 et 15 de l'ordonnance portant loi organique relative aux conditions d'éligibilité et aux incompatibilités parlementaires si elle n'a cessé de faire partie du Gouvernement depuis au moins six mois , à moins qu'il ne s'agisse de fonctions déjà exercées par elle antérieurement à sa nomination en qualité de membre du Gouvernement.

CODE ELECTORAL - Article LO145

(Loi organique nº 88-37 du 13 janvier 1988 Journal Officiel du 15 janvier 1988)

Sont incompatibles avec le mandat de député les fonctions de président et de membre de conseil d'administration ainsi que celles de directeur général et de directeur général adjoint exercées dans les entreprises nationales et établissements publics nationaux; il en est de même de toute fonction exercée de façon permanente en qualité de conseil auprès de ces entreprises ou établissements.

L'incompatibilité édictée au présent article ne s'applique pas aux députés désignés soit en cette qualité soit du fait d'un mandat électoral local comme présidents ou membres de conseils d'administration d'entreprises nationales ou d'établissements publics nationaux en application des textes organisant ces entreprises ou établissements.

CODE ELECTORAL - Article LO146

Sont incompatibles avec le mandat parlementaire les fonctions de chef d'entreprise, de président de conseil d'administration, de président et de membre de directoire, de président de conseil de surveillance, d'administrateur délégué, de directeur général, directeur général adjoint ou gérant exercées dans :

1º les sociétés, entreprises ou établissements jouissant, sous forme de garanties d'intérêts, de subventions ou, sous forme équivalente, d'avantages assurés par l'Etat ou par une collectivité publique sauf dans le cas où ces avantages découlent de l'application automatique d'une législation générale ou d'une réglementation générale;

2º les sociétés ayant exclusivement un objet financier et faisant publiquement appel à l'épargne, ainsi que les sociétés civiles autorisées à faire publiquement appel à l'épargne et les organes de direction, d'administration ou de gestion de ces sociétés;

3º les sociétés ou entreprises dont l'activité consiste principalement dans l'exécution de travaux, la prestation de fournitures ou de services pour le compte ou sous le contrôle de l'Etat, d'une collectivité ou d'un établissement public ou d'une entreprise nationale ou d'un Etat étranger;

4º les sociétés ou entreprises à but lucratif dont l'objet est l'achat ou la vente de terrains destinés à des constructions, quelle que soit leur nature, ou qui exercent une activité de promotion immobilière ou, à titre habituel, de construction d'immeubles en vue de leur vente;

5º les sociétés dont plus de la moitié du capital est constituée par des participations de sociétés, entreprises ou établissements visés aux 1º, 2º, 3º

et 4º ci-dessus.
Les dispositions du présent article sont applicables à toute personne qui, directement ou par personne interposée, exerce en fait la direction de l'un des établissements, sociétés ou entreprises ci-dessus visés.

CODE ELECTORAL - Article LO297

(Inséré par Loi organique nº 85-1405 du 30 décembre 1985 art. 5, 6 Journal Officiel du 31 Décembre 1985 en vigueur le 16 mars 1986)

Les dispositions du chapitre IV du titre II du livre Ier du présent code sont applicables aux sénateurs.

CODE PENAL (Partie Législative) - Article 432-12

(Ordonnance nº 2000-916 du 19 septembre 2000 art. 3 et 4 Journal Officiel du 22 septembre 2000 en vigueur le 1er janvier 2002)

Le fait, par une personne dépositaire de l'autorité publique ou chargée d'une mission de service public ou par une personne investie d'un mandat électif public, de prendre, recevoir ou conserver, directement ou indirectement, un intérêt quelconque dans une entreprise ou dans une opération dont elle a, au moment de l'acte, en tout ou partie, la charge d'assurer la surveillance, l'administration, la liquidation ou le paiement, est puni de cinq ans d'emprisonnement et de 75000 euros d'amende.

Toutefois, dans les communes comptant 3.500 habitants au plus, les maires, adjoints ou conseillers municipaux délégués ou agissant en remplacement du maire peuvent chacun traiter avec la commune dont ils sont élus pour le transfert de biens mobiliers ou immobiliers ou la fourniture de services dans la limite d'un montant annuel fixé à 16.000 euros.
En outre, dans ces communes, les maires, adjoints ou conseillers municipaux délégués ou agissant en remplacement du maire peuvent acquérir une parcelle d'un lotissement communal pour y édifier leur habitation personnelle ou conclure des baux d'habitation avec la commune pour leur propre logement. Ces actes doivent être autorisés, après estimation des biens concernés par le service des domaines, par une délibération motivée du conseil municipal.

Dans les mêmes communes, les mêmes élus peuvent acquérir un bien appartenant à la commune pour la création ou le développement de leur activité professionnelle. Le prix ne peut être inférieur à l'évaluation du service des domaines. L'acte doit être autorisé, quelle que soit la valeur des biens concernés, par une délibération motivée du conseil municipal.
Pour l'application des trois alinéas qui précèdent, la commune est représentée dans les conditions prévues par l'article L. 2122-26 du code général des collectivités territoriales et le maire, l'adjoint ou le conseiller municipal intéressé doit s'abstenir de participer à la délibération du conseil municipal relative à la conclusion ou à l'approbation du contrat. En outre, par dérogation au deuxième alinéa de l'article L. 2121-18 du code général des collectivités territoriales, le conseil municipal ne peut décider de se réunir à huis clos.

CODE PENAL (Partie Législative) - Article 432-13

(Ordonnance nº 2000-916 du 19 septembre 2000 art. 3 Journal Officiel du 22 septembre 2000 en vigueur le 1er janvier 2002)

Est puni de deux ans d'emprisonnement et de 30000 euros d'amende le fait, par une personne ayant été chargée, en tant que fonctionnaire public ou agent ou préposé d'une administration publique, à raison même de sa fonction, soit d'assurer la surveillance ou le contrôle d'une entreprise privée, soit de conclure des contrats de toute nature avec une entreprise privée, soit d'exprimer son avis sur les opérations effectuées par une entreprise privée, de prendre ou de recevoir une participation par travail, conseil ou capitaux dans l'une de ces entreprises avant l'expiration d'un délai de cinq ans suivant la cessation de cette fonction.

Est punie des mêmes peines toute participation par travail, conseil ou capitaux, dans une entreprise privée qui possède au moins 30 p. 100 de capital commun ou a conclu un contrat comportant une exclusivité de droit ou de fait avec l'une des entreprises mentionnées à l'alinéa qui précède.

Au sens du présent article, est assimilée à une entreprise privée toute entreprise publique exerçant son activité dans un secteur concurrentiel et conformément aux règles du droit privé.

Ces dispositions sont applicables aux agents des établissements publics, des entreprises nationalisées, des sociétés d'économie mixte dans lesquelles l'Etat ou les collectivités publiques détiennent directement ou indirectement plus de 50 p. 100 du capital et des exploitants publics prévus par la loi nº 90-568 du 2 juillet 1990 relative à l'organisation du service public de la poste et des télécommunications.

L'infraction n'est pas constituée en cas de participation au capital de sociétés cotées en bourse ou lorsque les capitaux sont reçus par dévolution successorale.

LOI n°83-634 du 13 juillet 1983

Loi portant droits et obligations des fonctionnaires. Loi dite loi Le Pors.

version consolidée au 3 août 2005

(..)

Article 25

Modifié par Loi n°2001-2 du 3 janvier 2001 art. 20 (jorf 4 janvier 2001).

Les fonctionnaires consacrent l'intégralité de leur activité professionnelle aux tâches qui leur sont confiées. Ils ne peuvent exercer à titre professionnel une activité privée lucrative de quelque nature que ce soit. Les conditions dans lesquelles il peut être exceptionnellement dérogé à cette interdiction sont fixées par décret en Conseil d'Etat.

Toutefois, les agents publics, ainsi que ceux dont le contrat est soumis aux dispositions du code du travail en application des articles 34 et 35 de la loi n° 2000-321 du 12 avril 2000 relative aux droits des citoyens dans leurs relations avec les administrations, occupant un emploi à temps non complet ou exerçant des fonctions impliquant un service à temps incomplet pour lesquels la durée du travail est inférieure à la moitié de la durée légale ou réglementaire du travail des agents publics à temps complet peuvent être autorisés à exercer, à titre professionnel, une activité privée lucrative dans les limites et conditions fixées par décret en Conseil d'Etat.

Les fonctionnaires ne peuvent prendre, par eux-mêmes ou par personnes interposées, dans une entreprise soumise au contrôle de l'administration à laquelle ils appartiennent ou en relation avec cette dernière, des intérêts de nature à compromettre leur indépendance.

(...)

LOI n°84-16 du 11 janvier 1984

Loi portant dispositions statutaires relatives à la fonction publique de l'Etat.

version consolidée au 24 juin 2006

(...)

Article 72

Modifié par Loi n°2002-73 du 17 janvier 2002 art. 73 (JORF 18 janvier 2002).

Un décret en Conseil d'Etat définit les activités privées qu'en raison de leur nature ne peut exercer un fonctionnaire placé dans l'une des situations ou positions statutaires suivantes :

1° Cessation définitive de fonctions ;

2° Disponibilité ;

3° Détachement ;

4° Hors cadres ;

5° Mise à disposition ;

6° Exclusion temporaire de fonctions.

Il peut prévoir que cette interdiction sera limitée dans le temps.

En cas de violation de l'une des interdictions prévues au présent article, le fonctionnaire retraité peut faire l'objet de retenues sur pension et, éventuellement, être déchu de ses droits à pension après avis du conseil de discipline du corps auquel il appartenait.

(...)

Loi n°88-227 du 11 mars 1988

Loi relative à la transparence financière de la vie politique.

version consolidée au 31 décembre 2005

TITRE Ier : DISPOSITIONS RELATIVES A LA DECLARATION DU PATRIMOINE DES MEMBRES DU GOUVERNEMENT ET DES TITULAIRES DE CERTAINES FONCTIONS ELECTIVES.

Article 1

Modifié par Loi n°95-126 du 8 février 1995 art. 1 (jorf 9 février 1995)

Tout membre du Gouvernement, dans les deux mois qui suivent sa nomination, adresse au président de la commission prévue à l'article 3 de la présente loi une déclaration de situation patrimoniale établie dans les conditions prévues à l'article L.O. 135-1 du code électoral.

" La même obligation est applicable dans les deux mois qui suivent la cessation des fonctions pour une cause autre que le décès.

" Toutefois, aucune nouvelle déclaration n'est exigée du membre du Gouvernement qui a établi depuis moins de six mois une déclaration de sa situation patrimoniale en application de l'article L.O. 135-1 du code électoral, du présent article ou de l'article 2 de la présente loi."

(...)

Article 3

Modifié par Loi n°96-5 du 4 janvier 1996 art. 1 (jorf 5 janvier 1996)

I. - Il est institué une commission pour la transparence financière de la vie politique, chargée de recevoir les déclarations des membres du Parlement et des personnes mentionnées aux articles 1er et 2 de la présente loi, ainsi composée :

1° Trois membres de droit :

- le vice-président du Conseil d'Etat, président ;

- le premier président de la Cour de cassation ;

- le premier président de la Cour des comptes.

2° Six membres titulaires et six membres suppléants ainsi désignés :

- quatre présidents de section ou conseillers d'Etat, en activité ou honoraires, dont deux ont la qualité de suppléant, élus par l'assemblée générale du Conseil d'Etat ;

- quatre présidents de chambre ou conseillers à la Cour de cassation, en activité ou honoraires, dont deux ont la qualité de suppléant, élus par l'ensemble des magistrats du siège hors hiérarchie de la Cour ;

- quatre présidents de chambre ou conseillers maîtres à la Cour des comptes, en activité ou honoraires, dont deux ont la qualité de suppléant, élus par la chambre du Conseil.

Les membres de la commission sont nommés par décret.

Le secrétaire général de la commission est nommé par arrêté du garde des sceaux sur proposition des membres de droit.

La commission est assistée de rapporteurs désignés par le vice-président du Conseil d'Etat parmi les membres, en activité ou honoraires, du Conseil d'Etat et du corps des conseillers de tribunaux administratifs et cours administratives d'appel, par le premier président de la Cour de cassation parmi les magistrats, en activité ou honoraires, de la Cour de cassation et des cours et tribunaux, par le premier président de la Cour des comptes parmi les magistrats, en activité ou honoraires, de la Cour des comptes et des chambres régionales des comptes. Elle peut également bénéficier pour l'accomplissement de ses tâches de la mise à disposition de fonctionnaires.

Un décret en Conseil d'Etat fixe l'organisation et le fonctionnement de la commission, ainsi que les procédures applicables devant elle.

II. - La commission pour la transparence financière de la vie politique informe les autorités compétentes du non-respect par les personnes mentionnées aux articles 1er et 2 de la présente loi des obligations définies par ces articles après qu'elles ont été appelées à fournir des explications.

Les personnes mentionnées aux articles 1er et 2 de la présente loi communiquent à la Commission pour la transparence financière de la vie politique, pendant l'exercice de leur mandat ou de leurs fonctions, toutes les modifications substantielles de leur patrimoine, chaque fois qu'elles le jugent utile.

La commission assure le caractère confidentiel des déclarations reçues ainsi que des observations formulées, le cas échéant, par les déclarants sur l'évolution de leur patrimoine.

Les déclarations déposées et les observations formulées ne peuvent être communiquées qu'à la demande expresse du déclarant ou de ses ayants droit ou sur requête des autorités judiciaires lorsque leur communication est nécessaire à la solution du litige ou utile pour la découverte de la vérité.

La commission apprécie la variation des situations patrimoniales des membres du Parlement et des personnes mentionnées aux articles 1er et 2 de la présente loi telle qu'elle résulte des déclarations et des observations qu'ils ont pu lui adresser. Elle établit, chaque fois qu'elle le juge utile, et en tout état de cause tous les trois ans, un rapport publié au Journal officiel de la République française. Ce rapport ne contient aucune indication nominale quant aux situations patrimoniales.

Dans le cas où la commission a relevé, après que l'intéressé aura été mis en mesure de faire ses observations, des évolutions de patrimoine pour lesquelles elle ne dispose pas d'explications, elle transmet le dossier au parquet.

(...)

Loi n°93-122 du 29 janvier 1993

Loi relative à la prévention de la corruption et à la transparence de la vie économique et des procédures publiques

version consolidée au 7 juin 2005

Article 1

Le service central de prévention de la corruption, placé auprès du ministre de la justice, est chargé de centraliser les informations nécessaires à la détection et à la prévention des faits de corruption active ou passive, de trafic d'influence commis par des personnes exerçant une fonction publique ou par des particuliers, de concussion, de prise illégale d'intérêts ou d'atteinte à la liberté et à l'égalité des candidats dans les marchés public.

Il prête son concours sur leur demande aux autorités judiciaires saisies de faits de cette nature.

Il donne sur leur demande aux autorités administratives des avis sur les mesures susceptibles d'être prises pour prévenir de tels faits. Ces avis ne sont communiqués qu'aux autorités qui les ont demandés. Ces autorités ne peuvent les divulguer.

Dirigé par un magistrat de l'ordre judiciaire, il est composé de magistrats et d'agents publics.

[Dispositions déclarées non conformes à la Constitution par décision du Conseil constitutionnel n° 92-316 DC du 20 janvier 1993.]

Les membres de ce service et les personnes qualifiées auxquelles il fait appel sont soumis au secret professionnel.

(...)

Article 87

Modifié par Loi n°2002-73 du 17 janvier 2002 art. 74 (jorf 18 janvier 2002)

Au sein de chacune des trois fonctions publiques, il est institué une commission qui est obligatoirement consultée par les administrations pour l'application des dispositions prévues à l'article 72 de la loi n° 84-16 du 11 janvier 1984 portant dispositions statutaires relatives à la fonction publique de l'Etat, à l'article 95 de la loi n° 84-53 du 26 janvier 1984 portant dispositions statutaires relatives à la fonction publique territoriale et à l'article 90 de la loi n° 86-33 du 9 janvier 1986 portant dispositions statutaires relatives à la fonction publique hospitalière.

Les commissions instituées à l'alinéa précédent sont chargées d'apprécier la compatibilité avec leurs fonctions précédentes des activités privées que souhaitent exercer des fonctionnaires devant être placés ou placés dans l'une des situations ou positions statutaires suivantes :

1° Cessation définitive de fonctions ;

2° Disponibilité ;

3° Détachement ;

4° Hors cadres ;

5° Mise à disposition ;

6° Exclusion temporaire de fonctions.

Un décret en Conseil d'Etat fixe les conditions d'application du présent article.

Décret n°93-232 du 22 février 1993

Décret relatif au service central de prévention de la corruption institué par la loi n° 93-122 du 29 janvier 1993 relative à la prévention de la corruption et à la transparence de la vie économique et des procédures publiques

version consolidée au 2 août 2003

(...)

Article 1

Le chef du service central de prévention de la corruption institué par la loi du 29 janvier 1993 susvisée et les autres membres de ce service sont nommés par décret pour une période de quatre ans renouvelable.

Le chef du service est assisté d'un secrétaire général nommé dans les mêmes conditions.

Article 2

Modifié par Loi n°2003-706 du 1 août 2003 art. 46 (JORF 2 août 2003).

Les avis du service central de prévention de la corruption prévus au troisième alinéa de l'article 1er de la loi du 29 janvier 1993 susvisée peuvent être demandés par les autorités suivantes :

1. Les ministres ;

2. Les préfets ;

3. Les chefs des juridictions financières ;

4. Le président de la commission prévue à l'article 3 de la loi du 11 mars 1988 susvisée relative à la transparence financière de la vie politique ;

5. Le président de la Commission nationale des comptes de campagne et des financements politiques ;

6. Le président du Conseil de la concurrence ;

7. Le président de l'Autorité des marchés financiers ;

8. Le chef du service créé par l'article 5 de la loi du 12 juillet 1990 susvisée relative à la participation des organismes financiers à la lutte contre le blanchiment des capitaux provenant du trafic des stupéfiants ;

9. Le chef de la mission interministérielle d'enquête sur les marchés ;

10. Les chefs des organismes ou services d'inspection ou de contrôle relevant de l'Etat ;

11. Les présidents et directeurs des établissements publics de l'Etat ;

12. Les trésoriers-payeurs généraux et les autres comptables publics ;

13. Les présidents des conseils régionaux, le président du conseil exécutif de Corse, les présidents des conseils généraux, les maires, les présidents de groupements de collectivités territoriales et des autres établissements publics des collectivités territoriales ;

14. Les dirigeants des organismes privés chargés d'une mission de service public.

Article 3

Le service central de prévention de la corruption établit annuellement un rapport d'activité qui comporte notamment des propositions de mesures tendant à prévenir les irrégularités de la nature de celles qui lui ont été signalées. Ce rapport est adressé au Premier ministre ainsi qu'au garde des sceaux, ministre de la justice.

Article 4

Le garde des sceaux, ministre de la justice, est chargé de l'exécution du présent décret, qui sera publié au Journal officiel de la République française.

Décret n°95-168 du 17 février 1995

Décret relatif à l'exercice d'activités privées par des fonctionnaires ou agents non titulaires ayant cessé temporairement ou définitivement leurs fonctions et aux commissions instituées par l'article 4 de la loi n° 94-530 du 28 juin 1994

version consolidée au 5 mars 1999

Le Président de la République,

Sur le rapport du Premier ministre et du ministre de la fonction publique,

Vu le code pénal, et notamment son article 432-13 ;

Vu la loi n° 83-634 du 13 juillet 1983 modifiée portant droits et obligations des fonctionnaires ;

Vu la loi n° 84-16 du 11 janvier 1984 modifiée portant dispositions statutaires relatives à la fonction publique de l'Etat, notamment son article 72 ;

Vu la loi n° 84-53 du 26 janvier 1984 modifiée portant dispositions statutaires relatives à la fonction publique territoriale, notamment son article 95 ;

Vu la loi n° 86-33 du 9 janvier 1986 modifiée portant dispositions statutaires relatives à la fonction publique hospitalière, notamment son article 90 ;

Vu la loi n° 94-530 du 28 juin 1994 relative à certaines modalités de nomination dans la fonction publique de l'Etat et aux modalités d'accès de certains fonctionnaires ou anciens fonctionnaires à des fonctions privées, et notamment son article 4 modifiant l'article 87 de la loi n° 93-122 du 29 janvier 1993 relative à la prévention de la corruption et à la transparence de la vie économique et des procédures publiques ;

Vu le décret n° 65-29 du 11 janvier 1965 relatif aux délais de recours contentieux en matière administrative ;

Vu l'avis du Conseil supérieur de la fonction publique de l'Etat en date du 4 octobre 1994 ;

Vu l'avis du Conseil supérieur de la fonction publique territoriale en date du 9 novembre 1994 ;

Vu l'avis du Conseil supérieur de la fonction publique hospitalière en date du 26 octobre 1994 ;

Vu l'avis du Conseil supérieur des administrations parisiennes en date du 7 décembre 1994 ;

Le Conseil d'Etat entendu ;

Le conseil des ministres entendu,

Titre Ier : Dispositions applicables aux fonctionnaires.

Article 1

Modifié par Décret n°95-833 du 6 juillet 1995 art. 1 (JORF 12 juillet 1995).

I. - Les activités privées interdites aux fonctionnaires placés en disponibilité ou ayant cessé définitivement leurs fonctions par l'article 72 de la loi du 11 janvier 1984 susvisée, l'article 95 de la loi du 26 janvier 1984 susvisée et l'article 90 de la loi du 9 janvier 1986 susvisée sont les suivantes:

1° Activités professionnelles dans une entreprise privée, lorsque l'intéressé a été, au cours des cinq dernières années précédant la cessation définitive de ses fonctions ou sa mise en disponibilité, chargé, à raison même de sa fonction :

a) Soit de surveiller ou contrôler cette entreprise ;

b) Soit de passer des marchés ou contrats avec cette entreprise ou d'exprimer un avis sur de tels marchés ou contrats.

Cette interdiction s'applique également aux activités exercées dans une entreprise :

- qui détient au moins 30 p. 100 du capital de l'entreprise susmentionnée, ou dont le capital est, à hauteur de 30 p. 100 au moins, détenu soit par l'entreprise susmentionnée, soit par une entreprise détenant aussi 30 p. 100 au moins du capital de l'entreprise susmentionnée ;

- ou qui a conclu avec l'entreprise susmentionnée un contrat comportant une exclusivité de droit ou de fait ;

2° Activités lucratives, salariées ou non, dans un organisme ou une entreprise privés et activités libérales si, par leur nature ou leurs conditions d'exercice et eu égard aux fonctions précédemment exercées par l'intéressé, ces activités portent atteinte à la dignité desdites fonctions ou risquent de compromettre ou mettre en cause le fonctionnement normal, l'indépendance ou la neutralité du service.

Au sens du présent article est assimilée à une entreprise privée toute entreprise publique exerçant son activité dans un secteur concurrentiel et conformément au droit privé.

II. - Les interdictions prévues au I ci-dessus s'appliquent pendant la durée de la disponibilité et, dans les autres cas, pendant un délai de cinq ans à compter de la cessation des fonctions justifiant l'interdiction.

Article 2

Modifié par Décret n°95-833 du 6 juillet 1995 art. 1 (JORF 12 juillet 1995).

Le fonctionnaire qui, cessant définitivement ses fonctions ou demandant à être placé en disponibilité, se propose d'exercer une activité privée en informe, par écrit, l'autorité dont il relève. S'il appartient à la fonction publique territoriale, il en informe également le préfet du département dans lequel est située sa collectivité d'origine.

Tout changement d'activité pendant la durée de la disponibilité, ou pendant le délai de cinq ans à compter de la cessation définitive des fonctions, est porté par l'intéressé à la connaissance de l'administration, dans les conditions prévues à l'alinéa précédent.

Article 3

Modifié par Décret n°95-833 du 6 juillet 1995 art. 1 (JORF 12 juillet 1995).

Dans un délai de quinze jours à compter de la date à laquelle elle a été informée dans les conditions prévues à l'article précédent, l'autorité dont relève le fonctionnaire saisit celle des trois commissions prévues aux articles 5 à 7 ci-après qui est compétente eu égard à la fonction publique à laquelle appartient l'intéressé.

Le fonctionnaire concerné ainsi que le préfet du département où est située la collectivité locale d'origine lorsque l'intéressé appartient à la fonction publique territoriale peuvent également saisir directement la commission compétente, à condition d'en informer l'autorité dont relève l'intéressé.

L'avis sur la compatibilité de l'activité projetée avec les fonctions précédemment exercées par l'intéressé est donné par cette commission dans les conditions prévues par l'article 11 ci-après.

Article 4

Modifié par Décret n°95-833 du 6 juillet 1995 art. 1 (JORF 12 juillet 1995).

Les commissions instituées au sein de chacune des trois fonctions publiques par l'article 87 modifié de la loi du 29 janvier 1993 susvisée sont placées auprès du Premier ministre.

Chaque commission remet au Premier ministre un rapport annuel.

Article 5

Modifié par Décret n°95-833 du 6 juillet 1995 art. 1 (JORF 12 juillet 1995).

La commission compétente pour la fonction publique de l'Etat, présidée par un conseiller d'Etat ou son suppléant, membre du Conseil d'Etat, comprend en outre :

1°Un conseiller maître à la Cour des comptes ou son suppléant, membre de la Cour des comptes ;

2°Trois personnalités qualifiées ;

3°Le directeur général de l'administration et de la fonction publique ou son représentant ;

4°Le directeur du personnel du ministère ou de l'établissement public ou le chef du corps dont relève l'intéressé, ou son représentant.

Le président et les membres de la commission prévus aux 1° et 2° ci-dessus sont nommés pour trois ans par décret pris sur proposition du ministre chargé de la fonction publique.

Le secrétariat de la commission est assuré par la direction générale de l'administration et de la fonction publique.

Article 6

Modifié par Décret n°95-833 du 6 juillet 1995 art. 1 (JORF 12 juillet 1995).

La commission compétente pour la fonction publique territoriale, présidée par un conseiller d'Etat ou son suppléant, membre du Conseil d'Etat, comprend en outre :

1°Un conseiller maître à la Cour des comptes ou son suppléant, membre de la Cour des comptes ;

2°Trois personnalités qualifiées ;

3°Le directeur général des collectivités locales ou son représentant ;

4°L'autorité investie du pouvoir de nomination dans la collectivité territoriale dont relève l'intéressé, ou son représentant ;

5°Un représentant des associations d'élus locaux, qui appartient à la catégorie de collectivité locale dont relève l'agent, nommé par arrêté du ministre chargé des collectivités locales.

Le président et les membres de la commission prévus aux 1° et 2° ci-dessus sont nommés pour trois ans par décret pris sur proposition du ministre chargé des collectivités locales.

Le secrétariat de la commission est assuré par la direction générale des collectivités locales.

Article 7

Modifié par Décret n°95-833 du 6 juillet 1995 art. 1 (JORF 12 juillet 1995).

La commission compétente pour la fonction publique hospitalière, présidée par un conseiller d'Etat ou son suppléant, membre du Conseil d'Etat, comprend en outre :

1° Un conseiller maître à la Cour des comptes ou son suppléant, membre de la Cour des comptes ;

2° Trois personnalités qualifiées ;

3° Le directeur des hôpitaux ou le directeur de l'action sociale, ou leur suppléant ;

4° Le directeur de l'établissement hospitalier ou de l'établissement social ou médico-social dont relève l'intéressé, ou son représentant.

Le président et les membres de la commission prévus aux 1° et 2° ci-dessus sont nommés pour trois ans par décret pris sur proposition du ministre chargé des affaires sociales et du ministre chargé de la santé.

Le secrétariat de la commission est assuré par la direction des hôpitaux.

Article 8

Modifié par Décret n°95-833 du 6 juillet 1995 art. 1 (JORF 12 juillet 1995).

Le conseiller d'Etat, président, le conseiller maître à la Cour des comptes ainsi que leurs suppléants et les trois personnalités qualifiées peuvent être communs aux trois commissions.

Dans ce cas, ils sont nommés par décret pris sur proposition conjointe du ministre chargé de la fonction publique, du ministre chargé des affaires sociales, du ministre chargé de la santé et du ministre chargé des collectivités locales.

Article 9

Modifié par Décret n°95-833 du 6 juillet 1995 art. 1 (JORF 12 juillet 1995).

Un rapporteur général et, le cas échéant, des rapporteurs choisis parmi les magistrats et fonctionnaires de catégorie A et assimilés sont nommés par arrêté du ministre chargé de la fonction publique, du ministre chargé des affaires sociales et de la santé ou du ministre chargé des collectivités locales, s'agissant respectivement de la commission compétente pour la fonction publique de l'Etat, la fonction publique hospitalière et la fonction publique territoriale.

Article 10

Modifié par Décret n°95-833 du 6 juillet 1995 art. 1 (JORF 12 juillet 1995).

Les commissions ne délibèrent valablement que si les quatre septièmes au moins de leurs membres sont présents lors de l'ouverture de la réunion.

Le quorum est fixé à cinq huitièmes des membres pour la commission compétente pour la fonction publique territoriale.

En cas de partage égal des voix, celle du président est prépondérante.

Article 11

Modifié par Décret n°95-833 du 6 juillet 1995 art. 1 (JORF 12 juillet 1995).

I. - La commission compétente entend le fonctionnaire sur sa demande. Celui-ci peut se faire assister par toute personne de son choix.

La commission peut également, si elle le juge nécessaire, le convoquer pour l'entendre et recueillir auprès des personnes publiques et privées les informations nécessaires à l'accomplissement de sa mission.

II. - L'avis de la commission est transmis à l'autorité dont relève le fonctionnaire. Cette autorité en informe l'intéressé.

Si le fonctionnaire fait partie de la fonction publique territoriale, l'avis de la commission est également transmis au préfet du département où est située la collectivité locale d'origine de l'intéressé.

III. - L'absence d'avis de la commission à l'expiration d'un délai d'un mois à compter de sa première saisine vaut avis que l'activité privée projetée par l'intéressé est compatible avec ses fonctions antérieures.

IV. - L'autorité dont relève le fonctionnaire informe la commission de la suite donnée à son avis et porte cette information à la connaissance de l'intéressé et, s'il appartient à la fonction publique territoriale, du préfet du département où est située sa collectivité locale d'origine.

V. - Le silence de cette autorité pendant un délai d'un mois à compter de la date de l'avis vaut décision conforme à cet avis.

Titre II : Dispositions applicables aux agents non titulaires.

Article 12

Modifié par Décret n°99-142 du 4 mars 1999 art. 1 (JORF 5 mars 1999).

I. - Est interdit aux agents non titulaires de droit public qui sont :

- soit employés de manière continue depuis plus d'un an par l'Etat, une collectivité territoriale ou un établissement public ;

- soit collaborateurs d'un cabinet ministériel ou du cabinet d'une autorité territoriale,

l'exercice, pendant la durée d'un congé sans rémunération ou pendant un délai de cinq ans à compter de la cessation des fonctions justifiant l'interdiction, des activités privées ci-après :

1° Activités professionnelles dans une entreprise privée lorsque l'intéressé a été, au cours des cinq dernières années précédant la cessation de ses fonctions ou sa mise en congé sans rémunération, chargé, à raison même de sa fonction :

a) Soit de surveiller ou contrôler cette entreprise ;

b) Soit de passer des marchés ou contrats avec cette entreprise ou d'exprimer un avis sur de tels marchés ou contrats ;

Cette interdiction s'applique également aux activités exercées dans une entreprise :

- qui détient au moins 30 p. 100 du capital de l'entreprise susmentionnée, ou dont le capital est, à hauteur de 30 p. 100 au moins, détenu soit par l'entreprise susmentionnée, soit par une entreprise détenant aussi 30 p. 100 au moins du capital de l'entreprise susmentionnée ;

- ou qui a conclu avec l'entreprise susmentionnée un contrat comportant une exclusivité de droit ou de fait ;

2° Activités lucratives, salariées ou non, dans un organisme ou une entreprise privés et activités libérales si, par leur nature ou leurs conditions d'exercice et eu égard aux fonctions précédemment exercées par l'intéressé, ces activités portent atteinte à la dignité desdites fonctions ou risquent de compromettre ou mettre en cause le fonctionnement normal, l'indépendance ou la neutralité du service.

Pour l'application du présent article est assimilée à une entreprise privée toute entreprise publique exerçant son activité dans un secteur concurrentiel et conformément au droit privé.

II. - L'interdiction prévue au I est applicable aux agents contractuels de droit public ou de droit privé de l'Agence française de sécurité sanitaire des produits de santé, de l'Agence française du sang et de l'Agence nationale du médicament vétérinaire, quelle que soit la durée du contrat de ces agents.

Article 13

Modifié par Décret n°95-833 du 6 juillet 1995 art. 1 et 2 (JORF 12 juillet 1995).

L'agent entrant dans l'une des catégories mentionnées à l'article 12 qui, cessant ses fonctions ou demandant le bénéfice d'un congé sans rémunération, se propose d'exercer une activité privée en informe par écrit l'autorité dont il relève. Si l'agent est rattaché à la fonction publique territoriale, il en informe également le préfet du département dans lequel est situé la collectivité territoriale ou l'établissement public qui l'emploie.

Tout changement d'activité, pendant la durée d'un congé sans rémunération ou pendant le délai de cinq ans à compter de la cessation des fonctions, est porté par l'intéressé à la connaissance de l'administration dans les conditions prévues à l'alinéa précédent.

Article 14

Modifié par Décret n°95-833 du 6 juillet 1995 art. 1 et 2 (JORF 12 juillet 1995).

Le contrôle de la compatibilité de l'activité projetée avec les fonctions précédemment exercées par l'intéressé est exercé suivant la procédure définie aux articles 3 et 11 du présent décret, la commission compétente étant déterminée par la fonction publique à laquelle est rattaché l'agent eu égard à la collectivité publique ou l'établissement public qui l'a employé.

Titre III : Dispositions diverses.

Article 15

Créé par Décret n°95-833 du 6 juillet 1995 art. 1 et 3 (JORF 12 juillet 1995).

Les dispositions du présent décret ne s'appliquent pas à la création d'oeuvres scientifiques, littéraires ou artistiques.

Article 16

Créé par Décret n°95-833 du 6 juillet 1995 art. 1 et 3 (JORF 12 juillet 1995).

Le décret n° 91-109 du 17 janvier 1991 pris pour l'application de l'article 72 de la loi n° 84-16 du 11 janvier 1984 portant dispositions statutaires relatives à la fonction publique de l'Etat est abrogé.

Article 17

Le Premier ministre, le ministre d'Etat, ministre des affaires sociales, de la santé et de la ville, le ministre d'Etat, ministre de l'intérieur et de l'aménagement du territoire, le ministre du budget, le ministre de la fonction publique, le ministre délégué à la santé, porte-parole du Gouvernement, et le ministre délégué à l'aménagement du territoire et aux collectivités locales sont chargés, chacun en ce qui le concerne, de l'exécution du présent décret, qui sera publié au Journal officiel de la République française.

Décret n°96-763 du 1 septembre 1996

Décret relatif à la commission pour la transparence financière de la vie politique

version consolidée au 22 décembre 1999

ANNEXE

DÉCLARATION DE PATRIMOINE

Nom :

Prénom :

Renseignements personnels

Régime matrimonial :

Profession du conjoint (facultatif) :

Mandats locaux :

Montant et origine des revenus (cette mention est facultative : les personnalités soumises à l'obligation de déclaration de patrimoine ne sont pas tenues de déclarer l'origine et le montant de leurs revenus) :

Indications générales

1. Justificatifs : la déclaration peut être utilement complétée par des justificatifs tels que : déclaration d'I.S.F. ; actes notariés ; attestations bancaires.

2. L'ensemble des biens doit être déclaré, y compris ceux détenus à l'étranger et ceux n'entrant pas dans l'assiette de l'I.S.F.

3. Pour les déclarations de fin de mandat ou de cessation d'une fonction au Gouvernement, les opérations ayant affecté la composition du patrimoine doivent être déclarées (achats, ventes, emprunts contractés) et les variations de la valeur du patrimoine justifiées.

4. La mention " néant " doit être portée dans les rubriques non remplies.

5. La déclaration doit être signée personnellement et chaque page paraphée.

Nota : suite de l'annexe : tableaux non reproduits.

(...)

TITRE Ier : PROCÉDURE DE DÉCLARATION DE SITUATION PATRIMONIALE.

Article 1

Les déclarations de situation patrimoniale sont établies conformément au modèle annexé au présent décret.

Elles sont soit déposées au siège de la commission contre remise d'un récépissé, soit adressées au président de celle-ci par lettre recommandée avec accusé de réception.

Article 2

Modifié par Décret n°99-1074 du 14 décembre 1999 art. 2 (jorf 22 décembre 1999)

Les autorités compétentes mentionnées au premier alinéa du II de l'article 3 de la loi du 11 mars 1988 susvisée sont respectivement :

1° Le Premier ministre pour les membres du Gouvernement ;

2° Le ministre des affaires étrangères pour les représentants au Parlement européen ;

3° Le ministre de l'intérieur pour les élus des collectivités territoriales de la métropole, pour les présidents de groupements de communes ainsi que pour les dirigeants des sociétés d'économie mixte locales dont les établissements ou sociétés ont leur siège en métropole ;

4° Le ministre chargé de l'outre-mer pour les élus des collectivités d'outre-mer et pour le président et les membres du gouvernement de la Nouvelle-Calédonie et du gouvernement de la Polynésie française, ainsi que pour les présidents et dirigeants mentionnés au 3° dont les établissements ou sociétés ont leur siège dans ces collectivités ;

5° Le ministre chargé du logement pour les dirigeants d'organismes publics d'habitations à loyer modéré ;

6° Le ministre de l'économie et des finances pour les dirigeants d'entreprises nationales, pour ceux des établissements publics nationaux à caractère industriel et commercial ainsi que pour ceux des sociétés d'économie mixte autres que celles mentionnées au 3°.

Article 3

La commission peut inviter à comparaître devant elle les personnes pour lesquelles les éléments contenus dans la déclaration ou les compléments adressés par écrit ne suffisent pas à expliquer la variation de leur situation patrimoniale.

La personne invitée à expliquer l'évolution de sa situation patrimoniale devant la commission peut se faire accompagner par une personne de son choix.

Article 4

Avant de transmettre un dossier au parquet en application du dernier alinéa de l'article 3 de la loi du 11 mars 1988 susvisée, la commission met l'intéressé à même de présenter ses observations, par écrit ou par oral. Elle joint au dossier les observations écrites ainsi que l'extrait du procès-verbal de la séance au cours de laquelle l'intéressé a été entendu.

TITRE II : FONCTIONNEMENT DE LA COMMISSION.

Article 5

Les membres titulaires de la commission pour la transparence financière de la vie politique et leurs suppléants sont désignés pour une période de quatre années, renouvelable une fois.

Article 6

La commission siège soit en formation plénière, soit en formation ordinaire.

Chaque formation ordinaire est composée d'un membre du Conseil d'Etat, d'un membre de la Cour de cassation et d'un membre de la Cour des comptes, autres que les membres de droit. Elle est présidée par le membre du Conseil d'Etat.

Les déclarations des membres du Gouvernement sont examinées par la commission réunie en formation plénière. Celles des autres personnes sont examinées par les formations ordinaires de la commission, selon une répartition dont les principes sont déterminés par les trois membres de droit. Les formations ordinaires peuvent renvoyer l'examen d'un dossier à la formation plénière.

Le rapport périodique que la commission adresse au Gouvernement est adopté en formation plénière.

Article 7

Le secrétaire général de la commission est choisi parmi les membres des corps de fonctionnaires recrutés par la voie de l'Ecole nationale d'administration ou parmi les magistrats de l'ordre judiciaire.

Le secrétaire général ainsi que les fonctionnaires mis à la disposition de la commission peuvent recevoir délégation de signature du président pour accuser réception des déclarations déposées à la commission et pour demander aux intéressés les précisions utiles à l'examen de leur situation patrimoniale.

germania

Costituzione federale (*Grundgesetz*), articolo 66

[Incompatibilità]

Il Cancelliere federale e i ministri federali non possono esercitare nessuna altra funzione pubblica remunerata, nessuna professione industriale o commerciale né alcun mestiere, così come non possono far parte né della direzione, né, senza l'approvazione del Bundestag, del consiglio di amministrazione di una impresa con scopo di lucro.

Artikel 66 [Berufsverbot]

Der Bundeskanzler und die Bundesminister dürfen kein anderes besoldetes Amt, kein Gewerbe und keinen Beruf ausüben und weder der Leitung noch ohne Zustimmung des Bundestages dem Aufsichtsrate eines auf Erwerb gerichteten Unternehmens angehören.

Gesetz über die Rechtsverhältnisse der Mitglieder der Bundesregierung - Bundesministergesetz

§ 5

(1) Die Mitglieder der Bundesregierung dürfen neben ihrem Amt kein anderes besoldetes Amt, kein Gewerbe und keinen Beruf ausüben. Sie dürfen während ihrer Amtszeit auch nicht dem Vorstand, Aufsichtsrat oder Verwaltungsrat eines auf Erwerb gerichteten Unternehmens angehören oder gegen Entgelt als Schiedsrichter tätig sein oder außergerichtliche Gutachten abgeben. Der Bundestag kann Ausnahmen von dem Verbot der Zugehörigkeit zu einem Aufsichtsrat oder Verwaltungsrat zulassen.

(2) Die Mitglieder der Bundesregierung sollen während ihrer Amtszeit kein öffentliches Ehrenamt bekleiden. Die Bundesregierung kann hiervon Ausnahmen zulassen.

(3) Die Mitglieder und ehemaligen Mitglieder der Bundesregierung haben dieser über Geschenke Mitteilung zu machen, die sie in bezug auf ihr Amt erhalten. Die Bundesregierung entscheidet über die Verwendung der Geschenke.

regno unito

Ministerial Code: A Code of Ethics and Procedural Guidance for Ministers (2005)

(...)

5 MINISTERS' PRIVATE INTERESTS

General principle

5.1 Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests, financial or otherwise.

Responsibility for avoiding a conflict

5.2 It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, and to defend that decision, if necessary by accounting for it in Parliament. The role of the Permanent Secretary is to ensure that advice is available when it is sought by the Minister, either by providing it personally, drawing on precedent and if need be other parts of government including the Secretary of the Cabinet, or to arrange for expert or professional advice from inside or outside

Government. In cases of serious difficulty or doubt the matter may be referred to the Prime Minister for a view. But ultimately it is the responsibility of Ministers individually to order their own private lives in such a way as to avoid criticism, and the final decision about what action to take to achieve that is theirs.

Procedure

5.3 On appointment to each new office, Ministers are advised to provide their Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict. The list should cover not only the Minister's personal interests but those of a spouse or partner, of children who are minors, of trusts of which the Minister or a spouse or partner is a trustee or beneficiary, or of closely associated persons. The list should cover all kinds of interest including financial instruments and partnerships, financial interests such as unincorporated businesses and real estate, as well as relevant non-financial private interests such as links with outside organisations, and previous relevant employment.

5.4 On receipt of the written list the Permanent Secretary will arrange a meeting with the Minister to discuss it and to consider what advice is necessary and from what source, and what further written information is needed. The Permanent Secretary will stand ready either to give a considered view on the issues which the Minister raises, drawing on precedent and the help of the Cabinet Office as necessary, or to arrange for expert or professional advice also to be made available to the Minister from inside or outside government. At the end of the exercise Ministers are advised to record in writing what action has been considered and taken, and to provide the Permanent Secretary with a copy of that record.

5.5 Where it is proper for a Minister to retain a private interest it is the rule that he or she should declare that interest to Ministerial colleagues if they have to discuss public business which in any way affects it and that the Minister should remain entirely detached from the consideration of that business. Similar steps may be necessary if a matter under consideration in the Department relates in some way to a Minister's previous or existing private interests such that there is or may be thought to be a conflict of interest. Particular care needs to be taken where financial interests are involved: see paragraphs 5.11 to 5.18 below.

5.6 The personal information which Ministers disclose to those who advise them is treated in confidence. Should the Department receive a request for this information it will take account of a range of factors including the confidentiality of the information. The relevant Minister will also be consulted and his or her views taken into account before a decision would be made on disclosure. If an allegation is made that a particular Minister has a conflict of interest it must be for that Minister to explain their position and justify what has been done. In doing so, they may wish to make public the list of their private interests (required under paragraph 5.3) and the steps taken to avoid an actual or perceived conflict. It is open to them if they wish to confirm (if it is the case) that they have consulted their Permanent Secretary in accordance with the Code. The Minister should however consult the Permanent Secretary about the content of any such statement before making it to ensure that there is agreement about the content, and any disagreement should be referred to the Prime Minister.

5.7 The intention of these procedures is not to inhibit the holding of Ministerial office by individuals with wide experience, whether of industry, a profession or some other walk of life, but to ensure that systemic steps are taken to avoid the danger of an actual or perceived conflict of interest. The following paragraphs set out in more detail particular measures which should be taken based on experience over successive governments.

Public appointments

5.8 When they take up office Ministers should give up any other public appointment they may hold. Where it is proposed that such an appointment should be retained, the Prime Minister must be consulted.

Non-Public Bodies

5.9 Ministers should take care to ensure that they do not become associated with non-public organisations whose objectives may in any degree conflict with Government policy and thus give rise to a conflict of interest. Hence Ministers should not normally accept invitations to act as patrons of or otherwise offer support to pressure groups, or organisations dependent in whole or in part on Government funding. There is normally less objection to a Minister associating him or herself with a charity (subject to the points above) but Ministers should take care to ensure that in participating in any fund-raising activity, they do not place, or appear to place, themselves under an obligation as Ministers to those to whom appeals are directed (and for this reason they should not normally approach individuals or companies personally for this purpose). In any case of doubt, the Prime Minister should be consulted before a Minister accepts an association with such bodies. Ministers should also exercise care in giving public support for petitions, open letters etc.

Trade Unions

5.10 There is, of course, no objection to a Minister holding trade union membership but care must be taken to avoid any actual or perceived conflict of interest. Accordingly, Ministers should arrange their affairs so as to avoid any suggestion that a union of which they are a member has any undue influence; they should take no active part in the conduct of union affairs, should give up any office they may hold in a union and should receive no remuneration from a union (a nominal payment purely for the purpose of protecting a Minister’s future pension rights is acceptable).

Financial interests

5.11 Ministers must scrupulously avoid any danger of an actual or apparent conflict of interest between their Ministerial position and their private financial interests. In order to avoid such a danger, they should be guided by the general principle that they should either dispose of any financial interest giving rise to the actual or apparent conflict or take alternative steps to prevent it. It is particularly important that the procedure described in paragraphs 5.3 and 5.4 is followed in the case of financial interests. The Permanent Secretary as Accounting Officer has a personal responsibility for financial propriety and regularity across the Department’s business, and his or her advice must be given particular weight where such issues arise.

5.12 Two particular ways in which a conflict of financial interest, or the perception of it, can arise are as follows:

a. from the exercise of powers or other influence in a way that does or could be considered to affect the value of interests held; or

b. from using special knowledge acquired in the course of their Ministerial activities in ways which bring benefit or avoid loss (or could arouse reasonable suspicion of this) in relation to their private financial interests.

5.13 Apart from the risk to the Minister’s reputation, two legal obligations must be born in mind:

a. any exercise or non-exercise by a Minister (including a Law Officer) of a legal power or discretion or other influence on a matter in which the Minister has a pecuniary interest could be challenged in the courts and, if the challenge is upheld, could be declared invalid. The courts interpret conflict of interest increasingly tightly;

b. Ministers are bound by the provisions of Part V of the Criminal Justice Act 1993 in relation to the use or transmission of unpublished price-sensitive information obtained by virtue of their Ministerial office.

Financial interests: alternatives to disposal

5.14 If for any reason the Minister is unable or unwilling to dispose of a relevant interest, he or she should consider, with the advice of the Permanent Secretary of the Department and, where necessary, an external adviser what alternative measures would sufficiently remove the risk of conflict. These fall into two types: those relating to the interests themselves, and those relating to the handling of the decisions to be taken or influenced by the Minister.

Steps to be taken where financial interests are retained

5.15 As regards steps other than disposal which might be taken in relation to interests, the Minister might consider placing all investments (including derivatives) into a ‘blind’ trust, i.e. one in which the Minister is not informed of changes in investments or of the state of the portfolio, but is still fully entitled to receive regular reports on the performance of the trust, and to receive both the capital and income generated. A blind trust is only blind in the case of a widely-spread portfolio of interests, managed by external advisers. Once a blind trust has been established the Minister should not be involved or advised of decisions on acquisition or disposal relating to the portfolio, although he can advise on the overall structure of the portfolio to be acquired. Ministers should remember that Part VI of the Companies Act 1985 allows companies to require information as to the true owners of its shares, which could result in the fact of a Minister's interest becoming public knowledge despite the existence of a trust. It should also be remembered that even with a trust the Minister could be assumed to know the contents of the portfolio for at least a period after its creation, so the protection a trust offers against conflict of interest is not complete. Alternatively a power of attorney may be suitable. However, this is a complex area and the Minister should seek professional advice because, among other things there may be tax consequences in establishing this kind of arrangement.

5.16 Another step which (perhaps in conjunction with other steps) might provide a degree of protection would be for the Minister to accept an obligation to refrain from dealing in the relevant shareholdings etc for a period.

5.17 Unless adequate steps can be taken in relation to the financial interests themselves, the Minister and the Department must put processes in place to prohibit access to certain papers and ensure that the Minister is not involved in certain decisions and discussions. The extent to which this can be done depends on the specific powers under which the Minister would be required to take decisions. For example:

> a. in the case of a junior Minister, it should be possible for the Ministerial head of the Department to take the decision or for the case to be handled by another junior Minister in the Department;
>
> b. in the case of the Ministerial head of Department or the holder of a specific office in whom powers are vested, it will normally be possible without risk of legal challenge to pass the handling of the matter to a junior Minister or appropriate official in the Department, or, exceptionally, to another Secretary of State. In such cases, legal advice should always be sought to ensure that the relevant powers can be exercised in this way.

5.18 In some cases, it may not be possible to devise such a mechanism to avoid actual or perceived conflict of interest, for example because of the nature or size of the investment or the nature of the Department's work. In such a case, or in any case where, after taking legal advice and the advice of the Permanent Secretary, the Minister is in doubt whether adequate steps have been or can be taken, he or she should consult the Prime Minister. In such a case it may be necessary for the Minister to cease to hold the office in question.

Partnerships

5.19 Ministers who are partners, whether in professional firms, for example solicitors, accountants etc, or in other businesses, should, on taking up office, cease to practise or to play any part in the day-to-day management of the firm’s affairs. They are not necessarily required, however, to dissolve their partnership or to allow, for example, their annual practising certificate to lapse. Beyond this it is not possible to lay down precise rules applicable to every case; but any continuing financial interest in the firm would make it necessary for the Minister to take steps to avoid involvement in relevant decisions, as described in paragraph 5.17 above. Ministers in doubt about their personal position should consult the Prime Minister.

Directorships

5.20 Ministers must resign any directorships they hold when they take up office. This applies whether the directorship is in a public or private company and whether it carries remuneration or is honorary. The only exception to this rule is that directorships in private companies established in connection with private family estates or in a company formed for the management of flats of which the Minister is a tenant may be retained subject to the condition that if at any time the Minister feels that conflict is likely to arise between this private interest and public duty, the Minister should even in those cases resign the directorship. Directorships or offices held in connection with charitable undertakings should also be resigned if there is any risk of conflict arising between the interests of the undertakings and the Government.

Membership of Lloyds

5.21 A Minister holding office as Prime Minister, Chancellor of the Exchequer or Secretary of State for Trade and Industry, or a Minister holding office as a Minister in the Treasury who is responsible under the Chancellor of the Exchequer for taxation matters relating specifically to Lloyd's, or as a Minister in the Department of Trade and Industry responsible under the Secretary of State for Trade and Industry for insurance matters relating specifically to Lloyd's, should not become an underwriting member of Lloyd's. Such a Minister, if already a member of Lloyd's on appointment, should cease underwriting during tenure of office.

5.22 Other Ministers who are underwriting members of Lloyd's should not take an active part in the management of the affairs of syndicates of which he/she is a member, and should on appointment as a Minister withdraw from any such active participation in its management. Ministers with underwriting connections to Lloyd’s (whether past or present) should seek the advice of their Permanent Secretary as there can be implications for handling Departmental or collective discussions or decisions which are not always obvious.

Nomination for prizes and awards

5.23 From time to time, the personal support of Ministers is requested for nominations being made for international prizes and awards, e.g. the annual Nobel prizes. Ministers should not sponsor individual nominations for any awards, since it would be inevitable that some people would assume that the Government was itself thereby giving its sponsorship.

Acceptance of gifts and hospitality

5.24 It is a well established and recognised rule that no Minister or public servant should accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under an obligation. The same principle applies if gifts etc are offered to a member of their family.

5.25 This is primarily a matter which must be left to the good sense of Ministers. But any Minister in doubt or difficulty over this should seek the Prime Minister's guidance. The same rules apply to the acceptance of gifts from donors with whom a Minister has official dealings in this country as to those from overseas (paragraph 10.19), that is:

a. Receipt of gifts should be reported to the Permanent Secretary;

b. Gifts of small value (currently this is set at up to £140) may be retained by the recipient;

c. Gifts of a higher value should be handed over to the Department for disposal, except that:

i. the recipient may purchase the gift at its cash value (abated by £140);

ii. if the Department judges that it would be of interest, the gift may be displayed or used in the Department;

iii. if the disposal of the gift would cause offence or if it might be appropriate for the recipient to use or display the gift on some future occasion as a mark of politeness, then the gift should be retained in the Department for this purpose for a period of up to five years;

d. Gifts received overseas worth more than the normal travellers' allowances should be declared at importation to Customs and Excise who will advise on any duty and tax liability. In general, if a Minister wishes to retain a gift he or she will be liable for any tax or duty it may attract.

5.26 Gifts given to Ministers in their Ministerial capacity become the property of the Government and do not need to be declared in the Register of Members' or Peers' Interests. Gifts given to Ministers as constituency MPs or members of a political Party fall within the rules relating to the Registers of Members' and Peers' Interests.

Annual List of Gifts

5.27 The Government publishes an annual list of gifts received by Ministers valued at more than £140. The list provides details of the value of the gifts and whether they were retained by the department or purchased by the Minister. Departments must ensure that they maintain records of gifts received in such a way as to be able to provide this information on an annual basis to the Cabinet Office.

5.28 In the event of a Minister accepting hospitality on a scale or from a source which might reasonably be thought likely to influence Ministerial action, it should be declared in Register of Members' or Peers' Interests. Registration of hospitality would normally be required for hospitality over £550[1] in value for the Commons and £1000[1] for the Lords.

Acceptance of appointments after leaving ministerial office

5.29 On leaving office, Ministers should seek advice from the independent Advisory Committee on Business Appointments about any appointments they wish to take up within two years of leaving office. This is not necessary for unpaid appointments in non-commercial organisations or appointments in the gift of the Government, such as Prime Ministerial appointments to international organisations. Although it is in the public interest that former Ministers should be able to move into business or other areas of public life, it is equally important that there should be no cause for any suspicion of impropriety about a particular appointment. The Advisory Committee may recommend a delay of up to two years before the appointment is taken up if:

> a. an appointment could lead to public concern that the statements and decisions of the Minister, when in Government, have been influenced by the hope or expectation of future employment with the firm or organisation concerned;
>
> b. an employer could make improper use of official information to which a former Minister has had access.

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[1] These figures will be uprated from time to time by the Houses.

spagna

Costituzione spagnola del 27 dicembre 1978 - Artículo 98

1.El Gobierno se compone del Presidente, de los Vicepresidentes, en su caso, de los Ministros y de los demás miembros que establezca la ley.

2.El Presidente dirige la acción del Gobierno y coordina las funciones de los demás miembros del mismo, sin perjuicio de la competencia y responsabilidad directa de éstos en su gestión.

3.Los miembros del Gobierno no podrán ejercer otras funciones representativas que las propias del mandato parlamentario, ni cualquier otra función pública que no derive de su cargo, ni actividad profesional o mercantil alguna.

4.La ley regulará el estatuto e incompatibilidades de los miembros del Gobierno.

Articolo 98

1. Il Governo è composto dal Presidente, se del caso dai Vice Presidenti, dai Ministri e dagli ulteriori membri che stabilisca la legge.

2. I1 Presidente dirige l'azione del Governo e coordina le funzioni degli altri membri dello stesso, senza pregiudizio della competenza e responsabilità diretta di questi ultimi nella loro attività di amministrazione.

3. I membri del Governo non potranno esercitare altre funzioni rappresentative che quelle connesse al mandato parlamentare, né qualsiasi altra funzione pubblica che non derivi dal loro incarico né qualsiasi attività professionale o commerciale.

4. La legge regolerà lo statuto e le incompatibilità dei membri del Governo.

Ley 5/2006, de 10 de abril, de regulación de los conflictos de intereses de los miembros del Gobierno y de los Altos Cargos de la Administración General del Estado

BOE 11 Abril

JUAN CARLOS I REY DE ESPAÑA A todos los que la presente vieren y entendieren,

Sabed: Que las Cortes Generales han aprobado y Yo vengo en sancionar la siguiente Ley.

PREÁMBULO

El objetivo de la Ley es establecer las obligaciones que incumben a los miembros del Gobierno y a los altos cargos de la Administración General del Estado para prevenir situaciones que puedan originar conflictos de intereses.

No se trata, pues, de una mera reproducción de las normas de incompatibilidades tal y como se han concebido hasta ahora, sino de constituir un nuevo régimen jurídico regulador de la actuación de los altos cargos en el que, perfeccionando el anterior de incompatibilidades, se introducen nuevas exigencias y cautelas que garanticen que no se van a producir situaciones que pongan en riesgo la objetividad, imparcialidad e independencia del alto cargo, sin perjuicio de la jerarquía administrativa.

En el Título I se establecen los requisitos a que han de someterse los titulares de determinados órganos con carácter previo a su nombramiento. Esta regulación supone un considerable avance en cuanto al control democrático en la designación de estos cargos, ya que se prevé su comparecencia ante el Congreso de los Diputados, órgano máximo de representación popular.

En el Título II, y cumpliendo lo acordado por el Pleno del Congreso de los Diputados, en su sesión de 23 de abril de 2002, se establece un nuevo régimen de prevención de situaciones de conflictos de intereses de los miembros del Gobierno y de los altos cargos de la Administración General del Estado en el que, a partir de la vigente Ley 12/1995, de 11 de mayo (LA LEY-LEG. 1815/1995), se introducen las modificaciones necesarias para suplir las deficiencias, e incluso lagunas legales, que con el paso del tiempo se han venido detectando, y se refuerza la imagen que los altos cargos, en cuanto servidores públicos, deben ofrecer ante los ciudadanos.

Se consagra el principio de dedicación exclusiva del alto cargo a su puesto público, restringiendo todas aquellas actividades que puedan perturbar o incidir en el desempeño de sus funciones públicas. En tal sentido, hay que resaltar que se elimina para los altos cargos la percepción de cualquier retribución o asistencia por su participación en los órganos rectores o Consejos de Administración de las empresas con capital público. Esta medida supone una mejora en la transparencia del sistema retributivo de los altos cargos.

Asimismo, la ley refuerza el control sobre los intereses patrimoniales que pueda tener el alto cargo, su cónyuge o persona que conviva con él en análoga relación de afectividad, así como de determinados miembros de su unidad familiar, extendiendo la prohibición de tener una participación de éstos superior al 10 por ciento en empresas no sólo a las que tengan conciertos o contratos de cualquier naturaleza con el sector público, sino también a las empresas que sean subcontratistas de éstas o que perciban subvenciones.

Otro aspecto en el que la Ley ha querido introducir un control adicional es el del desempeño por actividades privadas de los altos cargos, cuando éstos cesan en los mismos, de forma que en la ley se establecen nuevas garantías para que durante el ejercicio del cargo público no se vea afectada su imparcialidad e independencia, sin perjuicio de la jerarquía administrativa. Es especialmente relevante el hecho de que a las empresas privadas que contraten a alguna de las personas que hayan tenido la condición de altos cargos, incumpliendo las limitaciones que la Ley establece a tal efecto, se les prohibirá contratar con las Administraciones Públicas durante el tiempo en el que se mantenga la limitación para el alto cargo.

Finalmente, y para incidir en la importancia del seguimiento de los preceptos de esta Ley se han introducido dos innovaciones: la creación de la Oficina de Conflictos de Intereses, órgano similar al existente en otros países de nuestro entorno cultural, que actuará con plena autonomía funcional en el desempeño de las funciones que le encomienda esta Ley, y el reforzamiento del régimen sancionador, de forma que el incumplimiento de los preceptos de la Ley conlleva penalizaciones efectivas.

TÍTULO PRELIMINAR

Objeto y ámbito de aplicación

Artículo 1.

Objeto y ámbito de aplicación

Por esta ley se regulan los requisitos previos para el nombramiento de los titulares de determinados órganos y para el nombramiento de los altos cargos en determinados organismos reguladores y de supervisión, así como las medidas básicas para evitar situaciones de conflicto de intereses de los miembros del Gobierno y de los altos cargos de la Administración General del Estado y de las entidades del sector público estatal.

TÍTULO I

Requisitos previos para el nombramiento de los titulares de determinados órganos

Artículo 2.

Comparecencia ante el Congreso de los Diputados

1. El Gobierno, con carácter previo al nombramiento del Presidente del Consejo de Estado, pondrá en conocimiento del Congreso de los Diputados el nombre de la persona propuesta para el cargo a fin de que pueda disponer su comparecencia ante la comisión correspondiente de la Cámara, en los términos que prevea su Reglamento.

2. El mismo procedimiento será seguido en relación con los nombramientos de las personas que vayan a ser designadas máximos responsables en los organismos reguladores o de supervisión incluidos en el artículo 3.2 k), presidentes del Consejo Económico y Social; del Tribunal de Defensa de la Competencia y de la Agencia EFE, director de la Agencia de Protección de Datos y director general del Ente Público Radiotelevisión Española.

3. La comisión parlamentaria del Congreso de los Diputados examinará, en su caso, a los candidatos propuestos. Sus miembros formularán las preguntas o solicitarán las aclaraciones que crean convenientes. La comisión parlamentaria emitirá un dictamen en el que establecerá si se aprecia o no la existencia de conflicto de intereses.

TÍTULO II

Conflictos de intereses

Artículo 3.

Ámbito de aplicación

1. Este Título es aplicable a los miembros del Gobierno, a los Secretarios de Estado y al resto de los altos cargos de la Administración General del Estado y de las entidades del sector público estatal, de derecho público o privado, vinculadas o dependientes de aquélla.

2. A los efectos de esta Ley se consideran como altos cargos:

a) Los miembros del Gobierno.

b) Los secretarios de estado.

c) Los subsecretarios y asimilados; los secretarios generales; los delegados del Gobierno en las comunidades autónomas, en Ceuta y Melilla; los delegados del Gobierno en entidades de derecho público; y los jefes de misión diplomática permanente; así como los jefes de representación permanente ante organizaciones internacionales.

d) Los directores generales de la Administración General del Estado y asimilados.

e) El director general del Ente Público Radiotelevisión Española; los presidentes, los directores generales, los directores ejecutivos y asimilados en entidades de derecho público del sector público estatal vinculadas o dependientes de la Administración General del Estado, cuyo nombramiento se efectúe por decisión del Consejo de Ministros o por sus propios órganos de gobierno y, en todo caso, los presidentes y directores con rango de director general de las Entidades Gestoras y Servicios Comunes de la Seguridad Social.

f) El presidente del Tribunal de Defensa de la Competencia y los vocales del mismo.

g) El presidente y los directores generales del Instituto de Crédito Oficial.

h) Los presidentes y consejeros delegados de las sociedades mercantiles en cuyo capital sea mayoritaria la participación estatal, o que sin llegar a ser mayoritaria, la posición de la Administración General del Estado sea dominante en el consejo de administración, cuando sean designados previo acuerdo del Consejo de Ministros o por sus propios órganos de gobierno.

i) Los miembros de los Gabinetes de la Presidencia del Gobierno y de las Vicepresidencias nombrados por el Consejo de Ministros y los directores de los Gabinetes de los Ministros.

j) Los presidentes, los directores y gerentes de las fundaciones públicas estatales siempre que perciban retribuciones por el desempeño de estos cargos, así como los titulares de aquellos otros órganos a los que sus Estatutos les atribuyan tal condición.

k) El presidente y los vocales de la Comisión Nacional del Mercado de Valores, de la Comisión del Mercado de las Telecomunicaciones, de la Comisión Nacional de Energía, el presidente, los consejeros y el Secretario General del Consejo de Seguridad Nuclear, así como el presidente y los miembros de los órganos rectores de cualquier otro organismo regulador y de supervisión.

l) Los directores, directores ejecutivos, secretarios generales o equivalentes de los organismos reguladores y de supervisión.

m) Asimismo, los titulares de cualquier otro puesto de trabajo de la Administración General del Estado, cualquiera que sea su denominación, cuyo nombramiento se efectúe por el Consejo de Ministros.

Artículo 4.

Objeto

1. A los efectos de esta ley, hay conflicto de intereses cuando los altos cargos intervienen en las decisiones relacionadas con asuntos en los que confluyen a la vez intereses de su puesto público e intereses privados propios, de familiares directos, o intereses compartidos con terceras personas.

2. El presente título regula la prevención y resolución de conflictos de intereses a través del establecimiento de un régimen de incompatibilidades y de las correspondientes sanciones.

CAPÍTULO I

Régimen de incompatibilidades

Artículo 5.

Dedicación exclusiva al cargo público

Los altos cargos comprendidos en el artículo 3 ejercerán sus funciones con dedicación exclusiva y no podrán compatibilizar su actividad con el desempeño, por sí, o mediante sustitución o apoderamiento, de cualquier otro puesto, cargo, representación, profesión o actividad, sean de carácter público o privado, por cuenta propia o ajena, y, asimismo, tampoco podrán percibir cualquier otra remuneración con cargo a los presupuestos de las Administraciones públicas o entidades vinculadas o dependientes de ellas, ni cualquier otra percepción que directa o indirectamente provenga de una actividad privada.

Lo dispuesto en el párrafo anterior se entiende sin perjuicio de las excepciones señaladas en los artículos 9 y 10.

Artículo 6.

Limitaciones patrimoniales en participaciones societarias

1. Los titulares de los cargos previstos en el artículo 3 (LA LEY-LEG. 599/2006) no podrán tener, por sí o junto con su cónyuge, sea cual sea el régimen económico matrimonial, o persona que conviva en análoga relación de afectividad e hijos dependientes y personas tuteladas, participaciones directas o indirectas superiores a un diez por ciento en empresas en tanto tengan conciertos o contratos de cualquier naturaleza, con el sector público estatal, autonómico o local, o sean subcontratistas de dichas empresas o que reciban subvenciones provenientes de la Administración General del Estado.

2. En el supuesto de las sociedades anónimas cuyo capital social suscrito supere los 600.000 euros, dicha prohibición afectará a las participaciones patrimoniales que sin llegar a este porcentaje supongan una posición en el

capital social de la empresa que pueda condicionar de forma relevante su actuación.

3. En el supuesto de que la persona que sea nombrada para ocupar un puesto de los comprendidos en el artículo 3, poseyera una participación en los términos a los que se refieren los apartados anteriores, tendrá que desprenderse de ella en el plazo de tres meses, contados desde el día siguiente a su nombramiento. Si la participación se adquiriera por sucesión hereditaria u otro título gratuito durante el ejercicio del cargo, tendrá que desprenderse de ella en el plazo de tres meses desde su adquisición.

Dicha participación y posterior transmisión serán, asimismo, declaradas a los Registros de Actividades y de Bienes y Derechos Patrimoniales en la forma que reglamentariamente se determine.

Artículo 7. Deber de inhibición y de abstención

1. Quienes desempeñen un alto cargo vienen obligados a inhibirse del conocimiento de los asuntos en cuyo despacho hubieran intervenido o que interesen a empresas o sociedades en cuya dirección, asesoramiento o administración hubieran tenido alguna parte ellos, su cónyuge o persona con quien conviva en análoga relación de afectividad, o familiar dentro del segundo grado y en los dos años anteriores a su toma de posesión como cargo público.

A tal efecto, los altos cargos formularán una declaración de sus actividades profesionales, mercantiles o laborales que hubieran desempeñado durante los dos años anteriores a su toma de posesión como alto cargo. Esta declaración comprenderá una relación pormenorizada de sus intereses referida al citado periodo de dos años.

Dicha declaración se efectuará ante el Registro de Actividades de Altos Cargos.

2. En el caso de que durante el desempeño del cargo público el alto cargo estuviera obligado a abstenerse en los términos previstos en esta ley, en la Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común (LA LEY-LEG. 3279/1992), modificada por la Ley 4/1999, de 13 de enero (LA LEY-LEG. 156/1999), o en cualquier otra ley, la abstención se producirá por escrito para su adecuada expresión y constancia y se notificará al superior inmediato del alto cargo o al órgano que lo designó. En todo caso esta abstención será comunicada por el interesado, en el plazo de un mes, al Registro de Actividades de altos cargos, para su constancia.

Artículo 8.

Limitaciones al ejercicio de actividades privadas con posterioridad al cese

1. Durante los dos años siguientes a la fecha de su cese los altos cargos, a los que se refiere el artículo 3, no podrán desempeñar sus servicios en empresas o

sociedades privadas relacionadas directamente con las competencias del cargo desempeñado. A estos efectos se considera que existe relación directa cuando se den cualquiera de los siguientes supuestos de hecho:

a) Que los altos cargos, sus superiores a propuesta de ellos o los titulares de sus órganos dependientes, por delegación o sustitución, hubieran dictado resoluciones en relación con dichas empresas o sociedades.

b) Que hubieran intervenido en sesiones de órganos colegiados en las que se hubiera adoptado algún acuerdo o resolución en relación con dichas entidades.

2. Los altos cargos, regulados por esta Ley, que con anterioridad a ocupar dichos puestos públicos hubieran ejercido su actividad profesional en empresas privadas, a las cuales quisieran reincorporarse, no incurrirán en la incompatibilidad prevista en el apartado anterior cuando la actividad que vayan a desempeñar en ellas lo sea en puestos de trabajo que no estén directamente relacionados con las competencias del cargo público ocupado ni puedan adoptar decisiones que afecten a éste.

3. Durante el periodo de dos años a que se refiere el primer apartado de este artículo no podrán celebrar por sí mismos o a través de sociedades o empresas participadas por ellos directa o indirectamente en más del 10 por ciento contratos de asistencia técnica, de servicios o similares con las Administraciones Públicas, directamente o mediante empresas contratistas o subcontratistas.

4. Las personas que hubiesen desempeñado alguno de los altos cargos comprendidos en el artículo 3 deberán efectuar, durante el período de dos años a que se refiere el primer apartado de este artículo, ante la Oficina de Conflictos de Intereses prevista en el artículo 15, declaración sobre las actividades que vayan a realizar, con carácter previo a su inicio. En el plazo de un mes la Oficina de Conflictos de Intereses se pronunciará sobre la compatibilidad de la actividad a realizar y se lo comunicará al interesado y a la empresa o sociedad en la que fuera a prestar sus servicios.

5. Cuando la Oficina de Conflictos de Intereses estime que la actividad privada que quiera desempeñar una persona que hubiera ocupado un alto cargo vulnera lo previsto en el apartado 1, se lo comunicará al interesado y a la empresa o sociedad a la que fuera a prestar sus servicios, que formularán las alegaciones que tengan por convenientes. Analizadas las alegaciones, la Oficina propondrá la resolución que proceda.

6. Durante los dos años posteriores a la fecha de cese, aquellos que reingresen a la función pública y presten servicios retribuidos mediante honorarios, arancel o cualquier otra forma de contraprestación económica a personas físicas o jurídicas de carácter privado se inhibirán en todas aquellas actuaciones privadas que guarden relación con las competencias del alto cargo ejercido.

CAPÍTULO II

Régimen de actividades

Artículo 9.

Compatibilidad con actividades públicas

1. El ejercicio de las funciones de un alto cargo será compatible con las siguientes actividades públicas:

a) El desempeño de los cargos que les correspondan con carácter institucional, de aquellos para los que sean comisionados por el Gobierno, o de los que fueran designados por su propia condición.

b) El desarrollo de misiones temporales de representación ante otros Estados, o ante organizaciones o conferencias internacionales.

c) El desempeño de la presidencia de las sociedades a que se refiere el artículo 166.2 de la Ley 33/2003, de 3 de noviembre, del Patrimonio de las Administraciones Públicas (LA LEY-LEG. 1671/2003), cuando la naturaleza de los fines de la sociedad guarde conexión con las competencias legalmente atribuidas al alto cargo, así como la representación de la Administración General del Estado en los órganos colegiados, directivos o consejos de administración de organismos o empresas con capital público o de entidades de derecho público.

No se podrá pertenecer a más de dos consejos de administración de dichos organismos, empresas, sociedades o entidades salvo que lo autorice el Consejo de Ministros. Será precisa también esta autorización para permitir a un alto cargo de los incluidos en este Título ejercer la presidencia de las sociedades a que se refiere el párrafo anterior.

En los supuestos previstos en los párrafos anteriores los altos cargos no podrán percibir remuneración alguna con excepción de las indemnizaciones por gastos de viaje, estancias y traslados que les correspondan de acuerdo con la normativa vigente. Las cantidades devengadas por cualquier concepto que no deban ser percibidas serán ingresadas directamente por el organismo, ente o empresa en el Tesoro Público.

2. Los miembros del Gobierno y los Secretarios de Estado podrán compatibilizar su actividad con la de Diputado o Senador de las Cortes Generales en los términos previstos en la Ley Orgánica del Régimen Electoral General (LA LEY-LEG. 7691/1985).

Artículo 10. Compatibilidad con actividades privadas

El ejercicio de un puesto de alto cargo será compatible con las siguientes actividades privadas, siempre que con su ejercicio no se comprometa la imparcialidad o independencia del alto cargo en el ejercicio de su función, sin perjuicio de la jerarquía administrativa:

a) Las de mera administración del patrimonio personal o familiar con las limitaciones establecidas en el artículo 6 (LA LEY-LEG. 599/2006) de la presente Ley.

b) Las de producción y creación literaria, artística, científica o técnica y las publicaciones derivadas de aquéllas, así como la colaboración y la asistencia ocasional y excepcional como ponente a congresos, seminarios, jornadas de trabajo, conferencias o cursos de carácter profesional, siempre que no sean consecuencia de una relación de empleo o de prestación de servicios o supongan un menoscabo del estricto cumplimiento de sus deberes.

c) La participación en entidades culturales o benéficas que no tengan ánimo de lucro o fundaciones siempre que no perciban ningún tipo de retribución o percepción por dicha participación superior a la autorizada por el artículo 3.5 de la Ley 49/2002, de 23 de diciembre, que regula el régimen fiscal de las entidades sin fines lucrativos y de los incentivos fiscales al mecenazgo (LA LEY-LEG. 1774/2002).

CAPÍTULO III

Obligaciones de los altos cargos

Artículo 11.

Declaración de actividades

1. Los altos cargos están obligados a efectuar una declaración de las actividades que desempeñen por sí o mediante sustitución o apoderamiento y, de conformidad con lo previsto en el artículo 8, de aquellas que vayan a realizar una vez que hubiesen cesado en el desempeño de los cargos, ante el Registro de Actividades de Altos Cargos al que se refiere el artículo 14.2, en los términos que reglamentariamente se establezcan.

Igualmente están obligados a efectuar la declaración a que se refiere el apartado 1 del artículo 7 de esta Ley.

2. La declaración de actividades que desempeñan se efectuará en el improrrogable plazo de los tres meses siguientes a las fechas de toma de posesión y cese, respectivamente, en el alto cargo, así como cada vez que el interesado inicie una nueva actividad.

La declaración a que se refiere el apartado 1 del artículo 7 se efectuará en el plazo de tres meses desde la toma de posesión.

La declaración de actividades que vayan a realizar una vez que hubiesen cesado en el desempeño de los cargos se efectuará con carácter previo al inicio de la actividad.

3. La Oficina de Conflictos de Intereses examinará las declaraciones y, de apreciar defectos formales, requerirá su subsanación al interesado.

Artículo 12. Declaración de bienes y derechos

1. Quienes tengan la condición de alto cargo están obligados a formular en el Registro de Bienes y Derechos Patrimoniales de altos cargos, en los términos que reglamentariamente se establezcan, una declaración patrimonial, comprensiva de la totalidad de sus bienes, derechos y obligaciones. Voluntariamente, su cónyuge o persona con quien conviva en análoga relación de afectividad podrá formular esta declaración, que será aportada por el alto cargo.
La declaración patrimonial comprenderá, al menos, los siguientes extremos:

a) Los bienes, derechos y obligaciones patrimoniales que posean.

b) Los valores o activos financieros negociables.

c) Las participaciones societarias.

d) El objeto social de las sociedades de cualquier clase en las que tengan intereses el alto cargo, su cónyuge, sea cual sea el régimen económico matrimonial o persona que conviva en análoga relación de afectividad e hijos dependientes y personas tuteladas.

e) Las sociedades participadas por aquellas otras que sean objeto de declaración según el apartado c) con señalamiento de sus respectivos objetos sociales.

2. La declaración a que se refiere el apartado 1 de este artículo se efectuará en el improrrogable plazo de tres meses siguientes a las fechas de toma de posesión y cese, respectivamente, en el alto cargo.

3. Los altos cargos aportarán junto con las declaraciones iniciales y las del cese, así como anualmente, una copia de la última declaración tributaria correspondiente al Impuesto sobre la Renta de las Personas Físicas y al Impuesto sobre el Patrimonio que haya tenido obligación de presentar el declarante ante la Administración tributaria. También se podrá aportar la declaración voluntaria de su cónyuge o persona con quien conviva en análoga relación de afectividad referida a estos tributos. Dichas declaraciones se depositarán en el Registro como información complementaria, rigiéndose el acceso a las mismas por su normativa específica.

4. La declaración anual correspondiente al Impuesto sobre la Renta de las Personas Físicas y, en su caso, al Impuesto sobre el Patrimonio, a que hace

referencia el apartado anterior, se presentará en el improrrogable plazo de tres meses desde la conclusión de los plazos legalmente establecidos para su presentación.

5. El Registro de Bienes y Derechos Patrimoniales recibirá las declaraciones y las copias y de apreciarse defectos formales, se requerirá su subsanación al interesado.

Artículo 13. Control y gestión de valores y activos financieros

1. Las personas incluidas en el artículo 3 que ejerzan competencias reguladoras, de supervisión o control sobre sociedades mercantiles que emitan valores y otros activos financieros negociables en un mercado organizado, así como los miembros del Gobierno y los Secretarios de Estado, y en relación con los valores y activos finaniceros (sic) de que sean titulares tales personas, sus cónyuges no separados legalmente, salvo que su régimen económico matrimonial sea el de separación de bienes, o sus hijos menores de edad no emancipados, deberán contratar para la gestión y administración de tales valores o activos a una entidad financiera registrada en la Comisión Nacional del Mercado de Valores. Esta obligación no será exigible cuando la cuantía de dichos valores y activos no supere la cantidad de 100.000 euros, calculada por el valor a los efectos del Impuesto sobre el Patrimonio. La encomienda de gestión se mantendrá mientras dure el desempeño del cargo.

La entidad con la que contraten efectuará la administración con sujeción exclusivamente a las directrices generales de rentabilidad y riesgo establecidas en el contrato, sin que pueda recabar ni recibir instrucciones de inversión de los interesados. Tampoco podrá revelárseles la composición de sus inversiones, salvo que se trate de instituciones de inversión colectiva o que por causa justificada, medie autorización de la Comisión Nacional del Mercado de Valores.

Sin perjuicio de las responsabilidades de los interesados, el incumplimiento por la entidad de las obligaciones señaladas tendrá la consideración de infracción muy grave a los efectos del régimen sancionador que como entidad financiera le sea aplicable.

2. Los interesados entregarán copias de los contratos suscritos a la Oficina de Conflictos de Intereses para su anotación en los Registros, y a la Comisión Nacional del Mercado de Valores.

CAPÍTULO IV

Órganos de gestión, vigilancia y control

Artículo 14.

Registros

1. Los Registros de Actividades y de Bienes y Derechos Patrimoniales de Altos Cargos se instalarán en un sistema de gestión documental que garantice la inalterabilidad y permanencia de sus datos, así como la alta seguridad en el acceso y uso de éstos.

2. El Registro de Actividades tendrá carácter público, rigiéndose por lo dispuesto en la Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal (LA LEY-LEG. 4633/1999); en el artículo 37 de la Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones publicas y del Procedimiento Administrativo Común; en esta Ley, y en las correspondientes normas de desarrollo de las leyes citadas.

3. El Registro de Bienes y Derechos Patrimoniales tendrá carácter reservado y solo podrán tener acceso al mismo además del propio interesado, los siguientes órganos:

a) El Congreso de los Diputados y el Senado, de acuerdo con lo que establezcan los reglamentos de las Cámaras, así como las comisiones parlamentarias de investigación que se constituyan.

b) Los órganos judiciales para la instrucción o resolución de procesos que requieran el conocimiento de los datos que obran en el Registro, de conformidad con lo dispuesto en las leyes procesales.

c) El Ministerio Fiscal cuando realice actuaciones de investigación en el ejercicio de sus funciones que requieran el conocimiento de los datos obrantes en el Registro.

4. El contenido de las declaraciones de bienes y derechos patrimoniales de los miembros del Gobierno y de los Secretarios de Estado se publicarán en el «Boletín Oficial del Estado», en los términos previstos reglamentariamente. En relación con los bienes patrimoniales, se publicará una declaración comprensiva de la situación patrimonial de estos altos cargos, omitiéndose aquellos datos referentes a su localización y salvaguardando la privacidad y seguridad de sus titulares.

Artículo 15. Órgano de gestión

1. El órgano competente para la gestión del régimen de incompatibilidades de altos cargos es la Oficina de Conflictos de Intereses adscrita orgánicamente al Ministerio de Administraciones Públicas y que en el ejercicio de las competencias previstas en esta ley actuará con plena autonomía funcional. Este órgano será el encargado de requerir a quienes sean nombrados o cesen en un alto cargo el cumplimiento de las obligaciones previstas en esta Ley.

2. La Oficina de Conflictos de Intereses será el órgano encargado de la llevanza y gestión de los Registros de Actividades y de Bienes y Derechos Patrimoniales de altos cargos, y responsable de la custodia, seguridad e indemnidad de los datos y documentos que en ellos se contengan.

3. El personal que preste servicios en la Oficina de Conflictos de Intereses tiene el deber permanente de mantener en secreto los datos e informaciones que conozca por razón de su trabajo.

Artículo 16. Información al Congreso de los Diputados

Para asegurar la transparencia del control del régimen de incompatibilidades previsto en esta Ley, y sin perjuicio de las competencias que se atribuyen a otros órganos, la Oficina de Conflictos de Intereses elevará al Gobierno cada seis meses, para su remisión al Congreso de los Diputados, información detallada del cumplimiento por los altos cargos de las obligaciones de declarar, así como de las infracciones que se hayan cometido en relación con este título y de las sanciones que hayan sido impuestas, e identificará a sus responsables.

Dicha información contendrá datos sobre el número de altos cargos obligados a formular sus declaraciones, el número de declaraciones recibidas, las comunicaciones efectuadas con ocasión del cese y la identificación de los titulares de los puestos incluidos en el ámbito de aplicación de esta Ley que no hayan cumplimentado dichas obligaciones.

En el supuesto de que se hubiera resuelto algún procedimiento sancionador se remitirá copia de los documentos integrantes del mismo a la Mesa del Congreso de los Diputados.

CAPÍTULO V

Régimen sancionador

Artículo 17.

Infracciones

1. A los efectos de esta ley se consideran infracciones muy graves:

a) El incumplimiento de las normas de incompatibilidades a que se refiere este título.

b) La presentación de declaraciones con datos o documentos falsos.

c) El incumplimiento de las obligaciones a que se refiere el artículo 13 en relación con la gestión de valores y otros activos financieros negociables en un mercado organizado.

2. Se consideran infracciones graves:

- La no declaración de actividades y de bienes y derechos patrimoniales en los correspondientes Registros, tras el apercibimiento para ello.

- La omisión deliberada de datos y documentos que deban ser presentados conforme a lo establecido en esta Ley.

3. Se considera infracción leve la no declaración de actividades o de bienes y derechos patrimoniales en los correspondientes Registros, dentro de los plazos establecidos, cuando se subsane tras el requerimiento que se formule al efecto.

Artículo 18.

Sanciones

1. Las infracciones muy graves y graves serán sancionadas con la declaración del incumplimiento de la ley y su publicación en el «Boletín Oficial del Estado».

2. La sanción por infracción muy grave comprenderá, además:

a) La destitución en los cargos públicos que ocupen, salvo que ya hubieran cesado en los mismos.

b) La no percepción, en el caso de que la llevara aparejada, de la pensión indemnizatoria creada por el artículo 10 de la Ley 74/1980, de 29 de diciembre (LA LEY-LEG. 7862/1980).

c) La obligación de restituir, en su caso, las cantidades percibidas indebidamente en la forma que se establezca reglamentariamente.

3. Lo dispuesto en este capítulo se entiende sin perjuicio de la exigencia de las demás responsabilidades a que hubiera lugar. A estos efectos, cuando aparezcan indicios de otras responsabilidades, se ordenará a la Abogacía General del Estado-Dirección del Servicio Jurídico del Estado el ejercicio de las acciones que correspondan.

4. Si las infracciones pudieran ser constitutivas de delito, la Administración deberá poner los hechos en conocimiento del Fiscal General del Estado y se abstendrá de seguir el procedimiento mientras la autoridad judicial no dicte una resolución que ponga fin al proceso penal.

5. Las personas que hayan cometido las infracciones tipificadas en el artículo 17.1 no podrán ser nombradas para ocupar ninguno de los cargos incluidos en el artículo 3 durante un periodo de entre 5 y 10 años.

En la graduación de la medida prevista en el párrafo anterior, se valorará la existencia de perjuicios para el interés público, y la repercusión de la conducta en los ciudadanos, y, en su caso, la percepción indebida de cantidades por el desempeño de actividades públicas incompatibles.

6. En el supuesto previsto en el artículo 8.5 si la empresa o sociedad prosiguiera con la contratación de la persona que ha vulnerado lo establecido

en el apartado 1 del mismo, la publicación en el «Boletín Oficial del Estado» de la declaración de incumplimiento de la ley llevará aparejada además la prohibición a la empresa o sociedad para contratar con el sector público estatal, autonómico o local, durante todo el período que sea aplicable la limitación prevista en el artículo 8.1. A tal fin la Oficina de Conflictos de Intereses procederá, de conformidad con lo dispuesto en el artículo 21.4 del Texto Refundido de la Ley de Contratos de las Administraciones Públicas, aprobado por Real Decreto Legislativo 2/2000, de 16 de junio (LA LEY-LEG. 2206/2000).

7. Las faltas leves se sancionarán con amonestación.

Artículo 19.

Actuaciones previas al procedimiento sancionador

1. La Oficina de Conflictos de Intereses con anterioridad a la iniciación de cualquier expediente sancionador, podrá realizar de oficio, en los términos especificados en el artículo 69 de la ley 30/1992, de 26 de noviembre, actuaciones previas de carácter reservado para determinar si concurren circunstancias que justifiquen tal iniciación.

El inicio de las actuaciones se notificará al interesado.

2. Asimismo, la Oficina de Conflictos de Intereses conocerá de las denuncias que sobre los presuntos incumplimientos de esta ley pudieran formularse.

3. Los ficheros, archivos o registros de carácter público y, en especial, los de las Administraciones tributarias y las entidades gestoras y servicios comunes de la Seguridad Social proporcionarán a la Oficina de Conflictos de Intereses cuando ésta lo requiera, información, datos y colaboración en la forma establecida en la Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal y, en su caso, en la Ley General Tributaria.

4. Una vez realizada la información previa la Oficina de Conflictos de Intereses elevará a los órganos previstos en el artículo 21 el informe de las actuaciones realizadas.

Artículo 20.

Procedimiento sancionador

El procedimiento se sustanciará en expediente contradictorio y sumario conforme se determine reglamentariamente. En lo que no se regule específicamente se aplicará supletoriamente el Real Decreto 1398/1993, de 4 de agosto, por el que se establece el Reglamento del procedimiento para el ejercicio de la potestad sancionadora (LA LEY-LEG. 2846/1993).

Artículo 21.

Órganos competentes del procedimiento sancionador

1. El órgano competente para ordenar la incoación cuando los altos cargos tengan la condición de miembro del Gobierno o de Secretario de Estado será el Consejo de Ministros, a propuesta del Ministro de Administraciones Públicas.

En los demás supuestos el órgano competente para ordenar la incoación será el Ministro de Administraciones Públicas.

2. La instrucción de los correspondientes expedientes se realizará por la Oficina de Conflictos de Intereses.

3. Corresponde al Consejo de Ministros la imposición de sanciones por faltas muy graves y, en todo caso, cuando el alto cargo tenga la condición de miembro del Gobierno o de Secretario de Estado. La imposición de sanciones por faltas graves corresponde al Ministro de Administraciones Públicas. La sanción por faltas leves corresponderá al Secretario General para la Administración Pública.

Artículo 22.

Prescripción de infracciones y sanciones

El régimen de prescripción de las infracciones y sanciones previstas en esta Ley será el establecido en el Título IX de la Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común.

Disposiciones Adicionales

Disposición adicional primera. Subsistencia de incompatibilidades

Los preceptos contenidos en esta ley se aplicarán sin perjuicio de la expresa subsistencia de las incompatibilidades u obligaciones establecidas para determinados altos cargos en atención a la especial naturaleza de sus funciones.

Disposición adicional segunda. Régimen de incompatibilidades de los altos cargos del Banco de España

El Gobernador, Subgobernador y miembros del Consejo de Gobierno del Banco de España, así como el Secretario General y los directores generales, se regirán, en lo que al régimen de incompatibilidades se refiere, por lo que establezca su normativa específica, siéndoles de aplicación esta Ley en lo que expresamente se establezca en la citada normativa.

Disposición adicional tercera. Obligación de comunicar los nombramientos

1. Las entidades del sector público estatal, de derecho público o privado, deberán informar a la Oficina de Conflictos de Intereses de los nombramientos que efectúen respecto de aquellos puestos de trabajo que conforme a esta Ley tengan la condición de altos cargos.

2. Las entidades o empresas públicas o privadas con representación del sector público en sus consejos de administración, comunicarán a la Oficina de Conflictos de Intereses las designaciones que efectúen para su consejo de administración u órganos de gobierno en personas que conforme a lo dispuesto en esta ley tengan la condición de alto cargo.

Disposición adicional cuarta. La obligación de comparecer ante la comisión correspondiente del Congreso de los Diputados, prevista en el apartado 1 del artículo 2 de esta Ley, será aplicable al Fiscal General del Estado, por lo que se modificará, en dicho sentido, la Ley 50/1981, de 30 de diciembre, que regula el Estatuto Orgánico del Ministerio Fiscal (LA LEY-LEG. 7669/1981).

Disposición transitoria. Los altos cargos actualmente nombrados dispondrán de un plazo de seis meses para formular nuevas declaraciones de actividades y de bienes y derechos de acuerdo con la redacción de esta Ley, quedando automáticamente sin efectos las autorizaciones de compatibilidad concedidas.

Disposición derogatoria única. Derogación normativa

Quedan derogadas cuantas disposiciones de igual o inferior rango se opongan, contradigan o resulten incompatibles con lo dispuesto en la presente Ley y, expresamente:

a) La Ley 12/1995, de 11 de mayo, de Incompatibilidades de los Miembros del Gobierno de la Nación y de los Altos Cargos de la Administración General del Estado

b) El apartado 2 del artículo 181 de la Ley 33/2003, de 3 de noviembre, del Patrimonio de las Administraciones Públicas.

c) La disposición adicional vigésima cuarta de la Ley 62/2003, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social (LA LEY-LEG. 2013/2003).
Disposiciones Finales

Disposición final primera. Facultad de aplicación y desarrollo

El Gobierno aprobará en el plazo de cuatro meses, contado desde la entrada en vigor de esta Ley, las normas reglamentarias que exija la aplicación y el desarrollo de esta Ley.

Disposición final segunda. Ley de Contratos de las Administraciones Públicas

Se añade una nueva letra l) al artículo 20 del Texto refundido de la Ley de Contratos de las Administraciones Públicas, aprobado por el Real Decreto Legislativo 2/2000, de 16 de junio, en los siguientes términos:

«Haber contratado a personas respecto de las que se haya publicado en el Boletín Oficial del Estado el incumplimiento a que se refiere el artículo 18.6 de la Ley 5/2006, de regulación de los conflictos de intereses de los miembros del Gobierno y de los altos cargos de la Administración General del Estado, por haber pasado a prestar servicios en empresas o sociedades privadas directamente relacionadas con las competencias del cargo desempeñado durante los dos años siguientes a la fecha de cese en el mismo. La prohibición de contratar se mantendrá durante el tiempo que permanezca dentro de la organización de la empresa la persona contratada con el límite máximo de dos años a contar desde el cese como alto cargo.»

Disposición final tercera. Entrada en vigor

La presente Ley entrará en vigor a los 20 días de su publicación en el «Boletín Oficial del Estado».

Por tanto,

Mando a todos los españoles, particulares y autoridades, que guarden y hagan guardar esta ley.

canada

Conflict of Interest and Post-Employment Code for Public Office Holders 2006

Short Title

1. This Code may be cited as the Conflict of Interest Code.

Part I

OBJECT AND PRINCIPLES

OBJECT

2. The object of this Code is to enhance public confidence in the

integrity of public office holders and the decision-making process in

government

(a) while encouraging experienced and competent persons to seek and accept public office;

(b) while facilitating interchange between the private and public sector;

(c) by establishing clear rules of conduct respecting conflict of interest for, and post-employment practices applicable to all public office holders; and

(d) by minimizing the possibility of conflicts arising between the private interests and public duties of public office holders and providing for the resolution of such conflicts in the public interest should they arise.

PRINCIPLES

3. Every public office holder shall conform to the following principles:

Ethical Standards

(1) Public office holders shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.

Public Scrutiny

(2) Public office holders have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.

Decision Making

(3) Public office holders, in fulfilling their official duties and responsibilities, shall make decisions in the public interest

and with regard to the merits of each case.

Private Interests

(4) Public office holders shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly or significantly by government actions in which they participate.

Public Interest

(5) On appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between the private interests of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest.

Gifts, Hospitality and Benefits

(6) Public office holders and their families shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the public office holder.

Preferential Treatment

(7) Public office holders shall not use their position of office to assist private entities or persons where this would result in preferential treatment to any person.

Insider Information

(8) Public office holders shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public.

Government Property

(9) Public office holders shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.

Post-Employment

(10) Public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

Fundraising

(11) Public office holders are not to personally solicit funds from any person, group, organization or corporation where such fundraising could place public office holders in a position of obligation incompatible with their public duties.

Respect for Administration of the Code

(12) Public office holders shall respect the administration of this Code, and shall exercise appropriate restraint when commenting upon matters under review by the Ethics Commissioner.

Part II

CONFLICT OF INTEREST

COMPLIANCE MEASURES

INTERPRETATION

4. (1) The following definitions apply for the purposes of this Part and the Schedule:

"Assets" include any trusts in respect of which a public office holder or a member of his or her family is a beneficiary.

"Common-law partner" means a person who is cohabiting with a public office holder in a conjugal relationship, having so cohabited for a period of at least one year.

"Dependent child" means a child of a public office holder, or a child of the public office holder's spouse or commonlaw partner, who has not reached the age of 18 years or who has reached that age but is primarily dependent on the public office holder or the public office holder's spouse or common-law partner for financial support.

"Ethics Commissioner" means the Ethics Commissioner appointed under section 72.01 of the *Parliament of Canada Act*.

"Family" means spouse or common-law partner and dependent children.

"Private interest" does not include an interest in a matter

(a) that is of general application;

(b) that affects a person as one of a broad class of the public; or

(c) that concerns the remuneration or benefits of a public office holder.

"Public office holder" has the same meaning as defined by the *Parliament of Canada Act* and means

(a) a minister of the Crown, a minister of state or a parliamentary secretary;

(b) a person, other than a public servant, who works on behalf of a minister of the Crown or a minister of state;

(c) a Governor in Council appointee, other than the following persons, namely:

(i) a Lieutenant-Governor,

(ii) officers and staff of the Senate, House of Commons and Library of Parliament,

(iii) a person appointed or employed under the *Public Service Employment Act* who is a head of mission within the meaning of subsection 13(1) of the *Department of Foreign Affairs and International Trade Act*,

(iv) a judge who receives a salary under the *Judges Act*,

(v) a military judge within the meaning of subsection 2(1) of the *National Defence Act,* and

(vi) an officer of the Royal Canadian Mounted Police, not including the Commissioner; and

(d) a full-time ministerial appointee designated by the appropriate minister of the Crown as a public office holder.

“Public Registry” means the registry where public documents are maintained by the Ethics Commissioner for examination by the public.

“Relatives” include persons related to a public office holder by blood, marriage, adoption or affinity, except where the Ethics Commissioner otherwise determines necessary in the context.

“Spouse” does not include a person from whom the public office holder is separated where all support obligations and family property have been dealt with by a separation agreement or by a court order.

(2) Ministers and parliamentary secretaries are subject to the provisions of this Code when carrying out the duties and functions of their office as ministers or parliamentary secretaries.

(3) (a) Staff of federal boards, commissions and tribunals as defined in the *Federal Courts Act*, separate employers as defined under the *Public Service Labour Relations Act*, the Canadian Armed Forces and the Royal Canadian Mounted Police are subject

to the Principles set out in Part I and such other compliance measures as may be determined by the head of the organization in question, for whose application that individual is responsible.

(b) Public office holders who are:

(i) persons other than public servants who work on average fewer than fifteen hours a week on behalf of a minister, including persons working on a contractual or voluntary basis;

(ii) part-time Governor in Council appointees who are not in receipt of an annual salary or benefits from the appointment; or

(iii) part-time ministerial appointees who are designated by the appropriate minister as a public office holder

are subject only to the Principles set out in Part I and such other compliance measures as may be determined by the head of the organization in question, for whose application that individual is responsible.

(4) Crown corporations as set out in the *Financial Administration Act* shall be subject to compliance measures established by, and in accordance with, the established practices of their own organization.

(5) Such provisions of this Part as may be relevant shall be

brought to the attention of Lieutenant-Governors at the time of their appointment.

DUTIES OF THE ETHICS COMMISSIONER

5. (1) Pursuant to subsection 72.07 of the *Parliament of Canada Act*, the Ethics Commissioner is charged with the administration of this Code and the application of the conflict of interest compliance measures set out in this Part as they apply to public office holders.

(2) Information concerning the private interests of a public office holder provided to the Ethics Commissioner is confidential until a Public Declaration, if any, is made with respect to that information, or when the public office holder consents to the release of the information by the Ethics Commissioner.

(3) It is the responsibility of the Ethics Commissioner to ensure:

(a) that information provided under subsection (2) shall be kept in strict confidence and in secure safekeeping; and

(b) that any information provided by public office holders for a public purpose is placed in personal unclassified files in the Public Registry.

(4) In fulfilling the functions under 72.07(a) and (b) of the *Parliament of Canada Act*, and subject to 72.08 of that Act, the Ethics Commissioner shall consider information from the public that is brought to his attention by a member of

Parliament suggesting that a public office holder has not complied with this Code, and may take such action as the Ethics Commissioner deems appropriate in the circumstances.

CERTIFICATION

6. Before or within 30 days of assuming their official duties and responsibilities, public office holders shall sign a document certifying that, as a condition of their holding office, they will observe this Code.

COMPLIANCE ARRANGEMENTS

7. (1) In addition to the specific compliance measures provided for in this Part, the Ethics Commissioner may impose any compliance measure, including divestment or recusal, in respect of any matter or asset which, in the Ethics Commissioner’s opinion, creates a conflict of interest or the appearance of same.

(2) Once the arrangements made by a public office holder to comply with the conflict of interest compliance measures set out in this Code are completed, a Summary Statement described in subsection (3) and any Public Declaration made pursuant to sections 11, 14, 18 and 21, and section 1 of the Schedule, shall be signed by the public office holder and a certified copy of the Summary Statement and any Public Declaration shall be placed in the Public Registry.

(3) The Summary Statement shall include:

(a) a statement by the public office holder of the methods of compliance used to comply with the conflict of interest compliance measures;

(b) a list of the assets or matters which the Ethics Commissioner has determined could, as a result of the public office holder’s private interests or other reasons the Ethics Commissioner considers relevant, create a conflict of interest and in respect of which the public office holder shall recuse or divest, as the case may be, in accordance with this Code, or for other reasons which the Ethics Commissioner may consider necessary;

(c) information regarding the process which must be put in place by the public office holder and others to administer the recusal; and

(d) a certification by the public office holder that he or she is fully cognizant of the post-employment compliance measures set out in Part III, where applicable.

(4) Where there is doubt as to which method is appropriate in order that a public office holder may comply with the Code, the Ethics Commissioner shall determine the appropriate method and, in doing so, shall try to achieve mutual agreement with the public office holder.

(5) All arrangements made by a public office holder to comply

with the conflict of interest compliance measures set out in this Part shall be approved by the Ethics Commissioner.

(6) The information contained in Confidential Reports and the arrangements made by public office holders and their obligations under the Code will be reviewed annually by the Ethics Commissioner and the public office holder.

(7) Public office holders who have established:

(a) a trust, will require the respective trustee to provide the Ethics Commissioner with a written annual report verifying as to accuracy the trust's nature and market value, a reconciliation of the trust property, the net income of the trust for the preceding year, and the fees of the trustee, if any; or

(b) a management agreement in instances where

(i) a public office holder owns an interest in a corporation whose assets are invested, in whole or in part, in publicly traded securities, will require the manager to provide the Ethics Commissioner with a written annual report verifying as to accuracy the nature and market value of the agreement property, a reconciliation of the agreement property, the net income of the agreement property for the preceding year, and the fees of the manager, if any;

(ii) a corporation and its holdings in which a public office holder has an interest, contracts with the federal government or its agencies, will require the manager to provide the Ethics Commissioner with an annual report verifying as to accuracy the nature and name(s) of the corporation(s) that contract(s) with the federal government or its agencies, a reconciliation of the agreement property and the net worth value of the public office holder’s interest.

(8) On the recommendation of the Ethics Commissioner, a public office holder may be reimbursed for administrative costs incurred as a result of arrangements made under this Code, as set out in the Schedule.

(9) A public office holder shall not take any action that has as its purpose the circumvention of the public office holder’s obligations under this Code.

TIME LIMITS

8. Unless otherwise authorized by the Ethics Commissioner, every public office holder shall:

(1) within 60 days after appointment, make a Confidential Report as required under section 9;

(2) within 120 days after appointment

(a) where required, make a Public Declaration pursuant to sections 11, 14, 18 and 21, and section 1 of the Schedule;

(b) divest controlled assets as required under subsection 12(2); and

(c) sign a Summary Statement for placing in the Public Registry pursuant to section 7;

(3) within 30 days after receipt of a gift, hospitality or other benefit, notify the Ethics Commissioner as required under section 21, and within 60 days make a Public Declaration as required under that section;

(4) within 30 days, inform the Ethics Commissioner of any material changes in his or her assets, liabilities and outside activities; and

(5) in the case of ministers and parliamentary secretaries, within 30 days, inform the Ethics Commissioner of any material changes in their assets, liabilities and outside activities and those of their families except for exempt assets.

CONFIDENTIAL REPORT

9. (1) Public office holders shall make a Confidential Report to the Ethics Commissioner of all their assets, direct and contingent liabilities and income received during the twelve-month period before assuming public office as well as the income they are entitled to receive during the following twelve months. The Confidential Report shall include the value of these assets, liabilities and income.

The Confidential Report shall also include a description of those outside activities in which public office holders were engaged during the two-year period before they assumed public office. Outside activities shall include all involvements in activities of a philanthropic, charitable or non-commercial nature and designations as trustee, executor or holder of a power of attorney.

(2) (a) In the case of ministers and parliamentary secretaries, information, including value, regarding the assets, liabilities, income and outside activities of members of their families shall also be included in the Confidential Report. Ministers and parliamentary secretaries shall make reasonable efforts to include this information in the Confidential Report. This information is to be used by the Ethics Commissioner for the sole purpose of advising the ministers and parliamentary secretaries on their own compliance measures.

(b) In the case of ministers and parliamentary secretaries, the Confidential Report shall also include all benefits that the ministers and parliamentary secretaries and their families, and any partnership or private corporation in which they or their families have an interest, are entitled to receive during the following twelve months as a result of a contract with the Government of Canada, and a description of the subject matter and nature of each such contract.

(3) In addition to the information required under this section, a public office holder shall include in his or her Confidential Report any other information that the Ethics Commissioner may require to ensure compliance with this Code.

ASSETS AND LIABILITIES

Exempt Assets

10. (1) Assets and interests for the private use of public office holders and their families and assets that are not of a commercial character are not subject to public declaration or divestment. Such assets, hereinafter referred to as “exempt assets,” include:

(a) residences, recreational property and farms used or intended for use by public office holders or their families;

(b) household goods and personal effects;

(c) works of art, antiques and collectibles;

(d) automobiles and other personal means of transportation;

(e) cash and deposits;

(f) Canada Savings Bonds and other similar investments issued or guaranteed by any level of government in Canada or agencies of those governments;

(g) Registered Retirement Savings Plans and Registered Education Savings Plans that are not selfadministered or self-directed;

(h) investments in open-ended mutual funds;

(i) guaranteed investment certificates and similar financial instruments;

(j) public sector debt financing not guaranteed by a level of government, such as university and hospital debt financing;

(k) annuities and life insurance policies;

(l) pension rights;

(m) money owed by a previous employer, client or partnership;

(n) personal loans receivable from the public office holder’s relatives, and personal loans of less than $10,000 receivable from other persons where the public office holder has loaned the moneys receivable;

(o) money owed under a mortgage of less than $10,000;

(p) self-administered or self-directed Registered Retirement Savings Plans, Registered Education Savings Plans and Registered Retirement Income Funds composed exclusively of assets that would be considered exempt if held outside the Plan or Fund;

and

(q) investments in limited partnerships that are not traded publicly and whose assets are not or will not become declarable or controlled assets.

(2) Assets that are not exempt assets are either “declarable assets” or “controlled assets.”

Declarable Assets

11. (1) A public office holder shall make a Public Declaration of assets that are not controlled assets, as defined under section 12, in order to allow the public office holder to deal with those assets, subject to exercising vigilance to ensure that such dealings cannot give rise to a conflict of interest.

(2) Declarable assets include:

(a) interests in businesses that do not contract with the government, and do not own or control publicly traded securities, other than incidentally, and whose stocks and shares are not traded publicly;

(b) farms under commercial operations;

(c) real property that is not an exempt asset as described in section 10;

(d) assets that are beneficially owned, that are not exempt assets as described in section 10, and that are administered at arm’s length;

(e) rental property;

(f) personal loans, greater than or equal to $10,000 receivable from persons other than the public office holder’s relatives;

(g) money owed under a mortgage greater than or equal to $10,000;

(h) investments in limited partnerships that are not publicly traded and whose assets include any of the foregoing assets; and

(i) self-administered or self-directed Registered Retirement Savings Plans, Registered Education Savings Plans and Registered Retirement Income Funds composed of at least one asset that would be considered declarable, but no assets that would be considered controlled if held outside the Plan or Fund.

(3) Declarable assets that are not publicly declared pursuant to subsection (1) shall, for the purposes of section 13, be considered to be controlled assets and must be divested.

Controlled Assets

12. (1) For the purposes of this section and section 13, “controlled assets” means assets that could be directly or indirectly affected as to value by government decisions or policy.

(2) Controlled assets, other than assets that may be retained under subsection 13(5), shall be divested, pursuant to subsection 13(1).

(3) Controlled assets include:

(a) publicly traded securities of corporations and foreign governments, whether held individually or in an investment portfolio account such as, but not limited to, stocks, bonds, stock market indices, trust units, closed end mutual funds, commercial papers and medium-term notes;

(b) self-administered Registered Retirement Savings Plans, self-administered Registered Education Savings Plans and Registered Retirement Income Funds composed of at least one asset that would be considered controlled if held outside the Plan or Fund;

(c) commodities, futures and foreign currencies held or traded for speculative purposes; and

(d) stock options, warrants, rights and similar instruments.

Divestment of Controlled Assets

13. (1) Subject to subsection (5), controlled assets are usually divested by one of the following:

(a) selling them in an arm’s-length transaction; or

(b) making them subject to a trust or management agreement, the most common of which are set out in the Schedule.

(2) The Ethics Commissioner has the sole responsibility for determining that a trust, management agreement or recusal,

or a combination of any of the foregoing, meets the requirement of this Code. Before an arrangement is executed or when a change is contemplated, a determination that the arrangement meets the requirements of this Code shall be obtained from the Ethics Commissioner.

(3) Confirmation of sale or a copy of any executed instrument shall be filed with the Ethics Commissioner. With the exception of a statement that a sale has taken place or that a trust or management agreement exists, all information relating to the sale and the arrangement is confidential.

(4) For the purposes of this Code, trust or management arrangements shall be such that they do not leave in the hands of the public office holder any power of management or decision over the assets.

(5) (a) Subject to the approval of the Ethics Commissioner, a public office holder is not required to divest controlled assets:

(i) that are pledged to a lending institution as collateral; or

(ii) where, in the opinion of the Ethics Commissioner, the assets are of such minimal value that they do not constitute any risk of conflict of interest in relation to the public office holder’s official duties and responsibilities.

(b) Notwithstanding subparagraph 5(a)(ii), in the case of ministers and parliamentary secretaries, controlled assets, save those described in subparagraph 5(a)(i) above, must be divested even where they are of such minimal value that they do not constitute any risk of conflict of interest in relation to the public office holder's official duties and responsibilities.

Liabilities

14. The Ethics Commissioner may require, with respect to liabilities, that particular arrangements be made to prevent any conflict of interest situation from arising. Ministers and parliamentary secretaries are required to publicly declare liabilities greater than or equal to $10,000, identifying their source and nature, but not their value.

OUTSIDE ACTIVITIES

General

15. Public office holders' participation in activities outside their official duties and responsibilities is often in the public interest. Subject to sections 16 to 18, such participation is acceptable where it is not inconsistent with their official duties and responsibilities and does not call into question their capacity to perform their official duties and responsibilities objectively.

Prohibited Activities

16. Subject to section 17, public office holders shall not, outside their

official duties and responsibilities:

(a) engage in employment or the practice of a profession;

(b) actively manage or operate a business or commercial activity;

(c) retain or accept directorships or offices in a corporation;

(d) hold office in a union or professional association;

(e) serve as a paid consultant;

(f) be an active partner in a partnership; and

(g) personally solicit funds except for participation in fundraising campaigns sponsored by the federal government and participation in discussions of a strategic nature for other charitable campaigns.

Permissible Activities

17. (1) When the activities described in section 16 relate to the official duties and responsibilities of a public office holder, the public office holder may, in exceptional circumstances and with the approval required by subsection 7(5) and subject to the conditions specified by the Ethics Commissioner, become or remain involved in them, but may not accept remuneration for any activity, except as provided in subsections (3) and (4).

(2) A public office holder may, with the approval of and subject to the conditions specified by the Ethics Commissioner, retain or accept directorships in organizations of a philanthropic, charitable or non-commercial character, but

the office holder shall take great care to prevent conflicts of interest from arising.

(3) Where the Ethics Commissioner is of the opinion that it is in the public interest, full-time Governor in Council appointees to Crown Corporations, as defined in the *Financial Administration Act*, may retain or accept directorships or offices in a financial or commercial corporation, and accept remuneration therefore, in accordance with compensation policies for Governor in Council appointees as determined from time to time.

(4) Public office holders may, in exceptional circumstances and with the approval required by subsection 7(5), become or remain involved in activities that do not place on them demands inconsistent with their official duties and responsibilities or call into question their capacity to perform their official duties and responsibilities objectively.

Public Declaration of Outside Activities

18. (1) A public office holder shall make a Public Declaration of the activities referred to in section 17 and of past and current directorships and other positions listed in a Confidential Report under section 9.

(2) In cooperation with a public office holder, the Ethics Commissioner shall prepare the Public Declaration of outside activities to be made by that office holder.

GIFTS, HOSPITALITY AND OTHER BENEFITS

General

19. (1) Gifts, hospitality or other benefits, including those described in section 20, that could influence public office holders in their judgment and in the performance of official duties and responsibilities, shall be declined.

(2) Gifts, hospitality or other benefits include gifts, hospitality or other benefits from trusts.

(3) Where there is doubt as to the appropriateness of accepting an offer of a gift, hospitality or other benefit, irrespective of its value, public office holders must consult the Ethics Commissioner and obtain his or her approval to accept the offer.

Where Acceptable

20. (1) (a) Acceptance by public office holders or members of their families of offers of gifts, hospitality or other benefits arising out of activities associated with the performance of the public office holder's official duties and responsibilities is not prohibited if such gifts, hospitality or other benefits:

(i) are within the normal bounds of propriety, a normal expression of courtesy or protocol or within the normal standards of hospitality;

(ii) are not such as to bring suspicion on the public office holder's objectivity and impartiality; and

(iii) would not compromise the integrity of the Government.

(b) Invitations to attend special events (such as, but not limited to, sporting events and performing arts) are not prohibited provided that the criteria in paragraph (1)(a) are met and provided that:

(i) attendance serves a legitimate business purpose;

(ii) the person or a representative of the organization extending the invitation is in attendance; and

(iii) the value is reasonable and the invitations are not frequent.

(2) In the case of ministers and parliamentary secretaries and their family members, and in the case of ministerial staff, travel on non-commercial chartered or private aircraft for any purpose shall be prohibited except in exceptional circumstances and may only be accepted with the prior approval of the Ethics Commissioner.

(3) In keeping with existing practice, gifts, hospitality and other benefits are permitted if:

(a) received from relatives and close personal friends; or

(b) of reasonable value and received from a government or in connection with an official or public event.

(4) Where the Ethics Commissioner determines appropriate, where a gift accepted under subsection 20(1), other than gifts from relatives or close personal friends, has a value of $1,000 or more, the public office holder shall make arrangements for the gift to be placed into the government inventory.

Disclosure and Public Declaration

21. (1) Where the total value of all gifts, hospitality or other benefits received, directly or indirectly, by a public office holder or his/her family, exceeds $200, from any one source other than relatives and close personal friends in a twelve-month period, such gifts, hospitality and benefits shall be disclosed to the Ethics Commissioner.

(2) Where a public office holder or a member of his or her family directly or indirectly accepts any gift, hospitality or other benefit in accordance with section 20 that has a value of $200 or more, other than a gift, hospitality or other benefit from a relative or close personal friend, the public office holder shall notify the Ethics Commissioner and make a Public Declaration that provides sufficient detail to identify the gift, hospitality or other benefit received, the donor and the circumstances.

(3) Where travel has been accepted in accordance with subsection 20(2), from any source, the public office holder shall make a Public Declaration that provides sufficient

detail to identify the source and the circumstances.

(4) Where there is doubt as to the need for a Public Declaration the public office holder must consult the Ethics Commissioner.

AVOIDANCE OF PREFERENTIAL TREATMENT

22. (1) A public office holder shall take care to avoid being placed or the appearance of being placed under an obligation to any person or organization that might profit from special consideration on the part of the public office holder.

(2) In the formulation of government policy or the making of decisions, a public office holder shall ensure that no persons or groups are given preferential treatment based on the individuals hired to represent them.

(3) Public office holders shall not accord preferential treatment in relation to any official matter to relatives or friends or to organizations in which they, relatives or friends have an interest.

(4) A public office holder shall not use his or her position as a public office holder to influence or attempt to influence a decision of another person so as to further the public office holder's private interests or those of his or her relatives or friends or to improperly further another person's private interests.

(5) A public office holder shall not use information obtained in his or her position as a public office holder that is not

generally available to the public to further his or her private interests or those of his or her relatives or friends, or to improperly further another person's private interests.

(6) Ministers shall not hire or contract with their families, non-dependent children, siblings or parents. As well, they shall not permit departments or agencies for which they are responsible, or to which they are assigned, to hire or contract with their families, non-dependent children, siblings or parents.

(7) Ministers and the departments or agencies for which they are responsible shall not hire or contract with the families, non-dependent children, siblings or parents of another minister or party colleague in Parliament except by means of an impartial administrative process in which the minister plays no part. Appointments of ministerial exempt staff are not subject to this restriction.

(8) A public office holder shall not attempt to engage in any of the activities prohibited under subsections (1) to (7).

FAILURE TO COMPLY

23. (1) Where the Ethics Commissioner advises that a public office holder is not in compliance with the Code, the public office holder is subject to such appropriate measures as may be determined by the Prime Minister, including, where applicable, discharge or termination of appointment.

(2) Where the Ethics Commissioner finds that a public office

holder is not in compliance with this Code, or issues a report pursuant to the *Parliament of Canada Act*, such a finding or report is final, and may not be altered.

Part III

POST-EMPLOYMENT

COMPLIANCE MEASURES

INTERPRETATION

24. The following definitions apply for purposes of this Part:

"Public office holder" refers to the same positions subject to Part II, as set out in section 4, with the exception that ministerial staff and other public office holders as defined at paragraph (b) of the definition of "public office holder" under subsection 4(1) must be designated by their minister for this Part to apply.

"Senior public servant" means public office holders occupying a position of deputy head as that term is defined in the *Financial Administration Act*, as well as public office holders with the rank of deputy minister, deputy head, associate deputy minister, deputy secretary, associate secretary or equivalent.

OBJECT

25. Public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous public office. Observance of this Part will minimize the possibilities of:

(a) allowing prospects of outside employment to create a real, potential or apparent conflict of interest for public office holders while in public office;

(b) obtaining preferential treatment or privileged access to government after leaving public office;

(c) taking personal advantage of information obtained in the course of official duties and responsibilities until it has become generally available to the public; and

(d) using public office to unfair advantage in obtaining opportunities for outside employment.

COMPLIANCE MEASURES

Before Leaving Office

26. (1) Public office holders should not allow themselves to be influenced in the pursuit of their official duties and responsibilities by plans for or offers of outside employment.

(2) A public office holder shall disclose in writing to the Ethics Commissioner all firm offers of outside employment that could place the public office holder in a position of conflict of interest.

(3) A public office holder who accepts an offer of outside employment shall immediately disclose in writing to the Ethics Commissioner as well as to his or her superior, the acceptance of the offer. In such an event, where it is determined by the Ethics Commissioner that the public office holder is engaged in significant official dealings with

the future employer, the public office holder shall be assigned to other duties and responsibilities as soon as possible. The period of time spent in public office following such an assignment shall be counted toward the limitation under section 28.

(4) The public office holder shall also disclose the acceptance of the offer:

(a) in the case of ministers, to the Prime Minister;

(b) in the case of deputy heads, to the Clerk of the Privy Council;

(c) in the case of ministerial staff and other public office holders as defined at paragraph (b) of the definition of “public office holder” under subsection 4(1), full-time ministerial appointees and full-time Governor in Council appointees other than those referred to in paragraph (b), to the appropriate minister; and

(d) in the case of parliamentary secretaries, to the minister whom the parliamentary secretary assists.

After Leaving Office - Prohibited Activities

27. (1) At no time shall a former public office holder switch sides by acting for or on behalf of any person, commercial entity, association or union in connection with any specific ongoing proceeding, transaction, negotiation or case to which the Government is a party and where the former public office

holder acted for or advised the Government.

(2) Nor shall former public office holders give advice to their clients using information that is not available to the public concerning the programs or policies of the departments with which they were employed, or with which they had a direct and substantial relationship.

Limitation

28. Subject to section 29, and to the object of this Code, former public office holders, except for ministers for whom the prescribed period is two years, shall not, within a period of one year after leaving office:

(1) accept services contracts, appointment to a board of directors of, or employment with, an entity with which they had direct and significant official dealings during the period of one year immediately prior to the termination of their service in public office; or

(2) (a) make representations whether for remuneration or not, for or on behalf of any other person or entity to any department, organization, board, commission or tribunal with which they had direct and significant official dealings during the period of one year immediately prior to the termination of their service in public office; and

(b) in the case of former ministers, make representations to a minister in the Cabinet who had been a Cabinet colleague of the former minister;

provided that nothing in this section will act so as to prevent a former minister or parliamentary secretary from engaging in activities which, as a member of Parliament, he or she is normally asked to carry out on behalf of constituents.

29. (1) In addition to the limitations set out in section 28, former ministers, senior public servants and ministerial staff designated under section 24 may not act as consultant lobbyists, or accept employment as in-house lobbyists, for a period of five years after leaving public office.

(2) For the purposes of this section, acting as a “consultant lobbyist” means engaging in any activity for which subsection 5(1) of the *Lobbyists Registration Act* requires a return to be filed, and accepting employment as an “in-house lobbyist” means accepting any employment for which subsection 7(1) of that Act requires a return to be filed.

Reduction and Waiver of Limitation

30. (1) On application from a public office holder or former public office holder the Ethics Commissioner, may waive or reduce the limitation imposed under section 28.

(2) No waiver or reduction may be granted with respect to the limitation imposed under section 29.

(3) In deciding whether to waive or reduce the limitation imposed under section 28, the Ethics Commissioner will consider whether the public interest in granting the waiver

or reduction outweighs the public interest in maintaining the prohibition. Factors to consider include:

(a) the circumstances under which the termination of the public office holder’s service in public office occurred;

(b) the general employment prospects of the public office holder or former public office holder making the application;

(c) the significance to the Government of information possessed by the public office holder or former public office holder by virtue of that office holder’s public office;

(d) the desirability of a rapid transfer from the Government to private or other governmental sectors of the public office holder’s or former public office holder’s knowledge and skills;

(e) the degree to which the new employer might gain unfair commercial advantage by hiring the public office holder or former public office holder;

(f) the authority and influence possessed by the public office holder or former public office holder while in public office; and

(g) the disposition of other cases.

(4) The decision made by the Ethics Commissioner shall be communicated in writing to the applicant referred to in

subsection (1).

(5) Where the Ethics Commissioner has granted a waiver or reduction in accordance with this section, the Ethics Commissioner shall publish the decision, and the reasons therefor.

(6) A decision made by the Ethics Commissioner under this section is final and may not be altered.

EXIT ARRANGEMENTS

31. Prior to a public office holder’s official separation from public office, the Ethics Commissioner shall, in order to facilitate the observance of the compliance measures set out in this Part, communicate with the public office holder to advise about post-employment requirements.

DEALINGS WITH FORMER PUBLIC OFFICE HOLDERS

Obligation to Report

32. (1) Public office holders who have official dealings, other than dealings that consist of routine provision of a service to an individual, with former public office holders who are or may be governed by the measures set out in this Part, shall report those dealings to the Ethics Commissioner.

(2) On receipt of a report under subsection (1), the Ethics Commissioner shall immediately determine whether the former public office holder is complying with the compliance measures set out in this Part.

(3) Public office holders shall not, in respect of a transaction,

have official dealings with former public office holders, who are determined pursuant to subsection (2) to be acting, in respect of that transaction, contrary to the compliance measures set out in this Part.

SCHEDULE

AGREEMENTS AND RECUSAL

1. The following are examples of the most common agreements that may be established by public office holders for the purpose of complying with the Code.

(a) Blind Trust

A blind trust is one in which the trustee makes all investment decisions concerning the management of the controlled assets, with no direction from or control by the public office holder who has placed the assets in trust.

Assets are placed in a blind trust for the purpose of allowing investment in publicly traded securities of corporations or foreign governments.

A blind trust is not acceptable for a single or minimal block of shares with a relatively small value, unless there is a written undertaking by the public office holder to provide the trustee with additional funds to be invested at the trustee's discretion. In such a case, the Ethics Commissioner shall require confirmation from the trustee to that effect.

The trustee shall provide the Ethics Commissioner with an annual report setting out the nature and value of the trust property, the trust’s net income for the preceding year and the trustee’s fees, if any.

(b) Blind Management Agreement

A blind management agreement places the assets of the public office holder in the hands of a manager who is at arm’s length from the public office holder. The manager is empowered to exercise all of the rights and privileges associated with those assets. The agreement prevents the manager from seeking or obtaining the advice of the public office holder. The public office holder cannot offer or provide advice, nor can the public office holder participate in any discussion or decision-making processes, wherever they may arise, that may particularly or significantly affect the assets that are subject to the agreement. At all times, the manager is prohibited from contacting the public office holder, and the public office holder is prohibited from contacting the manager.

Where the manager is of the view that an extraordinary corporate event is likely to materially affect the value of the assets, the manager may advise the Ethics Commissioner of the circumstances. Should the Ethics Commissioner conclude that the circumstances are of such a nature that they may cause significant undue loss or hardship to the public office holder, financial information as approved by the Ethics Commissioner can be provided to the public office holder.

It is only in exceptional circumstances where an extraordinary corporate event is likely to materially affect the assets, that the public office holder may personally intervene, but only after the Ethics Commissioner has determined that the intervention would not give rise to a conflict of interest, and that failure to intervene would cause the public office holder undue loss or hardship. Any intervention must occur in the presence of the Ethics Commissioner.

A Public Declaration which has been verified as to accuracy by the manager, to be signed by the public office holder, must also be made, identifying the interest of a public office holder in a corporation and its holdings that contract with the federal government or its agencies. The public office holder is entitled throughout the duration of the agreement to be kept informed of the basic value of the assets.

Where the Ethics Commissioner permits financial information, other than value, to be disclosed to the public office holder, or permits an intervention in the circumstances allowed above, the Ethics Commissioner shall publish the fact of such information being provided, or of such intervention occurring, along with such details thereof as deemed appropriate by the Ethics Commissioner in all the circumstances.

(c) Recusal

Recusal is based on a determination by the Ethics Commissioner of matters that could create a conflict of interest for a public office holder. This could include a public office holder’s assets, which must be divested under subsection 13(1) of the Code, or other information which the Ethics Commissioner considers relevant. As provided at paragraph 7(3)(c) of the Code, matters determined to be subject for recusal must be set out in the Public Registry, as well as information regarding the process for administering recusals. On the basis of a determination, the public office holder must refrain from exercising any official power or performing any official duty or function with respect to the matter, and from attempting to influence the matter in any way.

For greater certainty, where there has been a determination by the Ethics Commissioner that a minister or parliamentary secretary is recused in respect of a matter, that minister or parliamentary secretary may not participate in debate on or vote on a question related to that matter in the Parliament of Canada.

The public office holder, with the advice of the Ethics Commissioner, will put in place appropriate procedures to prevent a conflict of interest on such matters, and to ensure the appropriate exercise of powers and performance of duties or functions. This could include:

(i) in the case of the Prime Minister, replacement on the matter by the acting Prime Minister;

(ii) in the case of a minister, replacement on the matter by an acting minister; and

(iii) in the case of a parliamentary secretary, the minister whom he or she assists seeing to the appropriate exercise of power or the performance of duty or function.

The Ethics Commissioner will maintain a confidential record of all recusals which the Ethics Commissioner may use in determining whether or not the public office holder has breached the requirements of the Code. The Ethics Commissioner will also report annually on recusal practices implemented under the Code.

Where a minister has recused him or herself in respect of a matter before the Queen's Privy Council for Canada, the Ethics Commissioner may publish the fact that such a recusal has occurred. However, no such publication shall be made where the very fact of such a recusal could reveal, directly or indirectly, a confidence of the Queen's Privy Council for Canada; nor shall any publication include any detail that could reveal, directly or indirectly, a confidence of the Queen's Privy Council for Canada. To ensure that confidences are protected as required, the Ethics Commissioner shall not publish under this provision without the prior authorization of the Clerk of the Privy Council or his or her delegate.

PROVISIONS COMMON TO BLIND TRUSTS

2. Provisions common to blind trusts are:

(a) Custody of the Assets: The assets to be placed in trust must be registered to the trustee unless these are in an RRSP account.

(b) Power of Management or Control: The public office holder (settler) may not have any power of management or control over trust assets. The trustee, likewise, may not seek or accept any instruction or advice from the public office holder concerning the management or the administration of the assets.

(c) Schedule of Assets: The assets placed in trust shall be listed on a schedule attached to the trust agreement.

(d) Duration of Trust: The term of any trust is to be for as long as the public office holder who establishes the trust continues to hold an office that makes that method of divestment appropriate. A trust may be dismantled once the trust assets have been depleted.

(e) Return of Trust Assets: Whenever a trust agreement is dismantled, the trustee shall deliver the trust assets to the public office holder.

(f) Information: No information is provided to the public office holder (settler) except information that is required by law to be filed and periodic reports on the overall value of the trust, but never its composition.

(g) Income: A public office holder who establishes a blind trust may receive any income earned by the trust, add or withdraw capital funds, and be informed of the aggregate value of the entrusted assets.

(h) Trustee: Any trustee who is appointed shall clearly be at arm’s length from the public office holder and the Ethics Commissioner is to be satisfied that an arm’s length relationship exists in each case. As other criteria, any trustee must be:

(i) a public trustee;

(ii) a company, such as a trust company or investment company, that is public and known to be qualified in performing the duties of a trustee; or

(iii) an individual who may perform trustee duties in the normal course of his or her work.

(i) Annual Reporting: Trustees are required to provide the Ethics Commissioner, on every anniversary of the trust, with a written annual report verifying as to accuracy the nature, market value and reconciliation of the trust property, the net income of the trust for the preceding year, and the fees of the trustee, if any.

AGREEMENT FORMS

3. (1) Acceptable blind trust and blind management agreements are available from the Ethics Commissioner. Any amendments to these agreements shall be submitted to the Ethics Commissioner for approval, before they are executed.

(2) Written investment instructions can be provided by the public office holder to the trustee, and be included in a blind trust agreement provided they are general in nature and preapproved by the Ethics Commissioner. The instructions may provide for proportions to be invested in various categories or risk, but may not be industry-specific, except where there are legislative restrictions on the type of assets that a public office holder may own. No oral directives are permitted.

FILING OF AGREEMENTS

4. Public office holders are required to file with the Ethics Commissioner a copy of any blind trust or blind management agreement. Such agreements will be kept in the public office holder’s confidential file and the Ethics Commissioner will not make them available to anyone for any purpose.

REIMBURSEMENT FOR COSTS INCURRED

5. On the recommendation of the Ethics Commissioner, the following reimbursements for costs to comply with the Conflict of Interest Compliance Measures set out in this Code may be permitted.

(a) Divestment of Assets:

(i) reasonable legal, accounting and transfer costs to establish and dismantle a trust or management arrangement determined to be necessary by the Ethics Commissioner;

(ii) annual, actual and reasonable costs to maintain and administer the trust or management arrangement, following rates set from time to time by the Ethics Commissioner;

(iii) commissions for transferring, converting or selling assets where determined necessary by the Ethics Commissioner;

(iv) costs of other financial, legal or accounting services required because of the complexity of arrangements for such assets; and

(v) commissions for transferring, converting or selling assets where no provisions for a tax deduction are provided for under the *Income Tax Act*.

(b) Withdrawal from Activities:

(i) costs of removing a public office holder’s name from federal or provincial registries of corporations.

6. Reimbursement is not permitted for:

(a) charges for day-to-day operations of a business or commercial entity;

(b) charges associated with winding down a business; and

(c) costs for acquiring permitted assets using proceeds from the required sale of other assets.

7. The public officer holder is responsible for any income tax

adjustment that may result from the reimbursement of trust costs.

stati uniti

Codice della legislazione federale (U.S. Code) - Titolo 5 (Organizzazione del Governo e dipendenti pubblici) – Appendice (Ethics in Government Act of 1978)

U.S. Code
Title 5 (Government organization and Employees)
Appendix (Ethics in Government Act of 1978) [29]

TITLE I - FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL

Sec.
101. Persons required to file.
102. Contents of reports.
103. Filing of reports.
104. Failure to file or filing false reports.
105. Custody of and public access to reports.
106. Review of reports.
107. Confidential reports and other additional requirements.
108. Authority of Comptroller General.
109. Definitions.
110. Notice of actions taken to comply with ethics agreements.
111. Administration of provisions.

[TITLE II - REPEALED]

[TITLE III - REPEALED]

TITLE IV - OFFICE OF GOVERNMENT ETHICS

401. Establishment; appointment of Director.
402. Authority and functions.
403. Administrative provisions.
404. Rules and regulations.
405. Authorization of appropriations.
406. Annual pay.
407. Annual pay of Director.
408. Reports to Congress.

TITLE V - GOVERNMENT-WIDE LIMITATIONS ON OUTSIDE EARNED INCOME AND EMPLOYMENT

501. Outside earned income limitation.
502. Limitations on outside employment.
503. Administration.

TITLE I - FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL

§ 101. Persons required to file

(a) Within thirty days of assuming the position of an officer or employee described in subsection (f), an individual shall file a report containing the information described in section 102(b) unless the individual has left another position described in subsection (f) within thirty days prior to assuming such new position or has already filed a report under this title with respect to nomination for the new position or as a candidate for the position.

(b)

(1) Within five days of the transmittal by the President to the Senate of the nomination of an individual (other than an individual nominated for appointment to a position as a Foreign Service Officer or a grade or rank in the uniformed services for which the pay grade prescribed by section 201 of title 37, United States Code, is O–6 or below) to a position, appointment to which requires the advice and consent of the Senate, such individual shall file a report containing the information described in section 102(b). Such individual shall, not later than the date of the first hearing to consider the nomination of such individual, make current the report filed pursuant to this paragraph by filing the information required by section 102(a)(1)(A) with respect to income and honoraria received as of the date which occurs five days before the date of such hearing. Nothing in this Act shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

(2) An individual whom the President or the President-elect has publicly announced he intends to nominate to a position may file the report required by paragraph (1) at any time after that public announcement, but not later than is required under the first sentence of such paragraph.

(c) Within thirty days of becoming a candidate as defined in section 301 of the Federal Campaign Act of 1971, in a calendar year for nomination or election to the office of President, Vice President, or Member of Congress, or on or before May 15 of that calendar year, whichever is later, but in no event later than 30 days before the election, and on or before May 15 of each successive year an individual continues to be a candidate, an individual other than an incumbent President, Vice President, or Member of Congress shall file a report containing the information described in section 102(b). Notwithstanding the preceding sentence, in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, such individual need not file a report unless he becomes a candidate for another vacancy in that office or another office during that year.

(d) Any individual who is an officer or employee described in subsection (f) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 102(a).

(e) Any individual who occupies a position described in subsection (f) shall, on or before the thirtieth day after termination of employment in such position, file a report containing the information described in section 102(a) covering the preceding calendar year if the report required by subsection (d) has not been filed and covering the portion of the calendar year in which such termination occurs up to the date the individual left such office or position, unless such individual has accepted employment in another position described in subsection (f).

(f) The officers and employees referred to in subsections (a), (d), and (e) are—

(1) the President;

(2) the Vice President;

(3) each officer or employee in the executive branch, including a special Government employee as defined in section 202 of title 18, United States Code, who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule; each member of a uniformed service whose pay grade is at or in excess of O–7 under section 201 of title 37, United States Code; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

(4) each employee appointed pursuant to section 3105 of title 5, United States Code;

(5) any employee not described in paragraph (3) who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character, except that the Director of the Office of Government Ethics may, by regulation, exclude from the application of this paragraph any individual, or group of individuals, who are in such positions, but only in cases in which the Director determines such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government;

(6) the Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Rate Commission who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule;

(7) the Director of the Office of Government Ethics and each designated agency ethics official;

(8) any civilian employee not described in paragraph (3), employed in the Executive Office of the President (other than a special government [1] employee) who holds a commission of appointment from the President;

(9) a Member of Congress as defined under section 109(12);

(10) an officer or employee of the Congress as defined under section 109(13);

(11) a judicial officer as defined under section 109(10); and

(12) a judicial employee as defined under section 109(8).

(g)

(1) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the supervising ethics office for each branch, but the total of such extensions shall not exceed ninety days.

(2)

(A) In the case of an individual who is serving in the Armed Forces, or serving in support of the Armed Forces, in an area while that area is designated by the President by Executive order as a combat zone for purposes of section 112 of the Internal Revenue Code of 1986, the date for the filing of any report shall be extended so that the date is 180 days after the later of—

(i) the last day of the individual's service in such area during such designated period; or

(ii) the last day of the individual's hospitalization as a result of injury received or disease contracted while serving in such area.

(B) The Office of Government Ethics, in consultation with the Secretary of Defense, may prescribe procedures under this paragraph.

(h) The provisions of subsections (a), (b), and (e) shall not apply to an individual who, as determined by the designated agency ethics official or Secretary concerned (or in the case of a Presidential appointee under subsection (b), the Director of the Office of Government Ethics), the congressional ethics committees, or the Judicial Conference, is not reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year, except that if such individual performs the duties of his office or position for more than sixty days in a calendar year—

(1) the report required by subsections (a) and (b) shall be filed within fifteen days of the sixtieth day, and

(2) the report required by subsection (e) shall be filed as provided in such subsection.

(i) The supervising ethics office for each branch may grant a publicly available request for a waiver of any reporting requirement under this section for an individual who is expected to perform or has performed the duties of his office or position less than one hundred and thirty days in a calendar year, but only if the supervising ethics office determines that—

(1) such individual is not a full-time employee of the Government,

(2) such individual is able to provide services specially needed by the Government,

(3) it is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(4) public financial disclosure by such individual is not necessary in the circumstances.

§ 102. Contents of reports

(a) Each report filed pursuant to section 101(d) and (e) shall include a full and complete statement with respect to the following:

(1)

(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating $200 or more in value and, effective January 1, 1991, the source, date, and amount of payments made to charitable organizations in lieu of honoraria, and the reporting individual shall simultaneously file with the applicable supervising ethics office, on a confidential basis, a corresponding list of recipients of all such payments, together with the dates and amounts of such payments.

(B) The source and type of income which consists of dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds $200 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within:

(i) not more than $1,000,

(ii) greater than $1,000 but not more than $2,500,

(iii) greater than $2,500 but not more than $5,000,

(iv) greater than $5,000 but not more than $15,000,

(v) greater than $15,000 but not more than $50,000,

(vi) greater than $50,000 but not more than $100,000,

(vii) greater than $100,000 but not more than $1,000,000,

(viii) greater than $1,000,000 but not more than $5,000,000, or

(ix) greater than $5,000,000.

(2)

(A) The identity of the source, a brief description, and the value of all gifts aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater, received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of an individual need not be reported, and any gift with a fair market value of $100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted, need not be aggregated for purposes of this subparagraph.

(B) The identity of the source and a brief description (including a travel itinerary, dates, and nature of expenses provided) of reimbursements received from any source aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater and received during the preceding calendar year.

(C) In an unusual case, a gift need not be aggregated under subparagraph (A) if a publicly available request for a waiver is granted.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a spouse,,[1] or by a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse, or any deposits aggregating $5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a spouse, or a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse which exceed $10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $10,000 as of the close of the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds $1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

(6)

(A) The identity of all positions held on or before the date of filing during the current calendar year (and, for the first report filed by an individual, during the two-year period preceding such calendar year) as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This subparagraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

(B) If any person, other than the United States Government, paid a nonelected reporting individual compensation in excess of $5,000 in any of the two calendar years prior to the calendar year during which the individual files his first report under this title, the individual shall include in the report—

(i) the identity of each source of such compensation; and

(ii) a brief description of the nature of the duties performed or services rendered by the reporting individual for each such source.

The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to

(A) future employment;

(B) a leave of absence during the period of the reporting individual’s Government service;

(C) continuation of payments by a former employer other than the United States Government; and

(D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(8) The category of the total cash value of any interest of the reporting individual in a qualified blind trust, unless the trust instrument was executed prior to July 24, 1995 and precludes the beneficiary from receiving information on the total cash value of any interest in the qualified blind trust.

(b)

(1) Each report filed pursuant to subsections (a), (b), and (c) of section 101 shall include a full and complete statement with respect to the information required by—

(A) paragraph (1) of subsection (a) for the year of filing and the preceding calendar year,

(B) paragraphs (3) and (4) of subsection (a) as of the date specified in the report but which is less than thirty-one days before the filing date, and

(C) paragraphs (6) and (7) of subsection (a) as of the filing date but for periods described in such paragraphs.

(2)

(A) In lieu of filling out one or more schedules of a financial disclosure form, an individual may supply the required information in an alternative format, pursuant to either rules adopted by the supervising ethics office for the branch in which such individual serves or pursuant to a specific written determination by such office for a reporting individual.

(B) In lieu of indicating the category of amount or value of any item contained in any report filed under this title, a reporting individual may indicate the exact dollar amount of such item.

(c) In the case of any individual described in section 101(e), any reference to the preceding calendar year shall be considered also to include that part of the calendar year of filing up to the date of the termination of employment.

(d)

(1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4), (5), and (8) of subsection (a) are as follows:

(A) not more than $15,000;

(B) greater than $15,000 but not more than $50,000;

(C) greater than $50,000 but not more than $100,000;

(D) greater than $100,000 but not more than $250,000;

(E) greater than $250,000 but not more than $500,000;

(F) greater than $500,000 but not more than $1,000,000;

(G) greater than $1,000,000 but not more than $5,000,000;

(H) greater than $5,000,000 but not more than $25,000,000;

(I) greater than $25,000,000 but not more than $50,000,000; and

(J) greater than $50,000,000.

(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list

(A) the date of purchase and the purchase price of the interest in the real property, or

(B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(e)

(1) Except as provided in the last sentence of this paragraph, each report required by section 101 shall also contain information listed in paragraphs (1) through (5) of subsection (a) of this section respecting the spouse or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed $1,000 and the source and amount of any honoraria received by a spouse, except that, with respect to earned income (other than honoraria), if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) All information required to be reported in subsection (a)(1)(B) with respect to income derived by a spouse or dependent child from any asset held by the spouse or dependent child and reported pursuant to subsection (a)(3).

(C) In the case of any gifts received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment and a brief description and the value of other gifts.

(D) In the case of any reimbursements received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of each such reimbursement.

(E) In the case of items described in paragraphs (3) through (5) of subsection (a), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse's or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of, (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

(F) For purposes of this section, categories with amounts or values greater than $1,000,000 set forth in sections 102(a)(1)(B) and 102(d)(1) shall apply to the income, assets, or liabilities of spouses and dependent children only if the income, assets, or liabilities are held jointly with the reporting individual. All other income, assets, or liabilities of the spouse or dependent children required to be reported under this section in an amount or value greater than $1,000,000 shall be categorized only as an amount or value greater than $1,000,000.

Reports required by subsections (a), (b), and (c) of section 101 shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(f)

(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a), (b), and (c) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

(A) any qualified blind trust (as defined in paragraph (3));

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any dependent child, and

(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of; or

(C) an entity described under the provisions of paragraph (8),

but such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the trust or other entity under subsection (a)(1)(B) of this section.

(3) For purposes of this subsection, the term “qualified blind trust” includes any trust in which a reporting individual, his spouse, or any minor or dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

(A)

(i) The trustee of the trust and any other entity designated in the trust instrument to perform fiduciary duties is a financial institution, an attorney, a certified public accountant, a broker, or an investment advisor who—

(I) is independent of and not associated with any interested party so that the trustee or other person cannot be controlled or influenced in the administration of the trust by any interested party; and

(II) is not and has not been an employee of or affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party; and

(III) is not a relative of any interested party.

(ii) Any officer or employee of a trustee or other entity who is involved in the management or control of the trust—

(I) is independent of and not associated with any interested party so that such officer or employee cannot be controlled or influenced in the administration of the trust by any interested party;

(II) is not a partner of, or involved in any joint venture or other investment with, any interested party; and

(III) is not a relative of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party’s tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1) of this section, but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only

(I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain),

(II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or

(III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office.

(E) For purposes of this subsection, "interested party" means a reporting individual, his spouse, and any minor or dependent child; "broker" has the meaning set forth in section 3(a)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4)); and "investment adviser" includes any investment adviser who, as determined under regulations prescribed by the supervising ethics office, is generally involved in his role as such an adviser in the management or control of trusts.

(F) Any trust qualified by a supervising ethics office before the effective date of title II of the Ethics Reform Act of 1989 shall continue to be governed by the law and regulations in effect immediately before such effective date.

(4)

(A) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of any applicable conflict of interest statutes, regulations, or rules of the Federal Government (including section 208 of title 18, United States Code), until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

(B)

(i) The provisions of subparagraph (A) shall not apply with respect to a trust created for the benefit of a reporting individual, or the spouse, dependent child, or minor child of such a person, if the supervising ethics office for such reporting individual finds that—

(I) the assets placed in the trust consist of a well-diversified portfolio of readily marketable securities;

(II) none of the assets consist of securities of entities having substantial activities in the area of the reporting individual's primary area of responsibility;

(III) the trust instrument prohibits the trustee, notwithstanding the provisions of paragraphs (3)(C)(iii) and (iv) of this subsection, from making public or informing any interested party of the sale of any securities;

(IV) the trustee is given power of attorney, notwithstanding the provisions of paragraph (3)(C)(v) of this subsection, to prepare on behalf of any interested party the personal income tax returns and similar returns which may contain information relating to the trust; and

(V) except as otherwise provided in this paragraph, the trust instrument provides (or in the case of a trust established prior to the effective date of this Act which by its terms does not permit amendment, the trustee, the reporting individual, and any other interested party agree in writing) that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A).

(ii) In any instance covered by subparagraph (B) in which the reporting individual is an individual whose nomination is being considered by a congressional committee, the reporting individual shall inform the congressional committee considering his nomination before or during the period of such individual's confirmation hearing of his intention to comply with this paragraph.

(5)

(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d) of this section.

This subparagraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7) of this subsection.

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (d) of this section.

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such dissolution, and

(ii) file with such office a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (d) of this section of each such asset.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 105 and the provisions of that section shall apply with respect to such documents and lists.

(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6)

(A) A trustee of a qualified blind trust shall not knowingly and willfully, or negligently,

(i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection;

(ii) acquire any holding the ownership of which is prohibited by the trust instrument;

(iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) of this subsection or the trust agreement; or

(iv) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly and willfully, or negligently,

(i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C) of this subsection or

(ii) fail to file any document required by this subsection.

(C)

(i) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $10,000.

(ii) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(7) Any trust may be considered to be a qualified blind trust if—

(A) the trust instrument is amended to comply with the requirements of paragraph (3) or, in the case of a trust instrument which does not by its terms permit amendment, the trustee, the reporting individual, and any other interested party agree in writing that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); except that in the case of any interested party who is a dependent child, a parent or guardian of such child may execute the agreement referred to in this subparagraph;

(B) a copy of the trust instrument (except testamentary provisions) and a copy of the agreement referred to in subparagraph (A), and a list of the assets held by the trust at the time of approval by the supervising ethics office, including the category of value of each asset as determined under subsection (d) of this section, are filed with such office and made available to the public as provided under paragraph (5)(D) of this subsection; and

(C) the supervising ethics office determines that approval of the trust arrangement as a qualified blind trust is in the particular case appropriate to assure compliance with applicable laws and regulations.

(8) A reporting individual shall not be required to report the financial interests held by a widely held investment fund (whether such fund is a mutual fund, regulated investment company, pension or deferred compensation plan, or other investment fund), if—

(A)

(i) the fund is publicly traded; or

(ii) the assets of the fund are widely diversified; and

(B) the reporting individual neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(g) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.

(h) A report filed pursuant to subsection (a), (d), or (e) of section 101 need not contain the information described in subparagraphs (A), (B), and (C) of subsection (a)(2) with respect to gifts and reimbursements received in a period when the reporting individual was not an officer or employee of the Federal Government.

(i) A reporting individual shall not be required under this title to report—

(1) financial interests in or income derived from—

(A) any retirement system under title 5, United States Code (including the Thrift Savings Plan under subchapter III of chapter 84 of such title); or

(B) any other retirement system maintained by the United States for officers or employees of the United States, including the President, or for members of the uniformed services; or

(2) benefits received under the Social Security Act [42 U.S.C. 301 et seq.].

§ 103. Filing of reports

(a) Except as otherwise provided in this section, the reports required under this title shall be filed by the reporting individual with the designated agency ethics official at the agency by which he is employed (or in the case of an individual described in section 101(e), was employed) or in which he will serve. The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such official.

(b) The President, the Vice President, and independent counsel and persons appointed by independent counsel under chapter 40 of title 28, United States Code, shall file reports required under this title with the Director of the Office of Government Ethics.

(c) Copies of the reports required to be filed under this title by the Postmaster General, the Deputy Postmaster General, the Governors of the Board of Governors of the United States Postal Service, designated agency ethics officials, employees described in section 105(a)(2)(A) or (B), 106(a)(1)(A) or (B), or 107(a)(1)(A) or (b)(1)(A)(i), of title 3, United States Code, candidates for the office of President or Vice President and officers and employees in (and nominees to) offices or positions which require confirmation by the Senate or by both Houses of Congress other than individuals nominated to be judicial officers and those referred to in subsection (f) shall be transmitted to the Director of the Office of Government Ethics. The Director shall forward a copy of the report of each nominee to the congressional committee considering the nomination.

(d) Reports required to be filed under this title by the Director of the Office of Government Ethics shall be filed in the Office of Government Ethics and, immediately after being filed, shall be made available to the public in accordance with this title.

(e) Each individual identified in section 101(c) who is a candidate for nomination or election to the Office of President or Vice President shall file the reports required by this title with the Federal Election Commission.

(f) Reports required of members of the uniformed services shall be filed with the Secretary concerned.

(g) Each supervising ethics office shall develop and make available forms for reporting the information required by this title.

(h)

(1) The reports required under this title shall be filed by a reporting individual with—

(A)

(i)

(I) the Clerk of the House of Representatives, in the case of a Representative in Congress, a Delegate to Congress, the Resident Commissioner from Puerto Rico, an officer or employee of the Congress whose compensation is disbursed by the Chief Administrative Officer of the House of Representatives, an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the Congressional Budget Office, the Government Printing Office, the Library of Congress, or the Copyright Royalty Tribunal (including any individual terminating service, under section 101(e), in any office or position referred to in this subclause), or an individual described in section 101(c) who is a candidate for nomination or election as a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico; and

(II) the Secretary of the Senate, in the case of a Senator, an officer or employee of the Congress whose compensation is disbursed by the Secretary of the Senate, an officer or employee of the Government Accountability Office, the Office of Technology Assessment, or the Office of the Attending Physician (including any individual terminating service, under section 101(e), in any office or position referred to in this subclause), or an individual described in section 101(c) who is a candidate for nomination or election as a Senator; and

(ii) in the case of an officer or employee of the Congress as described under section 101(f)(10) who is employed by an agency or commission established in the legislative branch after the date of the enactment of the Ethics Reform Act of 1989—

(I) the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, as designated in the statute establishing such agency or commission; or

(II) if such statute does not designate such committee, the Secretary of the Senate for agencies and commissions established in even numbered calendar years, and the Clerk of the House of Representatives for agencies and commissions established in odd numbered calendar years; and

(B) the Judicial Conference with regard to a judicial officer or employee described under paragraphs (11) and (12) of section 101(f) (including individuals terminating service in such office or position under section 101(e) or immediately preceding service in such office or position).

(2) The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such committee.

(i) A copy of each report filed under this title by a Member or an individual who is a candidate for the office of Member shall be sent by the Clerk of the House of Representatives or Secretary of the Senate, as the case may be, to the appropriate State officer designated under section 316(a) [1] of the Federal Election Campaign Act of 1971 of the State represented by the

Member or in which the individual is a candidate, as the case may be, within the 30-day period beginning on the day the report is filed with the Clerk or Secretary.

(j)

(1) A copy of each report filed under this title with the Clerk of the House of Representatives shall be sent by the Clerk to the Committee on Standards of Official Conduct of the House of Representatives within the 7-day period beginning on the day the report is filed.

(2) A copy of each report filed under this title with the Secretary of the Senate shall be sent by the Secretary to the Select Committee on Ethics of the Senate within the 7-day period beginning on the day the report is filed.

(k) In carrying out their responsibilities under this title with respect to candidates for office, the Clerk of the House of Representatives and the Secretary of the Senate shall avail themselves of the assistance of the Federal Election Commission. The Commission shall make available to the Clerk and the Secretary on a regular basis a complete list of names and addresses of all candidates registered with the Commission, and shall cooperate and coordinate its candidate information and notification program with the Clerk and the Secretary to the greatest extent possible.

§ 104. Failure to file or filing false reports

(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 102. The court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed $10,000.

(b) The head of each agency, each Secretary concerned, the Director of the Office of Government Ethics, each congressional ethics committee, or the Judicial Conference, as the case may be, shall refer to the Attorney General the name of any individual which such official or committee has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported. Whenever the Judicial Conference refers a name to the Attorney General under this subsection, the Judicial Conference also shall notify the judicial council of the circuit in which the named individual serves of the referral.

(c) The President, the Vice President, the Secretary concerned, the head of each agency, the Office of Personnel Management, a congressional ethics committee, and the Judicial Conference, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported.

(d)

(1) Any individual who files a report required to be filed under this title more than 30 days after the later of—

(A) the date such report is required to be filed pursuant to the provisions of this title and the rules and regulations promulgated thereunder; or

(B) if a filing extension is granted to such individual under section 101(g), the last day of the filing extension period, shall, at the direction of and pursuant to regulations issued by the supervising ethics office, pay a filing fee of $200. All such fees shall be deposited in the miscellaneous receipts of the Treasury. The authority under this paragraph to direct the payment of a filing fee may be delegated by the supervising ethics office in the executive branch to other agencies in the executive branch..[1]

(2) The supervising ethics office may waive the filing fee under this subsection in extraordinary circumstances.

§ 105. Custody of and public access to reports

(a) Each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall make available to the public, in accordance with subsection (b), each report filed under this title with such agency or office or with the Clerk or the Secretary of the Senate, except that—

(1) this section does not require public availability of a report filed by any individual in the Office of the Director of National Intelligence, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds or has found that, due to the nature of the office or position occupied by such individual, public disclosure of such report would, be revealing the identity of the individual or other sensitive information, compromise the national interest of the United States; and such individuals may be authorized, notwithstanding section 104(a), to file such additional reports as are necessary to protect their identity from public disclosure if the President first finds or has found that such filing is necessary in the national interest; and

(2) any report filed by an independent counsel whose identity has not been disclosed by the division of the court under chapter 40 of title 28, United States Code, and any report filed by any person appointed by that independent counsel under such chapter, shall not be made available to the public under this title.

(b)

(1) Except as provided in the second sentence of this subsection, each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall, within thirty days after any report is received under this title by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be, permit inspection of such report by or furnish a copy of such report to any person requesting such inspection or copy. With respect to any report required to be filed by May 15 of any year, such report shall be made available for public inspection within 30 calendar days after May 15 of such year or within 30 days of the date of filing of such a report for which an extension is granted pursuant to section 101(g). The agency, office, Clerk, or Secretary of the Senate, as the case may be may require a reasonable fee to be paid in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

(2) Notwithstanding paragraph (1), a report may not be made available under this section to any person nor may any copy thereof be provided under this section to any person except upon a written application by such person stating—

(A) that person’s name, occupation and address;

(B) the name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(C) that such person is aware of the prohibitions on the obtaining or use of the report.

Any such application shall be made available to the public throughout the period during which the report is made available to the public.

(3)

(A) This section does not require the immediate and unconditional availability of reports filed by an individual described in section 109(8) or 109(10) of this Act if a finding is made by the Judicial Conference, in consultation with United States Marshall Service, that revealing personal and sensitive information could endanger that individual.

(B) A report may be redacted pursuant to this paragraph only—

(i) to the extent necessary to protect the individual who filed the report; and

(ii) for as long as the danger to such individual exists.

(C) The Administrative Office of the United States Courts shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate an annual report with respect to the operation of this paragraph including—

(i) the total number of reports redacted pursuant to this paragraph;

(ii) the total number of individuals whose reports have been redacted pursuant to this paragraph; and

(iii) the types of threats against individuals whose reports are redacted, if appropriate.

(D) The Judicial Conference, in consultation with the Department of Justice, shall issue regulations setting forth the circumstances under which redaction is appropriate under this paragraph and the procedures for redaction.

(E) This paragraph shall expire on December 31, 2005, and apply to filings through calendar year 2005.

(c)

(1) It shall be unlawful for any person to obtain or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1) of this subsection. The court in which such action is brought may assess against such person a penalty in any amount not to exceed $10,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

(d) Any report filed with or transmitted to an agency or supervising ethics office or to the Clerk of the House of Representatives or the Secretary of the Senate pursuant to this title shall be retained by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be. Such report shall be made available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 101(b) and was not subsequently confirmed by the Senate, or who filed the report pursuant to section 101(c) and was not subsequently elected, such reports shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President, Vice President, or as a Member of Congress, unless needed in an ongoing investigation.

§ 106. Review of reports

(a)

(1) Each designated agency ethics official or Secretary concerned shall make provisions to ensure that each report filed with him under this title is reviewed within sixty days after the date of such filing, except that the Director of the Office of Government Ethics shall review only those reports required to be transmitted to him under this title within sixty days after the date of transmittal.

(2) Each congressional ethics committee and the Judicial Conference shall make provisions to ensure that each report filed under this title is reviewed within sixty days after the date of such filing.

(b)

(1) If after reviewing any report under subsection (a), the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by the congressional ethics committee, or a person designated by the Judicial Conference, as the case may be, is of the opinion that on the basis of information contained in such report the individual submitting such report is in compliance with applicable laws and regulations, he shall state such opinion on the report, and shall sign such report.

(2) If the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by the congressional ethics committee, or a person designated by the Judicial Conference, after reviewing any report under subsection (a)—

(A) believes additional information is required to be submitted, he shall notify the individual submitting such report what additional information is required and the time by which it must be submitted, or

(B) is of the opinion, on the basis of information submitted, that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, afford a reasonable opportunity for a written or oral response, and after consideration of such response, reach an opinion as to whether or not, on the basis of information submitted, the individual is in compliance with such laws and regulations.

(3) If the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by a congressional ethics committee, or a person designated by the Judicial Conference, reaches an opinion under paragraph (2)(B) that an individual is not in compliance with applicable laws and regulations, the official or committee shall notify the individual of that opinion and, after an opportunity for personal consultation (if practicable), determine and notify the individual of which steps, if any, would in the opinion of such official or committee be appropriate for assuring compliance with such laws and

regulations and the date by which such steps should be taken. Such steps may include, as appropriate—

(A) divestiture,

(B) restitution,

(C) the establishment of a blind trust,

(D) request for an exemption under section 208(b) of title 18, United States Code, or

(E) voluntary request for transfer, reassignment, limitation of duties, or resignation.

The use of any such steps shall be in accordance with such rules or regulations as the supervising ethics office may prescribe.

(4) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by an individual in a position in the executive branch (other than in the Foreign Service or the uniformed services), appointment to which requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate action.

(5) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by a member of the Foreign Service or the uniformed services, the Secretary concerned shall take appropriate action.

(6) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by any other officer or employee, the matter shall be referred to the head of the appropriate agency, the congressional ethics committee, or the Judicial Conference, for appropriate action; except that in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken.

(7) Each supervising ethics office may render advisory opinions interpreting this title within its respective jurisdiction. Notwithstanding any other provision of law, the individual to whom a public advisory opinion is rendered in accordance with this paragraph, and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of such act, be subject to any penalty or sanction provided by this title.

§ 107. Confidential reports and other additional requirements

(a)

(1) Each supervising ethics office may require officers and employees under its jurisdiction (including special Government employees as defined in section 202 of title 18, United States Code) to file confidential financial disclosure reports, in such form as the supervising ethics office may prescribe. The information required to be reported under this subsection by the officers and employees of any department or agency shall be set forth in rules or regulations prescribed by the supervising ethics office, and may be less extensive than otherwise required by this title, or more extensive when determined by the supervising ethics office to be necessary and appropriate in light of sections 202 through 209 of title 18, United States Code, regulations promulgated thereunder, or the authorized activities of such officers or employees. Any individual required to file a report pursuant to section 101 shall not be required to file a confidential report pursuant to this subsection, except with respect to information which is

more extensive than information otherwise required by this title. Subsections (a), (b), and (d) of section 105 shall not apply with respect to any such report.

(2) Any information required to be provided by an individual under this subsection shall be confidential and shall not be disclosed to the public.

(3) Nothing in this subsection exempts any individual otherwise covered by the requirement to file a public financial disclosure report under this title from such requirement.

(b) The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title shall not supersede the requirements of section 7342 of title 5, United States Code.

(c) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law, Executive order, rule, or regulation.

§ 108. Authority of Comptroller General

(a) The Comptroller General shall have access to financial disclosure reports filed under this title for the purposes of carrying out his statutory responsibilities.

(b) No later than December 31, 1992, and regularly thereafter, the Comptroller General shall conduct a study to determine whether the provisions of this title are being carried out effectively.

§ 109. Definitions

For the purposes of this title, the term—

(1) “congressional ethics committees” means the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives;

(2) “dependent child” means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986 [26 U.S.C. 152];

(3) “designated agency ethics official” means an officer or employee who is designated to administer the provisions of this title within an agency;

(4) “executive branch” includes each Executive agency (as defined in section 105 of title 5, United States Code), other than the Government Accountability Office, and any other entity or administrative unit in the executive branch;

(5) “gift” means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(D) food and beverages which are not consumed in connection with a gift of overnight lodging;

(E) communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; or

(F) consumable products provided by home-State businesses to the offices of a reporting individual who is an elected official, if those products are intended for consumption by persons other than such reporting individual;

(6) “honoraria” has the meaning given such term in section 505 of this Act;

(7) “income” means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

(8) “judicial employee” means any employee of the judicial branch of the Government, of the United States Sentencing Commission, of the Tax Court, of the Court of Federal Claims, of the Court of Appeals for Veterans Claims, or of the United States Court of Appeals for the Armed Forces, who is not a judicial officer and who is authorized to perform adjudicatory functions with respect to proceedings in the judicial branch, or who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule;

(9) “Judicial Conference” means the Judicial Conference of the United States;

(10) “judicial officer” means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals, United States district courts, including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Court of Federal Claims, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior;

(11) “legislative branch” includes—

(A) the Architect of the Capitol;

(B) the Botanic Gardens;

(C) the Congressional Budget Office;

(D) the Government Accountability Office;

(E) the Government Printing Office;

(F) the Library of Congress;

(G) the United States Capitol Police;

(H) the Office of Technology Assessment; and

(I) any other agency, entity, office, or commission established in the legislative branch;

(12) “Member of Congress” means a United States Senator, a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;

(13) “officer or employee of the Congress” means—

(A) any individual described under subparagraph (B), other than a Member of Congress or the Vice President, whose compensation is disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives;

(B)

(i) each officer or employee of the legislative branch who, for at least 60 days, occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule; and

(ii) at least one principal assistant designated for purposes of this paragraph by each Member who does not have an employee who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule;

(14) “personal hospitality of any individual” means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(15) “reimbursement” means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(16) “relative” means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual;

(17) “Secretary concerned” has the meaning set forth in section 101(a)(9) of title 10, United States Code, and, in addition, means—

(A) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration;

(B) the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(C) the Secretary of State, with respect to matters concerning the Foreign Service;

(18) “supervising ethics office” means—

(A) the Select Committee on Ethics of the Senate, for Senators, officers and employees of the Senate, and other officers or employees of the legislative branch required to file financial disclosure reports with the Secretary of the Senate pursuant to section 103(h) of this title;

(B) the Committee on Standards of Official Conduct of the House of Representatives, for Members, officers and employees of the House of Representatives and other officers or employees of the legislative branch required to file financial disclosure reports with the Clerk of the House of Representatives pursuant to section 103(h) of this title;

(C) the Judicial Conference for judicial officers and judicial employees; and

(D) the Office of Government Ethics for all executive branch officers and employees; and

(19) “value” means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual.

§ 110. Notice of actions taken to comply with ethics agreements

(a) In any case in which an individual agrees with that individual’s designated agency ethics official, the Office of Government Ethics, a Senate confirmation committee, a congressional ethics committee, or the Judicial Conference, to take any action to comply with this Act or any other law or regulation governing conflicts of interest of, or establishing standards of conduct applicable with respect to, officers or employees of the Government, that individual shall notify in writing the designated agency ethics official, the Office of Government Ethics, the appropriate committee of the Senate, the congressional ethics committee, or the Judicial Conference, as the case may be, of any action taken by the individual pursuant to that agreement. Such notification shall be made not later than the date specified in the agreement by which action by the individual must be taken, or not later than three months after the date of the agreement, if no date for action is so specified.

(b) If an agreement described in subsection (a) requires that the individual recuse himself or herself from particular categories of agency or other official action, the individual shall reduce to writing those subjects regarding which the recusal agreement will apply and the process by which it will be determined whether the individual must recuse himself or herself in a specific instance. An individual shall be considered to have complied with the requirements of subsection (a) with respect to such recusal agreement if such individual files a copy of the document setting forth the information described in the preceding sentence with such individual’s designated agency ethics official or the appropriate supervising ethics office within the time prescribed in the last sentence of subsection (a).

§ 111. Administration of provisions

The provisions of this title shall be administered by—

(1) the Director of the Office of Government Ethics, the designated agency ethics official, or the Secretary concerned, as appropriate, with regard to officers and employees described in paragraphs (1) through (8) of section 101(f);

(2) the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives, as appropriate, with regard to officers and employees described in paragraphs (9) and (10) of section 101(f); and

(3) the Judicial Conference in the case of an officer or employee described in paragraphs (11) and (12) of section 101(f).

The Judicial Conference may delegate any authority it has under this title to an ethics committee established by the Judicial Conference.

§ 112. Repealed. Pub. L. 101–280, § 3(10)(A), May 4, 1990, 104 Stat. 157]

Section, Pub. L. 95–521, title I, § 112, as added Pub. L. 101–194, title II, § 202, Nov. 30, 1989, 103 Stat. 1744, provided that the provisions made by title I of Pub. L. 95–521 take effect on Jan. 1, 1990, and be applicable to reports filed under such title after Jan. 1, 1991. See section 3(10)(C) of Pub. L. 101–280 and section 204 of Pub. L. 101–194, set out as an Effective Date of 1989 Amendment note under section 101 of this Appendix.

TITLE IV - OFFICE OF GOVERNMENT ETHICS

§ 401. Establishment; appointment of Director

(a) There is established an executive agency to be known as the Office of Government Ethics.

(b) There shall be at the head of the Office of Government Ethics a Director (hereinafter referred to as the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate. Effective with respect to any individual appointed or reappointed by the President as Director on or after October 1, 1983, the term of service of the Director shall be five years.

(c) The Director may—

(1) appoint officers and employees, including attorneys, in accordance with chapter 51 and subchapter III of chapter 53 of title 5, United States Code; and

(2) contract for financial and administrative services (including those related to budget and accounting, financial reporting, personnel, and procurement) with the General Services Administration, or such other Federal agency as the Director determines appropriate, for which payment shall be made in advance, or by reimbursement, from funds of the Office of Government Ethics in such amounts as may be agreed upon by the Director and the head of the agency providing such services.

Contract authority under paragraph (2) shall be effective for any fiscal year only to the extent that appropriations are available for that purpose.

§ 402. Authority and functions

(a) The Director shall provide, in consultation with the Office of Personnel Management, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency, as defined in section 105 of title 5, United States Code.

(b) The responsibilities of the Director shall include—

(1) developing, in consultation with the Attorney General and the Office of Personnel Management, rules and regulations to be promulgated by the President or the Director pertaining to conflicts of interest and ethics in the executive branch, including rules and regulations establishing procedures for the filing, review, and public availability of financial statements filed by officers and employees in the executive branch as required by title II of this Act;

(2) developing, in consultation with the Attorney General and the Office of Personnel Management, rules and regulations to be promulgated by the President or the Director pertaining to the identification and resolution of conflicts of interest;

(3) monitoring and investigating compliance with the public financial disclosure requirements of title II of this Act by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available financial statements filed pursuant to such title;

(4) conducting a review of financial statements to determine whether such statements reveal possible violations of applicable conflict of interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such review;

(5) monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch;

(6) interpreting rules and regulations issued by the President or the Director governing conflict of interest and ethical problems and the filing of financial statements;

(7) consulting, when requested, with agency ethics counselors and other responsible officials regarding the resolution of conflict of interest problems in individual cases;

(8) establishing a formal advisory opinion service whereby advisory opinions are rendered on matters of general applicability or on important matters of first impression after, to the extent practicable, providing interested parties with an opportunity to transmit written comments with respect to the request for such advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public;

(9) ordering corrective action on the part of agencies and employees which the Director deems necessary;

(10) requiring such reports from executive agencies as the Director deems necessary;

(11) assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending appropriate amendments;

(12) evaluating, with the assistance of the Attorney General and the Office of Personnel Management, the need for changes in rules and regulations issued by the Director and the agencies regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws;

(13) cooperating with the Attorney General in developing an effective system for reporting allegations of violations of the conflict of interest laws to the Attorney General, as required by section 535 of title 28, United States Code;

(14) providing information on and promoting understanding of ethical standards in executive agencies; and

(15) developing, in consultation with the Office of Personnel Management, and promulgating such rules and regulations as the Director determines necessary or desirable with respect to the evaluation of any item required to be reported by title II of this Act.

(c) In the development of policies, rules, regulations, procedures, and forms to be recommended, authorized, or prescribed by him, the Director shall consult when appropriate with the executive agencies affected and with the Attorney General.

(d)

(1) The Director shall, by the exercise of any authority otherwise available to the Director under this title, ensure that each executive agency has established written procedures relating to how the agency is to collect, review, evaluate, and, if applicable, make publicly available, financial disclosure statements filed by any of its officers or employees.

(2) In carrying out paragraph (1), the Director shall ensure that each agency's procedures are in conformance with all applicable requirements, whether established by law, rule, regulation, or Executive order.

(e) In carrying out subsection (b)(10), the Director shall prescribe regulations under which—

(1) each executive agency shall be required to submit to the Office an annual report containing—

(A) a description and evaluation of the agency's ethics program, including any educational, counseling, or other services provided to officers and employees, in effect during the period covered by the report; and

(B) the position title and duties of—

(i) each official who was designated by the agency head to have primary responsibility for the administration, coordination, and management of the agency's ethics program during any portion of the period covered by the report; and

(ii) each officer or employee who was designated to serve as an alternate to the official having primary responsibility during any portion of such period; and

(C) any other information that the Director may require in order to carry out the responsibilities of the Director under this title; and

(2) each executive agency shall be required to inform the Director upon referral of any alleged violation of Federal conflict of interest law to the Attorney General pursuant to section 535 of title 28, United States Code, except that nothing under this paragraph shall require any notification or disclosure which would otherwise be prohibited by law.

(f)

(1) In carrying out subsection (b)(9) with respect to executive agencies, the Director—

(A) may—

(i) order specific corrective action on the part of an agency based on the failure of such agency to establish a system for the collection, filing, review, and, when applicable, public inspection of financial disclosure statements, in accordance with applicable requirements, or to modify an existing system in order to meet applicable requirements; or

(ii) order specific corrective action involving the establishment or modification of an agency ethics program (other than with respect to any matter under clause (i)) in accordance with applicable requirements; and

(B) shall, if an agency has not complied with an order under subparagraph (A) within a reasonable period of time, notify the President and the Congress of the agency's noncompliance in writing (including, with the notification, any written comments which the agency may provide).

(2)

(A) In carrying out subsection (b)(9) with respect to individual officers and employees—

(i) the Director may make such recommendations and provide such advice to such officers and employees as the Director considers necessary to ensure compliance with rules, regulations, and Executive orders relating to conflicts of interest or standards of conduct;

(ii) if the Director has reason to believe that an officer or employee is violating, or has violated, any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct, the Director—

(I) may recommend to the head of the officer's or employee's agency that such agency head investigate the possible violation and, if the agency head finds such a violation, that such agency head take any appropriate disciplinary action (such as reprimand, suspension, demotion, or dismissal) against the officer or employee, except that, if the officer or employee involved is the agency head, any such recommendation shall instead be submitted to the President; and

(II) shall notify the President in writing if the Director determines that the head of an agency has not conducted an investigation pursuant to subclause (I) within a reasonable time after the Director recommends such action;

(iii) if the Director finds that an officer or employee is violating any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct, the Director—

(I) may order the officer or employee to take specific action (such as divestiture, recusal, or the establishment of a blind trust) to end such violation; and

(II) shall, if the officer or employee has not complied with the order under subclause (I) within a reasonable period of time, notify, in writing, the head of the officer's or employee's agency of the officer's or employee's noncompliance, except that, if the officer or employee involved is the agency head, the notification shall instead be submitted to the President; and

(iv) if the Director finds that an officer or employee is violating, or has violated, any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct, the Director—

(I) may recommend to the head of the officer's or employee's agency that appropriate disciplinary action (such as reprimand, suspension, demotion, or dismissal) be brought against the officer or employee, except that if the officer or employee involved is the agency head, any such recommendations shall instead be submitted to the President; and

(II) may notify the President in writing if the Director determines that the head of an agency has not taken appropriate disciplinary action within a reasonable period of time after the Director recommends such action.

(B)

(i) In order to carry out the Director’s duties and responsibilities under subparagraph (A)(iii) or (iv) with respect to individual officers and employees, the Director may conduct investigations and make findings concerning possible violations of any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct applicable to officers and employees of the executive branch.

(ii)

(I) Subject to clause (iv) of this subparagraph, before any finding is made under subparagraphs (A)(iii) or (iv), the officer or employee involved shall be afforded notification of the alleged violation, and an opportunity to comment, either orally or in writing, on the alleged violation.

(II) The Director shall, in accordance with section 553 of title 5, United States Code, establish procedures for such notification and comment.

(iii) Subject to clause (iv) of this subparagraph, before any action is ordered under subparagraph (A)(iii), the officer or employee involved shall be afforded an opportunity for a hearing, if requested by such officer or employee, except that any such hearing shall be conducted on the record.

(iv) The procedures described in clauses (ii) and (iii) of this subparagraph do not apply to findings or orders for action made to obtain compliance with the financial disclosure requirements in title 2 [1] of this Act. For those findings and orders, the procedures in section 206 of this Act shall apply.

(3) The Director shall send a copy of any order under paragraph (2)(A)(iii) to—

(A) the officer or employee who is the subject of such order; and

(B) the head of officer’s or employee’s agency or, if such officer or employee is the agency head, to the President.

(4) For purposes of paragraphs (2)(A)(ii), (iii), (iv), and (3)(B), in the case of an officer or employee within an agency which is headed by a board, committee, or other group of individuals (rather than by a single individual), any notification, recommendation, or other matter which would otherwise be sent to an agency head shall instead be sent to the officer’s or employee’s appointing authority.

(5) Nothing in this title shall be considered to allow the Director (or any designee) to make any finding that a provision of title 18, United States Code, or any criminal law of the United States outside of such title, has been or is being violated.

(6) Notwithstanding any other provision of law, no record developed pursuant to the authority of this section concerning an investigation of an individual for a violation of any rule, regulation, or Executive order relating to a conflict of interest shall be made available pursuant to section 552(a)(3) of title 5, United States Code, unless the request for such information identifies the individual to whom such records relate and the subject matter of any alleged violation to which such records relate, except that nothing in this subsection shall affect the

application of the provisions of section 552(b) of title 5, United States Code, to any record so identified.

§ 403. Administrative provisions

(a) Upon the request of the Director, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Director to the greatest practicable extent for the performance of functions under this Act; and

(2) except when prohibited by law, furnish to the Director all information and records in its possession which the Director may determine to be necessary for the performance of his duties.

The authority of the Director under this section includes the authority to request assistance from the inspector general of an agency in conducting investigations pursuant to the Office of Government Ethics responsibilities under this Act. The head of any agency may detail such personnel and furnish such services, with or without reimbursement, as the Director may request to carry out the provisions of this Act

(b)

(1) The Director is authorized to accept and utilize on behalf of the United States, any gift, donation, bequest, or devise of money, use of facilities, personal property, or services for the purpose of aiding or facilitating the work of the Office of Government Ethics.

(2) No gift may be accepted—

(A) that attaches conditions inconsistent with applicable laws or regulations; or

(B) that is conditioned upon or will require the expenditure of appropriated funds that are not available to the Office of Government Ethics.

(3) The Director shall establish written rules setting forth the criteria to be used in determining whether the acceptance of contributions of money, services, use of facilities, or personal property under this subsection would reflect unfavorably upon the ability of the Office of Government Ethics, or any employee of such Office, to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

§ 404. Rules and regulations

In promulgating rules and regulations pertaining to financial disclosure, conflict of interest, and ethics in the executive branch, the Director shall issue rules and regulations in accordance with chapter 5 of title 5, United States Code. Any person may seek judicial review of any such rule or regulation.

§ 405. Authorization of appropriations

There are authorized to be appropriated to carry out this title such sums as may be necessary for each of fiscal years 2002 through 2006.

§ 406. Annual pay

[Section amended section 5316 of Title 5, Government Organization and Employees.]

§ 407. Annual pay of Director

[Section amended sections 5314 and 5316 of Title 5, Government Organization and Employees.]

§ 408. Reports to Congress

The Director shall, no later than April 30 of each year in which the second session of a Congress begins, submit to the Congress a report containing—

(1) a summary of the actions taken by the Director during a 2-year period ending on December 31 of the preceding year in order to carry out the Director’s functions and responsibilities under this title; and

(2) such other information as the Director may consider appropriate.

TITLE V - GOVERNMENT-WIDE LIMITATIONS ON OUTSIDE EARNED INCOME AND EMPLOYMENT

§ 501. Outside earned income limitation

(a) **Outside Earned Income Limitation.—**

(1) Except as provided by paragraph (2), a Member or an officer or employee who is a noncareer officer or employee and who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule, may not in any calendar year have outside earned income attributable to such calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year.

(2) In the case of any individual who during a calendar year becomes a Member or an officer or employee who is a noncareer officer or employee and who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule, such individual may not have outside earned income attributable to the portion of that calendar year which occurs after such individual becomes a Member or such an officer or employee which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year multiplied by a fraction the numerator of which is the number of days such individual is a Member or such officer or employee during such calendar year and the denominator of which is 365.

(b) **Honoraria Prohibition.—** An individual may not receive any honorarium while that individual is a Member, officer or employee.

(c) **Treatment of Charitable Contributions.—** Any honorarium which, except for subsection (b), might be paid to a Member, officer or employee, but which is paid instead on behalf of such Member, officer or employee to a charitable organization, shall be deemed not to be received by such Member, officer or employee. No such payment shall exceed $2,000 or be made to a charitable organization from which such individual or a parent, sibling, spouse, child, or dependent relative of such individual derives any financial benefit.

§ 502. Limitations on outside employment

(a) **Limitations.—** A Member or an officer or employee who is a noncareer officer or employee and who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule shall not—

(1) receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship;

(2) permit that Member’s, officer’s, or employee’s name to be used by any such firm, partnership, association, corporation, or other entity;

(3) receive compensation for practicing a profession which involves a fiduciary relationship;

(4) serve for compensation as an officer or member of the board of any association, corporation, or other entity; or

(5) receive compensation for teaching, without the prior notification and approval of the appropriate entity referred to in section 503.

(b) **Teaching Compensation of Justices and Judges Retired From Regular Active Service.—** For purposes of the limitation under section 501(a), any compensation for teaching approved under subsection (a)(5) of this section shall not be treated as outside earned income—

(1) when received by a justice of the United States retired from regular active service under section 371(b) of title 28, United States Code;

(2) when received by a judge of the United States retired from regular active service under section 371(b) of title 28, United States Code, for teaching performed during any calendar year for which such judge has met the requirements of subsection (f) of section 371 of title 28, United States Code, as certified in accordance with such subsection; or

(3) when received by a justice or judge of the United States retired from regular active service under section 372(a) of title 28, United States Code.

§ 503. Administration

This title shall be subject to the rules and regulations of—

(1) and administered by—

(A) the Committee on Standards of Official Conduct of the House of Representatives, with respect to Members, officers, and employees of the House of Representatives; and

(B) in the case of Senators and legislative branch officers and employees other than those officers and employees specified in subparagraph (A), the committee to which reports filed by such officers and employees under title I are transmitted under such title, except that the authority of this section may be delegated by such committee with respect to such officers and employees;

(2) the Office of Government Ethics and administered by designated agency ethics officials with respect to officers and employees of the executive branch; and

(3) and administered by the Judicial Conference of the United States (or such other agency as it may designate) with respect to officers and employees of the judicial branch.

§ 504. Civil Penalties

(a) **Civil Action.—** The Attorney General may bring a civil action in any appropriate United States district court against any individual who violates any provision of section 501 or 502. The court in which such action is brought may assess against such individual a civil penalty of not more than $10,000 or the amount of compensation, if any, which the individual received for the prohibited conduct, whichever is greater.

(b) **Advisory Opinions.—** Any entity described in section 503 may render advisory opinions interpreting this title, in writing, to individuals covered by this title. Any individual to whom such an advisory opinion is rendered and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who, after the issuance of such advisory opinion, acts in good faith in accordance with its provisions and findings shall not, as a result of such actions, be subject to any sanction under subsection (a).

§ 505. Definitions

For purposes of this title:

(1) The term “Member” means a Senator in, a Representative in, or a Delegate or Resident Commissioner to, the Congress.

(2) The term “officer or employee” means any officer or employee of the Government except any special Government employee (as defined in section 202 of title 18, United States Code).

(3) The term “honorarium” means a payment of money or any thing of value for an appearance, speech or article (including a series of appearances, speeches, or articles if the subject matter is directly related to the individual’s official duties or the payment is made because of the individual’s status with the Government) by a Member, officer or employee, excluding any actual and necessary travel expenses incurred by such individual (and one relative) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed.

(4) The term “travel expenses” means, with respect to a Member, officer or employee, or a relative of any such individual, the cost of transportation, and the cost of lodging and meals while away from his or her residence or principal place of employment.

(5) The term “charitable organization” means an organization described in section 170(c) of the Internal Revenue Code of 1986 [26 U.S.C. 170 (c)].

STATI UNITI

Codice della legislazione federale (U.S. Code) - Titolo 18 (Reati e procedura penale) - Parte I (Reati) - Capitolo 11 – (Corruzione, concussione e conflitti d'interesse) [30]

U.S. Code

Title 18 – Crimes and criminal procedure

Part I – Crimes

Chapter 11 – Bribery, graft and conflicts of interest

Sec.

201. Bribery of public officials and witnesses.
202. Definitions.
203. Compensation to Members of Congress, officers, and others in matters affecting the Government.
204. Practice in United States Court of Federal Claims or the United States Court of Appeals for the Federal Circuit by Members of Congress.
205. Activities of officers and employees in claims against and other matters affecting the Government.
206. Exemption of retired officers of the uniformed services.
207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches.
208. Acts affecting a personal financial interest.
209. Salary of Government officials and employees payable only by United States.
210. Offer to procure appointive public office.
211. Acceptance or solicitation to obtain appointive public office.
212. Offer of loan or gratuity to financial institution examiner.
213. Acceptance of loan or gratuity by financial institution examiner.
214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper.
215. Receipt of commissions or gifts for procuring loans.
216. Penalties and injunctions.
217. Acceptance of consideration for adjustment of farm indebtedness.
218. Voiding transactions in violation of chapter; recovery by the United States.
219. Officers and employees acting as agents of foreign principals.

[220 to 222. Renumbered.]

[223. Repealed.]

224. Bribery in sporting contests.
225. Continuing financial crimes enterprise.

§ 201. Bribery of public officials and witnesses

(a) For the purpose of this section—

(1) the term "public official" means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;

(2) the term "person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed; and

(3) the term "official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.

(b) Whoever—

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

(A) to influence any official act; or

(B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

(A) being influenced in the performance of any official act;

(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) being induced to do or omit to do any act in violation of the official duty of such official or person;

(3) directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom;

(4) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for being influenced in testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom;

shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(c) Whoever—

(1) otherwise than as provided by law for the proper discharge of official duty—

(A) directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person;

(2) directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such person's absence therefrom;

(3) directly or indirectly, demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon any such trial, hearing, or other proceeding, or for or because of such person's absence therefrom;

shall be fined under this title or imprisoned for not more than two years, or both.

(d) Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or in the case of expert witnesses, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

(e) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.

§ 202. Definitions

(a) For the purpose of sections 203, 205, 207, 208, and 209 of this title the term "special Government employee" shall mean an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis, a part-time United States commissioner, a part-time United States magistrate judge, or, regardless of the number of days of appointment, an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28. Notwithstanding the next preceding sentence, every person serving as a part-time local representative of a Member of Congress in the Member's home district or State shall be classified as a special Government employee. Notwithstanding section 29(c) and (d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r (c) and (d)), a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is voluntarily serving a period of extended active duty in excess of one hundred and thirty days shall be classified as an officer of the United States within the meaning of section 203 and sections 205 through 209 and 218. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving involuntarily shall be classified as a special Government employee. The terms "officer or employee" and "special Government employee" as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces.

(b) For the purposes of sections 205 and 207 of this title, the term "official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

(c) Except as otherwise provided in such sections, the terms "officer" and "employee" in sections 203, 205, 207 through 209, and 218 of this title shall not include the President, the Vice President, a Member of Congress, or a Federal judge.

(d) The term "Member of Congress" in sections 204 and 207 means—

(1) a United States Senator; and

(2) a Representative in, or a Delegate or Resident Commissioner to, the House of Representatives.

(e) As used in this chapter, the term—

(1) "executive branch" includes each executive agency as defined in title 5, and any other entity or administrative unit in the executive branch;

(2) "judicial branch" means the Supreme Court of the United States; the United States courts of appeals; the United States district courts; the Court of International Trade; the United States bankruptcy courts; any court created pursuant to article I of the United States Constitution, including the Court of Appeals for the Armed Forces, the United States Court of Federal Claims, and the United States Tax Court, but not including a court of a territory or possession of the United States; the Federal Judicial Center; and any other agency, office, or entity in the judicial branch; and

(3) "legislative branch" means—

(A) the Congress; and

(B) the Office of the Architect of the Capitol, the United States Botanic Garden, the Government Accountability Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the United States Capitol

Police, and any other agency, entity, office, or commission established in the legislative branch.

§ 203. Compensation to Members of Congress, officers, and others in matters affecting the Government

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—

(1) demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another—

(A) at a time when such person is a Member of Congress, Member of Congress Elect, Delegate, Delegate Elect, Resident Commissioner, or Resident Commissioner Elect; or

(B) at a time when such person is an officer or employee or Federal judge of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States,

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court, court-martial, officer, or any civil, military, or naval commission; or

(2) knowingly gives, promises, or offers any compensation for any such representational services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Member Elect, Delegate, Delegate Elect, Commissioner, Commissioner Elect, Federal judge, officer, or employee;

shall be subject to the penalties set forth in section 216 of this title.

(b) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—

(1) demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another, at a time when such person is an officer or employee of the District of Columbia, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the District of Columbia is a party or has a direct and substantial interest, before any department, agency, court, officer, or commission; or

(2) knowingly gives, promises, or offers any compensation for any such representational services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was an officer or employee of the District of Columbia;

shall be subject to the penalties set forth in section 216 of this title.

(c) A special Government employee shall be subject to subsections (a) and (b) only in relation to a particular matter involving a specific party or parties—

(1) in which such employee has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise; or

(2) which is pending in the department or agency of the Government in which such employee is serving except that paragraph (2) of this subsection shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

(d) Nothing in this section prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for or otherwise representing his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—

(1) in those matters in which he has participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

(2) in those matters that are the subject of his official responsibility,

subject to approval by the Government official responsible for appointment to his position.

(e) Nothing in this section prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register.

(f) Nothing in this section prevents an individual from giving testimony under oath or from making statements required to be made under penalty of perjury.

§ 204. Practice in United States Court of Federal Claims or the United States Court of Appeals for the Federal Circuit by Members of Congress

Whoever, being a Member of Congress or Member of Congress Elect, practices in the United States Court of Federal Claims or the United States Court of Appeals for the Federal Circuit shall be subject to the penalties set forth in section 216 of this title.

§ 205. Activities of officers and employees in claims against and other matters affecting the Government

(a) Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, other than in the proper discharge of his official duties—

(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim, in consideration of assistance in the prosecution of such claim; or

(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest;

shall be subject to the penalties set forth in section 216 of this title.

(b) Whoever, being an officer or employee of the District of Columbia or an officer or employee of the Office of the United States Attorney for the District of Columbia, otherwise than in the proper discharge of official duties—

(1) acts as agent or attorney for prosecuting any claim against the District of Columbia, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim; or

(2) acts as agent or attorney for anyone before any department, agency, court, officer, or commission in connection with any covered matter in which the District of Columbia is a party or has a direct and substantial interest;

shall be subject to the penalties set forth in section 216 of this title.

(c) A special Government employee shall be subject to subsections (a) and (b) only in relation to a covered matter involving a specific party or parties—

(1) in which he has at any time participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

(2) which is pending in the department or agency of the Government in which he is serving.

Paragraph (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

(d)

(1) Nothing in subsection (a) or (b) prevents an officer or employee, if not inconsistent with the faithful performance of that officer's or employee's duties, from acting without compensation as agent or attorney for, or otherwise representing—

(A) any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings; or

(B) except as provided in paragraph (2), any cooperative, voluntary, professional, recreational, or similar organization or group not established or operated for profit, if a majority of the organization's or group's members are current officers or employees of the United States or of the District of Columbia, or their spouses or dependent children.

(2) Paragraph (1)(B) does not apply with respect to a covered matter that—

(A) is a claim under subsection (a)(1) or (b)(1);

(B) is a judicial or administrative proceeding where the organization or group is a party; or

(C) involves a grant, contract, or other agreement (including a request for any such grant, contract, or agreement) providing for the disbursement of Federal funds to the organization or group.

(e) Nothing in subsection (a) or (b) prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for, or otherwise representing, his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—

(1) in those matters in which he has participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or

(2) in those matters which are the subject of his official responsibility,

subject to approval by the Government official responsible for appointment to his position.

(f) Nothing in subsection (a) or (b) prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register.

(g) Nothing in this section prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(h) For the purpose of this section, the term “covered matter” means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.

(i) Nothing in this section prevents an employee from acting pursuant to—

(1) chapter 71 of title 5;

(2) section 1004 or chapter 12 of title 39;

(3) section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b);

(4) chapter 10 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4104 et seq.); or

(5) any provision of any other Federal or District of Columbia law that authorizes labor-management relations between an agency or instrumentality of the United States or the District of Columbia and any labor organization that represents its employees.

§ 206. Exemption of retired officers of the uniformed services

Sections 203 and 205 of this title shall not apply to a retired officer of the uniformed services of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress.

§ 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches

(a) **Restrictions on All Officers and Employees of the Executive Branch and Certain Other Agencies.—**

(1) **Permanent restrictions on representation on particular matters.—** Any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including any independent agency of the United States), or of the District of Columbia, and who, after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia) in connection with a particular matter—

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) in which the person participated personally and substantially as such officer or employee, and

(C) which involved a specific party or specific parties at the time of such participation,

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

(2) **Two-year restrictions concerning particular matters under official responsibility.—** Any person subject to the restrictions contained in paragraph (1) who, within 2 years after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia), in connection with a particular matter—

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) which such person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States or the District of Columbia, and

(C) which involved a specific party or specific parties at the time it was so pending,

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

(3) **Clarification of restrictions.—** The restrictions contained in paragraphs (1) and (2) shall apply—

(A) in the case of an officer or employee of the executive branch of the United States (including any independent agency), only with respect to communications to or appearances before any officer or employee of any department, agency, court, or court-martial of the United States on behalf of any other person (except the United States), and only with respect to a matter in which the United States is a party or has a direct and substantial interest; and

(B) in the case of an officer or employee of the District of Columbia, only with respect to communications to or appearances before any officer or employee of any department, agency, or court of the District of Columbia on behalf of any other person (except the District of Columbia), and only with respect to a matter in which the District of Columbia is a party or has a direct and substantial interest.

(b) **One-Year Restrictions on Aiding or Advising.—**

(1) **In general.—** Any person who is a former officer or employee of the executive branch of the United States (including any independent agency) and is subject to the restrictions contained in subsection (a)(1), or any person who is a former officer or employee of the legislative branch or a former Member of Congress, who personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States within the 1-year period preceding the date on which his or her service or employment with the United States terminated, and who had access to information concerning such trade or treaty negotiation which is exempt from disclosure under section 552 of title 5, which is so designated by the appropriate department or agency, and which the person knew or should have known was so designated, shall not, on the basis of that information, knowingly represent, aid, or advise any other person (except the United States) concerning such ongoing trade or treaty negotiation for a period of 1 year after his or her service or employment with

the United States terminates. Any person who violates this subsection shall be punished as provided in section 216 of this title.

(2) **Definition.—** For purposes of this paragraph—

(A) the term “trade negotiation” means negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made; and

(B) the term “treaty” means an international agreement made by the President that requires the advice and consent of the Senate.

(c) **One-Year Restrictions on Certain Senior Personnel of the Executive Branch and Independent Agencies.—**

(1) **Restrictions.—** In addition to the restrictions set forth in subsections (a) and (b), any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including an independent agency), who is referred to in paragraph (2), and who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in section 216 of this title.

(2) **Persons to whom restrictions apply.—**

(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))—

(i) employed at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5,

(ii) employed in a position which is not referred to in clause (i) and for which that person is paid at a rate of basic pay which is equal to or greater than 86.5 percent of the rate of basic pay for level II of the Executive Schedule, or, for a period of 2 years following the enactment of the National Defense Authorization Act for Fiscal Year 2004, a person who, on the day prior to the enactment of that Act, was employed in a position which is not referred to in clause (i) and for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5304 or section 5304a of title 5, was equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service on the day prior to the enactment of that Act,

(iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3,

(iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade O–7 or above; or

(v) assigned from a private sector organization to an agency under chapter 37 of title 5.

(B) Paragraph (1) shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.

(C) At the request of a department or agency, the Director of the Office of Government Ethics may waive the restrictions contained in paragraph (1) with respect to any position, or category of positions, referred to in clause (ii) or (iv) of subparagraph (A), in such department or agency if the Director determines that—

(i) the imposition of the restrictions with respect to such position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions, and

(ii) granting the waiver would not create the potential for use of undue influence or unfair advantage.

(d) **Restrictions on Very Senior Personnel of the Executive Branch and Independent Agencies.—**

(1) **Restrictions.—** In addition to the restrictions set forth in subsections (a) and (b), any person who—

(A) serves in the position of Vice President of the United States,

(B) is employed in a position in the executive branch of the United States (including any independent agency) at a rate of pay payable for level I of the Executive Schedule or employed in a position in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule, or

(C) is appointed by the President to a position under section 105(a)(2)(A) of title 3 or by the Vice President to a position under section 106(a)(1)(A) of title 3,

and who, within 1 year after the termination of that person's service in that position, knowingly makes, with the intent to influence, any communication to or appearance before any person described in paragraph (2), on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of the executive branch of the United States, shall be punished as provided in section 216 of this title.

(2) **Persons who may not be contacted.—** The persons referred to in paragraph (1) with respect to appearances or communications by a person in a position described in subparagraph (A), (B), or (C) of paragraph (1) are—

(A) any officer or employee of any department or agency in which such person served in such position within a period of 1 year before such person's service or employment with the United States Government terminated, and

(B) any person appointed to a position in the executive branch which is listed in section 5312, 5313, 5314, 5315, or 5316 of title 5.

(e) **Restrictions on Members of Congress and Officers and Employees of the Legislative Branch.—**

(1) **Members of congress and elected officers.—**

(A) Any person who is a Member of Congress or an elected officer of either House of Congress and who, within 1 year after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B) or (C), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former Member of Congress are any Member, officer, or employee of either House of Congress, and any employee of any other legislative office of the Congress.

(C) The persons referred to in subparagraph (A) with respect to appearances or communications by a former elected officer are any Member, officer, or employee of the House of Congress in which the elected officer served.

(2) **Personal staff.—**

(A) Any person who is an employee of a Senator or an employee of a Member of the House of Representatives and who, within 1 year after the termination of that employment, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a person who is a former employee are the following:

(i) the Senator or Member of the House of Representatives for whom that person was an employee; and

(ii) any employee of that Senator or Member of the House of Representatives.

(3) **Committee staff.—** Any person who is an employee of a committee of Congress and who, within 1 year after the termination of that person's employment on such committee, knowingly makes, with the intent to influence, any communication to or appearance before any person who is a Member or an employee of that committee or who was a Member of the committee in the year immediately prior to the termination of such person's employment by the committee, on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(4) **Leadership staff.—**

(A) Any person who is an employee on the leadership staff of the House of Representatives or an employee on the leadership staff of the Senate and who, within 1 year after the termination of that person's employment on such staff, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the following:

(i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are any Member of the leadership of the House of Representatives and any employee on the leadership staff of the House of Representatives; and

(ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate and any employee on the leadership staff of the Senate.

(5) **Other legislative offices.—**

(A) Any person who is an employee of any other legislative office of the Congress and who, within 1 year after the termination of that person's employment in such office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by any officer or employee of such office, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the employees and officers of the former legislative office of the Congress of the former employee.

(6) **Limitation on restrictions.—**

(A) The restrictions contained in paragraphs (2), (3), and (4) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was paid a rate of basic pay equal to or greater than an amount which is 75 percent of the basic rate of pay payable for a Member of the House of Congress in which such employee was employed.

(B) The restrictions contained in paragraph (5) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was employed in a position for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the basic rate of pay payable for level 5 of the Senior Executive Service.

(7) **Definitions.—** As used in this subsection—

(A) the term "committee of Congress" includes standing committees, joint committees, and select committees;

(B) a person is an employee of a House of Congress if that person is an employee of the Senate or an employee of the House of Representatives;

(C) the term "employee of the House of Representatives" means an employee of a Member of the House of Representatives, an employee of a committee of the House of Representatives, an employee of a joint committee of the Congress whose pay is disbursed by the Clerk of the House of Representatives, and an employee on the leadership staff of the House of Representatives;

(D) the term "employee of the Senate" means an employee of a Senator, an employee of a committee of the Senate, an employee of a joint committee of the Congress whose pay is disbursed by the Secretary of the Senate, and an employee on the leadership staff of the Senate;

(E) a person is an employee of a Member of the House of Representatives if that person is an employee of a Member of the House of Representatives under the clerk hire allowance;

(F) a person is an employee of a Senator if that person is an employee in a position in the office of a Senator;

(G) the term "employee of any other legislative office of the Congress" means an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the Government Accountability Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the Copyright Royalty Tribunal, the United States Capitol Police, and any other agency, entity, or office in the legislative branch not covered by paragraph (1), (2), (3), or (4) of this subsection;

(H) the term "employee on the leadership staff of the House of Representatives" means an employee of the office of a Member of the leadership of the House of Representatives described in subparagraph (L), and any elected minority employee of the House of Representatives;

(I) the term "employee on the leadership staff of the Senate" means an employee of the office of a Member of the leadership of the Senate described in subparagraph (M);

(J) the term "Member of Congress" means a Senator or a Member of the House of Representatives;

(K) the term "Member of the House of Representatives" means a Representative in, or a Delegate or Resident Commissioner to, the Congress;

(L) the term "Member of the leadership of the House of Representatives" means the Speaker, majority leader, minority leader, majority whip, minority whip, chief deputy majority whip, chief deputy minority whip, chairman of the Democratic Steering Committee, chairman and vice chairman of the Democratic Caucus, chairman, vice chairman, and secretary of the Republican Conference, chairman of the Republican Research Committee, and chairman of the Republican Policy Committee, of the House of Representatives (or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989);

(M) the term "Member of the leadership of the Senate" means the Vice President, and the President pro tempore, Deputy President pro tempore, majority leader, minority leader, majority whip, minority whip, chairman and secretary of the Conference of the Majority, chairman and secretary of the Conference of the Minority, chairman and co-chairman of the Majority Policy Committee, and chairman of the Minority Policy Committee, of the Senate (or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989).

(f) **Restrictions Relating to Foreign Entities.—**

(1) **Restrictions.—** Any person who is subject to the restrictions contained in subsection (c), (d), or (e) and who knowingly, within 1 year after leaving the position, office, or employment referred to in such subsection—

(A) represents a foreign entity before any officer or employee of any department or agency of the United States with the intent to influence a decision of such officer or employee in carrying out his or her official duties, or

(B) aids or advises a foreign entity with the intent to influence a decision of any officer or employee of any department or agency of the United States, in carrying out his or her official duties, shall be punished as provided in section 216 of this title.

(2) **Special rule for trade representative.—** With respect to a person who is the United States Trade Representative or Deputy United States Trade Representative, the restrictions described in paragraph (1) shall apply to representing, aiding, or advising foreign entities at any time after the termination of that person’s service as the United States Trade Representative.

(3) **Definition.—** For purposes of this subsection, the term “foreign entity” means the government of a foreign country as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended, or a foreign political party as defined in section 1(f) of that Act.

(g) **Special Rules for Detailees.—** For purposes of this section, a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.

(h) **Designations of Separate Statutory Agencies and Bureaus.—**

(1) **Designations.—** For purposes of subsection (c) and except as provided in paragraph (2), whenever the Director of the Office of Government Ethics determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and that there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate department or agency. On an annual basis the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his or her responsibilities under this paragraph.

(2) **Inapplicability of designations.—** No agency or bureau within the Executive Office of the President may be designated under paragraph (1) as a separate department or agency. No designation under paragraph (1) shall apply to persons referred to in subsection (c)(2)(A)(i) or (iii).

(i) **Definitions.—** For purposes of this section—

(1) the term “officer or employee”, when used to describe the person to whom a communication is made or before whom an appearance is made, with the intent to influence, shall include—

(A) in subsections (a), (c), and (d), the President and the Vice President; and

(B) in subsection (f), the President, the Vice President, and Members of Congress;

(2) the term “participated” means an action taken as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action; and

(3) the term “particular matter” includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.

(j) **Exceptions.—**

(1) **Official government duties.—** The restrictions contained in this section shall not apply to acts done in carrying out official duties on behalf of the United States or the District of Columbia or as an elected official of a State or local government.

(2) **State and local governments and institutions, hospitals, and organizations.—** The restrictions contained in subsections (c), (d), and (e) shall not apply to acts done in carrying out official duties as an employee of—

(A) an agency or instrumentality of a State or local government if the appearance, communication, or representation is on behalf of such government, or

(B) an accredited, degree-granting institution of higher education, as defined in section 101 of the Higher Education Act of 1965, or a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or representation is on behalf of such institution, hospital, or organization.

(3) **International organizations.—** The restrictions contained in this section shall not apply to an appearance or communication on behalf of, or advice or aid to, an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States.

(4) **Special knowledge.—** The restrictions contained in subsections (c), (d), and (e) shall not prevent an individual from making or providing a statement, which is based on the individual's own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received.

(5) **Exception for scientific or technological information.—** The restrictions contained in subsections (a), (c), and (d) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the department or agency concerned or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee. For purposes of this paragraph, the term "officer or employee" includes the Vice President.

(6) **Exception for testimony.—** Nothing in this section shall prevent an individual from giving testimony under oath, or from making statements required to be made under penalty of perjury. Notwithstanding the preceding sentence—

(A) a former officer or employee of the executive branch of the United States (including any independent agency) who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter; and

(B) a former officer or employee of the District of Columbia who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the District of Columbia) in that matter.

(7) **Political parties and campaign committees.—**

(A) Except as provided in subparagraph (B), the restrictions contained in subsections (c), (d), and (e) shall not apply to a communication or appearance made solely on behalf of a candidate in his or her capacity as a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party.

(B) Subparagraph (A) shall not apply to—

(i) any communication to, or appearance before, the Federal Election Commission by a former officer or employee of the Federal Election Commission; or

(ii) a communication or appearance made by a person who is subject to the restrictions contained in subsections (c), (d), or (e) if, at the time of the communication or appearance, the person is employed by a person or entity other than—

(I) a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party; or

(II) a person or entity who represents, aids, or advises only persons or entities described in subclause (I).

(C) For purposes of this paragraph—

(i) the term “candidate” means any person who seeks nomination for election, or election, to Federal or State office or who has authorized others to explore on his or her behalf the possibility of seeking nomination for election, or election, to Federal or State office;

(ii) the term “authorized committee” means any political committee designated in writing by a candidate as authorized to receive contributions or make expenditures to promote the nomination for election, or the election, of such candidate, or to explore the possibility of seeking nomination for election, or the election, of such candidate, except that a political committee that receives contributions or makes expenditures to promote more than 1 candidate may not be designated as an authorized committee for purposes of subparagraph (A);

(iii) the term “national committee” means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level;

(iv) the term “national Federal campaign committee” means an organization that, by virtue of the bylaws of a political party, is established primarily for the purpose of providing assistance, at the national level, to candidates nominated by that party for election to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(v) the term “State committee” means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level;

(vi) the term “political party” means an association, committee, or organization that nominates a candidate for election to any Federal or State elected office whose name appears on the election ballot as the candidate of such association, committee, or organization; and

(vii) the term “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(k)

(1)

(A) The President may grant a waiver of a restriction imposed by this section to any officer or employee described in paragraph (2) if the President determines and certifies in writing that it is in the public interest to grant the waiver and that the services of the officer or employee are critically needed for the benefit of the Federal Government. Not more than 25 officers and employees currently employed by the Federal Government at any one time may have been granted waivers under this paragraph.

(B)

(i) A waiver granted under this paragraph to any person shall apply only with respect to activities engaged in by that person after that person's Federal Government employment is terminated and only to that person's employment at a Government-owned, contractor operated entity with which the person served as an officer or employee immediately before the person's Federal Government employment began.

(ii) Notwithstanding clause (i), a waiver granted under this paragraph to any person who was an officer or employee of Lawrence Livermore National Laboratory, Los Alamos National Laboratory, or Sandia National Laboratory immediately before the person's Federal Government employment began shall apply to that person's employment by any such national laboratory after the person's employment by the Federal Government is terminated.

(2) Waivers under paragraph (1) may be granted only to civilian officers and employees of the executive branch, other than officers and employees in the Executive Office of the President.

(3) A certification under paragraph (1) shall take effect upon its publication in the Federal Register and shall identify—

(A) the officer or employee covered by the waiver by name and by position, and

(B) the reasons for granting the waiver.

A copy of the certification shall also be provided to the Director of the Office of Government Ethics.

(4) The President may not delegate the authority provided by this subsection.

(5)

(A) Each person granted a waiver under this subsection shall prepare reports, in accordance with subparagraph (B), stating whether the person has engaged in activities otherwise prohibited by this section for each six-month period described in subparagraph (B), and if so, what those activities were.

(B) A report under subparagraph (A) shall cover each six-month period beginning on the date of the termination of the person's Federal Government employment (with respect to which the waiver under this subsection was granted) and ending two years after that date. Such report shall be filed with the President and the Director of the Office of Government Ethics not later than 60 days after the end of the six-month period covered by the report. All reports filed with the Director under this paragraph shall be made available for public inspection and copying.

(C) If a person fails to file any report in accordance with subparagraphs (A) and (B), the President shall revoke the waiver and shall notify the person of the revocation. The revocation shall take effect upon the person's receipt of the notification and shall remain in effect until the report is filed.

(D) Any person who is granted a waiver under this subsection shall be ineligible for appointment in the civil service unless all reports required of such person by subparagraphs (A) and (B) have been filed.

(E) As used in this subsection, the term “civil service” has the meaning given that term in section 2101 of title 5.

(l) **Contract Advice by Former Details.—** Whoever, being an employee of a private sector organization assigned to an agency under chapter 37 of title 5, within one year after the end of that assignment, knowingly represents or aids, counsels, or assists in representing any other person (except the United States) in connection with any contract with that agency shall be punished as provided in section 216 of this title.

§ 208. Acts affecting a personal financial interest

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be subject to the penalties set forth in section 216 of this title.

(b) Subsection (a) shall not apply—

(1) if the officer or employee first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee;

(2) if, by regulation issued by the Director of the Office of Government Ethics, applicable to all or a portion of all officers and employees covered by this section, and published in the Federal Register, the financial interest has been exempted from the requirements of subsection (a) as being too remote or too inconsequential to affect the integrity of the services of the Government officers or employees to which such regulation applies;

(3) in the case of a special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (including an individual being considered for an appointment to such a position), the official responsible for the employee’s appointment, after review of the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978, certifies in writing that the need for the individual’s services outweighs the potential for a conflict of interest created by the financial interest involved; or

(4) if the financial interest that would be affected by the particular matter involved is that resulting solely from the interest of the officer or employee, or his or her spouse or minor child, in birthrights—

(A) in an Indian tribe, band, nation, or other organized group or community, including any Alaska Native village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians,

(B) in an Indian allotment the title to which is held in trust by the United States or which is inalienable by the allottee without the consent of the United States, or

(C) in an Indian claims fund held in trust or administered by the United States,

if the particular matter does not involve the Indian allotment or claims fund or the Indian tribe, band, nation, organized group or community, or Alaska Native village corporation as a specific party or parties.

(c)

(1) For the purpose of paragraph (1) of subsection (b), in the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be deemed to be the Government official responsible for appointment.

(2) The potential availability of an exemption under any particular paragraph of subsection (b) does not preclude an exemption being granted pursuant to another paragraph of subsection (b).

(d)

(1) Upon request, a copy of any determination granting an exemption under subsection (b)(1) or (b)(3) shall be made available to the public by the agency granting the exemption pursuant to the procedures set forth in section 105 of the Ethics in Government Act of 1978. In making such determination available, the agency may withhold from disclosure any information contained in the determination that would be exempt from disclosure under section 552 of title 5. For purposes of determinations under subsection (b)(3), the information describing each financial interest shall be no more extensive than that required of the individual in his or her financial disclosure report under the Ethics in Government Act of 1978.

(2) The Office of Government Ethics, after consultation with the Attorney General, shall issue uniform regulations for the issuance of waivers and exemptions under subsection (b) which shall—

(A) list and describe exemptions; and

(B) provide guidance with respect to the types of interests that are not so substantial as to be deemed likely to affect the integrity of the services the Government may expect from the employee.

§ 209. Salary of Government officials and employees payable only by United States

(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

Whoever, whether an individual, partnership, association, corporation, or other organization pays, makes any contribution to, or in any way supplements, the salary of any such officer or employee under circumstances which would make its receipt a violation of this subsection—

Shall be subject to the penalties set forth in section 216 of this title.

(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.

(d) This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of chapter 41 of title 5.

(e) This section does not prohibit the payment of actual relocation expenses incident to participation, or the acceptance of same by a participant in an executive exchange or fellowship program in an executive agency: Provided, That such program has been established by statute or Executive order of the President, offers appointments not to exceed three hundred and sixty-five days, and permits no extensions in excess of ninety additional days or, in the case of participants in overseas assignments, in excess of three hundred and sixty-five days.

(f) This section does not prohibit acceptance or receipt, by any officer or employee injured during the commission of an offense described in section 351 or 1751 of this title, of contributions or payments from an organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and which is exempt from taxation under section 501(a) of such Code.

(g)

(1) This section does not prohibit an employee of a private sector organization, while assigned to an agency under chapter 37 of title 5, from continuing to receive pay and benefits from such organization in accordance with such chapter.

(2) For purposes of this subsection, the term “agency” means an agency (as defined by section 3701 of title 5) and the Office of the Chief Technology Officer of the District of Columbia.

(h) This section does not prohibit a member of the reserve components of the armed forces on active duty pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10 from receiving from any person that employed such member before the call or order to active duty any payment of any part of the salary or wages that such person would have paid the member if the member’s employment had not been interrupted by such call or order to active duty.

§ 210. Offer to procure appointive public office

Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined under this title or imprisoned not more than one year, or both.

§ 211. Acceptance or solicitation to obtain appointive public office

Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined under this title or imprisoned not more than one year, or both.

Whoever solicits or receives any thing of value in consideration of aiding a person to obtain employment under the United States either by referring his name to an executive department or agency of the United States or by requiring the payment of a fee because such person has secured such employment shall be fined under this title, or imprisoned not more than one year, or both. This section shall not apply to such services rendered by an employment agency pursuant to the written request of an executive department or agency of the United States.

§ 212. Offer of loan or gratuity to financial institution examiner

(a) **In General.—** Except as provided in subsection (b), whoever, being an officer, director, or employee of a financial institution, makes or grants any loan or gratuity, to any examiner or assistant examiner who examines or has authority to examine such bank, branch, agency, organization, corporation, association, or institution—

(1) shall be fined under this title, imprisoned not more than 1 year, or both; and

(2) may be fined a further sum equal to the money so loaned or gratuity given.

(b) **Regulations.—** A Federal financial institution regulatory agency may prescribe regulations establishing additional limitations on the application for and receipt of credit under this section and on the application and receipt of residential mortgage loans under this section, after consulting with each other Federal financial institution regulatory agency.

(c) **Definitions.—** In this section:

(1) **Examiner.—** The term “examiner” means any person—

(A) appointed by a Federal financial institution regulatory agency or pursuant to the laws of any State to examine a financial institution; or

(B) elected under the law of any State to conduct examinations of any financial institutions.

(2) **Federal financial institution regulatory agency.—** The term “Federal financial institution regulatory agency” means—

(A) the Office of the Comptroller of the Currency;

(B) the Board of Governors of the Federal Reserve System;

(C) the Office of Thrift Supervision;

(D) the Federal Deposit Insurance Corporation;

(E) the Federal Housing Finance Board;

(F) the Farm Credit Administration;

(G) the Farm Credit System Insurance Corporation; and

(H) the Small Business Administration.

(3) **Financial institution.—** The term “financial institution” does not include a credit union, a Federal Reserve Bank, a Federal home loan bank, or a depository institution holding company.

(4) **Loan.—** The term “loan” does not include any credit card account established under an open end consumer credit plan or a loan secured by residential real property that is the principal residence of the examiner, if—

(A) the applicant satisfies any financial requirements for the credit card account or residential real property loan that are generally applicable to all applicants for the same type of credit card account or residential real property loan;

(B) the terms and conditions applicable with respect to such account or residential real property loan, and any credit extended to the examiner under such account or residential real property loan, are no more favorable generally to the examiner than the terms and conditions that are generally applicable to credit card accounts or residential real property loans offered by the same financial institution to other borrowers cardholders [1] in comparable circumstances under open end consumer credit plans or for residential real property loans; and

(C) with respect to residential real property loans, the loan is with respect to the primary residence of the applicant.

§ 213. Acceptance of loan or gratuity by financial institution examiner

(a) **In General.—** Whoever, being an examiner or assistant examiner, accepts a loan or gratuity from any bank, branch, agency, organization, corporation, association, or institution examined by the examiner or from any person connected with it, shall—

(1) be fined under this title, imprisoned not more than 1 year, or both;

(2) may be fined a further sum equal to the money so loaned or gratuity given; and

(3) shall be disqualified from holding office as an examiner.

(b) **Definitions.—** In this section, the terms “examiner”, “Federal financial institution regulatory agency”, “financial institution”, and “loan” have the same meanings as in section 212.

§ 214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper

Whoever stipulates for or gives or receives, or consents or agrees to give or receive, any fee, commission, bonus, or thing of value for procuring or endeavoring to procure from any Federal Reserve bank any advance, loan, or extension of credit or discount or purchase of any obligation or commitment with respect thereto, either directly from such Federal Reserve bank or indirectly through any financing institution, unless such fee, commission, bonus, or thing of value and all material facts with respect to the arrangement or understanding therefor shall be disclosed in writing in the application or request for such advance, loan, extension of credit, discount, purchase, or commitment, shall be fined under this title or imprisoned not more than one year, or both.

§ 215. Receipt of commissions or gifts for procuring loans

(a) Whoever—

(1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or

(2) as an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution;

shall be fined not more than $1,000,000 or three times the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted, whichever is greater, or imprisoned not more than 30 years, or both, but if the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted does not exceed $1,000, shall be fined under this title or imprisoned not more than one year, or both.

[(b) Transferred]

(c) This section shall not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

(d) Federal agencies with responsibility for regulating a financial institution shall jointly establish such guidelines as are appropriate to assist an officer, director, employee, agent, or attorney of a financial institution to comply with this section. Such agencies shall make such guidelines available to the public.

§ 216. Penalties and injunctions

(a) The punishment for an offense under section 203, 204, 205, 207, 208, or 209 of this title is the following:

(1) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in this title, or both.

(2) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in this title, or both.

(b) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(c) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

§ 217. Acceptance of consideration for adjustment of farm indebtedness

Whoever, being an officer or employee of, or person acting for the United States or any agency thereof, accepts any fee, commission, gift, or other consideration in connection with the compromise, adjustment, or cancellation of any farm indebtedness as provided by sections 1150, 1150a, and 1150b of Title 12, shall be fined under this title or imprisoned not more than one year, or both.

§ 218. Voiding transactions in violation of chapter; recovery by the United States

In addition to any other remedies provided by law the President or, under regulations prescribed by him, the head of any department or agency involved, may declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished, or published, or the performance of any service or transfer or delivery of any thing to, by or for any agency of the United States or officer or employee of the United States or person acting on behalf thereof, in relation to which there has been a final conviction for any violation of this chapter, and the United States shall be entitled to recover in addition to any penalty prescribed by law or in a contract the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof.

§ 219. Officers and employees acting as agents of foreign principals

(a) Whoever, being a public official, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938 or a lobbyist required to register under the Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity, as defined in section 3(6) of that Act shall be fined under this title or imprisoned for not more than two years, or both.

(b) Nothing in this section shall apply to the employment of any agent of a foreign principal as a special Government employee in any case in which the head of the employing agency certifies that such employment is required in the national interest. A copy of any certification under this paragraph shall be forwarded by the head of such agency to the Attorney General who shall cause the same to be filed with the registration statement and other documents filed by such agent, and made available for public inspection in accordance with section 6 of the Foreign Agents Registration Act of 1938, as amended.

(c) For the purpose of this section “public official” means Member of Congress, Delegate, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government.

§§ 220 to 222. Renumbered §§ 215 to 217]

§ 223. Repealed. Pub. L. 87–849, § 1(c), Oct. 23, 1962, 76 Stat. 1125]

Section, act June 25, 1948, ch. 645, 62 Stat. 696, related to transactions of the Home Owners’ Loan Corporation.

§ 224. Bribery in sporting contests

(a) Whoever carries into effect, attempts to carry into effect, or conspires with any other person to carry into effect any scheme in commerce to influence, in any way, by bribery any sporting contest, with knowledge that the purpose of such scheme is to influence by bribery that contest, shall be fined under this title, or imprisoned not more than 5 years, or both.

(b) This section shall not be construed as indicating an intent on the part of Congress to occupy the field in which this section operates to the exclusion of a law of any State, territory, Commonwealth, or possession of the United States, and no law of any State, territory, Commonwealth, or possession of the United States, which would be valid in the absence of the section shall be declared invalid, and no local authorities shall be deprived of any jurisdiction over any offense over which they would have jurisdiction in the absence of this section.

(c) As used in this section—

(1) The term "scheme in commerce" means any scheme effectuated in whole or in part through the use in interstate or foreign commerce of any facility for transportation or communication;

(2) The term "sporting contest" means any contest in any sport, between individual contestants or teams of contestants (without regard to the amateur or professional status of the contestants therein), the occurrence of which is publicly announced before its occurrence;

(3) The term "person" means any individual and any partnership, corporation, association, or other entity.

§ 225. Continuing financial crimes enterprise

(a) Whoever—

(1) organizes, manages, or supervises a continuing financial crimes enterprise; and

(2) receives $5,000,000 or more in gross receipts from such enterprise during any 24-month period,

shall be fined not more than $10,000,000 if an individual, or $20,000,000 if an organization, and imprisoned for a term of not less than 10 years and which may be life.

(b) For purposes of subsection (a), the term "continuing financial crimes enterprise" means a series of violations under section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of this title, or section 1341 or 1343 affecting a financial institution, committed by at least 4 persons acting in concert.

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[1] Il capitolo IV del Titolo primo del *Code electoral* (artt. L 0137-L0153) disciplina in particolare le incompatibilità per le elezioni a deputato dell'*Assemblée Nationale*, ma il *Code* fa rinvio agli stessi articoli per la disciplina delle incompatibilità dei senatori (art. L0297).

[2] http://www.cabinetoffice.gov.uk/propriety_and_ethics/publications/pdf/ministerial_code.pdf

[3] Il *Ministerial Code* approvato nel 2001 è consultabile all'indirizzo: http://www.cabinetoffice.gov.uk/propriety_and_ethics/publications/pdf/ministerial_code_2001.PDF .

[4] Per la Camera dei Comuni si veda il *Code of Conduct together with The Guide to the Rules Relating to the Conduct of Members* pubblicato nel 2005: http://www.publications.parliament.uk/pa/cm/code.pdf; per la Camera dei Lords si veda il *Code of Conduct* in vigore dal 31 marzo 2002: http://www.parliament.the-stationery-office.co.uk/pa/ld/ldcond/ldcond.htm.

[5] Completano il "sistema" degli *Standards in Public Life* i principi di *Objectivity*, *Accountability*, *Openness*, *Leadership*. I sette principi costituiscono l'*Annex A* del *Ministerial Code*. Si veda al riguardo anche il sito della Commissione, che contiene inoltre le relazioni annuali: http://www.public-standards.gov.uk/.

[6] Il testo in formato elettronico è disponibile al seguente indirizzo internet: http://www.boe.es/boe/dias/2006/04/11/pdfs/A13954-13961.pdf

[7] Il "codice del buon governo" è stato adottato nella seduta del Consiglio dei Ministri del 18 febbraio 2005 ed è consultabile al seguente indirizzo internet:http://www.map.es/iniciativas/mejora_de_la_administracion_general_del_estado/funcion_publica/codigo_buen_gobierno/codigo_pdf/document_es/Codigo_Buen_Gobierno.pdf

[8] Tale dichiarazione deve essere ripresentata tutte le volte che il titolare dell'alta carica intraprende nuove attività.

[9] Il testo in formato elettronico è disponibile al seguente indirizzo internet: http://www.parl.gc.ca/oec/en/public_office_holders/conflict_of_interest/docs/code_e.pdf

[10] L'Agenzia federale di controllo (*Office of Government Ethics, OGE*) ha inoltre emanato una ampia serie di disposizioni specifiche i cui testi integrali in lingua originale, al pari di tutta la documentazione concernente l'attività dell'Agenzia, sono consultabili nel sito ufficiale internet www.usoge.gov/.

[11] Il testo integrale in lingua originale delle norme contenute nel CFR è consultabile all'indirizzo http://www.law.cornell.edu/cfr/cfr.php?title=5&type=chapter&value=16

[12]18 USC § 202 (a): "(...) *the term ''special Government employee'' shall mean an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis, a part-time United States commissioner, a part-time United States magistrate judge, or, regardless of the number of days of appointment, an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28."(...)*

[13] California Code, §1090 ss.; §8920 ss.; § 87100 ss.

[14] Iowa Code, Charter 68B.

[15] Lauisiana Revised Statutes, Chapter 15 (*Code of Governmental Ethics*).

[16] Massachusetts General Laws, Chapter 268A (*The Conflict of Interest Law*).

[17] Minnesota Statutes, § 10A.01 e ss., fra cui in particolare § 10°.07 ss.

[18] Consolidated Laws of New York, Public Officers, Article 4 (§ 73 ss.); General Municipal Law, Article 18 (§§ 800-813).

[19] Texas Constitution, Article 4, § 6; Texas Government Code, Chapter 571-575.

[20]Washington Revised Code, § 42.17.240 ss.; § 42.23.010 ss.

[21] Le dichiarazioni del Presidente e del Vicepresidente degli Stati Uniti devono essere presentate al Direttore dell'Ufficio federale per l'etica nell'attività di governo (5 USC Appx, 103).

[22] **5 USC Appx § 102, (f) (2)**: "*A reporting individual need not report the holdings of or the source of income from any of the holdings of—*

(A) *any qualified blind trust (as defined in paragraph (3));*

(B) *a trust—*

(i) *which was not created directly by such individual, his spouse, or any dependent child, and*

(ii) *the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of; or*

(C) *an entity described under the provisions of paragraph (8),* ". (...).

In relazione a quest'ultimo punto, il successivo paragrafo 8 dispone "*A reporting individual shall not be required to report the financial interests held by a widely held investment fund (whether such fund is a mutual fund, regulated investment company, pension or deferred compensation plan, or other investment fund), if—*

(A)

(i) *the fund is publicly traded; or*

(ii) *the assets of the fund are widely diversified; and*

(B) *the reporting individual neither exercises control over nor has the ability to exercise control over the financial interests held by the fund. (...).*

[23]***5 USC Appx § 102 - Contents of reports***

(...)

(6)(A) A trustee of a qualified blind trust shall not knowingly and willfully, or negligently,

(i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection;

(ii) acquire any holding the ownership of which is prohibited by the trust instrument;

(iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) of this subsection or the trust agreement; or

(iv) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly and willfully, or negligently,

(i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C) of this subsection or

(ii) fail to file any document required by this subsection.

(C)(i) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $10,000.

(ii) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

[24]***5 USC Appx § 102 - Contents of reports***

(...)

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of -

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d) of this section.

This subparagraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7) of this subsection.

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (d) of this section.

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall -

(i) notify his supervising ethics office of such dissolution, and

(ii) file with such office a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (d) of this section of each such asset.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 105 and the provisions of that section shall apply with respect to such documents and lists.

(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

[25] Nel caso di vendita di proprietà dovuta all'esigenza di conformarsi alla normativa sul conflitto d'interessi, può essere richiesta al Direttore dell'OGE una apposita certificazione (*Certificate of Divestiture*, 5 CFR 2634.1001) al fine di beneficiare del particolare trattamento fiscale al riguardo previsto da 26 U.S. Code 1043 (***Sale of property to comply with conflict-of-interest requirements****:*

(a) ***Nonrecognition of gain***

If an eligible person sells any property pursuant to a certificate of divestiture, at the election of the taxpayer, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost (to the extent not previously taken into account under this subsection) of any permitted property purchased by the taxpayer during the 60-day period beginning on the date of such sale.

(b) ***Definitions***

For purposes of this section—

(1) ***Eligible person***

The term "eligible person" means—

(A) an officer or employee of the executive branch of the Federal Government, but does not mean a special Government employee as defined in section 202 of title 18, United States Code, and

(B) any spouse or minor or dependent child whose ownership of any property is attributable under any statute, regulation, rule, or executive order referred to in paragraph (2) to a person referred to in subparagraph (A).

(2) ***Certificate of divestiture***

The term "certificate of divestiture" means any written determination—

(A) that states that divestiture of specific property is reasonably necessary to comply with any Federal conflict of interest statute, regulation, rule, or executive order (including section 208 of title 18, United States Code), or requested by a congressional committee as a condition of confirmation,

(B) that has been issued by the President or the Director of the Office of Government Ethics, and

(C) that identifies the specific property to be divested.

(3) ***Permitted property***

The term "permitted property" means any obligation of the United States or any diversified investment fund approved by regulations issued by the Office of Government Ethics.

(4) ***Purchase***

The taxpayer shall be considered to have purchased any permitted property if, but for subsection (c), the unadjusted basis of such property would be its cost within the meaning of section 1012.

(5) ***Special rule for trusts***

For purposes of this section, the trustee of a trust shall be treated as an eligible person with respect to property which is held in the trust if—

(A) any person referred to in paragraph (1)(A) has a beneficial interest in the principal or income of the trust, or

(B) any person referred to in paragraph (1)(B) has a beneficial interest in the principal or income of the trust and such interest is attributable under any statute, regulation, rule, or executive order referred to in paragraph (2) to a person referred to in paragraph (1)(A).

(c) ***Basis adjustments***

If gain from the sale of any property is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any permitted property which is purchased by the taxpayer during the 60-day period described in subsection (a).

[26]18 USC sec. 208 - Acts affecting a personal financial interest

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest - Shall be subject to the penalties set forth in section 216 of this title.

(b) Subsection (a) shall not apply -

(1) if the officer or employee first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee;

(2) if, by regulation issued by the Director of the Office of Government Ethics, applicable to all or a portion of all officers and employees covered by this section, and published in the Federal Register, the financial interest has been exempted from the requirements of subsection (a) as being too remote or too inconsequential to affect the integrity of the services of the Government officers or employees to which such regulation applies;

(3) in the case of a special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (including an individual being considered for an appointment to such a position), the official responsible for the employee's appointment, after review of the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978, certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved; or

(4) if the financial interest that would be affected by the particular matter involved is that resulting solely from the interest of the officer or employee, or his or her spouse or minor child, in birthrights -

(A) in an Indian tribe, band, nation, or other organized group or community, including any Alaska Native village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians,

(B) in an Indian allotment the title to which is held in trust by the United States or which is inalienable by the allottee without the consent of the United States, or

(C) in an Indian claims fund held in trust or administered by the United States, if the particular matter does not involve the Indian allotment or claims fund or the Indian tribe, band, nation, organized group or community, or Alaska Native village corporation as a specific party or parties.

(...).

[27]***5 USC Appx § 402 - Authority and functions***

(a) The Director shall provide, in consultation with the Office of Personnel Management, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency, as defined in section 105 of title 5, United States Code.

(b) The responsibilities of the Director shall include -

(1) developing, in consultation with the Attorney General and the Office of Personnel Management, rules and regulations to be promulgated by the President or the Director pertaining to conflicts of interest and ethics in the executive branch, including rules and regulations establishing procedures for the filing, review, and public availability of financial statements filed by officers and employees in the executive branch as required by title II of this Act;

(2) developing, in consultation with the Attorney General and the Office of Personnel Management, rules and regulations to be promulgated by the President or the Director pertaining to the identification and resolution of conflicts of interest;

(3) monitoring and investigating compliance with the public financial disclosure requirements of title II of this Act by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available financial statements filed pursuant to such title;

(4) conducting a review of financial statements to determine whether such statements reveal possible violations of applicable conflict of interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such review;

(5) monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch;

(6) interpreting rules and regulations issued by the President or the Director governing conflict of interest and ethical problems and the filing of financial statements;

(7) consulting, when requested, with agency ethics counselors and other responsible officials regarding the resolution of conflict of interest problems in individual cases;

(8) establishing a formal advisory opinion service whereby advisory opinions are rendered on matters of general applicability or on important matters of first impression after, to the extent practicable, providing interested parties with an opportunity to transmit written comments with respect to the request for such advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public;

(9) ordering corrective action on the part of agencies and employees which the Director deems necessary;

(10)requiring such reports from executive agencies as the Director deems necessary;

(11)assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending appropriate amendments;

(12)evaluating, with the assistance of the Attorney General and the Office of Personnel Management, the need for changes in rules and regulations issued by the Director and the agencies regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws;

(13)cooperating with the Attorney General in developing an effective system for reporting allegations of violations of the conflict of interest laws to the Attorney General, as required by section 535 of title 28, United States Code;

(14)providing information on and promoting understanding of ethical standards in executive agencies; and

(15)developing, in consultation with the Office of Personnel Management, and promulgating such rules and regulations as the Director determines necessary or desirable with respect to the evaluation of any item required to be reported by title II of this Act.

(...)

[28] Il testo integrale in lingua originale degli ultimi due rapporti annuali presentati è consultabile sul sito ufficiale internet dell'OGE, all'indirizzo http://www.usoge.gov/pages/forms_pubs_otherdocs/forms_pubs_other_pg3.html#Anchor--Performan-45854.

[29] Testo aggiornato alle ultime modifiche del 17 dicembre 2004 (Public Law 108-458, TITLE I, sec. 1079(C), Dec. 17, 2004, 118 STAT. 3696) (http://uscode.house.gov/download/pls/05a.txt).

[30] Testo aggiornato alle ultime modifiche del 19 dicembre 2003 (Public Law 108-198, Sec. 2(b), Dec. 19, 2003, 117 Stat. 2900, added items 212 and 213 and struck out former items 212 "Offer of loan or gratuity to bank examiner" and 213 "Acceptance of loan or gratuity by bank examiner") (http://uscode.house.gov/download/pls/18C11.txt).