

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 984
OFFERED BY MR. WAXMAN OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Executive Branch Re-
3 form Act of 2007”.

4 **SEC. 2. REQUIREMENTS RELATING TO SIGNIFICANT CON-**
5 **TACTS.**

6 (a) IN GENERAL.—The Ethics in Government Act of
7 1978 (5 U.S.C. App. 4) is amended by adding at the end
8 the following new title:

9 **“TITLE VI—EXECUTIVE BRANCH**
10 **DISCLOSURE OF SIGNIFICANT**
11 **CONTACTS**

12 **“SEC. 601. RECORDING AND REPORTING BY CERTAIN EXEC-**
13 **UTIVE BRANCH OFFICIALS OF SIGNIFICANT**
14 **CONTACTS MADE TO THOSE OFFICIALS.**

15 “(a) IN GENERAL.—Not later than 30 days after the
16 end of a calendar quarter, each covered executive branch
17 official shall make a record of, and file with the Office
18 of Government Ethics a report on, any significant contacts

1 during the quarter between the covered executive branch
2 official and any private party relating to an official govern-
3 ment action. If no such contacts occurred, each such offi-
4 cial shall make a record of, and file with the Office a re-
5 port on, this fact, at the same time.

6 “(b) CONTENTS OF RECORD AND REPORT.—Each
7 record made, and each report filed, under subsection (a)
8 shall contain—

9 “(1) the name of the covered executive branch
10 official;

11 “(2) the name of each private party who had a
12 significant contact with that official; and

13 “(3) for each private party so named, a sum-
14 mary of the nature of the contact, including—

15 “(A) the date of the contact;

16 “(B) the subject matter of the contact and
17 the specific executive branch action to which the
18 contact relates; and

19 “(C) if the contact was made on behalf of
20 a client, the name of the client.

21 “(c) WITHHOLDING FOIA-EXEMPT INFORMATION.—
22 This section does not require the filing with the Office of
23 Government Ethics of information that is exempt from
24 public disclosure under section 552(b) of title 5, United

1 States Code (popularly referred to at the “Freedom of In-
2 formation Act”).

3 **“SEC. 602. AUTHORITIES AND RESPONSIBILITIES OF OF-
4 FICE OF GOVERNMENT ETHICS.**

5 “(a) IN GENERAL.—The Director of the Office of
6 Government Ethics shall—

7 “(1) promulgate regulations to implement this
8 title, provide guidance and assistance on the record-
9 ing and reporting requirements of this title, and de-
10 velop common standards, rules, and procedures for
11 compliance with this title;

12 “(2) review, and, where necessary, verify the ac-
13 curacy, completeness, and timeliness of reports;

14 “(3) develop filing, coding, and cross-indexing
15 systems to carry out the purpose of this title, includ-
16 ing—

17 “(A) a publicly available list of all private
18 parties who made a significant contact; and

19 “(B) computerized searchable systems de-
20 signed to minimize the burden of filing and
21 maximize public access to reports filed under
22 this title;

23 “(4) make available for public inspection and
24 copying at reasonable times the reports filed under
25 this title;

1 “(5) retain reports for a period of at least 6
2 years after they are filed;

3 “(6) compile and summarize, with respect to
4 each reporting period, the information contained in
5 reports filed with respect to such period in a clear
6 and complete manner;

7 “(7) notify any covered executive branch official
8 in writing that may be in noncompliance with this
9 title; and

10 “(8) notify the United States Attorney for the
11 District of Columbia that a covered executive branch
12 official may be in noncompliance with this title, if
13 the covered executive branch official has been noti-
14 fied in writing and has failed to provide an appro-
15 priate response within 60 days after notice was
16 given under paragraph (7).

17 **“SEC. 603. PENALTIES.**

18 “(a) VIOLATION.—Whoever violates this title shall be
19 subject to administrative sanctions, up to and including
20 termination of employment.

21 “(b) DELIBERATE ATTEMPT TO CONCEAL.—Who-
22 ever deliberately attempts to conceal a significant contact
23 in violation of this title shall upon proof of such deliberate
24 violation by a preponderance of the evidence, be subject

1 to a civil fine of not more than \$50,000, depending on
2 the extent and gravity of the violation.

3 **“SEC. 604. DEFINITIONS.**

4 “In this title:

5 “(1) COVERED EXECUTIVE BRANCH OFFI-
6 CIAL.—The term ‘covered executive branch official’
7 means—

8 “(A) any officer or employee serving in a
9 position in level I, II, III, IV, or V of the Exec-
10 utive Schedule, as designated by statute or Ex-
11 ecutive order;

12 “(B) any member of the uniformed serv-
13 ices whose pay grade is at or above O–7 under
14 section 201 of title 37, United States Code;

15 “(C) any officer or employee serving in a
16 position of a confidential, policy-determining,
17 policy-making, or policy-advocating character
18 described in section 7511(b)(2)(B) of title 5,
19 United States Code;

20 “(D) any noncareer appointee, as defined
21 by section 3132(a)(7) of title 5, United States
22 Code; and

23 “(E) any officer or employee serving in a
24 position of a confidential, policy-determining,
25 policy-making, or policy advocating character,

1 or any other individual functioning in the ca-
2 pacity of such an officer or employee, in the Ex-
3 ecutive Office of the President or the Office of
4 the Vice President, but does not include the
5 President or Vice President or the chief of staff
6 of the President or Vice President.

7 “(2) SIGNIFICANT CONTACT.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (B), the term ‘significant contact’
10 means oral or written communication (including
11 electronic communication) that is made by a
12 private party to a covered executive branch offi-
13 cial in which such private party seeks to influ-
14 ence official action by any officer or employee
15 of the executive branch of the United States.

16 “(B) EXCEPTION.—The term ‘significant
17 contact’ does not include any communication
18 that is an exception to the definition of ‘lob-
19 bying contact’—

20 “(i) under clauses (i) through (vii) or
21 clauses (ix) through (xix) of subparagraph
22 (B) of paragraph (8) of section 3 of the
23 Lobbying Disclosure Act of 1995 (2 U.S.C.
24 1602(8)(i)–(vii) or (ix)–(xix)); or

1 “(ii) with respect to publically avail-
2 able information only, under clause (viii) of
3 subparagraph (B) of paragraph (8) of sec-
4 tion 3 of the Lobbying Disclosure Act of
5 1995 (2 U.S.C. 1602(8)(viii)).

6 “(3) PRIVATE PARTY.—The term ‘private party’
7 means any person or entity, but does not include a
8 Federal, State, or local government official or a per-
9 son representing such an official.”.

10 (b) EFFECTIVE DATE.—

11 (1) IN GENERAL.—Title VI of the Ethics in
12 Government Act of 1978, as added by this section,
13 takes effect 1 year after the date of the enactment
14 of this Act, except as provided in paragraph (2).

15 (2) INITIAL REGULATIONS.—The initial regula-
16 tions required by section 602 of that Act shall be
17 promulgated—

18 (A) in draft form, not later than 270 days
19 after the date of the enactment of this Act; and

20 (B) in final form, not later than 1 year
21 after the date of the enactment of this Act.

1 **SEC. 3. REQUIREMENTS RELATING TO STOPPING THE RE-**
2 **VOLVING DOOR.**

3 The Ethics in Government Act of 1978 (5 U.S.C.
4 App. 4) is amended by adding at the end the following
5 new title:

6 **“TITLE VII—STOPPING THE**
7 **REVOLVING DOOR**

8 **“SEC. 701. TWO-YEAR COOLING-OFF PERIOD FOR PERSONS**
9 **LEAVING GOVERNMENT SERVICE.**

10 “(a) IN GENERAL.—For a period of two years after
11 the termination of his employment, a covered executive
12 branch official—

13 “(1) shall not engage in any conduct that would
14 be prohibited under subsection (c) of section 207 of
15 title 18, United States Code, if it occurred within
16 one year after the termination of his employment;
17 and

18 “(2) shall not, if his position is described in
19 subsection (d)(1) of section 207 of title 18, United
20 States Code, engage in any conduct that would be
21 prohibited under subsection (d) of section 207 of
22 title 18, United States Code, if it occurred within
23 one year after the termination of his employment.

24 “(b) NO EFFECT ON SECTION 207.—This section
25 does not expand, contract, or otherwise affect the applica-

1 tion of any waiver or criminal penalties under section 207
2 of title 18, United States Code.

3 “(c) EFFECTIVE DATE.—This section shall apply to
4 covered executive branch officials who terminate Govern-
5 ment service after March 31, 2007.

6 **“SEC. 702. PROHIBITION ON NEGOTIATION OF FUTURE EM-**
7 **PLOYMENT.**

8 “(a) PROHIBITION.—A covered executive branch offi-
9 cial shall not participate in any official matter in which,
10 to the official’s knowledge, a person or organization with
11 whom the official is negotiating or has any arrangement
12 concerning prospective employment has a financial inter-
13 est, unless a waiver has been granted under subsection (b).

14 “(b) WAIVERS ONLY WHEN EXCEPTIONAL CIR-
15 CUMSTANCES EXIST.—A waiver to subsection (a) is not
16 available, and shall not be granted, to any individual ex-
17 cept in a case which the Government official responsible
18 for the individual’s appointment as a covered executive
19 branch official determines that exceptional circumstances
20 exist. Whenever such a determination is made, the Direc-
21 tor of the Office of Government Ethics shall review the
22 circumstances relating to the determination, and the waiv-
23 er shall not take effect until the date on which the Direc-
24 tor certifies in writing that exceptional circumstances
25 exist.

1 **“SEC. 703. COOLING-OFF PERIOD FOR CERTAIN PERSONS**
2 **ENTERING GOVERNMENT SERVICE.**

3 “(a) IN GENERAL.—A covered executive branch offi-
4 cial shall not participate in any particular matter involving
5 specific parties that would affect the financial interests of
6 a covered entity.

7 “(b) WAIVER.—An agency’s designated ethics officer
8 may waive the prohibition in subsection (a) with respect
9 to a covered executive branch official of that agency upon
10 a determination that the interests involved are not so sub-
11 stantial as to be deemed likely to affect the integrity of
12 the services that the Government may expect from the of-
13 ficial. Whenever such a determination is made, the Direc-
14 tor of the Office of Government Ethics shall review the
15 circumstances relating to the determination, and the waiv-
16 er shall not take effect until the date on which the Direc-
17 tor approves the determination in writing.

18 “(c) DEFINITION.—In this section, the term ‘covered
19 entity’ means an entity—

20 “(1) in which the official, within the previous 2
21 years, served as an officer, director, trustee, general
22 partner, or employee; or

23 “(2) for which the official, within the previous
24 2 years, worked as a lobbyist, lawyer, or other rep-
25 resentative.

1 “(d) NO EFFECT ON SECTION 208.—This section
2 does not expand, contract, or otherwise affect the applica-
3 tion of any criminal penalties under section 208 of title
4 18, United States Code.

5 **“SEC. 704. PENALTIES.**

6 “Whoever violates section 701, 702, or 703 of this
7 title shall, upon proof of such knowing violation by a pre-
8 ponderance of the evidence, be subject to a civil fine of
9 not more than \$100,000, depending on the extent and
10 gravity of the violation.

11 **“SEC. 705. DEFINITION.**

12 “In this title, the term ‘covered executive branch offi-
13 cial’ means—

14 “(1) any officer or employee serving in a posi-
15 tion in level I, II, III, IV, or V of the Executive
16 Schedule, as designated by statute or Executive
17 order;

18 “(2) any member of the uniformed services
19 whose pay grade is at or above O-7 under section
20 201 of title 37, United States Code;

21 “(3) any officer or employee serving in a posi-
22 tion of a confidential, policy-determining, policy-
23 making, or policy-advocating character described in
24 section 7511(b)(2)(B) of title 5, United States Code;

1 “(4) any noncareer appointee, as defined by
2 section 3132(a)(7) of title 5, United States Code;

3 “(5) any officer or employee serving in a posi-
4 tion of a confidential, policy-determining, policy-
5 making, or policy advocating character, or any other
6 individual functioning in the capacity of such an of-
7 ficer or employee, in the Executive Office of the
8 President or the Office of the Vice President; and

9 “(6) the Vice President.”.

10 **SEC. 4. ADDITIONAL PROVISIONS RELATING TO PROCURE-**
11 **MENT OFFICIALS.**

12 (a) ELIMINATION OF LOOPHOLES THAT ALLOW
13 FORMER FEDERAL OFFICIALS TO ACCEPT COMPENSA-
14 TION FROM CONTRACTORS OR RELATED ENTITIES.—Sec-
15 tion 27(d) of the Office of Federal Procurement Policy
16 Act (41 U.S.C. 423(d)) is amended—

17 (1) in paragraph (1)—

18 (A) by striking “or consultant” and insert-
19 ing “consultant, lawyer, or lobbyist”;

20 (B) by striking “one year” and inserting
21 “two years”; and

22 (C) in subparagraph (C), by striking “per-
23 sonally made for the Federal agency—” and in-
24 serting “participated personally and substan-
25 tially in—”; and

1 (2) by amending paragraph (2) to read as fol-
2 lows:

3 “(2) Paragraph (1) shall not prohibit a former
4 official of a Federal agency from accepting com-
5 pensation from any division or affiliate of a con-
6 tractor that does not produce the same or similar
7 products or services as the entity of the contractor
8 that is responsible for the contract referred to in
9 subparagraph (A), (B), or (C) of such paragraph if
10 the agency’s designated ethics officer determines
11 that—

12 “(A) the offer of compensation is not a re-
13 ward for any action described in paragraph (1);
14 and

15 “(B) acceptance of the compensation is ap-
16 propriate and will not affect the integrity of the
17 procurement process.”.

18 (b) REQUIREMENT FOR FEDERAL PROCUREMENT
19 OFFICERS TO DISCLOSE JOB OFFERS MADE ON BEHALF
20 OF RELATIVES.—Section 27(c)(1) of such Act (41 U.S.C.
21 423(c)(1)) is amended by inserting after “that official”
22 the following: “or for a relative of that official (as defined
23 in section 3110 of title 5, United States Code),”.

24 (c) REQUIREMENT ON AWARD OF GOVERNMENT
25 CONTRACTS TO FORMER EMPLOYERS.—Section 27 of

1 such Act (41 U.S.C. 423) is amended by adding at the
2 end the following new subsection:

3 “(i) PROHIBITION ON INVOLVEMENT BY CERTAIN
4 FORMER CONTRACTOR EMPLOYEES IN PROCURE-
5 MENTS.—An employee of the Federal Government who is
6 a former employee of a contractor with the Federal Gov-
7 ernment shall not be personally and substantially involved
8 with any award of a contract to the employee’s former em-
9 ployer, or the administration of such a contract, for the
10 two-year period beginning on the date on which the em-
11 ployee leaves the employment of the contractor.”.

12 (d) REGULATIONS.—Section 27 of such Act (41
13 U.S.C. 423) is further amended by adding at the end of
14 the following new subsection:

15 “(j) REGULATIONS.—The Administrator, in consulta-
16 tion with the Director of the Office of Government Ethics,
17 shall—

18 “(1) promulgate regulations to carry out and
19 ensure the enforcement of this section; and

20 “(2) monitor and investigate individual and
21 agency compliance with this section.”.

22 (e) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect on the date of the enactment
24 of this Act, except that the amendment made by sub-

1 section (a)(1)(B) shall apply to individuals who terminate
2 Government service after March 31, 2007.

3 **SEC. 5. PROHIBITION ON UNAUTHORIZED EXPENDITURE**
4 **OF FUNDS FOR PUBLICITY OR PROPAGANDA**
5 **PURPOSES.**

6 (a) PROHIBITION.—Chapter 13 of title 31, United
7 States Code, is amended by adding at the end the fol-
8 lowing new section:

9 **“§ 1355. Prohibition on unauthorized expenditure of**
10 **funds for publicity or propaganda pur-**
11 **poses**

12 “An officer or employee of the United States Govern-
13 ment may not make or authorize an expenditure or obliga-
14 tion of funds for publicity or propaganda purposes within
15 the United States unless authorized by law.”.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 for chapter 13 of such title is amended by adding at the
18 end the following new item:

“1355. Prohibition on unauthorized expenditure of funds for publica-
ganda purposes.”.

19 **SEC. 6. REQUIREMENT FOR DISCLOSURE OF FEDERAL**
20 **SPONSORSHIP OF ALL FEDERAL ADVER-**
21 **TISING OR OTHER COMMUNICATION MATE-**
22 **RIALS.**

23 (a) REQUIREMENT.—Each advertisement or other
24 communication paid for by an Executive agency, either di-

1 rectly or through a contract awarded by the Executive
2 agency, shall include a prominent notice informing the tar-
3 get audience that the advertisement or other communica-
4 tion is paid for by that Executive agency.

5 (b) ADVERTISEMENT OR OTHER COMMUNICATION.—

6 In this section, the term “advertisement or other commu-
7 nication” includes—

8 (1) an advertisement disseminated in any form,
9 including print or by any electronic means; and

10 (2) a communication by an individual in any
11 form, including speech, print, or by any electronic
12 means.

13 (c) EXECUTIVE AGENCY.—In this section, the term
14 “Executive agency” has the meaning provided in section
15 105 of title 5, United States Code.

16 **SEC. 7. ELIMINATION OF “PSEUDO” CLASSIFICATION.**

17 (a) REPORTS ON THE PROLIFERATING USE OF
18 “PSEUDO” CLASSIFICATION DESIGNATIONS.—

19 (1) REPORT BY FEDERAL AGENCIES.—Not later
20 than six months after the date of the enactment of
21 this Act, each federal agency shall submit to the Ar-
22 chivist of the United States and the congressional
23 committees described in subsection (d) a report de-
24 scribing the use of “pseudo” classification designa-
25 tions.

1 (2) MATTERS COVERED.—Each such agency
2 shall report on, at a minimum, the following:

3 (A) The number of “pseudo”classification
4 designation policies used by the agency.

5 (B) Any existing guidance, instruction, di-
6 rective, or regulations regarding the agency’s
7 use of “pseudo” classification designations.

8 (C) The number and level of experience
9 and training of Federal agency, office, and con-
10 tractor personnel authorized to make “pseudo”
11 classification designations.

12 (D) The cost of placing and maintaining
13 information under each “pseudo” classification
14 designation.

15 (E) The extent to which information
16 placed under “pseudo” classification designa-
17 tions has subsequently been released under sec-
18 tion 552 of title 5, United States Code (popu-
19 larly known as the Freedom of Information
20 Act).

21 (F) The extent to which “pseudo” classi-
22 fication designations have been used to withhold
23 from the public information that is not author-
24 ized to be withheld by Federal statute, or by an

1 Executive order relating to the classification of
2 national security information.

3 (G) The statutory provisions described in
4 subsection (c).

5 (3) REPORT BY THE ARCHIVIST OF THE
6 UNITED STATES.—Not later than 9 months after the
7 date of the enactment of this Act, the Archivist of
8 the United States shall issue to the congressional
9 committees described in subsection (d) a report on
10 the use of “pseudo” classification designations
11 across the executive branch that is based on the in-
12 formation provided by agencies, as well as input
13 from the Director of National Intelligence, Federal
14 agencies, offices, and contractors. All federal agen-
15 cies, offices, and contractors shall cooperate fully
16 and promptly with all requests by the Archivist in
17 the fulfillment of this paragraph.

18 (4) NOTICE AND COMMENT.—The Archivist
19 shall provide notice and an opportunity for public
20 comment on the report.

21 (b) ELIMINATION OF “PSEUDO” CLASSIFICATION
22 DESIGNATIONS.—

23 (1) REGULATIONS.—Not later than 15 months
24 after the date of the enactment of this Act, the Ar-
25 chivist of the United States shall promulgate regula-

1 tions banning the use of “pseudo” classification des-
2 ignations.

3 (2) STANDARDS FOR INFORMATION CONTROL
4 DESIGNATIONS.—If the Archivist determines that
5 there is a need for some agencies to use information
6 control designations to safeguard information prior
7 to review for disclosure, beyond those designations
8 established by statute or by an Executive Order re-
9 lating to the classification of national security infor-
10 mation, the regulations under paragraph (1) shall
11 establish standards for the use of those designations
12 by agencies. Such standards shall address, at a min-
13 imum, the following issues:

14 (A) Standards for utilizing the information
15 control designations in a manner that is nar-
16 rowly tailored to maximize public access to in-
17 formation.

18 (B) Procedures for providing specified
19 Federal officials with authority to utilize the in-
20 formation control designations, including train-
21 ing and certification requirements.

22 (C) Categories of information that may be
23 assigned the information control designations.

1 (D) The duration of the information con-
2 trol designations and the process by which they
3 will be removed.

4 (E) Procedures for identifying, marking,
5 dating, and tracking information assigned the
6 information control designations, including the
7 identity of officials making the designations.

8 (F) Specific limitations and prohibitions
9 against using the information control designa-
10 tions.

11 (G) Procedures for members of the public
12 to challenge the use of the information control
13 designations.

14 (H) The manner in which the use of the
15 information control designations relates to the
16 procedures of each agency or office under sec-
17 tion 552 of title 5, United States Code.

18 (3) REGULATION TO CONSTITUTE SOLE AU-
19 THORITY.—A regulation promulgated pursuant to
20 this subsection shall constitute the sole authority by
21 which Federal agencies, offices, or contractors are
22 permitted to control information for the purposes of
23 safeguarding information prior to review for disclo-
24 sure, other than authority granted by Federal stat-

1 ute or by an Executive order relating to the classi-
2 fication of national security information.

3 (c) REVIEW OF STATUTORY BARRIERS TO PUBLIC
4 ACCESS INFORMATION.—

5 (1) REVIEW OF STATUTES.—As part of the re-
6 port required under subsection (a)(3), the Archivist
7 shall examine existing Federal statutes that allow
8 Federal agencies, offices, or contractors to control,
9 protect, or otherwise withhold information based on
10 security concerns.

11 (2) RECOMMENDATIONS.—The report shall
12 make recommendations on potential changes to the
13 Federal statutes examined under paragraph (1) that
14 would improve public access to information governed
15 by such statutes.

16 (d) DEFINITIONS.—In this section:

17 (1) The term “congressional committees”
18 means the Committees on Government Reform, Ju-
19 diciary, Homeland Security, and Appropriations of
20 the House of Representatives and the Committees
21 on Homeland Security and Governmental Affairs,
22 Judiciary, and Appropriations of the Senate.

23 (2) The term “‘pseudo’ classification designa-
24 tions” means information control designations, in-
25 cluding “sensitive but unclassified” and “for official

1 use only”, that are not defined by Federal statute,
2 or by an Executive order relating to the classifica-
3 tion of national security information, but that are
4 used to manage, direct, or route Government infor-
5 mation, or control the accessibility of Government
6 information, regardless of its form or format.