Sec.
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 Repealed.]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.
226. Bribery affecting port security.
227. Wrongfully influencing a private entity's employment decisions by a Member of Congress.

AMENDMENTS

2007—Pub. L. 110–81, title I, §102(c), Sept. 14, 2007, 121 Stat. 739, added item 227.

2006—Pub. L. 109–177, title III, §309(b), Mar. 9, 2006, 120 Stat. 242, added item 226.

2003—Pub. L. 108–198, §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''.

1994—Pub. L. 103–322, title XXXIII, §330010(12), Sept. 13, 1994, 108 Stat. 2144, substituted ''officers, and others in'' for ''officers and others, in'' in item 203 and inserted ''the'' after ''Federal Claims or'' in item 204.

1992—Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516, substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' in item 204.

1990—Pub. L. 101–647, title XXV, §2510(b), title XXXV, §3509, Nov. 29, 1990, 104 Stat. 4863, 4922, substituted ''to Members'' for ''of Members'' in item 203, substituted ''United States Claims Court or United States Court of Appeals for the Federal Circuit'' for ''Court of Claims'' in item 204, and added item 225.

1989—Pub. L. 101–194, title I, §101(b), title IV, §407(b), Nov. 30, 1989, 103 Stat. 1724, 1753, substituted ''Restrictions on former officers, employees, and elected officials of the executive and legislative branches'' for ''Disqualification of former officers and employees; disqualification of partners of current officers and employees'' in item 207 and added item 216.

1984—Pub. L. 98–473, title II, §1107(b), Oct. 12, 1984, 98 Stat. 2146, substituted ''Repealed'' for ''Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions'' in item 216.

1978—Pub. L. 95–521, title V, §501(b), Oct. 26, 1978, 92 Stat. 1867, struck out ''in matters connected with former duties or official responsibilities'' after ''officers and employees'' and inserted ''of current officers and employees'' after ''partners of'' in item 207.

1966—Pub. L. 89–486, §8(c)(2), July 4, 1966, 80 Stat. 249, added item 219.

1964—Pub. L. 88–316, §1(b), June 6, 1964, 78 Stat. 204, added item 224.

1962—Pub. L. 87–849, §1(a), Oct. 23, 1962, 76 Stat. 1119, included conflicts of interests in chapter heading, and amended analysis generally to contain items 201 to 218. Prior to amendment, the analysis contained items 201 to 223.

1958—Pub. L. 85–699, title VII, §702(d), Aug. 21 1958, 72 Stat. 698, included small business transactions in item 221.

§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.

(Added Pub. L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1119; amended Pub. L. 91–405, title II, § 204(d)(1), Sept. 22, 1970, 84 Stat. 853; Pub. L. 99–646, § 46(a)–(*l*), Nov. 10, 1986, 100 Stat. 3601–3604; Pub. L. 103–322, title XXXIII, §§ 330011(b), 330016(2)(D), Sept. 13, 1994, 108 Stat. 2144, 2148.)

PRIOR PROVISIONS

A prior section 201, act June 25, 1948, ch. 645, 62 Stat. 691, prescribed penalties for anyone who offered or gave anything of value to an officer or other person to influence his decisions, prior to the general amendment of this chapter by Pub. L. 87–849, and is substantially covered by revised section 201.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–322, § 330016(2)(D), which directed the amendment of "section 201" by inserting "under this title or" after "be fined" and "whichever is greater," before "or imprisoned", was executed by making the insertions in text of last par. of subsec. (b), and not in last par. of subsec. (c), to reflect the probable intent of Congress.

Pub. L. 103–322, § 330011(b)(A), amended Pub. L. 99–646, § 46(b)(1). See 1986 Amendment note below.

Subsec. (b)(1). Pub. L. 103–322, § 330011(b), amended Pub. L. 99–646, § 46(b). See 1986 Amendment note below.

1986—Pub. L. 99–646, § 46(*l*), provided for alignment of margins of each subsection, paragraph, and subparagraph of this section.

Subsec. (a). Pub. L. 99–646, § 46(a), substituted "section—" for "section:", designated provision defining "public official" as par. (1), inserted "the term" after "(1)", and substituted "Delegate" for "Delegate from the District of Columbia", "after such official has qualified" for "after he has qualified", and "juror;" for "juror; and"; designated provision defining "person who has been selected to be a public official" as par. (2), inserted "the term" after "(2)", and substituted "such person" for "he"; and designated provision defining "official act" as par. (3), inserted "the term" after "(3)", and substituted "in such official's official capacity, or in such official's" for "in his official capacity, or in his".

Subsec. (b). Pub. L. 99–646, § 46(b)(1), as amended by Pub. L. 103–322, § 330011(b)(A), substituted "Whoever—" for "Whoever," and inserted "(1)" before "directly".

Pub. L. 99–646, § 46(e)(5), redesignated the undesignated par. which followed former subsec. (e) as concluding par. of subsec. (b) and substituted "shall be fined not more than" for "Shall be fined not more than $20,000 or" and "thing of value," for "thing of value, whichever is greater,".

Subsec. (b)(1). Pub. L. 99–646, § 46(b), as amended by Pub. L. 103–322, § 330011(b), redesignated former subsec. (b) as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and realigned their margins, and in subpar. (C) substituted "the lawful duty of such official or person;" for "his lawful duty, or".

Subsec. (b)(2). Pub. L. 99–646, § 46(c), redesignated former subsec. (c) as par. (2), struck out "Whoever," before "being", substituted "corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally" for "corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself", redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and realigned their margins, in subpar. (A)

substituted ''the performance'' for ''his performance'' and struck out ''or'' after ''act;'', and in subpar. (C) substituted ''the official duty of such official or person;'' for ''his official duty; or''.

Subsec. (b)(3). Pub. L. 99–646, §46(d), redesignated former subsec. (d) as par. (3) and substituted ''directly'' for ''Whoever, directly'' and ''therefrom;'' for ''therefrom; or''.

Subsec. (b)(4). Pub. L. 99–646, §46(e), redesignated former subsec. (e) as par. (4), substituted ''directly'' for ''Whoever, directly'', ''demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally'' for ''asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself'', ''in testimony'' for ''in his testimony'', and ''therefrom;'' for ''therefrom—''.

Subsec. (c). Pub. L. 99–646, §46(f), (g)(1), (h)(1), (i)(1), redesignated former subsecs. (f) to (i) as subsec. (c)(1)(A), (B), (2), and (3), respectively. Former subsec. (c) redesignated (b)(2).

Pub. L. 99–646, §46(i)(6), redesignated the undesignated par. which followed former subsec. (i) as concluding par. of subsec. (c) and substituted ''shall be fined under this title'' for ''Shall be fined not more than $10,000''.

Subsec. (c)(1). Pub. L. 99–646, §46(f), (g), redesignated former subsec. (f) as par. (1) and substituted ''(1) otherwise'' for '', otherwise'' and ''(A) directly'' for '', directly'', redesignated former subsec. (g) as subpar. (B) and substituted ''being'' for ''Whoever, being'', ''indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally'' for ''indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself'', and ''by such official or person;'' for ''by him; or''.

Subsec. (c)(2). Pub. L. 99–646, §46(h), redesignated former subsec. (h) as par. (2) and substituted ''directly'' for ''Whoever, directly'' and ''such person's absence therefrom;'' for ''his absence therefrom; or''.

Subsec. (c)(3). Pub. L. 99–646, §46(i), redesignated former subsec. (i) as par. (3) and substituted ''directly'' for ''Whoever, directly'', ''demands, seeks, receives, accepts, or agrees to receive or accept'' for ''asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive'', ''personally'' for ''for himself'', ''by such person'' for ''by him'', and ''such person's absence therefrom;'' for ''his absence therefrom—''.

Subsec. (d). Pub. L. 99–646, §46(j), redesignated former subsec. (j) as (d), substituted ''Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c)'' for ''Subsections (d), (e), (h), and (i)'' and struck out ''involving a technical or professional opinion,'' after ''expert witnesses,''. Former subsec. (d) redesignated (b)(3).

Subsecs. (e) to (k). Pub. L. 99–646, §46(f)–(k), redesignated former subsecs. (e) to (k) as (b)(4), (c)(1)(A), (B), (2), (3), (d), and (e), respectively.

1970—Subsec. (a). Pub. L. 91–405 included Delegate from District of Columbia in definition of ''public official''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(b) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 46(b) of Pub. L. 99–646 took effect.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 46(m) of Pub. L. 99–646 provided that: ''The amendments made by this section [amending this section] shall take effect 30 days after the date of enactment of this Act [Nov. 10, 1986].''

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as an Effective Date note under section 25a of Title 2, The Congress.

EFFECTIVE DATE

Section 4 of Pub. L. 87–849 provided that: ''This Act [enacting this section and sections 202 to 209 and 218 of this title, redesignating sections 214, 215, 217 to 222 as 210, 211, 212 to 217 of this title respectively, repealing sections 223, 282, 284, 434, and 1914 of this title, and section 99 of former Title 5, Executive Departments and Government Officers and Employees, and enacting provisions set out as notes under section 281 and 282 of this title] shall take effect ninety days after the date of its enactment [Oct. 23, 1962]''.

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–198, §1, Dec. 19, 2003, 117 Stat. 2899, provided that: ''This Act [enacting sections 212 and 213 of this title and repealing former sections 212 and 213 of this title] may be cited as the 'Preserving Independence of Financial Institution Examinations Act of 2003'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–177, §1, Aug. 6, 1996, 110 Stat. 1563, provided that: ''This Act [amending section 205 of this title] may be cited as the 'Federal Employee Representation Improvement Act of 1996'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–370, §1, Aug. 4, 1986, 100 Stat. 779, provided that: ''This Act [amending section 215 of this title and enacting provisions set out as a note under section 215 of this title] may be cited as the 'Bank Bribery Amendments Act of 1985'.''

EXECUTIVE ORDER NO. 11222

Ex. Ord. No. 11222, May 8, 1965, 30 F.R. 6469, as amended by Ex. Ord. No. 11590, Apr. 23, 1971, 36 F.R. 7831; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12565, Sept. 25, 1986, 51 F.R. 34437, which established standards of ethical conduct for government officers and employees, was revoked by Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12565

Ex. Ord. No. 12565, Sept. 25, 1986, 51 F.R. 34437, which amended Ex. Ord. No. 11222, formerly set out above, and provided confidentiality for financial reports filed pursuant to Ex. Ord. No. 11222, was revoked by Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

MEMORANDUM OF ATTORNEY GENERAL REGARDING CONFLICT OF INTEREST PROVISIONS OF PUBLIC LAW 87–849, FEB. 1, 1963, 28 F.R. 985

JANUARY 28, 1963.

Public Law 87–849, ''To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes,'' came into force January 21, 1963. A number of departments and agencies of the Government have suggested that the Department of Justice prepare and distribute a memorandum analyzing the conflict of interest provisions contained in the new act. I am therefore distributing the attached memorandum.

One of the main purposes of the new legislation merits specific mention. That purpose is to help the Government obtain the temporary or intermittent services of persons with special knowledge and skills whose principal employment is outside the Government. For the most part the conflict of interest statutes superseded by Public Law 87–849 imposed the same restraints on a person serving the Government temporarily or intermittently as on a full-time employee, and those statutes often had an unnecessarily severe impact on the former. As a result, they impeded the departments and agencies in the recruitment of experts for important work. Public Law 87–849 meets this difficulty by imposing a lesser array of prohibitions on temporary and intermittent employees than on regular employees. I believe that a widespread appreciation of this aspect of the new law will lead to a significant expansion of

the pool of talent on which the departments and agencies can draw for their special needs.

ROBERT F. KENNEDY,
Attorney General.

MEMORANDUM RE THE CONFLICT OF INTEREST PROVISIONS OF PUBLIC LAW 87–849, 76 STAT. 1119, APPROVED OCTOBER 23, 1962

INTRODUCTION

Public Law 87–849, which came into force January 21, 1963, affected seven statutes which applied to officers and employees of the Government and were generally spoken of as the ''conflict of interest'' laws. These included six sections of the criminal code, 18 U.S.C. 216, 281, 283, 284, 434 and 1914, and a statute containing no penalties, section 190 of the Revised Statutes (5 U.S.C. 99). Public Law 87–849 (sometimes referred to hereinafter as ''the Act'') repealed section 190 and one of the criminal statutes, 18 U.S.C. 216, without replacing them.[1] In addition it repealed and supplanted the other five criminal statutes. It is the purpose of this memorandum to summarize the new law and to describe the principal differences between it and the legislation it has replaced.

The Act accomplished its revisions by enacting new sections 203, 205, 207, 208 and 209 of title 18 of the United States Code and providing that they supplant the above-mentioned sections 281, 283, 284, 434 and 1914 of title 18 respectively.[2] It will be convenient, therefore, after summarizing the principal provisions of the new sections, to examine each section separately, comparing it with its precursor before passing to the next. First of all, however, it is necessary to describe the background and provisions of the new 18 U.S.C. 202(a), which has no counterpart among the statutes formerly in effect.

SPECIAL GOVERNMENT EMPLOYEES [NEW 18 U.S.C. 202(a)]

In the main the prior conflict of interest laws imposed the same restrictions on individuals who serve the Government intermittently or for a short period of time as on those who serve full-time. The consequences of this generalized treatment were pointed out in the following paragraph of the Senate Judiciary Committee report on the bill which became Public Law 87–849:[3]

In considering the application of present law in relation to the Government's utilization of temporary or intermittent consultants and advisers, it must be emphasized that most of the existing conflict-of-interest statutes were enacted in the 19th century—that is, at a time when persons outside the Government rarely served it in this way. The laws were therefore directed at activities of regular Government employees, and their present impact on the occasionally needed experts—those whose main work is performed outside the Government—is unduly severe. This harsh impact constitutes an appreciable deterrent to the Government's obtaining needed part-time services.

The recruiting problem noted by the Committee generated a major part of the impetus for the enactment of Public Law 87–849. The Act dealt with the problem by creating a category of Government employees termed ''special Government employees'' and by excepting persons in this category from certain of the prohibitions imposed on ordinary employees. The new 18 U.S.C. 202(a) defines the term ''special Government employee'' to include, among others, officers and employees of the departments and agencies who are appointed or employed to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days either on a full-time or intermittent basis.

SUMMARY OF THE MAIN CONFLICT OF INTEREST PROVISIONS OF PUBLIC LAW 87–849

A regular officer or employee of the Government—that is, one appointed or employed to serve more than 130 days in any period of 365 days—is in general subject to the following major prohibitions (the citations are to the new sections of Title 18):

1. He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).

2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

3. He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibilities[4] during the last year of his Government service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restraint described in paragraph 3 if the matter is one in which he participated personally and substantially.

5. He may not receive any salary, or supplementation of his Government salary, from a private source as compensation for his services to the Government (18 U.S.C. 209).

A special Government employee is in general subject only to the following major prohibitions:

1. (a) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has in interest and in which he has at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205).

(b) He may not, except in the discharge of his official duties, represent anyone else in a matter pending before the agency he serves unless he has served there no more than 60 days during the past 365 (18 U.S.C. 203 and 205). He is bound by this restraint despite the fact that the matter is not one in which he has ever participated personally and substantially.

The restrictions described in subparagraphs (a) and (b) apply to both paid and unpaid representation of another. These restrictions in combination are, of course, less extensive than the one described in the corresponding paragraph 1 in the list set forth above with regard to regular employees.

2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

3. He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restriction described in paragraph 3 if the matter is one in which he participated personally and substantially.

It will be seen that paragraphs 2, 3, and 4 for special Government employees are the same as the corresponding paragraphs for regular employees. Paragraph 5 for the latter, describing the bar against the receipt of sal-

ary for Government work from a private source, does not apply to special Government employees.

As appears below, there are a number of exceptions to the prohibitions summarized in the two lists.

COMPARISON OF OLD AND NEW CONFLICT OF INTEREST SECTIONS OF TITLE 18, UNITED STATES CODE

New 18 U.S.C. 203. Subsection (a) of this section in general prohibits a Member of Congress and an officer or employee of the United States in any branch or agency of the Government from soliciting or receiving compensation for services rendered on behalf of another person before a Government department or agency in relation to any particular matter in which the United States is a party or has a direct and substantial interest. The subsection does not preclude compensation for services rendered on behalf of another in court.

Subsection (a) is essentially a rewrite of the repealed portion of 18 U.S.C. 281. However, subsections (b) and (c) have no counterparts in the previous statutes.

Subsection (b) makes it unlawful for anyone to offer or pay compensation the solicitation or receipt of which is barred by subsection (a).

Subsection (c) narrows the application of subsection (a) in the case of a person serving as a special Government employee to two, and only two, situations. First, subsection (c) bars him from rendering services before the Government on behalf of others, for compensation, in relation to a matter involving a specific party or parties in which he has participated personally and substantially in the course of his Government duties. And second, it bars him from such activities in relation to a matter involving a specific party or parties, even though he has not participated in the matter personally and substantially, if it is pending in his department or agency and he has served therein more than 60 days in the immediately preceding period of a year.

New 18 U.S.C. 205. This section contains two major prohibitions. The first prevents an officer or employee of the United States in any branch or agency of the Government from acting as agent or attorney for prosecuting any claim against the United States, including a claim in court, whether for compensation or not. It also prevents him from receiving a gratuity, or a share or interest in any such claim, for assistance in the prosecution thereof. This portion of section 205 is similar to the repealed portion of 18 U.S.C. 283, which dealt only with claims against the United States, but it omits a bar contained in the latter—i.e., a bar against rendering uncompensated aid or assistance in the prosecution or support of a claim against the United States.

The second main prohibition of section 205 is concerned with more than claims. It precludes an officer or employee of the Government from acting as agent or attorney for anyone else before a department, agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

Section 205 provides for the same limited application to a special Government employee as section 203. In short, it precludes him from acting as agent or attorney only (1) in a matter involving a specific party or parties in which he has participated personally and substantially in his governmental capacity, and (2) in a matter involving a specific party or parties which is before his department or agency, if he has served therein more than 60 days in the year past.

Since new sections 203 and 205 extend to activities in the same range of matters, they overlap to a greater extent than did their predecessor sections 281 and 283. The following are the few important differences between sections 203 and 205:

1. Section 203 applies to Members of Congress as well as officers and employees of the Government; section 205 applies only to the latter.

2. Section 203 bars services rendered for compensation solicited or received, but not those rendered without such compensation; section 205 bars both kinds of services.

3. Section 203 bars services rendered before the departments and agencies but not services rendered in court; section 205 bars both.

It will be seen that while section 203 is controlling as to Members of Congress, for all practical purposes section 205 completely overshadows section 203 in respect of officers and employees of the Government.

Section 205 permits a Government officer or employee to represent another person, without compensation, in a disciplinary, loyalty or other personnel matter. Another provision declares that the section does not prevent an officer or employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.[5]

Section 205 also authorizes a limited waiver of its restrictions and those of section 203 for the benefit of an officer or employee, including a special Government employee, who represents his own parents, spouse or child, or a person or estate he serves as a fiduciary. The waiver is available to the officer or employee, whether acting for any such person with or without compensation, but only if approved by the official making appointments to his position. And in no event does the waiver extend to his representation of any such person in matters in which he has participated personally and substantially or which, even in the absence of such participation, are the subject of his official responsibility.

Finally, section 205 gives the head of a department or agency the power, notwithstanding any applicable restrictions in its provisions or those of section 203, to allow a special Government employee to represent his regular employer or other outside organization in the performance of work under a Government grant or contract. However, this action is open to the department or agency head only upon his certification, published in the Federal Register, that the national interest requires it.

New 18 U.S.C. 207. Subsections (a) and (b) of this section contain post-employment prohibitions applicable to persons who have ended service as officers or employees of the executive branch, the independent agencies or the District of Columbia.[6] The prohibitions for persons who have served as special Government employees are the same as for persons who have performed regular duties.

The restraint of subsection (a) is against a former officer or employee's acting as agent or attorney for anyone other than the United States in connection with certain matters, whether pending in the courts or elsewhere. The matters are those involving a specific party or parties in which the United States is one of the parties or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while holding a Government position.

Subsection (b) sets forth a 1-year postemployment prohibition in respect of those matters which were within the area of official responsibility of a former officer or employee at any time during the last year of his service but which do not come within subsection (a) because he did not participate in them personally and substantially. More particularly, the prohibition of subsection (b) prevents his personal appearance in such matters before a court or a department or agency of the Government as agent or attorney for anyone other than the United States.[7] Where, in the year prior to the end of his service, a former officer or employee has changed areas of responsibility by transferring from one agency to another, the period of his postemployment ineligibility as to matters in a particular area ends 1 year after his responsibility for that area ends. For example, if an individual transfers from a supervisory position in the Internal Revenue Service to a supervisory position in the Post Office Department and leaves that department for private employment 9 months later, he will be free of the restriction of subsection (b) in 3 months insofar as Internal Revenue matters are concerned. He will of course be bound by it for a year in respect of Post Office Department matters.

The proviso following subsections (a) and (b) authorizes an agency head, notwithstanding anything to the contrary in their provisions, to permit a former officer or employee with outstanding scientific qualifications to act as attorney or agent or appear personally before the agency for another in a matter in a scientific field. This authority may be exercised by the agency head upon a ''national interest'' certification published in the FEDERAL REGISTER.

Subsections (a) and (b) describe the activities they forbid as being in connection with ''particular matter[s] involving a specific party or parties'' in which the former officer or employee had participated. The quoted language does not include general rulemaking, the formulation of general policy or standards, or other similar matters. Thus, past participation in or official responsibility for a matter of this kind on behalf of the Government does not disqualify a former employee from representing another person in a proceeding which is governed by the rule or other result of such matter.

Subsection (a) bars permanently a greater variety of actions than subsection (b) bars temporarily. The conduct made unlawful by the former is *any action as agent or attorney*, while that made unlawful by the latter is a *personal appearance as agent or attorney*. However, neither subsection precludes postemployment activities which may fairly be characterized as no more than aiding or assisting another.[8] An individual who has left an agency to accept private employment may, for example, immediately perform technical work in his company's plant in relation to a contract for which he had official responsibility—or, for that matter, in relation to one he helped the agency negotiate. On the other hand, he is forbidden for a year, in the first case, to appear personally before the agency as the agent or attorney of his company in connection with a dispute over the terms of the contract. And he may at no time appear personally before the agency or otherwise act as agent or attorney for his company in such dispute if he helped negotiate the contract.

Comparing subsection (a) with the antecedent 18 U.S.C. 284 discloses that it follows the latter in limiting disqualification to cases where a former officer or employee actually participated in a matter for the Government. However, subsection (a) covers all matters in which the United States is a party or has a direct and substantial interest and not merely the ''claims against the United States'' covered by 18 U.S.C. 284. Subsection (a) also goes further than the latter in imposing a lifetime instead of a 2-year bar. Subsection (b) has no parallel in 18 U.S.C. 284 or any other provision of the former conflict of interest statutes.

It will be seen that subsections (a) and (b) in combination are less restrictive in some respects, and more restrictive in others, than the combination of the prior 18 U.S.C. 284 and 5 U.S.C. 99. Thus, former officers or employees who were outside the Government when the Act came into force on January 21, 1963, will in certain situations be enabled to carry on activities before the Government which were previously barred. For example, the repeal of 5 U.S.C. 99 permits an attorney who left an executive department for private practice a year before to take certain cases against the Government immediately which would be subject to the bar of 5 U.S.C. 99 for another year. On the other hand, former officers or employees became precluded on and after January 21, 1963 from engaging or continuing to engage in certain activities which were permissible until that date. This result follows from the replacement of the 2-year bar of 18 U.S.C. 284 with a lifetime bar of subsection (a) in comparable situations, from the increase in the variety of matters covered by subsection (a) as compared with 18 U.S.C. 284 and from the introduction of the 1-year bar of subsection (b).

Subsection (c) of section 207 pertains to an individual outside the Government who is in a business or professional partnership with someone serving in the executive branch, an independent agency or the District of Columbia. The subsection prevents such individual from acting as attorney or agent for anyone other than the United States in any matter, including those in court, in which his partner in the Government is participating or has participated or which are the subject of his partner's official responsibility. Although included in a section dealing largely with post-employment activities, this provision is not directed to the postemployment situation.

The paragraph at the end of section 207 also pertains to individuals in a partnership but sets forth no prohibition. This paragraph, which is of importance mainly to lawyers in private practice, rules out the possibility that an individual will be deemed subject to section 203, 205, 207(a) or 207(b) solely because he has a partner who serves or has served in the Government either as a regular or a special Government employee.

New 18 U.S.C. 208. This section forbids certain actions by an officer or employee of the Government in his role as a servant or representative of the Government. Its thrust is therefore to be distinguished from that of sections 203 and 205 which forbid certain actions in his capacity as a representative of persons outside the Government.

Subsection (a) in substance requires an officer or employee of the executive branch, an independent agency or the District of Columbia, including a special Government employee, to refrain from participating as such in any matter in which, to his knowledge, he, his spouse, minor child or partner has a financial interest. He must also remove himself from a matter in which a business or nonprofit organization with which he is connected or is seeking employment has a financial interest.

Subsection (b) permits the agency of an officer or employee to grant him an *ad hoc* exemption from subsection (a) if the outside financial interest in a matter is deemed not substantial enough to have an effect on the integrity of his services. Financial interests of this kind may also be made nondisqualifying by a general regulation published in the FEDERAL REGISTER.

Section 208 is similar in purpose to the former 18 U.S.C. 434 but prohibits a greater variety of conduct than the ''transaction of business with * * * [a] business entity'' to which the prohibition of section 434 was limited. In addition, the provision in section 208 including the interests of a spouse and others is new, as is the provision authorizing exemptions for insignificant interest.

New 18 U.S.C. 209. Subsection (a) prevents an officer or employee of the executive branch, an independent agency or the District of Columbia from receiving, and anyone from paying him, any salary or supplementation of salary from a private source as compensation for his services to the Government. This provision uses much of the language of the former 18 U.S.C. 1914 and does not vary from that statute in substance. The remainder of section 209 is new.

Subsection (b) specifically authorizes an officer or employee covered by subsection (a) to continue his participation in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer.

Subsection (c) provides that section 209 does not apply to a special Government employee or to anyone serving the Government without compensation whether or not he is a special Government employee.

Subsection (d) provides that the section does not prohibit the payment or acceptance of contributions, awards or other expenses under the terms of the Government Employees Training Act. (72 Stat. 327, 5 U.S.C. 2301–2319).

STATUTORY EXEMPTIONS FROM CONFLICT OF INTEREST LAWS

Congress has in the past enacted statutes exempting persons in certain positions—usually advisory in nature—from the provisions of some or all of the former conflict of interest laws. Section 2 of the Act grants corresponding exemptions from the new laws with respect to legislative and judicial positions carrying such past exemptions. However, section 2 excludes positions

in the executive branch, an independent agency and the District of Columbia from this grant. As a consequence, all statutory exemptions for persons serving in these sectors of the Government ended on January 21, 1963.

RETIRED OFFICERS OF THE ARMED FORCES

Public Law 87–849 enacted a new 18 U.S.C. 206 which provides in general that the new sections 203 and 205, replacing 18 U.S.C. 281 and 283, do not apply to retired officers of the armed forces and other uniformed services. However, 18 U.S.C. 281 and 283 contain special restrictions applicable to retired officers of the armed forces which are left in force by the partial repealer of those statutes set forth in section 2 of the Act.

The former 18 U.S.C. 284, which contained a 2-year disqualification against postemployment activities in connection with claims against the United States, applied by its terms to persons who had served as commissioned officers and whose active service had ceased either by reason of retirement or complete separation. Its replacement, the broader 18 U.S.C. 207, also applies to persons in those circumstances. Section 207, therefore applies to retired officers of the armed forces and overlaps the continuing provisions of 18 U.S.C. 281 and 283 applicable to such officers although to a different extent than did 18 U.S.C. 284.

VOIDING TRANSACTIONS IN VIOLATION OF THE CONFLICT OF INTEREST OR BRIBERY LAWS

Public Law 87–849 enacted a new section, 18 U.S.C. 218, which did not supplant a pre-existing section of the criminal code. However, it was modeled on the last sentence of the former 18 U.S.C. 216 authorizing the President to declare a Government contract void which was entered into in violation of that section. It will be recalled that section 216 was one of the two statutes repealed without replacement.

The new 18 U.S.C. 218 grants the President and, under Presidential regulations, an agency head the power to void and rescind any transaction or matter in relation to which there has been a ''final conviction'' for a violation of the conflict of interest or bribery laws. The section also authorizes the Government's recovery, in addition to any penalty prescribed by law or in a contract, of the amount expended or thing transferred on behalf of the Government.

Section 218 specifically provides that the powers it grants are ''in addition to any other remedies provided by law.'' Accordingly, it would not seem to override the decision in *United States v. Mississippi Valley Generating Co.*, 364 U.S. 520 (1961), a case in which there was no ''final conviction.''

BIBLIOGRAPHY

Set forth below are the citations to the legislative history of Public Law 87–849 and a list of recent material which is pertinent to a study of the act. The listed 1960 report of the Association of the Bar of the City of New York is particularly valuable. For a comprehensive bibliography of earlier material relating to the conflict of interest laws, see 13 Record of the Association of the Bar of the City of New York 323 (May 1958).

LEGISLATIVE HISTORY OF PUBLIC LAW 87–849 (H.R. 8140, 87TH CONG.)

1. Hearings of June 1 and 2, 1961, before the Antitrust Subcommittee (Subcommittee No. 5) of the House Judiciary Committee, 87th Cong., 1st sess., ser. 3, on *Federal Conflict of Interest Legislation*.
2. H. Rept. 748, 87th Cong., 1st sess.
3. 107 Cong., Rec. 14774.
4. Hearing of June 21, 1962, before the Senate Judiciary Committee, 87th Cong., 2d sess., on *Conflicts of Interest*.
5. S. Rept. 2213, 87th Cong., 2d sess.
6. 108 Cong. Rec. 20805 and 21130 (daily ed., October 3 and 4, 1962).

OTHER MATERIAL

1. President's special message to Congress, April 27, 1961, and attached draft bill, 107 Cong. Rec. 6835.
2. President's Memorandum of February 9, 1962, to the heads of executive departments and agencies entitled *Preventing Conflicts of Interest on the Part of Advisers and Consultants to the Government*, 27 F.R. 1341.
3. 42 Op. A.G. No. 6, January 31, 1962.
4. Memorandum of December 10, 1956, for the Attorney General from the Office of Legal Counsel re conflict of interest statutes, Hearings before the Antitrust Subcommittee (Subcommittee No. 5) of House Judiciary Committee, 86th Cong., 2d sess., ser. 17, pt. 2, p. 619.
5. Staff report of Antitrust Subcommittee (Subcommittee No. 5) of House Judiciary Committee, 85th Cong., 2d sess., *Federal Conflict of Interest Legislation* (Comm. Print 1958).
6. Report of the Association of the Bar of the City of New York, *Conflict of Interest and Federal Service* (Harvard Univ. Press 1960).

FOOTNOTES

[1] Section 190 of the Revised Statutes (5 U.S.C. 99), which was repealed by section 3 of Public Law 87–849, applied to a former officer or employee of the Government who had served in a department of the executive branch. It prohibited him, for a period of two years after his employment had ceased, from representing anyone in the prosecution of a claim against the United States which was pending in that or any other executive department during his period of employment. The subject of post-employment activities of former Government officers and employees was also dealt with in another statute which was repealed, 18 U.S.C. 284. Public Law 87–849 covers the subject in a single section enacted as the new 18 U.S.C. 207.

18 U.S.C. 216, which was repealed by section 1(c) of Public Law 87–849, prohibited the payment to or acceptance by a Member of Congress or officer or employee of the Government of any money or thing of value for giving or procuring a Government contract. Since this offense is within the scope of the newly enacted 18 U.S.C. 201 and 18 U.S.C. 203, relating to bribery and conflicts of interest, respectively, section 216 is no longer necessary.

[2] See section 2 of Public Law 87–849. 18 U.S.C. 281 and 18 U.S.C. 283 were not completely set aside by section 2 but remain in effect to the extent that they apply to retired officers of the Armed Forces (see ''Retired Officers of the Armed Forces,'' *infra*).

[3] S. Rept. 2213, 87th Cong., 2d sess., p. 6.

[4] The term ''official responsibility'' is defined by the new 18 U.S.C. 202(b) to mean ''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.''

[5] These two provisions of section 205 refer to an ''officer or employee'' and not, as do certain of the other provisions of the Act, to an ''officer or employee, including a special Government employee.'' However, it is plain from the definition in section 202(a) that a special Government employee is embraced within the comprehensive term ''officer or employee.'' There would seem to be little doubt, therefore, that the instant provisions of section 205 apply to special Government employees even in the absence of an explicit reference to them.

[6] The prohibitions of the two subsections apply to persons ending service in these areas whether they leave the Government entirely or move to the legislative or judicial branch. As a practical matter, however, the prohibitions would rarely be significant in the latter situation because officers and employees of the legislative and judicial branches are covered by sections 203 and 205.

[7] Neither section 203 nor section 205 prevents a special Government employee, during his period of affiliation with the Government, from representing another person before the Government in a particular matter only because it is within his official responsibility. Therefore the inclusion of a *former* special Government employee within the 1-year postemployment ban of sub-

section (b) may subject him to a temporary restraint from which he was free prior to the end of his Government service. However, since special Government employees usually do not have ''official responsibility,'' as that term is defined in section 202(b), their inclusion within the 1-year ban will not have a widespread effect.

[8] Subsection (a), as it first appeared in H.R. 8140, the bill which became Public Law 87–849, made it unlawful for a former officer or employee to act as agent or attorney for, *or aid or assist*, anyone in a matter in which he had participated. The House Judiciary Committee struck the underlined words, and the bill became law without them. It should be noted also that the repealed provisions of 18 U.S.C. 283 made the distinction between one's acting as agent or attorney for another and his aiding or assisting another.

§ 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)[1] 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.

(Added Pub. L. 87–849, § 1(a), Oct. 23, 1962, 76 Stat. 1121; amended Pub. L. 90–578, title III, § 301(b), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 100–191, § 3(a), Dec. 15, 1987, 101 Stat. 1306; Pub. L. 101–194, title IV, § 401, Nov. 30, 1989, 103 Stat. 1747; Pub. L. 101–280, § 5(a), May 4, 1990, 104 Stat. 158; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–337, div. A, title IX, § 924(d)(1)(B), Oct. 5, 1994, 108 Stat. 2832; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

References in Text

Section 29(c) and (d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r(c) and (d)), referred to in subsec. (a), was repealed and the provisions thereof were reenacted as sections 502, 2105(d), and 5534, of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 278.

Prior Provisions

A prior section 202, act June 25, 1948, ch. 645, 62 Stat. 691, prescribed penalties for any officer or other person who accepted or solicited anything of value to influence his decision, prior to the general amendment of this chapter by Pub. L. 87–849, and is substantially covered by revised section 201.

[1] See References in Text note below.