



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick, Director

SUBJECT: LEGISLATIVE ACTIVITY OF THE 111TH CONGRESS AFFECTING
THE EXECUTIVE BRANCH ETHICS PROGRAM

This Legal Advisory updates relevant legislative activity from the recently ended 111th Congress. Two new laws are of particular importance to the Executive Branch ethics community: the re-codification of the Procurement Integrity Act and changes to the ethics laws for the intelligence community, both of which are briefly discussed below. OGE also detected a trend in legislative activity aimed at imposing new post-employment restrictions on certain Executive Branch employees.

The 111th Congress also considered several other ethics-related provisions that did not become law, including: the extension of partner benefits to domestic partnerships and amendments to 18 U.S.C. § 205 that would have exempted qualifying law students from conflict of interest violations when participating in law clinics.

The Procurement Integrity Act

The Procurement Integrity Act was previously codified as 41 U.S.C. § 423. On January 4, 2011, 41 U.S.C. § 423 was repealed and subsequently replaced by 41 U.S.C.A. §§ 2101 – 2107. *See* Pub. L. No. 111-350, sec. 7(b), 124 Stat. 3855 (2011). In the recodification of the Procurement Integrity Act, the post-employment restriction that prohibits certain former federal employees from accepting employment with a contractor for a one-year period was codified into a separate section. *Id.* (to be codified at 41 U.S.C. § 2104).

The House Committee on the Judiciary's Report on H.R. 1107 (which became Public Law No: 111-350) asserts that, in restating the existing law, H.R. 1107 consolidated and reorganized various provisions of law which had been enacted separately over a period of many years, conformed style and terminology, modernized obsolete language, and corrected drafting errors – and that the changes are not intended to have substantive effect, and are not to impair in

any way the precedential value of earlier judicial decisions or other interpretations: that is, H.R. 1107 is intended to restate existing law without substantive change. *See* H.R. REP. NO. 111-42, at 2-3 (2009).

This change may affect training materials and other materials in which a citation may be made to the Procurement Integrity Act.

Changes to Ethics Laws Related to the Intelligence Community

The Intelligence Authorization Act for Fiscal Year 2010, Pub. L. No. 111-259, allows the head of an element of the intelligence community to delete certain information about the receipt and disposition of foreign gifts and decorations if the publication of this information would adversely affect U.S. intelligence sources or methods. Pub. L. No. 111-259, § 361, 124 Stat. 2654 (2010). Any information withheld from the Secretary of State must be transmitted to the Director of National Intelligence, who is required to keep a record of this sensitive information. This Act also requires the Director of National Intelligence to issue outside-employment restrictions for intelligence officers and employees in consultation with OGE. Pub. L. No. 111-259, § 307, 124 Stat. 2654 (2010). The Director of National Intelligence will submit an annual report to the congressional intelligence committees detailing the authorized instances of outside employment for intelligence officers and employees.

Legislative Trends in Post-Employment Restrictions

Legislators in the 111th Congress focused on imposing additional post-employment restrictions for certain government employees, a trend which appears to be surfacing again in the 112th Congress. Proposed legislation directed at the former Minerals Management Service, National Highway Traffic Safety Administration, and the Federal Aviation Administration (FAA) would have either directly prohibited current government employees from working for certain prospective employers or penalized specified prospective employers for hiring certain government employees. The FAA Air Transportation Modernization and Safety Improvement Act proposed in the 111th Congress called for three-year post-employment restriction period for certain former employees and has been reintroduced in the first session of the 112th Congress. S. 223, 112th Cong. (2011); H.R. 658, 112th Cong. (2011). OGE will continue to monitor legislative activity involving post-employment restrictions and provide relevant updates as events unfold.

Conclusion

OGE brings this information to your attention as part of our initiative to keep you apprised of relevant legislative activity. As the 112th Congress engages in ethics-related legislative activity, OGE will provide similar, periodic legislative activity updates. OGE also may be in communication with you directly about agency-specific legislative proposals and provisions that may affect your ethics program as they come to our attention. If you would like to discuss this or other legislative matters, please contact OGE's Associate Director for Legislative Affairs, Shelley Finlayson at (202) 482-9314.