

MEMORANDUM

TO: Commission on Strengthening Utah's Democracy
FROM: David R. Hall of Parsons Behle & Latimer
DATE: March 2009
SUBJECT: Lobbying Regulations Summary

Lobbying is as old as government itself. Wherever lawmakers have met, individuals or groups have gathered to persuade lawmakers. The term "lobbyist" is believed to have originated from English Parliament where the public would gather in the lobby to speak to members of the House of Commons. The modern usage of the term lobbyist most commonly refers to a professional who is hired to advocate on behalf of a particular client or position.

I. LOBBYING REGISTRATION AND DISCLOSURE

A. Utah's Lobbying Registration and Disclosure Requirements

Utah law defines lobbying as "communicating with a public official for the purpose of influencing the passage, defeat, amendment, or postponement of legislative or executive action."¹ A lobbyist is defined as an individual who is employed or compensated to lobby a public official.²

1. Utah Registration Requirements

Utah requires legislative and executive branch lobbyists to register with the Lieutenant Governor's office before engaging in any lobbying activities. Lobbyists must pay a \$25 licensing fee and disclose the name and address of each principal for whom they work, but lobbyist principals (i.e. individuals, corporations, and other entities that hire lobbyists) themselves are not required to register with the state. Registration for so-called "grassroots lobbying"³ is not required. Individuals elected to a position in state or local government, or employed in a full-time position by state or local government, are not required to be licensed, but must disclose expenditures.⁴

¹ Utah Code Ann. § 36-11-102(8).

² Utah Code Ann. § 36-11-102(9).

³ "Grassroots lobbying," also known by the pejorative term "Astroturf lobbying," refers to efforts by interest groups to pressure public officials indirectly through issue-oriented public advertisements.

⁴ Utah Code Ann. § 36-11-103.

2. Utah Reporting Requirements

A Utah-registered lobbyist must file quarterly reports that disclose and itemize the lobbyist's expenditures made to benefit any public official, including travel expenses and food costs. During the 2009 General Legislative Session, the reporting threshold for daily food or beverage expenditures was changed from expenditures greater than \$50 to expenditures greater than \$25 per official.⁵ No reporting is required for an event where the entire Legislature or an entire legislative committee is invited. Any other type of expenditure must be disclosed if it exceeds \$10 per official.⁶ The reporting requirements were also amended to clarify that a "gift" includes "admission to a sporting, recreational, or artistic event whether as a spectator or a participant."⁷ A lobbyist must also disclose the legislative or executive action for which he or she made expenditures. Lobbyists are not required to report political contributions (unless given on behalf of a principal), fundraising activities, and compensation from lobbying activity.⁸

B. Statistics Concerning Lobbying Registration and Reporting

- 16 states, unlike Utah, require lobbyist principals to register;
 - Licensing/registration fees in other states range from 0 to \$1,000;
- 27 states, unlike Utah, require registration for so-called "grassroots lobbying";
- 13 states, unlike Utah, require lobbyists to wear special name badges on government property;
- 14 states, including Utah, require lobbyist disclosure reports to be filed quarterly;
- 23 states require lobbying disclosure on a less frequent basis than Utah (i.e. less often than quarterly);
- 13 states require lobbying disclosure on a more frequent basis than Utah (i.e. more often than quarterly); and
- 33 states, unlike Utah, require lobbyists to report the amount of lobbying-related compensation they receive.⁹

C. Alternative Approaches to Lobbying Registration and Reporting

1. Washington—Registration for Grassroots Lobbying

Under Washington law, "lobbying" means "attempting to influence the passage or defeat of any legislation or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency."¹⁰ "Lobbying" therefore includes "grassroots lobbying," which is

⁵ S.B. 156 amendments to Utah Code Ann. § 36-11-201.

⁶ *Id.*

⁷ S.B. 156 amendments to Utah Code Ann. § 36-11-304.

⁸ Utah Code Ann. § 36-11-201.

⁹ [National Conference of State Legislatures, http://www.ncsl.org/programs/ethics/lobby_registration.htm](http://www.ncsl.org/programs/ethics/lobby_registration.htm) and http://www.ncsl.org/programs/ethics/lobby_reports.htm.

¹⁰ R.C.W § 42.17.020(31).

itself defined as a “program addressed to the general public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation.”¹¹ A grassroots-lobbying campaign (e.g., newspaper ads, websites, meeting-organization efforts) sponsor must register within 30 days after “grassroots lobbying” expenditures exceed \$1,000 in any three-month period or \$500 in any month.¹² Thereafter, the sponsor must file monthly reports that disclose receipts and expenditures unless they are reported by a registered lobbyist, candidate, or political committee.¹³

2. Federal—Disclosure of Lobbyist Campaign Contributions and “Bundling”

The federal Honest Leadership and Open Government Act requires federally registered lobbyists¹⁴ to semiannually report on the date, recipient, and amount of any donation(s) given:

- To pay the cost of an event “to honor or recognize” a covered official;¹⁵
- To pay the cost of a “meeting, retreat, conference, or other similar event held by or in the name of, 1 or more” covered officials;
- To an entity “named for,” “in recognition of,” or “designated by” a covered official; or
- To an entity “established, financed, maintained, or controlled by a” covered official.¹⁶

A donation need only fit *one* of these four bulleted descriptions to trigger HLOGA’s disclosure requirements. To be clear, HLOGA does not prohibit lobbyist political contributions. It simply calls for contribution disclosure when a registered lobbyist gives money to entities (including charities and educational institutions) that are affiliated with a public official.

Additionally, federal law requires candidates, political parties, and leadership PACs (i.e. committees established or controlled by a federal official) to disclose political contributions that are “bundled” by registered lobbyists (i.e. forwarded by or credited to registered lobbyists). Lobbyists themselves have no duty to disclose fundraising activities. Specifically, reports must include the name, address, and employer of each registered lobbyist “reasonably known” to the

¹¹ R.C.W. § 42.17.200(1).

¹² *Id.*

¹³ R.C.W. §42.17.200(3).

¹⁴ Lobbying Disclosure Act registration requirements are codified at 2 U.S.C. § 1603. Donations given by entities that registered lobbyists control should also be disclosed. 2 U.S.C. 1604(d)(1).

¹⁵ “Covered legislative branch officials” include Members of Congress, elected congressional officials, and congressional employees. 2 U.S.C. § 1602(4). “Covered executive branch officials” include: The President, the Vice President, any officer or employee, or any other individual functioning in the capacity of such an officer or employee, in the Executive Office of the President; any officer or employee serving in a position in level I, II, III, IV, or V of the Executive Schedule, as designated by statute or Executive order; any member of the uniformed services whose pay grade is at or above O–7 under section 201 of title 37, United States Code; and any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character described in section 7511(b)(2)(B) of title 5, United States Code. 2 U.S.C. § 1602(3).

¹⁶ 2 U.S.C. § 1604(d)(1)(E).

reporting committee to have provided two or more “bundled” contributions during a “covered period” to the committee that, when aggregated, exceed \$16,000.¹⁷ Reports must also include the aggregated amount of the bundled contributions.¹⁸ Candidate-authorized committees, leadership PACs, and political party committees must file reports semiannually and, in some cases, more frequently (quarterly or monthly)¹⁹ with either the Secretary of the Senate or the Federal Election Commission, according to the committee’s normal reporting deadlines.²⁰

D. Pros and Cons of Lobbyist Registration and Disclosure Requirements

Lobbying-disclosure advocates believe that “responsible representative Government requires public awareness of the efforts of paid lobbyists to influence the public decisionmaking process.”²¹ Moreover, the “effective public disclosure of the identity and extent of the efforts of paid lobbyists to influence . . . officials in the conduct of Government actions will increase public confidence in the integrity of Government.”²² Others argue, however, that lobbyists assist public officials in making fair and informed decisions by exposing them to information from a broad range of interested parties.²³ They also assert that lobbying regulations do little to affect interest groups’ influence on public policy because groups simply develop methods to overcome new regulatory obstacles.²⁴ Lobbying regulation is thus a drag on a legitimate activity that produces few results for the public.

II. “REVOLVING DOOR” PROVISIONS

So-called “revolving door” laws are conflict-of-interest provisions that apply to government officials upon entering and leaving government employment. For example, revolving door provisions often prevent government employees and officials from making official decisions related to their former private-sector employers and from engaging in lobbying activities after leaving public service.

A. Utah’s Current Law

Prior to the 2009 General Session, Utah imposed no “revolving door” restrictions on legislative branch officials. During the 2009 General Session, the legislature passed the Lobbying Restrictions Act. Assuming it is signed into law by the Governor, it requires a one

¹⁷ 2 U.S.C. §434(i)(1). This reporting threshold will be adjusted annually based on the Consumer Price Index. 2 U.S.C. §434(i)(3)(B).

¹⁸ 2 U.S.C. §434(i)(1).

¹⁹ 11 C.F.R. §104.22(a)(5).

²⁰ 11 C.F.R. §104.22(d).

²¹ 2 U.S.C. § 1601(1).

²² 2 U.S.C. § 1601(3).

²³ William V. Luneberg & Thomas M. Susman, *The Lobbying Manual* at xxvi (ABA, 2005).

²⁴ See generally, Scott H. Ainsworth, *The Role of Legislators in the Determination of Interest Group Influence*, LEGIS. Stud. Q., Vol. 22, No. 4 (Nov. 1997) at 517-533. See also James M. Demarco, Note, *Lobbying the Legislature in the Republic: Why Lobbying Reform is Unimportant*, 8 NOTRE DAME J.L. ETHICS & PUB. POL’Y 599 (1994).

year “cool-off” period before a former “state official” (legislator, governor, lieutenant governor, state auditor, state treasurer, attorney general) may become licensed as a lobbyist or engage in “lobbying.” It exempts former state officials who lobby on behalf of themselves or their own business (so long as their business is not a lobbying or governmental relations organization).²⁵ No cool-off period applies to former legislative employees.

By Executive Order, for two years after the termination of their employment, former Executive Branch department or agency employees may not “lobby” current executive branch employees.²⁶

B. Statistics Concerning “Revolving Door” Provisions

- 33 states, including Utah, impose cool-off periods for post-public service lobbying employment;
- 9 of the 33 states, including Utah, require a 2-year cool-off period for some post-public service lobbying employment.
- The following states impose “cool-off” periods for former legislators:
 - 2 years: Alabama, Colorado, Florida, Iowa, New York, Kentucky
 - 1 year: Alaska, Arizona, California, Connecticut, Hawaii, New Jersey, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, Utah (pending), Wisconsin.
 - 6 months: North Carolina
 - Other: Michigan prohibits a legislator from lobbying for compensation after resigning from office until after the remainder of their term has expired. Maryland and Oregon prohibit a former legislator from lobbying until the conclusion of the next regular session that begins after the member leaves office.²⁷

C. Example of Revolving Door Provision—Federal Executive Branch

On January 21, 2009, President Barack Obama signed an Executive Order entitled “Ethics Commitments by Executive Branch Personnel.” It requires all appointees in the executive branch to sign and contractually agree to its terms. As a condition of employment, an appointee must agree, among other things, to not:

- Work, for two years, on any particular matter (including a regulation or contract) involving specific parties that is “directly and substantially related to” a former employer or client;
- Work in “the specific issue area” on which the appointee lobbied during the 2 years before appointment;
- Seek or accept employment with any executive agency that the appointee lobbied within the two years before appointment;

²⁵ Utah Code § 678-24-101 as enacted by H.B. 345 (2009).

²⁶ Utah Executive Order 2007-0001.

²⁷ National Conference of State Legislatures, http://www.ncsl.org/programs/ethics/e_revolving.htm.

- Lobby employees of the appointee’s former executive agency for two years after leaving public service; and
- Lobby any Administration appointee for the remainder of the Obama Administration.

The Executive Order allows the requirements to be waived if “it is in the public interest” or if the restrictions’ application “is inconsistent with the purpose of the restrictions.”²⁸

D. Pros and Cons of “Revolving Door” Regulations

Proponents of revolving door laws argue that cool-off periods keep former legislators from using their government connections to benefit themselves, their clients or their business interests after they leave office. Perhaps more importantly, it improves public perception and helps curb skepticism about the political process.²⁹

Revolving-door law opponents claim that the rules are unfair to legislators and public officials and may adversely affect the recruitment and retention of qualified legislators and executive branch employees.³⁰ Government should not restrict former legislators and government employees from participating in the democratic process or seeking employment in their area of expertise. Lawmakers acquire expertise in the political process, and democracy suffers when qualified people are temporarily banned from participating in the democratic process.³¹

III. METHOD FOR CHANGING UTAH’S LOBBYING REGULATIONS

With the exception of restrictions upon former and current executive branch employees, which are imposed by Executive Order, the regulation of lobbyists is governed by Utah’s Lobbyist Disclosure and Regulation Act.³² Accordingly, changes to Utah’s laws regarding lobbyist generally occur by amending or supplementing the Lobbyist Disclosure and Regulation Act, as took place in the most recent legislative session.

²⁸ Executive Order § 1 (Jan. 21, 2009), available at http://www.whitehouse.gov/the_press_office/ExecutiveOrder-EthicsCommitments/.

²⁹ Peggy Kerns, *Revolving Door Laws*, available at www.ncsl.org/programs/ethics/legisbrief-revolving.htm.

³⁰ Report to the President and Congressional Committees on the Conflict of Interest Laws Relating to Executive Branch Employment 27-28 (January 2006).

³¹ Peggy Kerns, *Revolving Door Laws*, available at www.ncsl.org/programs/ethics/legisbrief-revolving.htm.

³² Utah Code Ann. § 36-11-102, et seq.

IV. APPENDIX OF CITED MATERIALS

A. S.B. 156

B. H.B. 345

C. Exec. Order No. 13490 (January 26, 2009).

EXHIBIT A

S.B. 156

**GIFTS AND MEAL PROVISIONS FOR
PUBLIC OFFICIALS**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory S. Bell

House Sponsor: Brad L. Dee

LONG TITLE

General Description:

This bill addresses the provision and reporting of gifts and meals to public officials.

Highlighted Provisions:

This bill:

- ▶ addresses the definition of "tangible personal property";
- ▶ includes admission to various events in the definition of "gift";
- ▶ requires reporting of meals costing more than \$25 provided to a public official

under certain circumstances; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

36-11-102, as last amended by Laws of Utah 2008, Chapter 382

36-11-201, as last amended by Laws of Utah 2007, Chapters 233 and 239

36-11-304, as last amended by Laws of Utah 2007, Chapter 233

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **36-11-102** is amended to read:

30 **36-11-102. Definitions.**

31 As used in this chapter:

32 (1) "Aggregate daily expenditures" means:

33 (a) for a single lobbyist, principal, or government officer, the total of all expenditures
34 made within a calendar day by the lobbyist, principal, or government officer for the benefit of
35 an individual public official;

36 (b) when an expenditure is made by a member of a lobbyist group, the total of all
37 expenditures made within a calendar day by every member of the lobbyist group for the
38 benefit of an individual public official; or

39 (c) for a multiclient lobbyist, the total of all expenditures made by the multiclient
40 lobbyist within a calendar day for the benefit of an individual public official, regardless of
41 whether expenditures were attributed to different clients.

42 (2) "Executive action" means:

43 (a) nominations and appointments by the governor;

44 (b) the proposal, drafting, amendment, enactment, or defeat by a state agency of any
45 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

46 (c) agency ratemaking proceedings.

47 (3) (a) "Expenditure" means any of the items listed in this Subsection (3)(a) when
48 given to or for the benefit of a public official:

49 (i) a purchase, payment, distribution, loan, gift, advance, deposit, subscription,
50 forbearance, services, or goods, unless consideration of equal or greater value is received; and

51 (ii) a contract, promise, or agreement, whether or not legally enforceable, to provide
52 any of the items listed in Subsection (3)(a)(i).

53 (b) "Expenditure" does not mean:

54 (i) a commercially reasonable loan made in the ordinary course of business;

55 (ii) a campaign contribution reported in accordance with Title 20A, Chapter 11,
56 Campaign and Financial Reporting Requirements;

57 (iii) printed informational material that is related to the performance of the recipient's

58 official duties;

59 (iv) a devise or inheritance;

60 (v) any item listed in Subsection (3)(a) if given by a relative;

61 (vi) a modest item of food or refreshment such as a beverage or pastry offered other
62 than as part of a meal, the value of which does not exceed \$5;

63 (vii) a greeting card or other item of little intrinsic value that is intended solely for
64 presentation; or

65 (viii) plaques, commendations, or awards presented in public and having a cash value
66 not exceeding \$50.

67 (4) "Gift" is as defined in Section 36-11-304.

68 [~~4~~] (5) (a) "Government officer" means:

69 (i) an individual elected to a position in state or local government, when acting within
70 the government officer's official capacity; or

71 (ii) an individual appointed to or employed in a full-time position by state or local
72 government, when acting within the scope of the individual's employment.

73 (b) "Government officer" does not mean a member of the legislative branch of state
74 government.

75 [~~5~~] (6) "Immediate family" means:

76 (a) a spouse;

77 (b) a child residing in the household; or

78 (c) an individual claimed as a dependent for tax purposes.

79 [~~6~~] (7) "Interested person" means an individual defined in Subsections [~~9~~]

80 (10)(b)(iii) and (viii).

81 [~~7~~] (8) "Legislative action" means:

82 (a) bills, resolutions, amendments, nominations, and other matters pending or
83 proposed in either house of the Legislature or its committees or requested by a legislator; and

84 (b) the action of the governor in approving or vetoing legislation.

85 [~~8~~] (9) "Lobbying" means communicating with a public official for the purpose of

86 influencing the passage, defeat, amendment, or postponement of legislative or executive
87 action.

88 [~~9~~] (10) (a) "Lobbyist" means:

89 (i) an individual who is employed by a principal; or

90 (ii) an individual who contracts for economic consideration, other than reimbursement
91 for reasonable travel expenses, with a principal to lobby a public official.

92 (b) "Lobbyist" does not include:

93 (i) a government officer;

94 (ii) a member or employee of the legislative branch of government;

95 (iii) any person appearing at, or providing written comments to, a hearing conducted
96 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act or Title 63G,
97 Chapter 4, Administrative Procedures Act;

98 (iv) any person participating on or appearing before an advisory or study task force,
99 commission, board, or committee, constituted by the Legislature or any agency or department
100 of state government, except legislative standing, appropriation, or interim committees;

101 (v) a representative of a political party;

102 (vi) an individual representing a bona fide church solely for the purpose of protecting
103 the right to practice the religious doctrines of the church unless the individual or church makes
104 an expenditure that confers a benefit on a public official;

105 (vii) a newspaper, television station or network, radio station or network, periodical of
106 general circulation, or book publisher for the purpose of publishing news items, editorials,
107 other comments, or paid advertisements that directly or indirectly urge legislative or executive
108 action; or

109 (viii) an individual who appears on the individual's own behalf before a committee of
110 the Legislature or an executive branch agency solely for the purpose of testifying in support of
111 or in opposition to legislative or executive action.

112 [~~10~~] (11) "Lobbyist group" means two or more lobbyists, principals, government
113 officers, and any combination of lobbyists, principals, and officers who each contribute a

114 portion of an expenditure made to benefit a public official or member of the public official's
115 immediate family.

116 ~~[(11)]~~ (12) "Multiclient lobbyist" means a single lobbyist, principal, or government
117 officer who represents two or more clients and divides the aggregate daily expenditure made to
118 benefit a public official or member of the public official's immediate family between two or
119 more of those clients.

120 ~~[(12)]~~ (13) "Person" includes individuals, bodies politic and corporate, partnerships,
121 associations, and companies.

122 ~~[(13)]~~ (14) "Principal" means a person that employs an individual to perform lobbying
123 either as an employee or as an independent contractor.

124 ~~[(14)]~~ (15) "Public official" means:

- 125 (a) (i) a member of the Legislature;
- 126 (ii) an individual elected to a position in the executive branch; or
- 127 (iii) an individual appointed to or employed in the executive or legislative branch if
128 that individual:

129 (A) occupies a policymaking position or makes purchasing or contracting decisions;

130 (B) drafts legislation or makes rules;

131 (C) determines rates or fees; or

132 (D) makes adjudicative decisions; or

133 (b) an immediate family member of a person described in Subsection ~~[(14)]~~ (15)(a).

134 ~~[(15)]~~ (16) "Public official type" means a notation to identify whether a public official
135 is:

136 (a) (i) a member of the Legislature;

137 (ii) an individual elected to a position in the executive branch;

138 (iii) an individual appointed to or employed in a position in the legislative branch who
139 meets the definition of public official under Subsection ~~[(14)]~~ (15)(a)(iii); or

140 (iv) an individual appointed to or employed in a position in the executive branch who
141 meets the definition of public official under Subsection ~~[(14)]~~ (15)(a)(iii); or

142 (b) an immediate family member of a person described in Subsection ~~[(14)]~~ (15)(b).

143 ~~[(16)]~~ (17) "Quarterly reporting period" means the three-month period covered by each
144 financial report required under Subsection 36-11-201(2)(a).

145 ~~[(17)]~~ (18) "Related person" means any person, or agent or employee of a person, who
146 knowingly and intentionally assists a lobbyist, principal, or government officer in lobbying.

147 ~~[(18)]~~ (19) "Relative" means a spouse, child, parent, grandparent, grandchild, brother,
148 sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or
149 spouse of any of these individuals.

150 ~~[(19)]~~(a) (20) "Tangible personal property" means an item having a description that is
151 consistent with the meaning of tangible personal property found in the Utah Constitution,
152 Article XIII.

153 ~~[(b) "Tangible personal property" does not include the admission price or cost for
154 events, meals, recreation, outings, or functions.]~~

155 Section 2. Section **36-11-201** is amended to read:

156 **36-11-201. Lobbyist, principal, and government officer financial reporting**
157 **requirements -- Prohibition for related person to make expenditures.**

158 (1) (a) (i) Each lobbyist shall file quarterly financial reports with the lieutenant
159 governor on or before the due dates under Subsection (2)(a).

160 (ii) If the lobbyist has not made an expenditure during the quarterly reporting period,
161 the lobbyist shall file a quarterly financial report listing the amount of expenditures as "none."

162 (b) Each government officer or principal that makes an expenditure during any of the
163 quarterly reporting periods under Subsection (2)(a) shall file a quarterly financial report with
164 the lieutenant governor on or before the date that a report for that quarter is due.

165 (2) (a) Quarterly expense reports shall be due on the following dates:

166 (i) April 10, for the period of January 1 through March 31;

167 (ii) July 10, for the period of April 1 through June 30;

168 (iii) October 10, for the period of July 1 through September 30; and

169 (iv) January 10, for the period of October 1 through December 31 of the previous year.

170 (b) If the due date for a financial report falls on a Saturday, Sunday, or legal holiday,
171 the report shall be considered to be due on the next succeeding business day.

172 (c) A financial report shall be considered timely filed if it is:

173 (i) postmarked on its due date; or

174 (ii) filed electronically on or before the due date.

175 (3) A quarterly financial report shall contain:

176 (a) the total amount of expenditures made to benefit any public official during the
177 quarterly reporting period;

178 (b) the total amount of expenditures made, by public official type, during the quarterly
179 reporting period;

180 (c) for the report due on January 10:

181 (i) the total amount of expenditures made to benefit any public official during the last
182 calendar year; and

183 (ii) the total amount of expenditures made, by public official type, during the last
184 calendar year;

185 (d) a disclosure of each expenditure made during the quarterly reporting period to
186 reimburse or pay for the travel or lodging expenses of a public official, including for each trip:

187 (i) the purpose and each destination of the trip;

188 (ii) the name of each public official that participated in the trip;

189 (iii) the public official type of each public official named;

190 (iv) for each public official named, a listing of the amount and purpose of each
191 expenditure made for travel or lodging that benefitted the public official; and

192 (v) the total amount of expenditures made to benefit each public official named;

193 (e) a disclosure of each expenditure made during the quarterly reporting period that
194 was not disclosed under Subsection (3)(d), to be provided as follows:

195 (i) using Schedule A under Section 36-11-201.3, a disclosure of each of the following
196 expenditures:

197 (A) an expenditure made for the cost or value of admission to a [~~professional or~~

198 ~~collegiate sporting event]~~ sporting, recreational, or artistic event, whether as a spectator or a
199 participant;

200 (B) an expenditure made for [~~tangible personal property~~] a gift, if the aggregate daily
201 expenditures benefitting the public official are greater than \$10;

202 (C) an expenditure made for food or beverage, if the aggregate daily expenditures
203 benefitting the public official are greater than [~~\$50; and~~] \$25 unless the food or beverage is
204 provided in connection with an event to which:

205 (I) all of the members of the Legislature, a standing or interim committee or official
206 legislative task force, or a party caucus are invited; or

207 (II) all attendees from a house of the Legislature are invited, if the event is held in
208 conjunction with a meeting of a regional or national organization the members of which are
209 comprised of state legislatures or legislators; and

210 (D) any expenditure not otherwise reported in Subsection (3)(d), or this Subsection
211 (3)(e)(i), [~~if the aggregate daily expenditures benefitting the public official are greater than~~
212 ~~\$50; and~~] except for an expenditure for food and beverage provided in connection with an
213 event to which:

214 (I) all of the members of the Legislature, a standing or interim committee or official
215 legislative task force, or a party caucus are invited; or

216 (II) all attendees from a house of the Legislature are invited, if the event is held in
217 conjunction with a meeting of a regional or national organization the members of which are
218 comprised of state legislatures or legislators; and

219 (ii) using Schedule B under Section 36-11-201.3, a disclosure of every expenditure not
220 reported in Subsection (3)(d) or (3)(e)(i);

221 (f) for each public official who was employed by the lobbyist, principal, or
222 government officer or who performed work as an independent contractor for the lobbyist,
223 principal, or government officer during the last year, a list that provides:

224 (i) the name of the public official; and

225 (ii) the nature of the employment or contract with the public official;

226 (g) each bill or resolution, by number and short title, on behalf of which the lobbyist,
227 principal, or government officer made an expenditure to a public official for which a report is
228 required by this section, if any;

229 (h) a description of each executive action on behalf of which the lobbyist, principal, or
230 government officer made an expenditure to a public official for which a report is required by
231 this section, if any;

232 (i) the general purposes, interests, and nature of the organization or organizations that
233 the lobbyist, principal, or government officer filing the report represents; and

234 (j) for a lobbyist, a certification that the information provided in the report is true,
235 accurate, and complete to the lobbyist's best knowledge and belief.

236 (4) In reporting expenditures under this section for events to which all legislators are
237 invited, each lobbyist, principal, and government officer:

238 (a) may not divide the cost of the event by the number of legislators who actually
239 attend the event and report that cost as an expenditure made to those legislators;

240 (b) shall divide the total cost by the total number of Utah legislators and others invited
241 to the event and report that quotient as the amount expended for each legislator who actually
242 attended the event; and

243 (c) may not report any expenditure as made to a legislator who did not attend the
244 event.

245 (5) A related person may not, while assisting a lobbyist, principal, or government
246 officer in lobbying, make an expenditure that benefits a public official under circumstances
247 which would otherwise fall within the disclosure requirements of this chapter if the
248 expenditure was made by the lobbyist, principal, or government officer.

249 (6) The lieutenant governor shall:

250 (a) (i) develop preprinted forms for all financial reports required by this section; and

251 (ii) make copies of the forms available to each person who requests them; and

252 (b) provide a reporting system that allows financial reports to be submitted via the
253 Internet.

254 (7) (a) Each lobbyist and each principal shall continue to file the quarterly financial
255 reports required by this section until the lobbyist or principal files a statement with the
256 lieutenant governor that:

257 (i) states:

258 (A) for a lobbyist, that the lobbyist has ceased lobbying activities; or

259 (B) for a principal, that the principal no longer employs an individual as a lobbyist;

260 (ii) in the case of a lobbyist, states that the lobbyist is surrendering the lobbyist's
261 license;

262 (iii) contains a listing, as required by this section, of all previously unreported
263 expenditures that have been made through the date of the statement; and

264 (iv) states that the lobbyist or principal will not make any additional expenditure that
265 is not disclosed on the statement unless the lobbyist or principal complies with the disclosure
266 and licensing requirements of this chapter.

267 (b) A lobbyist that fails to renew the lobbyist's license or otherwise ceases to be
268 licensed shall be required to file quarterly reports until the lobbyist files the statement required
269 by Subsection (7)(a).

270 Section 3. Section **36-11-304** is amended to read:

271 **36-11-304. Gift Provisions.**

272 (1) As used in this section and Section 36-11-201:

273 (a) "Gift" means a transfer of real property or tangible personal property for less than
274 fair and adequate consideration.

275 (b) Notwithstanding Subsection (1)(a), "gift" includes:

276 (i) admission to a sporting, recreational, or artistic event whether as a spectator or a
277 participant; and

278 (ii) cash.

279 [~~(b)~~] (c) "Gift" does not include a plaque, commendation, or award that is presented in
280 public.

281 (2) Except as provided in Subsection (3), a lobbyist, principal, or government officer

282 may not offer to or give any public official any gift or loan if the public official has been, or is
283 now, or in the near future may be involved in any governmental action directly affecting the
284 donor or lender.

285 (3) Subsection (2) does not apply to the following:

286 (a) an occasional nonpecuniary gift, having a value of not in excess of \$50 per
287 individual;

288 (b) an award publicly presented in recognition of public services;

289 (c) any bona fide loan made in the ordinary course of business; or

290 (d) gifts to a relative.

EXHIBIT B

H.R. 345

**ELECTED OFFICIALS - RESTRICTIONS ON
LOBBYING**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad L. Dee

Senate Sponsor: Gregory S. Bell

7	Cosponsors:	Francis D. Gibson	Michael T. Morley
8	Douglas C. Aagard	Kerry W. Gibson	Carol Spackman Moss
9	Sheryl L. Allen	James R. Gowans	Merlynn T. Newbold
10	Roger E. Barrus	Richard A. Greenwood	Michael E. Noel
11	Trisha S. Beck	Keith Grover	Curtis Oda
12	Ron Bigelow	Wayne A. Harper	Patrick Painter
13	Jim Bird	Lynn N. Hemingway	Marie H. Poulson
14	Jackie Biskupski	Christopher N. Herrod	Kraig Powell
15	Laura Black	Kory M. Holdaway	Paul Ray
16	Melvin R. Brown	Gregory H. Hughes	Phil Riesen
17	Rebecca Chavez-Houck	Fred R Hunsaker	Stephen E. Sandstrom
18	David Clark	Eric K. Hutchings	F. Jay Seegmiller
19	Stephen D. Clark	Don L. Ipson	Jennifer M. Seelig
20	Tim M. Cosgrove	Christine A. Johnson	Kenneth W. Sumsion
21	John Dougall	Brian S. King	Evan J. Vickers
22	Jack R. Draxler	Todd E. Kiser	C. Brent Wallis
23	Susan Duckworth	Bradley G. Last	Christine F. Watkins
24	James A. Dunnigan	David Litvack	R. Curt Webb
25	Rebecca P. Edwards	Rebecca D. Lockhart	Mark A. Wheatley
26	Janice M. Fisher	Steven R. Mascaro	Ryan D. Wilcox
27	Julie Fisher	John G. Mathis	Larry B. Wiley
28	Lorie D. Fowlke	Kay L. McIff	Carl Wimmer
29	Gage Froerer	Ronda Rudd Menlove	Bradley A. Winn
30	Kevin S. Garn		

31
32 **LONG TITLE**

33 **General Description:**

34 This bill enacts the Lobbying Restrictions Act, which places restrictions on certain
35 elected officers' ability to act as a lobbyist after leaving office.

36 **Highlighted Provisions:**

37 This bill:

- 38 ▶ enacts the Lobbying Restrictions Act, which prohibits certain elected government
- 39 officials from acting as a lobbyist for one year after leaving office; and
- 40 ▶ requires the lieutenant governor to disapprove an application for a lobbyist license
- 41 when the applicant does not meet the eligibility requirements.

42 **Monies Appropriated in this Bill:**

43 None

44 **Other Special Clauses:**

45 None

46 **Utah Code Sections Affected:**

47 AMENDS:

48 **36-11-103**, as last amended by Laws of Utah 2008, Chapter 382

49 ENACTS:

50 **67-24-101**, Utah Code Annotated 1953

51 **67-24-102**, Utah Code Annotated 1953

52 **67-24-103**, Utah Code Annotated 1953



54 *Be it enacted by the Legislature of the state of Utah:*

55 Section 1. Section **36-11-103** is amended to read:

56 **36-11-103. Licensing requirements.**

57 (1) (a) Before engaging in any lobbying, a lobbyist shall obtain a license from the

58 lieutenant governor by completing the form required by this section.

59 (b) The lieutenant governor shall issue licenses to qualified lobbyists.

60 (c) The lieutenant governor shall prepare a Lobbyist License Application Form that

61 includes:

62 (i) a place for the lobbyist's name and business address;

63 (ii) a place for the name and business address of each principal for whom the lobbyist

64 works or is hired as an independent contractor;

65 (iii) a place for the name and address of the person who paid or will pay the lobbyist's
66 registration fee, if the fee is not paid by the lobbyist;

67 (iv) a place for the lobbyist to disclose any elected or appointed position that the
68 lobbyist holds in state or local government, if any;

69 (v) a place for the lobbyist to disclose the types of expenditures for which the lobbyist
70 will be reimbursed; and

71 (vi) a certification to be signed by the lobbyist that certifies that the information
72 provided in the form is true, accurate, and complete to the best of the lobbyist's knowledge and
73 belief.

74 (2) Each lobbyist who obtains a license under this section shall update the licensure
75 information when the lobbyist accepts employment for lobbying by a new client.

76 (3) (a) Except as provided in Subsection (4), the lieutenant governor shall grant a
77 lobbying license to an applicant who:

78 (i) files an application with the lieutenant governor that contains the information
79 required by this section; and

80 (ii) pays a \$25 filing fee.

81 (b) A license entitles a person to serve as a lobbyist on behalf of one or more
82 principals and expires on December 31 of each even-numbered year.

83 (4) (a) The lieutenant governor may disapprove an application for a lobbying license:

84 (i) if the applicant has been convicted of violating Section 76-8-103, 76-8-107,
85 76-8-108, or 76-8-303 within five years before the date of the lobbying license application;

86 (ii) if the applicant has been convicted of violating Section 76-8-104 or 76-8-304
87 within one year before the date of the lobbying license application;

88 (iii) for the term of any suspension imposed under Section 36-11-401; [or]

89 (iv) if, within one year before the date of the lobbying license application, the
90 applicant has been found to have willingly and knowingly:

91 (A) violated [~~Section 36-11-103,~~ this section or Section 36-11-201, 36-11-301,
92 36-11-302, 36-11-303, 36-11-304, 36-11-305, or 36-11-403; or

93 (B) filed a document required by this chapter that the lobbyist knew contained
 94 materially false information or omitted material information[-]; or
 95 (v) if the applicant is prohibited from becoming a lobbyist under Title 67, Chapter 24,
 96 Lobbying Restrictions Act.

97 (b) An applicant may appeal the disapproval in accordance with the procedures
 98 established by the lieutenant governor under this chapter and Title 63G, Chapter 4,
 99 Administrative Procedures Act.

100 (5) The lieutenant governor shall deposit license fees in the General Fund.

101 (6) A principal need not obtain a license under this section, but if the principal makes
 102 expenditures to benefit a public official without using a lobbyist as an agent to confer those
 103 benefits, the principal shall disclose those expenditures as required by Sections 36-11-201.

104 (7) Government officers need not obtain a license under this section, but shall disclose
 105 any expenditures made to benefit public officials as required by Sections 36-11-201.

106 (8) Surrender, cancellation, or expiration of a lobbyist license does not absolve the
 107 lobbyist of the duty to file the financial reports if the lobbyist is otherwise required to file the
 108 reports by Section 36-11-201.

109 Section 2. Section **67-24-101** is enacted to read:

110 **CHAPTER 24. LOBBYING RESTRICTIONS ACT**

111 **67-24-101. Title.**

112 This chapter is known as the "Lobbying Restrictions Act."

113 Section 3. Section **67-24-102** is enacted to read:

114 **67-24-102. Definitions.**

115 As used in this chapter:

116 (1) "Lobbying" is as defined in Section 36-11-102.

117 (2) "Lobbyist" is as defined in Section 36-11-102.

118 (3) "State official" means:

119 (a) a member of the Legislature;

120 (b) the governor;

121 (c) the lieutenant governor;

122 (d) the state auditor;

123 (e) the state treasurer; and

124 (f) the attorney general.

125 Section 4. Section **67-24-103** is enacted to read:

126 **67-24-103. Qualified prohibitions on lobbyists -- Time limit -- Exceptions.**

127 (1) Except as provided in Subsection (2), a former state official serving on or after
128 May 12, 2009, may not become a lobbyist or engage in lobbying that would require
129 registration as a lobbyist under Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act,
130 for one calendar year, beginning on the day the state official leaves office and ending on the
131 one-year anniversary of that day.

132 (2) This section does not apply if the former state official engages in lobbying on
133 behalf of:

134 (a) himself; or

135 (b) a business with which he is associated, unless the primary activity of the business
136 is lobbying or governmental relations.

EXHIBIT C

EXEC. ORDER NO. 13490
(January 26, 2009)

Presidential Documents

Executive Order 13490 of January 21, 2009

Ethics Commitments by Executive Branch Personnel

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Ethics Pledge.* Every appointee in every executive agency appointed on or after January 20, 2009, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

“As a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

“1. *Lobbyist Gift Ban.* I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

“2. *Revolving Door Ban—All Appointees Entering Government.* I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

“3. *Revolving Door Ban—Lobbyists Entering Government.* If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

(a) participate in any particular matter on which I lobbied within the 2 years before the date of my appointment;

(b) participate in the specific issue area in which that particular matter falls; or

(c) seek or accept employment with any executive agency that I lobbied within the 2 years before the date of my appointment.

“4. *Revolving Door Ban—Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment.

“5. *Revolving Door Ban—Appointees Leaving Government to Lobby.* In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration.

“6. *Employment Qualification Commitment.* I agree that any hiring or other employment decisions I make will be based on the candidate’s qualifications, competence, and experience.

“7. *Assent to Enforcement.* I acknowledge that the Executive Order entitled ‘Ethics Commitments by Executive Branch Personnel,’ issued by the President on January 21, 2009, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth

the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.”

Sec. 2. Definitions. As used herein and in the pledge set forth in section 1 of this order:

(a) “Executive agency” shall include each “executive agency” as defined by section 105 of title 5, United States Code, and shall include the Executive Office of the President; provided, however, that for purposes of this order “executive agency” shall include the United States Postal Service and Postal Regulatory Commission, but shall exclude the Government Accountability Office.

(b) “Appointee” shall include every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

(c) “Gift”

(1) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(2) shall include gifts that are solicited or accepted indirectly as defined at section 2635.203(f) of title 5, Code of Federal Regulations; and

(3) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) & (3) and (j)-(l) of title 5, Code of Federal Regulations.

(d) “Covered executive branch official” and “lobbyist” shall have the definitions set forth in section 1602 of title 2, United States Code.

(e) “Registered lobbyist or lobbying organization” shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, “registered lobbyist” shall include each of the lobbyists identified therein.

(f) “Lobby” and “lobbied” shall mean to act or have acted as a registered lobbyist.

(g) “Particular matter” shall have the same meaning as set forth in section 207 of title 18, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.

(h) “Particular matter involving specific parties” shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one’s official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

(i) “Former employer” is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that “former employer” does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, or any United States territory or possession.

(j) “Former client” is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to a speech or similar appearance. It does not include clients

of the appointee's former employer to whom the appointee did not personally provide services.

(k) "Directly and substantially related to my former employer or former clients" shall mean matters in which the appointee's former employer or a former client is a party or represents a party.

(l) "Participate" means to participate personally and substantially.

(m) "Post-employment restrictions" shall include the provisions and exceptions in section 207(c) of title 18, United States Code, and the implementing regulations.

(n) "Government official" means any employee of the executive branch.

(o) "Administration" means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this order.

(p) "Pledge" means the ethics pledge set forth in section 1 of this order.

(q) All references to provisions of law and regulations shall refer to such provisions as in effect on January 20, 2009.

Sec. 3. Waiver. (a) The Director of the Office of Management and Budget, or his or her designee, in consultation with the Counsel to the President or his or her designee, may grant to any current or former appointee a written waiver of any restrictions contained in the pledge signed by such appointee if, and to the extent that, the Director of the Office of Management and Budget, or his or her designee, certifies in writing (i) that the literal application of the restriction is inconsistent with the purposes of the restriction, or (ii) that it is in the public interest to grant the waiver. A waiver shall take effect when the certification is signed by the Director of the Office of Management and Budget or his or her designee.

(b) The public interest shall include, but not be limited to, exigent circumstances relating to national security or to the economy. *De minimis* contact with an executive agency shall be cause for a waiver of the restrictions contained in paragraph 3 of the pledge.

Sec. 4. Administration. (a) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate to ensure that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee; to ensure that compliance with paragraph 3 of the pledge is addressed in a written ethics agreement with each appointee to whom it applies, which agreement shall also be approved by the Counsel to the President or his or her designee prior to the appointee commencing work; to ensure that spousal employment issues and other conflicts not expressly addressed by the pledge are addressed in ethics agreements with appointees or, where no such agreements are required, through ethics counseling; and generally to ensure compliance with this order within the agency.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a) shall be the responsibility of the Counsel to the President or his or her designee.

(c) The Director of the Office of Government Ethics shall:

(1) ensure that the pledge and a copy of this order are made available for use by agencies in fulfilling their duties under section 4(a) above;

(2) in consultation with the Attorney General or the Counsel to the President or their designees, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(3) in consultation with the Attorney General and the Counsel to the President or their designees, adopt such rules or procedures as are necessary or appropriate:

- (i) to carry out the foregoing responsibilities;
- (ii) to apply the lobbyist gift ban set forth in paragraph 1 of the pledge to all executive branch employees;
- (iii) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;
- (iv) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.205 of title 5, Code of Federal Regulations;
- (v) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by their official actions do not affect the integrity of the Government's programs and operations;
- (vi) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph 6 of the pledge is honored by every employee of the executive branch;

(4) in consultation with the Director of the Office of Management and Budget, report to the President on whether full compliance is being achieved with existing laws and regulations governing executive branch procurement lobbying disclosure and on steps the executive branch can take to expand to the fullest extent practicable disclosure of such executive branch procurement lobbying and of lobbying for presidential pardons, and to include in the report both immediate action the executive branch can take and, if necessary, recommendations for legislation; and

(5) provide an annual public report on the administration of the pledge and this order.

(d) The Director of the Office of Government Ethics shall, in consultation with the Attorney General, the Counsel to the President, and the Director of the Office of Personnel Management, or their designees, report to the President on steps the executive branch can take to expand to the fullest extent practicable the revolving door ban set forth in paragraph 5 of the pledge to all executive branch employees who are involved in the procurement process such that they may not for 2 years after leaving Government service lobby any Government official regarding a Government contract that was under their official responsibility in the last 2 years of their Government service; and to include in the report both immediate action the executive branch can take and, if necessary, recommendations for legislation.

(e) All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. Enforcement. (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States pursuant to this section by any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief.

(b) Any former appointee who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from lobbying any officer or employee of that agency for up to 5 years in addition to the time period covered by the pledge. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement this subsection, which procedures shall include (but not be limited to) providing for factfinding and investigation of possible violations of this order and for referrals to the Attorney General for his or her consideration pursuant to subsection (c).

(c) The Attorney General or his or her designee is authorized:

(1) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate Federal investigative authority to conduct such investigations as may be appropriate; and

(2) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In any such civil action, the Attorney General or his or her designee is authorized to request any and all relief authorized by law, including but not limited to:

(1) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring, or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(2) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

Sec. 6. General Provisions. (a) No prior Executive Orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive Order, this order shall control.

(b) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(c) Nothing in this order shall be construed to impair or otherwise affect:

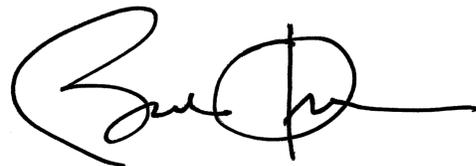
(1) authority granted by law to a department, agency, or the head thereof; or

(2) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(d) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(f) The definitions set forth in this order are solely applicable to the terms of this order, and are not otherwise intended to impair or affect existing law.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

THE WHITE HOUSE,
January 21, 2009.

[FR Doc. E9-1719
Filed 1-23-09; 8:45 am]
Billing code 3195-W9-P