

EXECUTIVE BRANCH REFORM ACT OF 2006

APRIL 27, 2006.—Committed to the Committee of the White House on the State of the Union and ordered to be printed

Mr. TOM DAVIS of Virginia, from the Committee on Government Reform, submitted the following

R E P O R T

[To accompany H.R. 5112]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 5112) to provide for reform in the operations of the executive branch, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
Committee Statement and Views	1
Section-by-Section	3
Explanation of Amendments	8
Committee Consideration	8
Rollcall Votes	9
Application of Law to the Legislative Branch	10
Statement of Oversight Findings and Recommendations of the Committee	10
Statement of General Performance Goals and Objectives	10
Constitutional Authority Statement	10
Federal Advisory Committee Act	10
Unfunded Mandate Statement	10
Committee Estimate	10
Budget Authority and Congressional Budget Office Cost Estimate	11
Changes in Existing Law Made by the Bill as Reported	12

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 5112, “The Executive Branch Reform Act of 2006,” would provide enhanced transparency to the operations of the executive branch. This landmark legislation would ensure that the behavior of our public servants is above reproach and worthy of the public trust. This legislation would strike that fine balance between rea-

sonable and focused rules of ethical behavior and arbitrary restrictions and prohibitions that hamstring our officials and prevent them from exercising the discretion needed to perform their missions on behalf of our citizens. The legislation contains common-sense rules that would enhance the public's trust in our executive branch.

Specifically, H.R. 5112 would bring transparency to meetings between the private sector and executive branch officials by requiring all political appointees and senior officials in federal agencies and the White House to report the contacts they have with private parties seeking to influence official government action. The reports, which would be filed quarterly and maintained on a searchable database at the Office of Government Ethics, must disclose the dates of meetings, the parties involved, and the subject matter discussed.

H.R. 5112 would close the revolving door between the private sector and government by deeming lawyers, lobbyists and executives appointed to high government positions to have a prohibited conflict of interest if they take official actions affecting their former clients or employers within 2 years of entering government. No conflict-of-interest waivers could be granted without the approval of the Office of Government Ethics. In addition, government officials would be prohibited from negotiating future employment with private entities that are affected by their official actions. Officials who leave government for the private sector would not be able to contact their former colleagues for 2 years (current law has only a 1-year ban) on official matters.

H.R. 5112 would close the revolving door between contractors and government. For the first time, executives who worked for private contractors would be barred from awarding contracts to their former employers when they enter government. The bill also clarifies the current law governing when government procurement officials could be hired by companies which hold federal contracts.

H.R. 5112 would provide protection to national security whistleblowers by providing whistleblower protections for national security personnel. Currently, a federal employee who works on national security issues has no effective recourse if he loses his security clearance for retaliation for disclosing abuses. The bill would give these national security officials protections against this retaliation.

H.R. 5112 would advance the cause of open government by eliminating the use of unregulated "pseudo-classifications" such as "sensitive but unclassified" or "for official use only." The legislation would require the development of regulations and standards governing the use of any information control designations by federal agencies. Any use of administrative secrecy designations not covered by statute or the new regulations would be banned.

H.R. 5112 would control government-sponsored advertising, communications, and propaganda by requiring the federal government to disclose its role in funding or disseminating advertising and communications and prohibits the expenditure of funds on unauthorized propaganda.

SECTION-BY-SECTION

Section 1. Short Title

This section provides the short title of H.R. 5112 as the “Executive Branch Reform Act of 2006.”

Section 2. Requirements relating to significant contacts

The section would amend the Ethics in Government Act of 1978 (5 U.S.C. App.4) by adding a new Title VI—Executive Branch Disclosure of Significant Contacts—including the following new sections:

Section 601—Recording and Reporting by Certain Executive Branch Officials of Significant Contacts Made to Those Officials. This section would require covered executive branch officials, on a quarterly basis, to file with the Office of Government Ethics a report on any significant contacts during that quarter between that official and any private party relating to an official government action. The report would contain the names of the covered official and the private party, a summary of the nature of the contact (date, subject matter). It would also provide that it does not require the filing of information exempt from public disclosure under section 552 (b) of title 5, the Freedom of Information Act.

Section 602—Authorities and Responsibilities of Office of Government Ethics. This section would provide that the Director of the Office of Government Ethics shall (1) provide guidance and assistance on the recording and reporting requirements and develop common compliance standards, rules, and procedures; (2) review and verify the accuracy, completeness and timeliness of the reports; (3) develop systems to carry out the title including, publicly available list of all persons who made a significant contact, computerized system to minimize burden of filing and public access; (4) make publicly available the filed reports; (5) retain reports for 6 years; (6) compile and summarize information for each reporting period; (7) notify any covered executive branch official that may be in noncompliance; and (8) notify the US Attorney General for the District of Columbia that a covered official may be in noncompliance if the official notified under paragraph (7) has failed to provide appropriate response with 60 days.

Section 603—Penalties. This section would provide that a person who knowingly fails to remedy a defective filing within 60 days of notification shall be subject to a civil fine of not more than \$50,000.

Section 604—Definitions. This section would define the term “covered executive branch official” to include officers and employees serving in level I, II, III, IV or V of the Executive Schedule, certain members of the uniformed services, officers and employees serving in confidential, policy positions described in 5 U.S.C. 7511(b)(2)(B), and those in the Executive Office of the President serving in a confidential, policy positions in the Executive Office of the President or the Office of the Vice President, but not including the President, Vice President and their respective chiefs of staff. This section would also define the term “significant contact” to include oral or written contacts in which a private party seeks influence, or obtain nonpublic information about official action and the term “private party” anyone other than a Federal, state, or local official. Finally this section would provide that the new title is to be effective 1

year after enactment and that the initial regulations are to be promulgated in draft not later than 270 days after enactment and in final not later than 1 year after enactment.

Section 3. Requirements relating to stopping the revolving door

This section would amend the Ethics in Government Act of 1978 (5 U.S.C. App.4) to add a new title VII—Stopping the Revolving Door—including the following new sections.

Section 701—Two-Year Cooling-Off Period for Persons Leaving Government Service. This section would prohibit covered executive officials from contacting federal agencies to influence policy for 2 years after the termination of the official's federal employment. The section would extend the current 1-year prohibitions contained in 18 USC 207 (c) and (d) while not otherwise affecting any waiver or criminal penalties under section 207. Subsection (c) prohibits covered officials' contacts with the agency the former official served, while subsection (d) prohibits contacts by very senior former officials with any Federal agency.

Section 702—Prohibition on Negotiation of Future Employment. This section would prohibit a covered executive branch official from participating in an official matter if the organization with whom the official is negotiating or has an arrangement concerning prospective employment has a financial interest unless a waiver is obtained. The official responsible for the employment of covered executive branch official may waive the prohibition, if the responsible official determines that exceptional circumstances exist. The Director of the Office of Government Ethics would have to investigate and review the waiver determination and the waiver would not take effect until the Director certified in writing that exceptional circumstances exist.

Section 703—Cooling-Off Period for Certain Persons Entering Government Service. This section would provide that a covered executive branch official who had been employed by an entity as an officer, director, trustee, general partner, employee or worked as lobbyist, lawyer, or other representative with the last 2 years shall not engage in official activities that would be prohibited under 18 USC 208 involving his former employer unless a waiver is obtained from the agency's designated ethics officer with the approval of the Director of the Office of Government Ethics. This section would not otherwise affect any waiver or criminal penalties under section 208. Section 208, in general, prohibits covered officials from engaging in official acts affecting the official's personal financial interest.

Section 704—Penalties. This section would provide for civil fines of up to \$100,000 for violations of sections 701, 702, or 703.

Section 705—Definitions. This section would define the term "covered executive branch official" to include officials or employees serving in level I, II, III, IV, or V of the Executive Schedule, various members of the uniformed services, certain members of the uniformed services, officers and employees serving in confidential, policy positions described in 5 U.S.C. 7511(b)(2)(B), officials or employees serving in the Executive Office of the President or the Office of the Vice President serving in confidential, policy positions, including the Vice President.

Section 4. Additional provisions relating to procurement officials

This section would amend the “Procurement Integrity Provisions” in section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) to extend the current 1-year prohibition against a former government official accepting compensation from a contract as an employee, officer, director or consultant to include those serving the contractor as a lawyer or as a lobbyist and to extend the prohibition from the current 1 year to 2 years. The current prohibition applies to former officials who served as selection or evaluation officials at the time of the selection of a contractor in an acquisition valued at over \$10,000,000, as a program manager, or similar capacity for a contract in excess of \$10,000,000 or personally made a decision regarding (1) the award or selection of a contract, sub-contract, modification, or the award of a task or delivery order above \$10,000,000, (2) a decision to establish overhead or other rates under a contract, (3) issue a contract payment in excess of \$10,000,000, or (4) to pay or settle a claim of more than \$10,000,000. This prohibition currently applies to the entity of the contractor that produces the same or similar products or services that are the subject of the covered contract. This section would also tighten the coverage of the prohibition by removing the requirement that the official must have “personally” made a decision impacting subjects (1)–(4) above so that the prohibition would attach to an official who “participated personally and substantially in” the decision.

This section would also amend 41 U.S.C. 423(c)(1) to expand that the current requirement that a government official participating in an agency procurement who is contacted by an offeror under that procurement for prospective employment, report the contact and either reject the offered employment or disqualify him or herself from participation in the procurement to include relatives of the participating government official as defined by 5 U.S.C. 3110 who are offered prospective employment.

This section would also provide that the appropriate designated agency ethics official may determine that a former government official may accept an offer of compensation for work to be performed by the former official as a new employee in that portion of a contractor’s organization other than the organization that produced the good or service that was the subject of the former government official’s action if the ethics officer determines that the offer of compensation is not a reward for contract actions listed above and the acceptance of compensation will not affect the integrity of the procurement process.

This section would also prohibit, for a 2-year period, a procurement official who is a former employee of a private-sector contractor from working on the award or management of a contract held by the official’s former employee.

This section would provide that the Administrator for Federal Procurement Policy, in consultation with the Director of the Office of Government Ethics, should promulgate regulations to carry out and ensure the enforcement of the section and monitor and investigate agency compliance with the section.

Section 5. Prohibition on unauthorized expenditure of funds for publicity or propaganda purposes

This section would amend Chapter 13 of title 31 of the U.S. Code to add a new section 1355 that provides that an officer or employee of the Government may not make or authorize expenditure for publicity or propaganda within the United States unless authorized by law.

Section 6. Requirement for disclosure of federal sponsorship of all federal advertising or other communication materials

This section would provide that each advertisement or other communication paid for by an executive agency, directly or through a contract, include a notice that the notice is paid for by the agency.

Section 7. Elimination of "pseudo" classification

Subsection (a) would require, six months after enactment, each Federal agency to submit to the Archivist of the United States (Archivist) and congressional committees, a report describing the use of "pseudo" classification designations that include: the number of "pseudo" classification policies used, existing guidance regarding their use, number and experience of employees and contractor personnel authorized to make such designations, cost of placing and maintaining information under each such designation, extent to which information under such designations have been released under the Freedom of Information Act, extent to which such designations have been used to withhold from the public information not otherwise authorized to be withheld, and a list of the statutory provisions that allow federal agencies or contractors to control, protect, or otherwise withhold information based on security concerns. This subsection would require a subsequent report by the Archivist, within 9 months after enactment, to the House Committees on Government Reform, Judiciary, Homeland Security, and Appropriations and the Senate Committees on Homeland Security and Governmental Affairs, Judiciary, and Appropriations, on the use of "pseudo" classifications across the executive branch based on the input provided by the agencies, as well as input from the Director of National Intelligence, other agencies and contractors. The Archivist would be required to provide notice and an opportunity for public comment.

Subsection (b) would require the Archivist to issue regulations, not later than 15 months after enactment, banning the use of "pseudo" classifications. If the Archivist determines that there is a need to use information control designations ("pseudo" classifications) to safeguard information prior to review for disclosure, beyond designations established by statute or an Executive Order relating to the classification of national security information, the regulations should establish standards for use of such designations. The standards should address: standards for control designations that are narrowly tailored, procedures for providing specified officials with authority to use the designations, including training and certification requirements, categories of information that may be controlled, duration of control designations and the process for removal, procedures for identifying, making and tracking the designations, specific limitations and prohibitions against using the designations, procedures for challenge by the public and the man-

ner in which use of the designations relates to procedures of each agency under the Freedom of Information Act. This regulation should be the sole authority by which federal agencies and contractors are permitted to safeguard information prior to review for disclosure except for authority granted under Federal statute or Executive Order relating to the classification of national security information.

Subsection (c) would require the Archivist's report under subsection (b) to examine existing Federal statutes that allow Federal agencies or contractors to withhold information and include recommendations on these existing Federal statutes that would improve public access to information governed by such statutes. In developing this regulation, the Archivist shall consult with agency acquisition officials, contractors, and experts on acquisition, including the Administrator for Federal Procurement Policy.

Subsection (d) would provide for the definition of the term "congressional committees" and define the term "pseudo classification designation" to mean information control designations, including "sensitive but not classified" and "for official use only" that are not defined by Federal statute or by an Executive order relating to the classification of national security information, but are used to manage, direct, or route government information, or control the accessibility of Government information. Nothing in this section shall supercede or affect section 27 of the Office of Federal Procurement Policy Act (41 U.S.C.423).

Section 8. National security whistleblower rights

This section would amend Chapter 23 of title 5 of the US Code to add a new section 2303a, "National Security Whistleblower Rights."

Subsection (a) would provide that, in addition to rights provided in Title VII of P.L. 105-272, 5 U.S.C. 2303, and any other applicable law, an employee or applicant for employment of a covered agency (covered agencies include, the Central Intelligence Agency, Defense Intelligence Agency, National Imagery and Mapping Agency, National Security Agency, Federal Bureau of Investigation, National Reconnaissance Office and any other agency involved in foreign intelligence or counterintelligence activities) may not be discharged or discriminated against, including denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information as a reprisal for disclosing covered information to an authorized Member of Congress, authorized executive official or the Inspector General (IG).

Subsection (b) would provide that an employee or applicant who believes he has been the subject of a reprisal prohibited by subsection (a) may complain to the IG and the agency head. The IG is to investigate the complaint and report to the agency head within 180 days.

Subsection (c) would provide that within 210 days of the filing of the complaint, the agency head, taking into account the IG report, shall issue an order accepting or rejecting the complaint. If the complaint is accepted, the agency head shall implement corrective action returning the complainant as nearly as possible to his pre-reprisal condition, including voiding any action denying, suspending, or revoking a security clearance or other access to classi-

fied or sensitive information as well as back pay, benefits, costs, and consequential damages. If the complaint is denied, the agency head shall issue a report detailing the reasons. The subsection would further provide that where corrective action by an agency head involves voiding a suspension or revocation of a security clearance or other access to sensitive or classified information, the agency head may re-initiate procedures to suspend the clearance or restrict access only if the new actions are based exclusively on national security concerns and not related to the original reprisal. In such cases the agency head is to issue a report to the IG and authorized Members of Congress explaining that the actions are based exclusively on national security concerns and shall provide periodic updates on the actions.

This subsection also would provide that if the agency has not acted on the complaint within 210 days, the complainant would be deemed to have exhausted the administrative remedies and may bring an action in the appropriate district court, which shall have jurisdiction without regard to the amount in controversy. A petition to review a final decision under this subsection shall be filed in the U.S. Court of Appeals for the Federal Circuit. Also the complainant may, within 60 days, have any order issued under the section reviewed by the appropriate district court or the U.S. Court of Appeals for the Federal Circuit. The review shall conform to chapter 7 of title 5 of the U.S. Code. A review of a final decision of the district court shall be filed in the U.S. Court of Appeals for the Federal Circuit. This subsection would finally contain limitations on the executive agency's assertion of the so-called "state secrets privilege" in actions for damages or relief under this section.

Subsection (d) would provide that nothing in this section is to be construed to authorize the discharge, demotion or discrimination against an employee for a disclosure other than one protected by this section or to change a right or remedy otherwise available to the employee or applicant.

Subsection (e) would provide for the definitions of the term "covered information" to include information, including classified information, that an employee reasonably believes provides evidence of a violation of any law, rule, or regulation, or gross mismanagement, or waste of funds, abuse of authority, or substantial and specific danger to public health or safety. The subsection would also define the term "covered agency" to include those agencies listed above and the term "authorized Member of Congress" to include a member of the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs and the committees of the House or Senate that have oversight over the program about which the information is disclosed.

EXPLANATION OF AMENDMENTS

There were no amendments offered.

COMMITTEE CONSIDERATION

On Thursday, April 6, 2006, the Committee ordered the bill reported to the House by a recorded vote.

ROLLCALL VOTES
Final Passage – H.R. 5112
COMMITTEE ON GOVERNMENT REFORM
109TH CONGRESS – 2nd SESSION
ROLL CALL SHEET

Representatives	Aye	No	Present	Dem.	Aye	No	Present
MR. DAVIS (VA) (CHAIRMAN)	X			MR. WAXMAN	X		
MR. SHAYS	X			MR. LANTOS			
MR. BURTON	X			MR. OWENS	X		
MS. ROS-LEHTINEN	X			MR. TOWNS			
MR. MCHUGH				MR. KANJORSKI	X		
MR. MICA	X			MR. SANDERS	X		
MR. GUTKNECHT	X			MRS. MALONEY	X		
MR. SOUDER	X			MR. CUMMINGS	X		
MR. LATOURETTE	X			MR. KUCINICH	X		
MR. PLATTS	X			MR. DAVIS (IL)	X		
MR. CANNON				MR. CLAY	X		
MR. DUNCAN				MS. WATSON			
MRS. MILLER (MI)	X			MR. LYNCH	X		
MR. TURNER (OH)				MR. VAN HOLLEN	X		
MR. ISSA	X			MS. SANCHEZ	X		
MR. PORTER	X			MR. RUPPERSBERGER	X		
MR. MARCHANT	X			MR. HIGGINS	X		
MR. WESTMORELAND	X			MS. NORTON	X		
MR. MCHENRY							
MR. DENT	X						
MRS. FOXX	X						
MRS. SCHMIDT	X						
VACANCY							

Totals: Ayes 32 Nays 0 Present

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill provides enhanced transparency to the operations of the executive branch. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 5112. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 5112. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 5112 from the Director of Congressional Budget Office:

H.R. 5112—Executive Branch Reform Act of 2006

Summary: H.R. 5112 would amend the Ethics in Government Act of 1978 and the Office of Federal Procurement Policy Act. Major provisions of the legislation would require increased disclosure regarding contacts between certain executive branch officials and lobbyists and would expand restrictions on certain federal employees and on federal employees leaving government service. In addition, H.R. 5112 would require new regulations and a report by the National Archives and Records Administration (NARA) on the inappropriate designation of government information as classified information by federal agencies.

CBO estimates that implementing H.R. 5112 would cost about \$2 million in fiscal year 2007 and \$20 million over the 2007–2011 period, subject to the availability of appropriated funds. Enacting the bill could affect revenues, but CBO estimates that any increase in revenue collections would not be significant. Enacting the bill would not affect direct spending.

H.R. 5112 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal government.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5112 is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

	By fiscal year, in millions of dollars—				
	2007	2008	2009	2010	2011
SPENDING SUBJECT TO APPROPRIATION ¹					
Office of Government Ethics:					
Authorization Level	11	12	12	13	13
Estimated Outlays	11	12	12	13	13
Proposed Changes:					
Estimated Authorization Level	2	3	4	5	6
Estimated Outlays	2	3	4	5	6
Spending Under H.R. 5112 for the Office of Government Ethics:					
Estimated Authorization Level	13	15	16	18	19
Estimated Outlays	13	15	16	18	19

¹ Enacting the bill also could affect revenues, but CBO estimates that any such effects would not be significant.

Basis of estimate: For this estimate, CBO assumes that the H.R. 5112 will be enacted near the end of fiscal year 2006, that the necessary amounts will be appropriated over the 2007–2011 period, and that spending will follow historical spending patterns of the Office of Government Ethics (OGE).

Spending subject to appropriation

The legislation would require certain executive branch officials to disclose contacts with private parties seeking to influence government actions, and it would expand restrictions on certain federal employees leaving or beginning government service. H.R. 5112 also would require the Office of Government Ethics to enforce the new lobbying restrictions.

Under current law, OGE manages financial reporting for about 1,000 Presidential appointees and provides guidance and training to the executive branch regarding workplace ethics issues. According to information from the Office of Personnel Management (OPM) and data from the uniformed services, CBO estimates that approximately 8,000 employees would be affected by the expanded reporting requirements proposed in H.R. 5112.

CBO estimates that OGE would need about 40 new attorneys, paralegals, auditors, and administrative personnel and additional computer resources to oversee workplace ethics reporting and compliance by those additional federal employees. In addition, we anticipate that this increase in staffing would occur over 4 years. Thus, CBO estimates that implementing the legislation would cost about \$20 million over the 2007–2011 period, assuming appropriation of the necessary amounts.

H.R. 5112 also would require the NARA to report on and issue regulations to prevent inappropriate classification of information as classified by federal agencies. Based on information from the NARA, this provision would codify and expand current policy. CBO estimates that preparing regulations and a report would cost less than \$500,000 over the 2007–2008 period.

Revenues

Enacting H.R. 5112 could affect federal revenues as a result of new civil penalties for violations of workplace ethics rules. Collections of civil penalties are recorded in the budget as revenues. CBO estimates, however, that any change in revenues that would result from enacting the bill would not be significant.

Intergovernmental and private-sector impact: H.R. 5112 contains no intergovernmental or private-sector mandates as defined in the UMRA and would impose no costs on state, local, or tribal government.

Estimate prepared by: Federal Costs: Matthew Pickford. Impact on State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ETHICS IN GOVERNMENT ACT OF 1978

* * * * *

TITLE VI—EXECUTIVE BRANCH DISCLOSURE OF SIGNIFICANT CONTACTS

SEC. 601. RECORDING AND REPORTING BY CERTAIN EXECUTIVE BRANCH OFFICIALS OF SIGNIFICANT CONTACTS MADE TO THOSE OFFICIALS.

(a) *IN GENERAL.*—Not later than 30 days after the end of a calendar quarter, each covered executive branch official shall make a record of, and file with the Office of Government Ethics a report on, any significant contacts during the quarter between the covered executive branch official and any private party relating to an official government action. If no such contacts occurred, each such official shall make a record of, and file with the Office a report on, this fact, at the same time.

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

- (1) the name of the covered executive branch official;
- (2) the name of each private party who had a significant contact with that official; and
- (3) for each private party so named, a summary of the nature of the contact, including—
 - (A) the date of the contact;
 - (B) the subject matter of the contact and the specific executive branch action to which the contact relates; and
 - (C) if the contact was made on behalf of a client, the name of the client.

(c) *WITHHOLDING FOIA-EXEMPT INFORMATION.*—This section does not require the filing with the Office of Government Ethics of information that is exempt from public disclosure under section 552(b) of title 5, United States Code (popularly referred to as the “Freedom of Information Act”).

SEC. 602. AUTHORITIES AND RESPONSIBILITIES OF OFFICE OF GOVERNMENT ETHICS.

(a) *IN GENERAL.*—The Director of the Office of Government Ethics shall—

- (1) promulgate regulations to implement this title, provide guidance and assistance on the recording and reporting requirements of this title, and develop common standards, rules, and procedures for compliance with this title;
- (2) review, and, where necessary, verify the accuracy, completeness, and timeliness of reports;
- (3) develop filing, coding, and cross-indexing systems to carry out the purpose of this title, including—
 - (A) a publicly available list of all private parties who made a significant contact; and
 - (B) computerized systems designed to minimize the burden of filing and maximize public access to reports filed under this title;
- (4) make available for public inspection and copying at reasonable times the reports filed under this title;
- (5) retain reports for a period of at least 6 years after they are filed;

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

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

(8) notify the United States Attorney for the District of Columbia that a covered executive branch official may be in noncompliance with this title, if the covered executive branch official has been notified in writing and has failed to provide an appropriate response within 60 days after notice was given under paragraph (7).

SEC. 603. PENALTIES.

Whoever knowingly fails to—

(1) remedy a defective filing within 60 days after notice was given under paragraph (7); or

(2) comply with any other provision of this title;

shall, upon proof of such knowing violation by a preponderance of the evidence, be subject to a civil fine of not more than \$50,000, depending on the extent and gravity of the violation.

SEC. 604. DEFINITIONS.

In this title:

(1) **COVERED EXECUTIVE BRANCH OFFICIAL.**—The term “covered executive branch official” means—

(A) 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;

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

(C) 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; and

(D) any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character, or any other individual functioning in the capacity of such an officer or employee, in the Executive Office of the President or the Office of the Vice President, but does not include the President or Vice President or the chief of staff of the President or Vice President.

(2) **SIGNIFICANT CONTACT.**—The term “significant contact” means oral or written communication (including electronic communication) that is made by a private party to a covered executive branch official in which such private party seeks to influence, or obtain nonpublic information about, official action by any officer or employee of the executive branch of the United States.

(3) **PRIVATE PARTY.**—The term “private party” means any person or entity, but does not include a Federal, State, or local government official or a person representing such an official.

TITLE VII—STOPPING THE REVOLVING DOOR

SEC. 701. TWO-YEAR COOLING-OFF PERIOD FOR PERSONS LEAVING GOVERNMENT SERVICE.

(a) *IN GENERAL.*—A covered executive branch official shall not, for a period of two years after the termination of his employment, engage in any conduct that would be prohibited under subsections (c) or (d) of section 207 of title 18, United States Code, if it occurred within one year after the termination of his employment.

(b) *NO EFFECT ON SECTION 207.*—This section does not expand, contract, or otherwise affect the application of any waiver or criminal penalties under section 207 of title 18, United States Code.

SEC. 702. PROHIBITION ON NEGOTIATION OF FUTURE EMPLOYMENT.

(a) *PROHIBITION.*—A covered executive branch official shall not participate in any official matter in which, to the official's knowledge, a person or organization with whom the official is negotiating or has any arrangement concerning prospective employment has a financial interest, unless a waiver has been granted under subsection (b).

(b) *WAIVERS ONLY WHEN EXCEPTIONAL CIRCUMSTANCES EXIST.*—A waiver to subsection (a) is not available, and shall not be granted, to any individual except in a case which the Government official responsible for the individual's appointment as a covered executive branch official determines that exceptional circumstances exist. Whenever such a determination is made, the Director of the Office of Government Ethics shall independently investigate and review the circumstances relating to the determination, and the waiver shall not take effect until the date on which the Director certifies in writing that exceptional circumstances exist.

SEC. 703. COOLING-OFF PERIOD FOR CERTAIN PERSONS ENTERING GOVERNMENT SERVICE.

(a) *IN GENERAL.*—A covered executive branch official shall not engage in conduct relating to a covered entity that would be prohibited under section 208 of title 18, United States Code, if the official had a financial interest in the covered entity, unless a waiver has been granted under subsection (b).

(b) *WAIVER.*—An agency's designated ethics officer may, if the Director of the Office of Government Ethics approves, waive the prohibition in subsection (a) with respect to a covered executive branch official of that agency upon a determination that the relationship between the covered executive branch official and the covered entity is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from the official.

(c) *DEFINITION.*—In this section, the term "covered entity" means an entity—

- (1) in which the official, within the previous 2 years, served as an officer, director, trustee, general partner, or employee; or
- (2) for which the official, within the previous 2 years, worked as a lobbyist, lawyer, or other representative.

(d) *NO EFFECT ON SECTION 208.*—This section does not expand, contract, or otherwise affect the application of any criminal penalties under section 208 of title 18, United States Code.

SEC. 704. PENALTIES.

Whoever violates section 701, 702, or 703 of this title shall, upon proof of such knowing violation by a preponderance of the evidence, be subject to a civil fine of not more than \$100,000, depending on the extent and gravity of the violation.

SEC. 705. DEFINITION.

In this title, the term “covered executive branch official” means—

(1) 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;

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

(3) 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; and

(4) any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy advocating character, or any other individual functioning in the capacity of such an officer or employee, in the Executive Office of the President or the Office of the Vice President; and

(5) the Vice President.

**SECTION 27 OF THE OFFICE OF FEDERAL
PROCUREMENT POLICY ACT**

SEC. 27. RESTRICTIONS ON DISCLOSING AND OBTAINING CONTRACTOR BID OR PROPOSAL INFORMATION OR SOURCE SELECTION INFORMATION.

(a) * * *

* * * * *

(c) ACTIONS REQUIRED OF PROCUREMENT OFFICERS WHEN CONTACTED BY OFFERORS REGARDING NON-FEDERAL EMPLOYMENT.—(1) If an agency official who is participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contacts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official or for a relative of that official (as defined in section 3110 of title 5, United States Code), the official shall—

(A) * * *

* * * * *

(d) PROHIBITION ON FORMER OFFICIAL’S ACCEPTANCE OF COMPENSATION FROM CONTRACTOR.—(1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, [or consultant] consultant, lawyer, or lobbyist of the contractor within a period of [one year] two years after such former official—

(A) * * *

* * * * *

(C) [personally made for the Federal agency—] participated personally and substantially in—

(i) * * *

* * * * *

[(2) Nothing in paragraph (1) may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph.]

(2) Paragraph (1) shall not prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph if the agency's designated ethics officer determines that—

(A) the offer of compensation is not a reward for any action described in paragraph (1); and

(B) acceptance of the compensation is appropriate and will not affect the integrity of the procurement process.

* * * * *

(i) PROHIBITION ON INVOLVEMENT BY CERTAIN FORMER CONTRACTOR EMPLOYEES IN PROCUREMENTS.—An employee of the Federal Government who is a former employee of a contractor with the Federal Government shall not be personally and substantially involved with any award of a contract to the employee's former employer, or the administration of such a contract, for the two-year period beginning on the date on which the employee leaves the employment of the contractor.

(j) REGULATIONS.—The Administrator, in consultation with the Director of the Office of Government Ethics, shall—

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

(2) monitor and investigate individual and agency compliance with this section.

CHAPTER 13 OF TITLE 31, UNITED STATES CODE

CHAPTER 13—APPROPRIATIONS

SUBCHAPTER I—GENERAL

Sec.

1301. Application.

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SUBCHAPTER III—LIMITATIONS, EXCEPTIONS, AND PENALTIES

1341. Limitations on expending and obligating amounts.

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1355. Prohibition on unauthorized expenditure of funds for publicity or propaganda purposes.

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SUBCHAPTER III—LIMITATIONS, EXCEPTIONS, AND PENALTIES

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§ 1355. Prohibition on unauthorized expenditure of funds for publicity or propaganda purposes

An officer or employee of the United States Government may not make or authorize an expenditure or obligation of funds for publicity or propaganda purposes within the United States unless authorized by law.

CHAPTER 23 OF TITLE 5, UNITED STATES CODE

CHAPTER 23—MERIT SYSTEM PRINCIPLES

* * * * *

§ 2303a. National security whistleblower rights

(a) *PROHIBITION OF REPRISALS.*—In addition to any rights provided in Title VII of Public Law 105–272, section 2303 of title 5, United States Code, or any other law, an employee or applicant for employment of a covered agency may not be discharged, demoted, or otherwise discriminated against, including denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information, as a reprisal for disclosing covered information to an authorized Member of Congress or to an authorized official of an executive agency, the Department of Justice, or the Inspector General of the employee’s employing covered agency.

(b) *INVESTIGATION OF COMPLAINTS.*—An employee or applicant for employment of a covered agency who believes he has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General and head of the covered agency. The Inspector General shall investigate the complaint and, unless the Inspector General determines that the complaint is frivolous, submit a report of the findings of the investigation within 180 days to the employee or applicant for employment and the head of the covered agency.

(c) *REMEDY.*—

(1) *Within 210 days of the filing of the complaint, the head of the covered agency shall issue an order accepting or rejecting the complaint, or portions thereof, taking into consideration the report issued by the Inspector General under subsection (b), if any. If the head of the covered agency accepts the complaint, he shall implement corrective action to return the complainant, as nearly as possible, to the position he would have held had the reprisal not occurred, including voiding any directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information that constituted a reprisal, as well as providing back pay and related benefits, medical costs incurred, travel expenses, and any other reasonable and foreseeable consequential damages including attorney’s fees and costs. If the head of the covered agency rejects the complaint, he shall issue a report to the employee or applicant for employment detailing the reasons for the rejection.*

(2)(A) *If the head of the covered agency, in the process of implementing corrective action under (c)(1), voids a directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information that constituted a reprisal, the head of the covered agency may re-initiate procedures to issue a directive or order denying, sus-*

pending, or revoking a security clearance or otherwise restricting access to classified or sensitive information only if those re-initiated procedures are based exclusively on national security concerns and are unrelated to the actions constituting the original reprisal.

(B) In any case in which the head of a covered agency re-initiates procedures under (2)(A), the head of the covered agency shall issue an unclassified report to its IG and authorized members of Congress (with a classified annex if necessary), detailing the circumstances of the agency's re-initiated procedures and describing the manner in which those procedures are based exclusively on national security concerns and are unrelated to the actions constituting the original reprisal. The head of the covered agency shall also provide periodic updates to the IG and authorized members of Congress detailing any significant actions taken as a result of those procedures, and shall respond promptly to inquiries from authorized Members of Congress regarding the status of those procedures.

(3) If the head of the covered agency has not accepted or rejected the complaint within 210 days of the filing of the complaint, and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted his or her administrative remedies with respect to the complaint, and the complainant may bring an action at law or equity for de novo review to seek any relief described in (c)(1) in the appropriate district court of the United States, which shall have jurisdiction over such action without regard to the amount in controversy. A petition to review a final decision under this subsection shall be filed in the United States Court of Appeals for the Federal Circuit.

(4) The complainant may obtain review of any order issued under this section in the appropriate district court of the United States or the United States Court of Appeals for the Federal Circuit. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Review shall conform to chapter 7 of title 5. A petition to review a final decision of a district court under this subsection shall be filed in the United States Court of Appeals for the Federal Circuit.

(5)(A) If, in any action for damages or relief under subsections (c)(3) or (c)(4), an executive branch agency moves to withhold information from discovery based on a claim that disclosure would be inimical to national security by asserting the privilege commonly referred to as the "state secrets privilege," and if the assertion of such privilege prevents the plaintiff from establishing an element in support of the plaintiff's claim, the court shall resolve the disputed issue of fact or law in favor of the plaintiff, provided that an inspector general investigation under subsection (b) has resulted in substantial confirmation of that element, or those elements, of the plaintiff's claim.

(B) In any case in which an executive branch agency asserts the privilege commonly referred to as the "state secrets privilege," whether or not an inspector general has conducted an investigation under subsection (b), the head of that agency shall, at the same time it asserts the privilege, issue a report to au-

thorized Members of Congress, accompanied by a classified annex if necessary, describing the reasons for the assertion, explaining why the court hearing the matter does not have the ability to maintain the protection of classified information related to the assertion, detailing the steps the agency has taken to arrive at a mutually agreeable settlement with the employee or applicant for employment, setting forth the date on which the classified information at issue will be declassified, and providing all relevant information about the underlying substantive matter.

(d) *CONSTRUCTION.*—Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) of this section or to modify or derogate from a right or remedy otherwise available to the employee or applicant for employment.

(e) *DEFINITIONS.*—In this section:

(1) The term “covered information,” including classified information, is information that an employee reasonably believes to provide direct and specific evidence of—

(A) a violation of any law, rule, or regulation, or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(2) The term “covered agency” means one of the following:

(A) The Central Intelligence Agency.

(B) The Defense Intelligence Agency.

(C) The National Imagery and Mapping Agency.

(D) The National Security Agency.

(E) The Federal Bureau of Investigation.

(F) The National Reconnaissance Office.

(G) Any other Executive agency, or element or unit thereof, determined by the President under section 2302(a)(2)(C)(ii) of title 5, United States Code, to have as its principal function the conduct of foreign intelligence or counterintelligence activities.

(3) The term “authorized member of Congress” means a member of the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the committees of the House of Representatives or the Senate that have oversight over the program about which the covered information is disclosed.

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