Revolving In

Richard Briffault[♦]

Abstract: *The "revolving door"—that is, the movement of policymakers from the private sector into government and back out again—is a longstanding issue of concern in law, political science, public administration, and government ethics. Although some applaud this exchange of personnel between the public and private sectors, the general tenor of popular, political, and academic coverage of the revolving door has been highly negative, marked by frequent references to corruption, capture, and conflicts of interest.*

One striking feature of the scholarly treatment and nearly all the legal regulation of the revolving door has been a focus on "revolving out," that is, government employees leaving for the private sector to become lobbyists, consultants, or lawyers representing clients before their former government agencies. Conflicts regulation of the outward-bound revolving door is widespread at all levels of government, but the revolving door swings both ways. There has been much less attention to, or regulation of, the conflicts issues that arise when lobbyists, corporate executives, or other representatives of private interests enter government. This may sound paradoxical at first blush because the regulatory capture concern animating the focus on the revolving door should be particularly acute when the regulated become government regulators. However, as I discuss, the issues raised by what I call "revolving in" do not fit as easily within traditional government ethics regulation as those posed by revolving out.

This article addresses the gap in the legal analysis and regulation of revolving in. It explores the scope of revolving in, the conflicts of interest it poses, and the patchwork of measures that apply to it. Drawing on general government ethics principles and emergent efforts at regulation, it then proposes a set of ethics rules to deal with the conflicts of interest posed by revolving in. It concludes by acknowledging that although more robust ethics regulation is necessary, ethics rules without accompanying political action

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[♦]Joseph P. Chamberlain Professor of Legislation, Columbia University School of Law. This article benefited from (i) the comments of colleagues at the Columbia Law School faculty workshop, the Panel on Regulating Political Influence in the 21st Century at the ICON-S July 2025 Annual Conference, and especially from Professors Tim Kuhner and Eugene Mazo; and (ii) the research assistance of Columbia Law students Katerina Kakkis, Bennett M. Lunn, Ria McDonald, and Clayton C. Pierce. Research for this article was made possible in part by the Class of 1932 Law Fund at Columbia Law School.

are unlikely to be enough to deal with the underlying concern about regulatory capture.

INTRODUCTION

The "revolving door"—that is, the movement of policymakers from the private sector into government and back out again—is a longstanding issue of concern in law, political science, public administration, and government ethics. Some observers applaud this exchange of personnel between the public and private sectors. As President John F. Kennedy put it in 1961, "[t]oday's Government needs men and women with a broad range of experience, knowledge, and ability. . . . [W]e need to draw upon America's entire reservoir of talent and skill to conduct our generation's most important business, the public's business."[1] Three decades later, the American Bar Association's Committee on Government Standards observed that "our country prizes the ability to draw on the skills of citizens who have been, and will return to be, private sector managers, physical and social scientists, technical experts, and medical and legal professionals."[2] Scholars have urged that "citizen governance" "requires that people move in and out of government," with the revolving door preventing domination by a permanent "bureaucratic elite."[3] Certainly, the revolving door can enrich government policymaking with the specialized knowledge, expertise, and deep understanding of complex fields brought by actors from the private sector. It can also help private-sector entities understand and comply with regulations when former public officers and employees bring their experience and insights to the private sector. However, the general tenor of popular, political, and academic coverage of the revolving door has been

[1] John F. Kennedy, President of the United States, Special Message to Congress on Conflict-of-Interest Legislation and on Problems of Ethics in Government (Apr. 27, 1961) *in* The American Presidency Project, https://www.presidency.ucsb.edu/documents/special-message-the-congress-conflict-interest-legislation-and-problems-ethics-government.

[2] Cynthia R. Farina, Keeping Faith: Government Ethics & Government Ethics Regulation, 45 Admin. L. Rev. 287, 327 (1993).

[3] Beth Nolan, Public Interest, Private Income: Conflict and Control Limits on the Outside Income of Government Officials, 87 Nw. U. L. Rev. 57, 84 (1992); accord, Wentong Zheng, The Revolving Door, 90 Notre Dame L. Rev. 1265, 1301–02 (2015); David Zaring, Against Being Against the Revolving Door, 2013 U. Ill. L. Rev. 507, 546 (2013); Robert H. Mundheim, Conflict of Interest and the Former Government Employee: Rethinking the Revolving Door, 14 Creighton L. Rev. 707, 708–709 (1981); Thomas D, Morgan, Appropriate Limits on Participation by a Former Agency Official in Matters Before an Agency, 1980 Duke L.J. 1, 51–55 (1980).

highly negative, marked by frequent references to "entrenched corruption,"[4] regulatory capture,[5] and conflicts of interest.[6]

One striking feature of most of the scholarly treatment—and in the United States at least, nearly all the legal regulation—of the revolving door is a heavy focus on revolving out. These authorities address government employees leaving government service for the private sector to become lobbyists, consultants, corporate executives, or lawyers representing clients dealing with their former government agencies.[7] Scholars and policymakers have expressed concern that the prospect of lucrative private employment will induce public servants to take actions or make decisions while in office that will benefit potential future employers in order to enhance their private sector job prospects.[8] Similarly, critics of the revolving door cite the dangers that former public servants will take advantage of inside information gained while in public service[9] and use connections to their former colleagues who remain in public office for financial gain, either for themselves or their new employers or clients.

The revolving door as exit has been addressed by a host of laws that (i) restrict the ability of a public servant to pursue private sector employment while still in government employment;[10] (ii) set a lifetime ban on a former public employee acting on behalf of a private client or employer with respect to a particular matter that the public servant had been directly involved with while in government service;[11] and (iii) impose "cooling-off" periods that

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[4] Lee Fang, Bank Lobbyists Hired by Congress to Oversee Banking Regulations, The Intercept (Feb. 15, 2023, at 15:58 ET), https://theintercept.com/2023/02/15/congress-bank-lobbying/.

[5] Toni Makkai & John Braithwaite, In and Out of the Revolving Door: Making Sense of Regulatory Capture, 12 J. Pub. Pol 61, 61 (1992).

[6] See, e.g., Laura Karas, FDA's Revolving Door: Reckoning and Reform, 34 Stan. L. & Pol. Rev. 1, 50–53 (2023); Conor Bigley, Remedying Conflict of Interest Issues in Public Health Bodies, 36 Geo. J. Legal Ethics 575, 586–88 (2023); James D. Cox and Randall S. Thomas, Revolving Elites: The Unexplored Risk of Capturing the SEC, 107 Geo. L.J. 845, 869–89 (2019).

[7] See, e.g., Jacob R. Straus, Cong. Rsch. Serv., R45946, Executive Branch Service and the "Revolving Door" in Cabinet Departments: Background and Issues for Congress, at n.8 (2019).

[8] Contra Ed deHaan et al., The Revolving Door and the SEC's Enforcement Outcomes: Initial Evidence from Civil Litigation, 60 J. Acct. & Econ. 65, 95 (2015) (finding that government lawyers who leave public service for private careers appear to be more aggressive in bringing cases against entities in their jurisdiction than their colleagues); see Zheng, supra note 3, at 1280–1300 (suggesting that public officials considering departure for the private sector may have incentives to expand agency jurisdiction or increase enforcement in order to increase the need for their services).

[9] This is not simply confidential information legally protected from disclosure—there are other legal tools to address that—but the more informal "process knowledge" of the details of the decision-making process, and the identities and particular concerns of the key decision-makers. See, e.g., Timothy M, LaPira & Herschel F. Thomas, Revolving Door Lobbying: Public Service, Private Influence, and the Unequal Representation of Interests 7, 10–17 (2017).

[10] See, e.g., 18 U.S.C. § 208(a).

[11] See, e.g., 18 U.S.C. § 207(a)(1).

temporarily limit the ability of former public servants to appear before or communicate with their former government departments or agencies on behalf of their new employers or clients.[12] The specifics of these rules vary. Different jurisdictions adopt different definitions of what constitutes the pursuit of private employment (or when the pursuit is considered to have started);[13] what types of activities are covered by the lifetime ban and cooling-off period (such as whether restrictions are limited to formal appearances before or communications with the former agency or extend to behind-the-scenes assistance to those doing the appearing);[14] and the length of the cooling-off period, which may vary according to the level and responsibilities of the public servant.[15] The types of public servants covered by these laws vary as well, with some rules applying only to the executive branch, while others reach the legislature.[16] So, too, jurisdictions divide over whether these restrictions apply to elected officials or only appointees and staff.[17] Some of the federal restrictions, for example, even apply to members of Congress.[18] Congress enacted some revolving door restrictions in the Ethics in Government Act of 1978,[19] which have been amplified and implemented by federal regulations.[20] State and local governments have adopted similar measures.[21] Though not identical everywhere, then, some regulation of the outward-bound revolving door is widespread.

The revolving door as entrance into government has been treated quite differently. One might think that the concerns about conflict of interest, capture, and corruption that have driven the regulation of revolving out would be even more acute for revolving in. After all, many who revolve into government previously worked as lobbyists, trade association advocates, private organization staff, or corporate executives. When that occurs, the formerly regulated may actually be doing the regulating, and former policy advocates may actually make policy rather than try to influence government action from the outside. Despite these concerns, there is relatively little

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[12] See, e.g., 18 U.S.C. § 207(a)(2).

[13] See, e.g., Principles of the L., Gov't Ethics § 511 at cmt. c, Rep. Notes (A.L.I. 2025).

[14] See, e.g., id. at § 513, Rep. Notes.

[15] See, e.g., id. at § 513, cmt. c.

[16] See, e.g., id. at § 513, Rep. Notes.

[17] Id.

[18] A Senator who becomes a lobbyist may not lobby the Senate to influence the passage of legislation for two years after leaving office. Standing Rules of the Senate, R. XXXVII, in S. Doc. No. 117-1 at 78–79 (2021). The cooling-off period for members of the House of Representatives and House and Senate staff is one year. 18 U.S.C. § 207(e)(1)(B); 18 U.S.C. § 207(e)(2)–(6).

[19] Ethics in Government Act of 1978, Pub. L. 95-521, 92 Stat. 1824 (1978).

[20] See 5 C.F.R. §§ 2641 et seq.

[21] See, e.g., Principles of the L., Gov't Ethics §§ 511–513 at cmt. c, Rep. Notes (A.L.I. 2025).

academic literature on this subject,[22] and even less legal regulation. Strikingly, the literature that does exist repeatedly refers to the movement from the private sector into government as the "reverse" revolving door, as if the basic swing of the door is out of government, with "reverse" necessary to modify that assumption.[23] But, like actual revolving doors, the metaphoric one swings both ways, with the movement into government no less important than the movement out. Indeed, the door often swings both ways for many of the same individuals who move from the private sector to the public sector and then back to the private (or public-to-private-to-public).[24]

The intellectual gap regarding what I call "revolving in" is more than matched by a regulatory gap. There are no general federal conflict of interest statutes that apply to revolving in, that is, to federal employees who enter federal service from the private sector. Like all other government employees, new revolvers-in are barred from participating in matters in which they have an ongoing financial interest. As a result, an incoming employee with stock or other financial interests in their former employer may have to divest those

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[22] See Stefano Colonello, et al., The Reverse Revolving Door in the Supervision of European Banks, 1 (Dec. 26, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3997731 ("The trade-off posed by the reverse revolving door is scarcely scrutinized by the public and relatively underexplored in academic research."). This may be starting to change. See, e.g., Jeremiah Davis, Closing the Reverse Revolving Door: Proposed Restrictions on Employees of Contractors Seeking Government Employment, 43 J.L. & Com. 93, 93–95 (2024); Benjamin C.K. Egerod & Joshua McCrain, Lobbyists into Government, 18 Q.J. Pol. Sci. 403, 405 ("[T]here is little research and few stylized facts available about the transition of lobbyists *into* government – a potentially more worrying revolving door than the reverse from a normative stand point.") (2023); Ana G. Castellani & Alejandro Dulitzky, The Reverse Revolving Door: Participation of Economic Elites in the Public Sector During the 1990s in Argentina, 19 Lat. Am. Bus. Rev. 131, 132–33 (2018) ("[F]ew empirical works analyze the economic elites' (owners and executives of the most important companies and business associations in a given country) participation in the structural reforms at the end of the century by holding public offices."); Elisa Wirsching, The Revolving Door for Political Elites: An Empirical Analysis of the Linkages between Government Officials' Professional Background and Financial Regulation (Aug. 2017) (MSc dissertation, London School of Economics and Political Science), https://www.lse.ac.uk/government/Assets/Documents/pdf/masters/2017/PSPE-Elisa-Wirsching-2016-17.pdf. Yet scholarly attention continues to be focused largely on revolving out. A forthcoming law review article reporting an extensive empirical study of the revolving door devotes just one paragraph out of sixty-nine pages to revolving in. See Asaf Eckstein, Ziv Granov, & Ariel Shillo, Leave the Door Open? Towards a Context-Based Approach to the Revolving Doors, 58 Ariz. St. L.J. (forthcoming 2026) (manuscript at 13–14), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5548680.

[23] See, e.g., Colonello, et al., supra note 22, at 1; Miguel Alquezar-Yus and Josep Amer-Mestre, Reverse Revolving Door: The Influence of Interest Groups on Legislative Voting, 1 (Oct. 10, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5588564; Castellani & Dulitzky, supra note 22; Philip Mattera, The Industry-to-Government Revolving Door, *in* A Matter of Trust: How the Revolving Door Undermines Public Confidence in Government—And What to Do About It, Revolving Door Working Group, at 14 (Oct. 2005).

[24] See, e.g., Bigley, supra note 6, at 586–88 (discussing movement of Tom Vilsack from state government to private practice to United States Secretary of Agriculture to trade association executive to Secretary of Agriculture again).

interests, put them in a blind trust,[25] or agree to recuse from participating in matters involving the former employer if the employee continues to hold those interests.[26] But once these economic conflicts are resolved,[27] there are no other general *statutory*[28] restrictions that prevent revolvers-in from participating in matters that involve a former employer or client or that affect the new public servant's former industry or interest group. During several recent presidential administrations, presidential executive orders placed some revolving in ethics constraints on senior incoming appointees.[29] But President Trump, at the start of his second term, revoked the Biden Administration's revolving door executive order,[30] so there is currently no executive order constraining appointees from revolving in. However, as discussed in Part II *infra*, certain Office of Government Ethics ("OGE") rules apply.

This article addresses the gap in the regulation of revolving in. Part I provides some general information about the scope of revolving in and the nature of the conflicts of interest it may create. Part II reviews the emerging but limited regulatory framework that currently applies to revolving in. Part III then proposes ethics rules for revolving in that focus on the goal of promoting the impartiality, and the appearance of impartiality, of public servants' decision-making. However, consistent with general government ethics practice, this section defines impartiality in terms of the avoidance of favoritism for or bias against particular parties in particular matters, rather than the avoidance of predispositions or the favoring of certain viewpoints more generally. Part IV concludes by acknowledging that the ethics

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[25] The effectiveness of blind trusts in preventing financial conflicts of interest has been challenged. See Robert Rizzi & Dianna Muth, Blind Faith in Blind Trusts: Not as Solid an Ethical Shield as Many Believe, 1, 1 (2016) https://www.steptoe.com/a/web/6072/3ZEt5y/blind-faith-in-blind-trusts-not-as-solid-an-ethical.pdf.

[26] For a comprehensive overview of the federal rules, see Jack Maskell, Cong. Rsch. Serv., R43365, Financial Assets and Conflict of Interest Regulation in the Executive Branch (2014); Cong. Rsch. Serv., R31822, Entering the Executive Branch of Government: Potential Conflicts of Interest with Previous Employments and Affiliations (2007).

[27] Of course, high ranking officials may say they are divesting assets that have the potential to create a conflict of interest but then fail to do so. See, e.g., Eric Lipton, Transportation Secretary Failed to Sever Financial Ties to Construction Company, N.Y. Times (May 28, 2019), https://www.nytimes.com/2019/05/28/us/politics/elaine-chao-stock-divest.html; Rob McLean, Commerce Secretary Wilbur Ross Admits to "Errors" in Failing to Divest Assets, CNN Politics (July 12, 2018), https://www.cnn.com/2018/07/12/politics/wilbur-ross-ethics-asset-sales/index.html.

[28] As will be discussed more fully *infra* there are federal regulations and presidential executive orders that apply some revolving in restrictions to some executive branch personnel. There are also restrictions adopted by certain agencies, typically applying to employees responsible for procurement.

[29] See infra Subsection II.B.2.

[30] Exec. Order No. 14148, 90 Fed. Reg. 8237 (Jan. 28, 2025), revoking Exec. Order 13989, 86 Fed. Reg. 7029 (Jan. 20, 2021).

regulations proposed here, although far more robust than the conflict of interest regulation currently on the books in most jurisdictions, is unlikely to satisfy concerns about the "capture" issue implicated by revolving in. That concern is ultimately less about ethics, as traditionally understood, and more a matter of politics.

I. REVOLVING IN—EVIDENCE AND CONCERNS

A. Evidence that Revolving In is a Widespread Phenomenon

In the United States, there is a long tradition of appointing prominent corporate executives to senior government positions. Presidents have regularly chosen the Secretary of the Treasury from Wall Street,[31] and appointees to other top positions dealing with finance, trade, and the economy generally—such as the Department of Commerce,[32] the Securities and Exchange Commission ("SEC"),[33] the Department of Agriculture,[34] the Federal Trade Commission ("FTC"),[35] and the Federal Communications

[31] See, e.g., Alan Rappeport & Maggie Haberman, Trump Taps Investor Scott Bessent as Treasury Secretary, N.Y. Times (Nov. 22, 2024), https://www.nytimes.com/2024/11/22/business/trump-scott-bessent-treasury.html ("billionaire hedge fund manager" was founder of the investment firm Key Square Capital); Renae Merle, From Goldman Sachs to 'Suicide Squad': Meet Steven Mnuchin, Donald Trump's pick for Treasury secretary, Wash. Post, (Nov. 29, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/11/29/from-goldman-sachs-to-suicide-squad-meet-steven-mnuchin-donald-trumps-pick-for-treasury-secretary/ (Trump's Treasury pick spent seventeen years at Goldman Sachs; his father and brother also worked there.); Brett D. Fromson, Clinton Turns to a Wizard of Wall Street, Wash. Post (Jan. 23, 1993), https://www.washingtonpost.com/archive/business/1993/01/24/clinton-turns-to-a-wizard-of-wall-st/c54e7370-7e89-48ca-8833-c7cd223e930f/ ("[I]n choosing someone to coordinate economic policy from the White House, President Clinton has turned to a man many regard as one of the hottest financiers on the street . . . .").

[32] See, e.g., Ana Swanson & Maureen Farrell, Trump's Pick for Commerce Secretary Reveals Positions at More Than 800 Companies, N.Y. Times (Jan. 24, 2025), https://www.nytimes.com/2025/01/24/us/politics/trump-howard-lutnick-commerce-secretary.html (Commerce nominee Howard Lutnick "has built a fortune in brokerages, real estate and financial services.").

[33] See, e.g., Matthew Goldstein & David Yaffe-Bellany, Trump Picks Paul Atkins to Run the S.E.C., N.Y. Times (Dec. 4, 2024), https://www.nytimes.com/2024/12/04/business/trump-sec-paul-atkins.html (Atkins previously served on the SEC during the Bush Administration and then founded Patomak Global Partners, a financial services consulting firm that "provides advisory services to banks and investment firms on regulatory and compliance matters."); cf. Patrick Temple-West, Warren allies delay Obama's SEC pick, Politico (July 7, 2015), https://www.politico.com/story/2015/07/barack-obama-elizabeth-warren-sec-wall-street-119780.

[34] See, e.g., Bigley, supra note 6, at 586–88 (discussing appointment of Tom Vilsack from dairy trade association executive to Secretary of Agriculture).

[35] See, e.g., President Obama Nominates Ohlhausen to be FTC Commissioner (July 25, 2011), https://www.hunton.com/privacy-and-information-security-law/president-obama-nominates-ohlhausen-to-be-ftc-commissioner (describing how Ohlhausen had been technology policy counsel for the Business Software Alliance, a group that "has lobbied for less government control in areas such as behavioral advertising and cybersecurity").

Commission ("FCC")[36]—have consistently included top members of the corporate or financial elite and members of the corporate bar.[37] Consistent with the web of relationships that form the "military-industrial complex," senior positions at the Department of Defense have frequently been filled from the corporate sector, including executives from leading defense contractors.[38] So, too, important posts addressing health care, food and drug regulation, workplace safety, energy, and the environment have often been given to former executives of, or lobbyists for, the industries regulated by those agencies.[39] Although most of the coverage of revolving in is relatively

[36] See, e.g., Cecilia Kang, Obama to nominate telecom executive Tom Wheeler to chair FCC, Wash. Post (Apr. 30, 2013), https://www.washingtonpost.com/business/technology/obama-to-nominate-telecom-executive-to-chair-fcc/2013/04/30/cbc7dc06-b1c6-11e2-baf7-5bc2a9dc6f44_story.html ("[T]o the dismay of some critics, Wheeler . . . has served as head of the wireless industry's CTIA trade group and the National Cable and Telecommunications Association, among the most powerful and deep-pocketed lobbying groups in Washington."); see Jeffrey E. Cohen, The Dynamics of the "Revolving Door" on the FCC, 30 Am. J. Pol. Sci. 689 (1986).

[37] See, e.g., Mattera, supra note 23, at 15–23; William T. Gormley Jr., A Test of the Revolving Door Hypothesis at the FCC, 23 Am. J. Pol. Sci. 665, 666 (1979); Kelly M. Falls, A Quorum of One: Redefining Recusal Standards in the Federal Trade Commission, 19 Geo. J. Legal Ethics 705 (2006); Michael Smallberg, Revolving Regulators: SEC Faces Ethics Challenges with Revolving Door, Project on Government Oversight (May 13, 2011), https://www.pogo.org/reports/revolving-regulators-sec-faces-ethics-challenges-with-revolving-door.

[38] See, e.g., Theresa Hitchens, Trump names picks for top Pentagon posts, with financier as No. 2, Breaking Defense (Dec. 23, 2024), https://breakingdefense.com/2024/12/trump-names-picks-for-top-pentagon-posts-with-financier-in-the-lead ("Trump nominated [as Deputy Secretary of Defense] Stephen Feinberg, billionaire investor and co-founder of private equity firm Cerberus Capital Management . . . [that] owns Stratolaunch Systems, which provides hypersonic vehicles for testing including to DoD."); Sara Sirota & Lee Fang, Joe Biden Is Filling Top Pentagon Positions with Defense Contractors, The Intercept (May 28, 2021, at 11:34 ET), https://theintercept.com/2021/05/28/biden-pentagon-defense-contractors; Mattera, supra note 23, at 16, 23; Davis, supra note 22, at 95, 105. See also Jennifer Steinhauer, Michèle Flournoy Again Finds Her Shot at the Top Pentagon Job Elusive, N.Y. Times (Dec. 8, 2020), https://www.nytimes.com/2020/12/08/us/politics/michele-flournoy-defense-secretary.html ("[E]ven her supporters acknowledge that Ms. Flournoy's WestExec consulting role, and her position as an adviser to the investment fund Pine Island Capital Partners, put her in the cross hairs of many liberal critics . . . .").

[39] See, e.g., Eric Lipton, Ben Protess & Andrew W. Lehren, With Trump Appointees, a Raft of Potential Conflicts and 'No Transparency,' N.Y. Times (Apr. 15, 2017), https://www.nytimes.com/2017/04/15/us/politics/trump-appointees-potential-conflicts.html ("[O]fficials in the Trump administration now hold the exact jobs they targeted as lobbyists or lawyers in the past two years."); Mattera, supra note 23, at 20–23; Craig Holman, The Government-to-Lobbyist Revolving Door, Revolving Door Working Group, *in* A Matter of Trust: How the Revolving Door Undermines Public Confidence in Government—And What to Do About It, supra note 23, at 40–43; Zahra Meghani & Jennifer Kuzma, The "Revolving Door" Between Regulatory Agencies and Industry: A Problem That Requires Reconceptualizing Objectivity, 24 J. Agric. & Env't Ethics 575, 578–79 (2011) (appointees from industry regulate biotechnology at USDA, EPA, and FDA); Former Industry Executives Hold Top Spots in Several Federal Departments, NPR (Jan. 4, 2019), https://www.npr.org/2019/01/04/682349993/former-industry-executives-hold-top-spots-in-several-federal-departments (former lobbyist for oil industry sets policy for oil and gas leases on federal land); Jessica Wentz, Trump Appointees at Environmental, Energy and Natural Resource Management Agencies: Not Much Expertise, Plenty of Fossil Fuel Connections, Climate Law Blog (Apr. 10, 2017), https://blogs.law.columbia.edu/climate

anecdotal, one quantitative study did find that over the sixteen-year period between 2004 and 2020, fifteen percent of the people appointed to the federal Department of Health and Human Services ("HHS") came from private industry.[40] Indeed, substantial revolving in has been going on for some time. An older study of the SEC found that in 1998–2000 "[m]ore than half of all SEC employees were employed in the private sector before joining the agency, either in broker-dealer firms or in firms offering advice and other services, such as law firms and accounting firms."[41] Another older study found that in 2004, "nearly every major officeholder" at the United States Department of Agriculture "had previously owned, been employed by, or lobbied for agricultural interests and organizations."[42]

Rather than attempt to canvass all the news media accounts and studies of specific examples of revolving in, I will make four points. First, Republican administrations seem particularly inclined to make appointments from industry and the corporate sector, but Democrats engage in revolving in, too. The study of HHS appointments found that eighteen percent of appointees in Republican administrations and eleven percent of HHS appointees under Democratic presidents came from the private sector.[43] As will be discussed in the next Part, President Obama issued an executive order aimed at limiting the hiring of lobbyists, yet more than seventy Obama appointees were former lobbyists,[44] and both the Obama and Biden administrations received some criticism from the left for the appointment of financial regulators and other senior officials with Wall Street ties.[45] To be

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change/2017/04/10/trump-appointees-at-environmental-energy-and-natural-resource-management-agencies-not-much-expertise-plenty-of-fossil-fuel-connections/.

[40] Genevieve P. Kanter & Daniel Carpenter, The Revolving Door in Health Care Regulation, 42 Health Affs. 1298, 1298 (2023).

[41] Stavros Gadinis, The SEC and the Financial Industry: Evidence from Enforcement Against Broker-Dealers, 67 Bus. L. 679, 725 (2012) (citing U.S. Gov't Accountability Off., GAO-01-947, Securities and Exchange Commission: Human Capital Challenges Require Management Attention 1, 49 (2001), https://www.gao.gov/assets/gao-01-947.pdf).

[42] Jeff Herman, Saving U.S. Dietary Advice from Conflicts of Interest, 65 Food & Drug L.J. 285, 295 (2010).

[43] Kanter & Carpenter, supra note 40, at 1299.

[44] Juliet Eilperin, Obama Promised to Curb the Influence of Lobbyists. Has He Succeeded?, Wash. Post (Mar. 22, 2015), https://www.washingtonpost.com/politics/obama-promised-to-curb-the-influence-of-lobbyists-has-he-succeeded/2015/03/22/e9ec766e-ab03-11e4-abe8-e1ef60ca26de_story.html.

[45] See, e.g., Andrew Perez, Walker Bragman & Julia Rock, Joe Biden's Nominees Walk Through the Revolving Door, Jacobin (Jan. 4, 2021), https://jacobin.com/2021/01/joe-biden-cabinet-janet-yellen-antony-blinken-lobbying; Top Treasury Nominee Caught in a Cesspool of Conflicts of Interest, Revolving Door Project (June 3, 2021), https://therevolvingdoorproject.org/top-treasury-nominee-caught-in-a-cesspool-of-conflicts-of-interest/; How BlackRock Is on Track to Infiltrate Biden Administration, Revolving Door Project (Oct. 22, 2020), https://therevolvingdoorproject.org/how-blackrock-is-on-track-to-infiltrate-a-biden-administration; Matthew Yglesias, Elizabeth Warren wins battle against Obama Treasury nominee, but the war goes on, Vox, (last modified Jan. 12, 2015, at 17:06

sure, the first Trump Administration hired far more lobbyists, corporate executives, and corporate lawyers[46] than its predecessor, and the second Trump Administration quickly placed significant numbers of revolvers-in in the White House, the Cabinet, and critical agency positions—not to mention the hard-to-characterize position of "special government employee," a title held by Elon Musk and others who staffed the so-called Department of Government Efficiency.[47] Nonetheless, revolving in occurs under both parties.

Second, revolving in affects not just the executive branch but also the legislature. Congress regularly hires senior staffers from the private sector, especially former lobbyists, who then play a central role in drafting legislation in technically intricate areas such as banking and taxation that they had previously lobbied—and likely would lobby again subsequently.[48]

Third, although most of the literature and nearly all of the criticism of revolving in focuses on the appointment of corporate and industry executives, lobbyists, and lawyers into government, executives, lawyers,

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ET), https://www.vox.com/2014/12/11/7376421/antonio-weiss ("The idea that the Obama administration would pick a finance veteran for a position that, among other things, regulates the financial industry infuriated Warren.").

[46] See, e.g., Alex Gangitano, 281 lobbyists have worked in Trump administration: report, The Hill (Oct. 15, 2019, at 13:31 ET), https://thehill.com/business-a-lobbying/465865-281-lobbyists-have-worked-in-trump-administration-report/; More than 75 Trump Administration Lawyers Present Revolving Door Concerns, Public Citizen Finds, Pub. Citizen (Mar. 1, 2018), https://www.citizen.org/news/more-than-75-trump-administration-lawyers-present-revolving-door-concerns-public-citizen-finds/.

[47] See, e.g., Sophia Gonsalves-Brown, Stopping the Revolving Door: Preventing Conflicts of Interest from Former Lobbyists, Campaign Legal Ctr. (Apr. 27, 2026) (noting the appointment of forty-seven lobbyists in the Trump administration including major regulatory positions concerning mine safety and air pollution); Tracker*:* Trump Appointees' Corporate Conflicts of Interest, Pub. Citizen (last updated July 7, 2026) https://www.citizen.org/article/tracker-trump-appointees-in-the-pocket-of-big-corporations/; Jesse Drucker, He Helped Big Companies Dodge Taxes. Now He's Writing the Rules, N.Y. Times (July 14, 2025), https://www.nytimes.com/2025/07/14/business/economy/ken-kies-tax-lobbyist-treasury.html (discussing the appointment of major tax lobbyist as assistant secretary of the treasury for tax policy).

[48] See, e.g., Fang, supra note 4; Megan R. Wilson, Lobbyists' Revolving Door Leads Back to Capitol Hall Jobs, Bloomberg Gov't (Nov. 5, 2019, at 14:59 ET), https://about.bgov.com/insights/news/lobbyists-revolving-door-leads-back-to-capitol-hill-jobs/; Lee Fang, Former Tax Lobbyists are Writing the Rules on Tax Dodging, The Intercept (Apr. 27, 2016, at 22:14 ET), https://theintercept.com/2016/04/27/congress-tax-lobbyists/; Jamie Boschma, Revolving Door Works for Staffers, Too, OpenSecrets (Feb. 27, 2013, at 14:54 ET), https://www.opensecrets.org/ news/2013/02/revolving-door-works-for-staffers-too/; Humberto Sanchez, Jeff Shockey Goes for the Reverse Revolving Door Again, Roll Call (Dec. 3, 2014, at 13:45 ET), https://rollcall.com/2014/12/03/jeff-shockey-goes-for-the-reverse-revolving-door-again; Lee Fang, The Reverse Revolving Door: How Corporate Insiders Are Rewarded Upon Leaving Firms for Congress, The Nation (May 4, 2013), https://www.thenation.com/article/archive/reverse-revolving-door-how-corporate-insiders-are-rewarded-upon-leaving-firms-congres/; Sheryl Gay Stolberg, Lobbyist Turns Senator but Twists Same Arms, N.Y. Times (last updated Mar. 2, 2006), https://www.nytimes.com/2006/02/28/politics/28lobby.html.

and lobbyists from labor unions, environmental organizations, civil rights groups, charities, and other non-profit organizations revolve in too.[49]

Fourth, although this article focuses on the regulation of revolving in in the United States, revolving in is not a uniquely American phenomenon. Studies have found, for example, that a significant percentage of the executive directors of the national supervisory authorities in European banking have come from the financial industry[50] and that a majority of the new entrants in senior positions in the United Kingdom government earlier in this century came from outside the public service.[51]

B. Concerns Arising from Revolving In

Revolving in brings people with private sector (for-profit and non-profit) experience into government, introducing new expertise and distinct perspectives, including an understanding of the situation and problems—and strategies and tricks—of the regulated. That background may make them better regulators. So, what, if anything, is the problem? The question of whether to be concerned about revolving in—and what, if anything, to be concerned about—becomes sharper in contrast with revolving out.

Revolving out relates directly to the central purpose of conflict of interest laws, which is the prevention of the use of public office for private gain. "Private gain" almost always means the private financial gain of the officeholder (or ex-officeholder)

, a close family member, or someone with whom the (ex)officeholder is closely "associated," typically in a financial arrangement.[52] Basic ethics rules aim to prevent the public servant from exploiting public office for private gain and often include measures such as prohibiting public servants from soliciting or accepting gifts (including meals, travel, and entertainment) from someone with an interest in the recipient's official

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[49] See, e.g., Courtney Bublé, Were Biden's Ethics Waivers for Labor Ties Justified?, Gov't Exec., (May 11, 2021), https://www.govexec.com/oversight/2021/05/were-bidens-ethics-waivers-labor-ties-justified/173958/; Biden Administration Ethics Pledge Waivers, U.S. Dep't of the Interior (last visited July 12, 2026), https://www.doi.gov/ethics/biden-administration-ethics-pledge-waivers (listing ethics pledge waivers granted to former representatives of Native American organizations); Ethics Pledge Waiver, U.S. Env't Prot. Agency (last visited July 12, 2026), https://www.epa.gov/foia/ethics-pledge-waivers-0 (ethics pledge waiver for former counsel to environmental organization); Ctr. for Lobbying in the Pub. Int., Collateral Damage: How the Obama Administration's Ethics Restrictions on Public Service Have Harmed Nonprofit Advocacy and the Public Interest (Sept. 2011).

[50] Colonello et al., supra note 22, at 2; see also Wirsching, supra note 22, at 10.

[51] Regulating the Revolving Door, Transparency International, at 2 (June 1, 2010), https://files.transparencycdn.org/images/2010_WP_RevolvingDoor_EN.pdf .

[52] See, e.g., Principles of the L., Gov't Ethics §§ 301, 302 (A.L.I. 2025).

actions,[53] barring use of public resources for personal benefit,[54] prohibiting participation in decisions that could affect the public servant's outside interests,[55] and banning nepotism.[56] Such rules address the core concern raised by revolving out—that the former official, while still in office, will have an incentive to take actions favoring potential future private employers to improve his or her job prospects, and that once in a private sector job the former public servant will monetize the inside information, government process expertise, and social ties for private gain.[57]

But private sector employees revolving into government do not pose these problems—assuming, as ethics rules require, that the new employee's financial ties to the prior employer have been severed or that he or she has committed to recusing from matters affecting any continuing financial ties. The principal concern repeatedly voiced about revolving in is not the new public servant's financial self-interest but rather his or her viewpoint or mindset: the potential predisposition to favor the policy interests of the former employer or client or the former employer's or client's industry simply because the new public servant spent so much time working with that employer or client or advocating for their positions. This orientation towards the interests of the former employer or client need not be intentional or even something of which the new public servant is conscious. After all, "[i]t might simply be the case that people often come to share the worldviews of those with whom they spend a lot of time."[58]

It is this concern about worldview shaped by time in the private sector driving public officials' decisions—rather than financial self-interest—that spurs progressive Democrats' opposition to Democratic presidents staffing financial regulatory agencies with ex-Wall Streeters,[59] fuels outrage over Trump hiring energy company executives and ex-oil and gas lobbyists to run energy and environmental agencies,[60] and leads to frustration at the

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[53] See, e.g., id. at §§ 201–223.

[54] See, e.g., id. at §§ 301, 316.

[55] See, e.g., id. at § 302.

[56] See, e.g., id. at § 317.

[57] See, e.g., Eckstein, Granov, & Shillo, supra note 22, at 16 ("The effects of regulatory capture are two-fold: initially, government officials provide regulatory favors *ex ante* in anticipation of fulfilling their self-serving goals in the private market . . . . Afterwards, transitioning personnel may utilize their knowledge and connections within the public sector *ex post* to garner favorable regulatory treatment.").

[58] Matthew C. Stephenson, The Qualities of Public Servants Determine the Quality of Public Service, 2019 Mich. St. L. Rev. 1177, 1208 (2019).

[59] See, e.g., Temple-West, supra note 33.

[60] See, e.g., Dharna Noor, More than 40 Trump administration picks tied directly to oil, gas and coal, analysis shows, The Guardian (Oct. 9, 2025, at 22:37 ET), https://www.theguardian.com/us-news/2025/oct/08/trump-administration-fossil-fuels-climate ("It is often specific actors coming from

widespread hiring by both Democratic and Republican legislators of senior committee staff from the ranks of the lobbyists who used to lobby their committees.[61] Given the dearth of studies of revolving in, it is not clear just how much prior industry or lobbying experience itself shapes the actions of public officials.[62] It may be that other factors like political party matter more.[63] And private sector experience may make revolvers-in more effective enforcers, with "special insight into the tricks of the trade" that can be "helpful in finding the skeletons in the corporate closet."[64] But the driving concern about revolving in seems to be the potential for public policy to be shaped by an official's favoritism or bias for one's former colleagues or industry rather than misuse of office for personal financial gain.

To be sure, revolving in will often serve the economic self-interest of the new public servant's former associates who remain in the private sector. One study found that when a lobbyist goes into government, revenues for their former firm shoot up.[65] Another concluded that when senior public officials are appointed from an industry, that industry enjoys abnormally high stock market returns.[66]

However, assuming the new public servant has cut financial ties to the former private sector job, these economic gains are external effects, not benefits to the public servant himself or herself. That those financial ties have been cut is, admittedly, a big assumption. Federal ethics laws require new appointees to disclose their financial interests. If ethics officers find that these interests pose the potential for a conflict of interest with the appointee's public service job, the appointee may have to divest the interest, place it in a blind trust, or agree to recuse from certain situations or actions where that financial interest could be implicated.[67] All this assumes full and accurate disclosure by the appointee, action by the ethics officer to require divestiture

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specific moneyed interests that are carrying out this disastrous deregulatory agenda.") (internal citations omitted).

[61] See, e.g., Lee Fang, As the Revolving Door Spins: Lobbyists Hired for Top Jobs in Congress Yet Again, The Intercept (Jan. 11, 2021, at 23:27 ET), https://theintercept.com/2021/01/11/congress-lobbyists-biden/.

[62] See, e.g., Makkai & Braithwaite, supra note 5, at 61 ("Captured regulatory attitudes and revolving door variables have little power, however, in explaining the toughness of actual enforcement practices.").

[63] Gormley, supra note 37, at 681.

[64] Makkai & Braithwaite, supra note 5, at 73.

[65] Egerod & McCrain, supra note 22, at 407, 431. See also Caitlin Oprysko, Here's what happens when big-time lobbyists become big-name Trump officials, Politico (Sept. 21, 2025, at 14:00 ET), https://www.politico.com/news/2025/09/21/lobbying-connections-duffy-wiles-00574382 (reporting that the former lobbying firms of major Trump appointees are enjoying huge surges in business).

[66] Simon Luechinger & Christoph Moser, The value of the revolving door: Political appointees and the stock market, 119 J. Pub. Econ. 93, 106 (2014).

[67] See, e.g., Cong. Rsch. Serv., RL31822, Entering the Executive Branch of Government: Potential Conflicts of Interest with Previous Employments and Affiliations 7 (2015).

or a recusal agreement, and subsequent enforcement of divestiture or recusal. Any one or more of these steps may fail to occur.[68] So, too, federal ethics offices, which are ultimately subject to the will of the President,[69] may fail to adequately enforce federal ethics agreements and ethics commitments by senior administration appointees.[70] At least in theory, however, there are rules in place intended to ensure that the new appointee does not have an ongoing financial tie to a former private sector firm that could influence his or her actions in office.[71]

That said, the public servant may ultimately benefit financially if and when he or she revolves out back to the private sector and perhaps to the old firm.[72] The revolving door swings both ways, and there are many repeat

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[68] See, e.g., Karoun Demirjian, F.A.A. Chief Failed to Divest Airline Holdings as Promised, Ethics Agency Says, N.Y. Times (Dec. 10, 2025), https://www.nytimes.com/2025/12/10/us/politics/bryan-bedford-faa-airline-holdings-ethics.html; Eric Lipton, Ethics Pledges by Trump Cabinet Draw Questions and Skepticism, N.Y. Times (Feb. 1, 2025), https://www.nytimes.com/2025/02/01/us/politics/ethics-trump-zinke-bondi-lutnick-rfk.html.

[69] See, e.g., Michael Rothfeld & Ana Swanson, Democratic Lawmakers Request Review of Commerce Secretary's Possible Conflicts, N.Y. Times (Dec. 18, 2025), https://www.nytimes.com/2025/12/18/us/politics/howard-lutnick-conflicts-inspector-general.html (reporting that twenty-five members of Congress requested an investigation into whether Secretary Howard Lutnick improperly promoted artificial intelligence data center projects that could enrich his family members); Myah Ward, Trump Removes Government Ethics Office Director, Politico (Feb. 10, 2025, at 16:12 ET), https://www.politico.com/news/2025/02/10/trump-removes-government-ethics-office-director-00203418.

[70] See, e.g., Eric Tucker, Michelle L. Price & Zeke Miller, With firings and lax enforcement, Trump moving to dismantle government's public integrity guardrails, Assoc. Press (Feb. 10, 2025, at 21:24 ET), https://apnews.com/article/trump-inspectors-general-firing-justice-department-902d19ae20bcd10c2d11e92dd902d85e.

[71] One major exception to this conflict-prevention system is the Special Government Employee ("SGE"). An SGE is an officer or employee in the executive branch of the federal government appointed to perform temporary duties, defined as no more than 130 days of government work within a 365-day period. See 18 U.S.C. § 202(a). Although SGEs are subject to many government ethics rules—such as the prohibition against bribery or the restrictions on post-employment lobbying—due to their limited time in office, they are not expected to divest of any potentially conflicting financial interests. Indeed, SGEs are not eligible for a Certificate of Divestiture ("CD"), a tax benefit that allows the deferral or nonrecognition of capital gain where an employee divests a financial interest in order to comply with conflict of interest requirements. See 26 U.S.C. § 1043(b)(1)(A). The Trump Administration has been a heavy user of SGEs for senior positions—most prominently, but not limited to, Elon Musk. Jon Golinger, Isn't That Special: The Trump Administration's Use of 'Special Government Employees' Raises Conflict-of-Interest and Ethics Risks that Go Way Beyond Elon Musk, Public Citizen (Apr. 17, 2025), https://www.citizen.org/article/isnt-that-special/. See also Cecilia Kang et al., Silicon Valley's Man in the White House Is Benefiting Himself and His Friends, N.Y. Times (Nov. 30, 2025), https://www.nytimes.com/2025/11/30/technology/david-sacks-white-house-profits.html (reporting that David Sacks, the Trump Administration's SGE "artificial intelligence and crypto czar" has "at least 449 stakes in companies with ties to artificial intelligence that could be aided directly or indirectly by his policies;" Sacks has received two White House ethics waivers finding that his investments are "not so substantial" as to influence his government service).

[72] See, e.g., Egerod & McCrain, supra note 22, at 426 (finding that thirty-five percent of the sample of firm lobbyists who revolved into government returned to lobbying, nineteen percent of the total returned to their old firm). See also Murray Energy Corp. v. McCarthy, No. 5:14-CV-39, 2016 WL

revolvers. As previously discussed, however, there are revolving *out* rules that address the conflicts that would arise from appearing back before the former government agency or working on particular matters that the revolver worked on while in government. By contrast, ethics rules generally give little attention to the nonpecuniary conflicts of interest that may arise for the new public servant who has just revolved in.

Government ethics rules have traditionally focused largely on economic self-interest and financial conflicts, not the influence of particular viewpoints or mindsets. As the first director of the U.S. Office of Government Ethics, created by the Ethics in Government Act of 1978, explained,

> [q]uestions of 'bias' or prejudgment on policy matters do not come within the reach of the conflict of interest laws. Thus, a corporate official legally may accept without qualification nomination to a regulatory position having jurisdiction over his or her former business, as long as the official has no continuing financial interests in firms engaged in that business. . . . [B]ias or prejudgment on policy issues is not, by itself, an issue under the conflict of interest statutes.[73]

From this perspective, the viewpoint or mindset a revolver-in brings to government is a feature, not a bug, of a system that relies on the regular entrance of people from the private sector into leading government positions. It is an issue for which our ethics rules are not well-designed and which they are not intended to address.

However, as I will discuss in the next Part, economic self-interest has not been and need not be the exclusive focus of ethics laws. Impartial government service, that is, the avoidance of improper bias for or favoritism against parties affected by government action, is also a fundamental principle of government ethics.[74] To be sure, the meaning and scope of any impartiality requirement is uncertain. And it is critical that it not be applied in a way that calls into question the ability of public servants to act on the

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3390517, at *1 (N.D.W. Va. 2016) (chronicling the odyssey of Jeffrey Homstead, who worked for Davis Polk & Wardwell LLP, then the Bush I White House, then Latham & Watkins LLP, then the Bush II EPA, then Bracewell LLP).

[73] J. Jackson Walter, The Ethics in Government Act, Conflict of Interest Laws and Presidential Recruiting, 41 Pub. Admin. Rev. 659, 663 (1981).

[74] Principles of the L., Gov't Ethics § 303 (A.L.I. 2025).

policy views which may very well have been the basis for their election or appointment in the first place. But the norm of impartiality provides a basis for a more targeted regulation of the new public servant's relationship with particular former employers, clients, or business associates. It can address the more egregious cases of favoritism or bias with respect to particular firms, organizations, or individuals in particular matters that a revolver-in may bring to public office, even if it does not reach the broader concern of "cognitive" or "cultural" capture.

II. EMERGING REGULATION OF REVOLVING IN

A. Federal Law

There are no general federal statutes[75] governing revolving in, apart from the previously mentioned rules applicable to federal public servants generally that require disclosure and divestiture or recusal with respect to ongoing financial ties to former employers.[76] Revolving in, however, is to a

[75] At one time, the statute setting up the Department of Energy restricted former employees of "energy concerns" from participating at a supervisory level for one year after leaving that employment in a proceeding other than general rulemaking in which their former employer is interested. See Peter L. Strauss, Disqualifications of Decisional Officials in Rulemaking, 80 Colum. L. Rev. 990, 1002 (1980) (citing 42 U.S. §§ 7212, 7216 (Supp. II 1978)). That statute has since been repealed. National Defense Authorization Act for Fiscal Year 1996, Pub. L. 104–106, div. D, title XLIII, § 4304(b)(6) 110 Stat. 664 (1996). Strauss indicates that several other federal agencies had similar rules by regulation, but not by statute. The National Defense Authorization Act (NDAA) for Fiscal Year 2022 prohibited an officer or employee of the Department of Defense from "knowingly participat[ing] personally and substantially in any particular matter involving specific parties" where "any organization . . . for which the officer or employee has served as an employee, officer, director, trustee, or general partner in the past 2 years." National Defense Authorization Act for Fiscal Year 2022, Pub L. 117–81, § 1117, 135 Stat. 1955 (2021). But the more recent NDAA for Fiscal Year 2025 contains no comparableprovision.

[76] Arguably, 19 U.S.C. § 2171(b)(4), which prohibits any "person who has directly represented, aided, or advised a foreign entity . . . in any trade negotiation, or trade dispute, with the United States" from being appointed as United States Trade Representative or a Deputy United States Trade Representative is a revolving in restriction. Adopted as part of the Lobbying Disclosure Act of 1995, it parallels the LDA's revolving out section's lifetime ban on any person who had served as U.S. Trade Representative or Deputy Trade Representative from "representing, aiding, or advising foreign entities *at any time* after the termination of that person's service as the United States Trade Representative." 18 U.S.C. § 207(f)(2) (emphasis added). However, the restriction on appointing as trade representative or deputy trade representative anyone who has represented, aided, or advised a foreign entity in a trade matter with the United States is not a revolving in restriction on the activities of a new public servant based on the public servant's prior private sector actions or affiliations but an outright ban on making a revolving in-type appointment. In 2017, the Senate waived the ban and approved the nomination of Rober Lighthizer to serve as U.S. Trade Representative notwithstanding his prior work representing foreign entities on trade matters. See FreightWaves Staff, Waiver Issue Bogs Down Lighthizer Nomination, FreightWaves (Mar. 22, 2017), https://www.freightwaves.com/news/waiver-issue-bogs-down-lighthizer-nomination; Roll Call Vote 115th Congress - 1st Session (May 11, 2017), https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_115_1.htm; Congress also passed special legislation to enable Charlene Barshefsky to serve as Trade Representative notwithstanding her prior experience representing

limited degree subject to regulations adopted by the OGE. From 2009 to 2025, revolving in at the highest levels of government was also subject to more substantial restrictions by presidential executive orders.

1. OGE Regulations

(a) Impartiality: The General Rule. In 1989, President George H.W. Bush issued an executive order, "Principles of Ethical Conduct for Government Officers and Employees,"[77] stating that as a general norm "employees shall act impartially and not give preferential treatment to any private organization or individual."[78] In 1992, as part of a general recodification of its ethics regulations, OGE adopted a rule to implement Bush's impartiality principle that requires that employees "take appropriate steps to avoid an appearance of loss of impartiality in the performance of their official duties" in circumstances that go beyond the conflicts banned by the conflict of interest statute.[79] The rule provides that an employee "should not participate" in a "particular matter involving specific parties [that] is likely to have a direct and predictable effect on the financial interest of a member of the employee's household, or . . . a person with whom the employee has a covered relationship" under circumstances that would "cause a reasonable person with knowledge of the relevant facts to question their impartiality in the matter."[80] Although the definition of "covered relationship" in federal conflict of interest statutes looks to current or prospective employment or business relations, the OGE rule is broader than the statutory restriction and also includes in "covered relationship" a person for whom the employee "*within the last year*[] served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee."[81]

The rule analyzes six examples of circumstances when the impartiality of a federal employee may be questioned, of which just one addresses the connection between a new hire for the private sector and the former employer: an engineer who just resigned from a position as vice president of an electronics company to take a position at the Federal Aviation Administration ("FAA") with procurement responsibilities.

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foreign clients in trade matters. See Joint Resolution Waiving Certain Provisions of the Trade Act of 1974 Relating to the Appointment of the United States Trade Representative, Pub. L. 105–5 (1997).

[77] Exec. Order No. 12674, 54 Fed. Reg. 15159 (1989) (as modified by Exec. Order No. 12731, 55 Fed. Reg. 42547 (1990)).

[78] Id. at § 101(h).

[79] 5 C.F.R. § 2635.501(a) (2025).

[80] 5 C.F.R. § 2635.502(a) (2025).

[81] Id. at § 2635.502(b)(1)(iv) (emphasis added).

> [U]nder the circumstances the employee would be correct in concluding that this former service as an officer of the company would be likely to cause a reasonable person to question their impartiality if they were to participate in the administration of an FAA contract for which the firm is a first-tier subcontractor.[82]

In that situation, the employee ought to recuse.

Beyond calling for voluntary recusal, the rule also provides a six-factor test for an agency ethics officer to consider whether to recommend that the public servant recuse: "the nature of the relationship involved," "the effect that resolution of the matter would have upon the financial interests of the person involved in the relationship," "the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion," "the sensitivity of the matter," "the difficulty of reassigning the matter to another employee," and whether "adjustments" may be made in the employee's duties to "reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality."[83] The rule, however, also expressly states that it should not be "construed to suggest that an employee should not participate in a matter because of their political, religious or moral views."[84]

OGE's impartiality rule creates something like a "cooling off" period for dealings with former employers, clients, or business associates for a narrow set of actions, including participation in "a particular matter involving specific parties" that is likely to have a direct and substantial financial benefit for the former employer, client, or business associate. "Particular matter involving specific parties" is a frequently used term of art in ethics law that focuses on a government action or initiative that affects the interests of only a specific person(s) or a discrete class of persons. The term generally refers to "a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties."[85] The rule does not limit the ability of the new public servant to participate in general policy matters that might overlap with the public servant's prior private sector work or affect the former business or industry from which the new public servant was appointed.

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[82] Id. at § 2635.502(b) (ex. 4).
[83] Id. at § 2635.502(d)(1)(i)–(vi).
[84] Id. at § 2635.502 note 2.
[85] 5 C.F.R. § 2641.201(h) (2008).

As an illustration of the narrowness of the rule, the OGE provides the following example of a situation that does not constitute "a particular matter involving specific parties":

> An employee of the Department of Labor is providing technical assistance in drafting occupational safety and health legislation that will affect all employers of five or more persons. The employee's spouse is employed as an administrative assistant by a large corporation that will incur additional costs if the proposed legislation is enacted. Because the legislation is not a particular matter involving specific parties, the employee may continue to work on the legislation and need not be concerned that the spouse's employment with an affected corporation would raise a question concerning the employee's impartiality.[86]

The impartiality rule is only precatory. The employee simply "should not participate" in a particular matter involving someone with whom the employee has a covered relationship, but there is no requirement that the employee "must not" participate. Any agency ethics officer determination that an employee should not participate in a matter due to a covered relationship with a recent former private sector employer turns on a complex multi-factor analysis without a clearly predictable result. Nor does the rule spell out any penalties for an employee who "should" recuse but does not.[87]

(b) Golden Parachutes. A second, more tightly targeted OGE regulation provides that a federal employee must recuse for two years from participating in any particular matter involving specific parties in which a former employer is a party or represents a party if the employee had received a payment of more than $10,000 from the employer "on the basis of a determination made after it became known to the former employer that the individual was being considered for or had accepted a [g]overnment position."[88] However, any payment made pursuant to the former employer's established compensation, partnership, or benefits programs is not "covered" within the meaning of the regulation.

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[86] 5 C.F.R. § 2635.502(b) (ex. 2) (2025).

[87] 5. C.F.R. § 2635.106(a) (2024) **(**providing only that a violation of an OGE rule which is not otherwise a violation of federal statutory law "may be cause for appropriate corrective or disciplinary action").

[88] 5 C.F.R. § 2635.503(b)(1)(i) (1992).

The phenomenon of "golden parachutes" for private sector executives departing for senior government positions became a point of concern during the 2013 confirmation hearing for Jacob Lew to be President Obama's Treasury Secretary. The controversy arose after the public learned that when Lew was previously appointed to a position in the Obama Administration, he had received from Citigroup, his then-employer, a cash bonus of nearly one million dollars, which, pursuant to his contract, was contingent on his securing a "full time high level position with the U.S. government or regulatory body."[89] Further research found that a number of major financial services corporations, private-equity firms, government contractors, trade associations, and other companies have a practice of making special and substantial payments to senior executives who revolve into government. These payments may include cash bonuses or accelerated payment of stock-option profits or otherwise restricted stock options, and are made expressly contingent on the executive entering into government service.[90] The OGE rule does not prohibit the practice but does require that for two years after receiving such a "covered payment," the employee must recuse from participating in particular matters involving specific parties in which the employee's former employer is a party or represents a party, if the employee received a "covered payment" from that person.[91]

Like the impartiality rule, the "covered payments" regulation applies only to participation in particular matters involving specific parties, not policymaking or regulatory actions affecting the former employer's industry or business more broadly. However, unlike the impartiality rule, it does impose a mandatory recusal obligation. Both the extraordinary payments and impartiality regulations include provisions for waivers.[92]

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[89] Michael Winship, Jack Lew, Citigroup and the Ugland Truth, Truthout (Mar. 9, 2013), https://truthout.org/articles/jack-lew-citigroup-and-the-ugland-truth/.

[90] See, e.g., William Alden, Deals Like Lew's Aren't Uncommon, N.Y. Times Dealbook (Mar. 21, 2013, at 7:36 ET), https://archive.nytimes.com/dealbook.nytimes.com/2013/03/21/deals-like-lews-arent-uncommon/ (citing awards available to senior executives at JPMorgan Chase, Goldman Sachs, and Morgan Stanley who had taken government jobs); Michael Smallberg, Big Businesses Offer Revolving Door Awards, Project On Government Oversight (Mar. 21, 2013), https://www.pogo.org/investigates/big-businesses-offer-revolving-door-rewards (finding that in addition to the firms mentioned in the Dealbook article, Blackstone Group, the Northern Trust investment company, MF Global, and Fannie Mae made such awards available); Fang, supra note 48. See generally John H. Secaras, Pulling the Ripcord: Reconsidering the Federal Regulation of Government Service Golden Parachutes, 29 Geo. J. Leg. Ethics 1369, 1370–71 (2016).

[91] 5 C.F.R. § 2635.503(a) (1992).

[92] See 5 C.F.R. §§ 2635.502(d), 2635.503(c).

2. Presidential Ethics Pledges

Presidents Barack Obama, Donald Trump (first term), and Joseph Biden each, on entering office, issued executive orders that, inter alia, required incoming senior administration appointees to sign an "ethics pledge" in which they agreed to accept restrictions on the governmental matters in which they could participate—restrictions that in some respects went well beyond the existing statutes and regulations dealing with revolving in.[93]

President Obama's ethics pledge imposed a two-year ban on working on particular issues directly and substantially related to former employers or former clients, including regulations and contracts.[94] A new appointee who had been a registered lobbyist within the two years prior to entering government was additionally required to agree that for a period of two years after entering government the appointee would: (i) not participate in any particular matter on which the appointee had lobbied within the two years before his or her appointment; (ii) not participate "in the specific issue area in which that particular matter falls;" and (iii) not "seek or accept employment with any executive agency" the appointee had lobbied within the two years before his or her appointment.[95]

The Trump (first term) ethics pledge similarly required new appointees to refrain for two years from participating "in any particular matter involving specific parties that is directly and substantially related to [their] former employer[s] or former clients, including regulations and contracts."[96] Appointees who had been registered lobbyists within the preceding two years had to agree not to participate for two years "in any particular matter on which [they] lobbied within the 2 years before the date of [their] appointment[s] or participate in the specific issue area in which that particular matter falls."[97] Both the Obama and Trump executive orders established rules for the administration of their respective ethics pledges and for waivers.[98]

The Biden ethics pledge similarly imposed: (i) a general restriction on appointees' involvement in "particular matter[s]" involving a former

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[93] See Exec. Order No. 13,490, 74 Fed. Reg. 4673 (Jan. 21, 2009); Exec. Order No. 13,770, 82 Fed. Reg. 9333 (Jan. 28, 2017); Exec. Order No. 13,989, 86 Fed. Reg. 7209 (Jan 20, 2021).

[94] Exec. Order No. 13,490, § 1(2), 74 Fed. Reg. 4678 (2009).

[95] Id. at § 1(3)(a)–(c).

[96] Exec. Order No. 13770, § 1(6), 82 Fed. Reg. 9333 (2017).

[97] Id. at § 1(7).

[98] See generally Exec. Order No. 13490, § 1(4)–(5), 74 Fed. Reg. 4678 (2009); Exec. Order No. 13770, §1(2)–(4), 82 Fed. Reg. 9333 (2017). As he left office, President Trump revoked the executive order that contained the ethics pledge. Exec. Order No. 13983, 86 Fed. Reg. 6835 (2021).

employer or client;[99] (ii) specific restrictions on former lobbyists participating in particular matters they had lobbied and in the specific issue areas in which those matters fell;[100] and (iii) a ban on lobbyists' accepting employment at an agency they had lobbied.[101] President Biden's ethics pledge also had three new and more restrictive features. First, it included a prohibition on appointees having a "meeting or other communication relating to the performance of one's official duties with a former employer or former client."[102] The restriction on meetings was not limited to "particular matters" but also applied to broader discussions of legislation, regulation, and policy, although the restriction did not apply to meetings or other events that are "open to all interested parties."[103] Second, the Biden order placed an outright ban on an entering appointee's acceptance of any "salary or other cash payment"—or "non-cash benefit . . . provided in lieu of such a prohibited cash payment"— "the eligibility for and payment of which is limited to individuals accepting a position in the United States Government."[104] Not only did this actually ban golden parachutes, nor simply impose a temporal recusal requirement, but there was no dollar threshold.[105] Third, the Biden ethics pledge also expanded the scope of the restrictions on lobbyists by applying not just to lobbyists registered under the federal Lobbying Disclosure Act but also to agents registered under the Foreign Agents Registration Act ("FARA").[106]

A striking feature of all three presidential ethics executive orders was the imposition of additional restrictions on revolvers-in who had been registered lobbyists (and under the Biden order, registered under FARA) within the two years preceding their appointments.[107] The cooling-off period applied not just to participation in specific matters involving specific parties—which is the focus of the general federal statutory cooling off period for revolving

[99] Exec. Order No. 13989, § 1(2), 86 Fed. Reg 6835 (2021).
[100] Id. at § 1(3)(a)–(b).
[101] Id. at § 1(3)(c).
[102] Id. at § 2(j).
[103] Id.
[104] Id. at § 1(7).
[105] Id.
[106] Id. at § 1(3). FARA, 22 U.S.C. §§ 611 et seq., requires extensive disclosure from those who engage in "registrable activities" as an agent of a foreign principal. A "foreign principal" includes a foreign government, foreign political party, foreign person, or foreign business. An "agent of a foreign principal" is someone whose activities are "supervised, directed, controlled, or financed" by a foreign principal. See 22 U.S.C. § 611 (b)–(c). Registrable activities include political activities for or in the interest of a foreign principal, acting as public relations counsel or publicity agent for a foreign principal, or representing a foreign principal before any U.S. government agency or official. Id.
[107] See 18 U.S.C. § 207(a)(2)(C).

out[108]—but to "specific issue areas" the former lobbyists had lobbied and to working for agencies they had lobbied. The OGE interpreted "specific issue areas" to mean "particular matter[s] of general applicability," which is broader than just particular matters involving specific parties.[109] OGE gave as an example of the broad scope of the term the case of an appointee who was a registered lobbyist during the two-year period before she entered government and who, in that capacity, lobbied her agency against a proposed regulation focused on a specific industry. Although her lobbying "was limited to a specific section of the regulation affecting her client," "[h]er recusal obligation as an appointee is not limited to the section of the regulation on which she lobbied, nor is it limited to the application of the regulation to her former client."[110] The guidance instead required that "she must recuse for two years from development and implementation of the entire regulation, subsequent interpretation of the regulation, and application of the regulation in individual cases."[111]

Notably, these additional restrictions were only applicable to new appointees revolving in from lobbying, not from posts as corporate or trade association executives, strategic consultants, or non-lobbying lawyers. The executive orders did not explain why lobbyists were especially targeted or what particular conflict of interest problem their entry into government created.

As of January 20, 2025, these presidential ethics executive orders are history. When Trump began his second term, he revoked the Biden executive order without issuing one of his own.[112] For the first time in more than sixteen years, there is no presidential restriction on revolving into senior executive branch positions. Although the executive order ethics pledges no longer apply, they do provide some suggestions concerning the elements of a regulatory structure to address the conflicts of interest issues posed by revolving in.

B. State and Local Regulation

There does not appear to be any general state or local legislation dealing with revolving in. However, there have been a handful of state and local efforts to address the issue. Maryland and Pennsylvania, by statute, have very targeted restrictions on specific categories of revolvers-in or actions

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[108] 18 U.S.C. § 207; supra Subsection II.A.1.a.
[109] U.S. Off. of Gov't Ethics, LA-17-03, Guidance on Executive Order 13770.
[110] Id.
[111] Id.
[112] Exec. Order No. 14148, § 2(e), 90 Fed. Reg. 8237 (Jan. 20, 2025).

taken by them. New York, by ethics agency ruling, purports to have a broader rule, but that seems to be more a directive to an open-ended inquiry on whether to require recusal rather than a hard-and-fast restriction.

Like the former presidential executive orders, Maryland's ethics law prohibits a lobbyist who becomes a public official or employee from "participat[ing] in a case, contract, or other specific matter . . . for one year after the termination of the registration of the former regulated lobbyist if the former regulated lobbyist previously assisted or represented another party for compensation in the matter."[113] In Pennsylvania, the commonwealth's procurement code regulates competitive sealed bids, prohibiting anyone who had been employed by a bidder within the preceding two years from participating in the evaluation of bids.[114] In New York, the state ethics commission, through a series of advisory opinions,[115] has interpreted the state's code of ethics to provide a "reverse two-year bar"[116] on participation by a new employee in a matter involving a prior employer or entity with which the new employee had a business relationship. However, for most public employees the "bar" is less than absolute.

The New York agency explained that "[g]enerally, prior employment or past business relationships may affect" a state official's "judgment in his or her [s]tate position."[117] The agency then determined that the provisions of the state ethics code requiring that a state officer or employee "should not by his conduct give reasonable basis . . . that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties" and "should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts in violation of his trust" applied to actions taken with respect to past employers.[118] The agency looked to New York's two-year statutory cooling-off period for appearances by a former state employee before his or her former state agency and "conclude[d] that a similar, though not identical,

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[113] Md. Code Ann. § 5-501(a-1)(2).

[114] 62 Pa. Cons. Stat. § 513(e).

[115] New York's current ethics body, the Commission on Ethics and Lobbying in Government ("COELIG") came into existence in 2022, see N.Y. Exec. Law § 94. The relevant advisory opinions, No. 94-11, No. 98-09 and No. 07-04, were issued by two predecessor bodies, respectively the New York State Ethics Commission (for the two older opinions) and the Commission on Public Integrity, but they continue to be honored by COELIG.

[116] See Conflicts of Interest, N.Y. State Commission on Ethics and Lobbying in Government, https://ethics.ny.gov/conflicts-interest (last visited Aug. 21, 2026).

[117] N.Y.S. Ethics Comm'n Advisory Op. 94-11 (1994), https://ethics.ny.gov/system/files/documents/2018/01/advisory-opinion-94-11.pdf.

[118] Id.

rule should be applied to . . . past employment and business relationships."[119] As the legislature had not actually enacted a cooling-off period for revolvers-in, the ethics agency concluded that it could adopt only a rebuttable presumption that new employees should recuse for two years from matters involving a former employer.[120]

In a subsequent case, the ethics agency softened that restriction. It noted that the initial case had involved unpaid *part-time* members of a board that made decisions on funding applications. Many of the board members were "actively engaged in private activities while serving the State"; their decisions involved funding, "a subject that is always extremely sensitive"; and "since a multi-member board was involved, the recusal of one member was not a serious problem."[121] The situation for a new full-time state employee with individual responsibilities was different, and the ethics agency rejected "any presumption of required recusal with respect to full-time employees. The work of these employees is too varied to make it likely that there either is or is not a conflict."[122] Instead, the agency would undertake a multi-factor, case-by-case assessment consideration of whether to require recusal, including consideration of the "nature of the prior relationship," the nature and importance of the public employee's role in the matter, including the discretion to be exercised, and "the sensitivity of the matter."[123] And there was no basis at all for a recusal inquiry with respect to a business or employment relationship that had ended before the matter in question.[124]

Turning to the local level, at least three cities have adopted measures that deal with revolving in. The city of Chicago imposes a one-year "particular matter" cooling-off period for officers and employees. The avoidance of the "appearance of impropriety" section of the Chicago ethics code provides that:

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[119] Id.

[120] In a subsequent case, the successor agency to the Ethics Commission found that in the circumstances presented in that case, the presumption was rebutted by evidence of the employee's relatively limited connection to the private employer. N.Y.S. Comm'n on Pub. Integrity, Advisory Op. 07-04 (2007), https://ethics.ny.gov/system/files/documents/2021/01/nys-commission-on-public-integrity-advisory-opinion-07-04_links_within.pdf.

[121] N.Y. S. Ethics Comm'n, Advisory Op. 98-09 (1998), https://ethics.ny.gov/system/files/documents/2021/06/nys-ethics-commission-advisory-opinion-98-09_links_within.pdf.

[122] Id.

[123] Id.

[124] Id. ("[T]he significance of the two year period is that within this period further inquiry must be made, while it need not be made after two years have elapsed."). See also Advisory Op. 07-04, supra note 120 (applying the part-time/full-time distinction; requiring a full-time employee to recuse from matters involving a recent former private employer).

> [n]o official or employee shall make or participate in the making of any governmental decision with respect to any matter . . . from which he has derived any income or compensation *during the preceding twelve months* or from which he reasonably expects to derive any income or compensation in the following twelve months.[125]

Elected officials, including members of the City Council, similarly are required to disclose whether they had received income or compensation from any pending matter and "abstain from participating in any discussion concerning and voting on the matter."[126]

The city of Seattle applies a broader one-year recusal requirement for city officers or employees with respect to *any matter* in which someone who employed or retained the officer or employee, or retained the officer or employee in the preceding year, "has a financial interest."[127] The recusal requirement may be waived if the officer's or employee's agency determines there is a "compelling City need for the covered individual to participate in a matter involving a prior employer or client, and submits . . . a written plan showing how the [agency] will safeguard the City's interests," and the city's ethics agency approves.[128]

San Francisco focuses simply on disclosure. The city requires an officer or employee to disclose that he or she has a "personal, professional or business relationship with any person who is the subject of or has an ownership or financial interest in the subject of a governmental decision being made by the officer or employee," with "business relationship" defined to include someone who, within the two years before the decision, "was a client, business partner, colleague, or did business with the officer or employee's business."[129]

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In short, although there has been only limited attention to revolving in, and revolving in does not pose the same concern about misuse of office for the financial self-interest of the officeholder, there is a scattering of laws, agency rules and advisory opinions, and executive actions at all levels of

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[125] Chi., Ill., Mun. Code § 2-156-080(a) (2022) (emphasis added).
[126] Id. at § 2-156-080(b)(1).
[127] Seattle Mun. Code § 4.16.070(A)(2) (2013).
[128] Id.
[129] S.F., Cal., Campaign & Gov't Conduct Code Reg. § 3.214-5 (2024).

government, framed around the ethical duties of impartiality and the avoidance of bias. This patchwork of measures signals the growing interest in taking revolving in more seriously, underscores the need for more comprehensive regulation of revolving in, and points toward what such regulation should entail. The next Part sketches out these rules, examines key questions about the scope of revolving-door regulation, and addresses the limits of an ethics-based approach to remedying the regulatory capture driving much of the concern about revolving in.

III. GOING FORWARD: REGULATING REVOLVING IN

A. Regulating Revolving In to Prevent Bias and Promote Impartiality

A long-standing principle of government ethics is that public servants owe all members of the public equal and impartial service, without bias for or against a party or a party's representative. As first articulated by President George H.W. Bush in Executive Order 12674 of April 12, 1989, a public servant "shall act impartially and not give preferential treatment to any private organization or individual."[130] Although a common—and heavily regulated—source of bias is the public servant's financial self-interest (or the financial interest of family members and other people with whom the public servant is associated),[131] there are other causes of bias or favoritism in addition to financial self-interest. A relatively straightforward example is close personal friendship with, or known personal animosity against, a party or party representative.[132] Recent close association with a firm or business—as an officer, employer, lawyer, or lobbyist—presents a closer question. The new public servant may have severed all ties with the former partner, client, or firm. Business ties do not always generate close personal ties, and departure may be marked by resentment or hard feelings, not continuing affection for the old business or colleagues. That "[i]t's not personal—it's

[130] See 5 C.F.R. § 2635.101(b)(8) (2026).

[131] See, e.g., Cong. Rsch. Serv., RL 31822, Entering the Executive Branch of Government: Potential Conflicts of Interest with Previous Employments and Affiliations 1 (Apr. 7, 2015); see also Daniel B. Rodriguez, Whither the Neutral Agency? Rethinking Bias in Regulating Administration, 69 Buff. L. Rev. 375, 465 (2021) ("Pecuniary self-interest is the most enduring area where bias, or the appearance of bias, is ruled as inappropriate.").

[132] See, e.g., Wright v. United States, 732 F.2d 1048, 1055 (2d Cir. 1984) (noting that assigning an "investigation to a prosecutor whose wife was not merely a political opponent [of the person under investigation] but a lawyer . . . who had actively petitioned various federal, state and local agencies to investigate [his] alleged misdeeds, who had allegedly been assaulted by [his] minions, and who almost certainly harbored personal animosity against [him], created an appearance of impropriety."). Accord Louis J. Virelli, An Ethical Gap in Agency Adjudication, 69 Buff. L. Rev. 1329, 1339 (2021) (describing a recommendation by the Administrative Conference of the United States that agencies promulgate regulations addressing types of adjudicator bias including personal animosity against a party or attorney).

strictly business" is not limited to the murder of a Mob henchman in *The Godfather*.[133]

But working together can be a source of bias or favoritism. The social ties—the friendships, informal conversations, after-hours contacts, and reciprocal exchange of favors—that can result from working together on common projects or towards a common goal may continue even when the employee, lawyer, or lobbyist is no longer working for, with, or to represent the former employer, client, or business associate. The revolver-in may simply be more likely to do a favor for, give a head's up to, or just take a phone call from a former co-worker, client, or associate than other members of the public.[134] This may not be a matter of conscious bias but may simply grow out of an unreflective willingness to be nice to a friend or one-time colleague—albeit nicer than to other people who have competing or conflicting interests in the matter.

Indeed, whether or not the public servant is actually biased, members of the public could reasonably believe that the public servant is likely disposed to unduly favor his or her former colleagues or business associates. It will always be difficult for citizens to determine whether government decisions were taken for proper or improper reasons. As Dennis Thompson put it, "[t]he only reliable way that citizens can judge whether improper actions took place is by looking at the circumstances under which officials act. . . . [A]ppearances are often the only window that citizens have on official conduct."[135] And even when officials only "appear to do wrong . . . they erode the confidence in government, they give citizens reasons to act as if government cannot be trusted, and, most of all, they undermine democratic accountability."[136]

The principle of impartiality—fair and equal treatment of all similarly situated persons subject to government action—together with the equally important requirement of assuring public confidence in government by maintaining the appearance of impartiality, mandate some regulation of the actions of new public servants with respect to their former employers, clients, or business associates. The next subpart fleshes out the basic elements of that restriction.

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[133] The Godfather (Paramount Pictures 1972).

[134] See, e.g., Wirsching, supra note 22, at 7 (asserting that "officials are presumably more likely to take a phone call from someone they know than from a stranger . . . and may feel empathy for their former colleagues"); Benjamin Egerod, The Revolving Door in Regulatory Enforcement: Firm-Level Evidence on Tax Rate and Trax Audits, 86 J. Pol. 608, 610 (2024) (establishing that "decision-makers are more likely to grant access to people they know").

[135] Dennis F. Thompson, Paradoxes of Government Ethics, 52 Pub. Admin. Rev. 254, 257 (1992).

[136] Id.

B. The Scope of Revolving In Regulation

(1) Golden Parachutes. The principle and appearance of impartiality require the restriction of, if not an outright ban on, golden parachutes. That is, the payments, often in the millions of dollars, by financial services and other firms to executives who take government positions. As Sheila Bair, the former chair of the Federal Deposit Insurance Commission, tartly observed in discussing the $20 million golden parachute offered by an investment banking firm to its executive nominated by President Obama to be the Under Secretary of the Treasury for Domestic Finance, "[o]nly in the Wonderland of Wall Street logic could one argue that this looks like anything other than a bribe."[137] Although a little hyperbolic, it is surely the case that "[t]hese windfalls create the perception that an ex-employee may favor her benefactors."[138]

These special payments blatantly signal that the former employer seeks favorable treatment from the revolver-in and expects to receive it. Such payments are likely to deepen any sense of gratitude or reciprocity the departing employee has for the former firm to a greater extent than the normal warm feelings and social ties one may have for former co-workers. Certainly, that is how the public is likely to see this. By making up for the lost corporate salary, the golden parachute may also imply that the former employer expects the revolver-in to revolve back out to the former firm, or is at least keeping the door open.

At the federal level, golden parachutes operate to circumvent the federal salary supplementation ban. The federal salary supplementation ban prohibits executive branch government officers or employees from receiving compensation for their government work from anyone other than the United States.[139] The ban has "roots in a longstanding distrust of the influence of private power in the public sphere."[140] The Supreme Court, in *Crandon v. United States*, held that the supplementation ban only applies to payments to people currently working for the federal government and not to payments from a private-sector employer to a departing employee made *before* the employee enters the federal service, even if made because the employee is

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[137] Sheila Bair, Obama's treasury pick is another bank watchdog straight from Wall Street, Fortune (Dec. 5, 2014, at 22:46 ET), https://fortune.com/2014/12/05/sheila-bair-antonio-weiss-lazard-treasury/.

[138] Brookings Inst., If It's Broke, Fix It: Restoring Federal Government Ethics and the Rule of Law 5 (Norman Eisen ed., 2021), https://www.brookings.edu/wp-content/uploads/2021/02/Brookings-Report-If-its-Broke-Fix-it.pdf.

[139] 18 U.S.C. § 209.

[140] See Nolan, supra note 3, at 69.

taking a government position.[141] Legislation is needed to close the loophole opened by *Crandall*—and any similarly narrow readings of comparable state and local laws—for payments contingent on entering public service but paid before that public service actually begins.

Current and recent federal action presents two alternatives for dealing with golden parachutes. The OGE, by rule, requires a federal "employee to recuse for two years from participating in any particular matter involving specific parties in which the employee's former employer is a party or represents a party if the employee had received" a payment of more than $10,000 from an employer for agreeing to accept a government position.[142] The Biden Administration ethics pledge—subsequently revoked in the second Trump Administration—went further by banning an entering appointee's acceptance of any "salary or other cash payment" or "non-cash benefit . . . provided in lieu of such a prohibited cash payment . . . the eligibility for and payment of which is limited to individuals accepting a position in the United States government."[143]

Between recusal for payments above a dollar threshold, as in the OGE regulation, and prohibition, as in the Biden executive order, there is much to be said for an outright ban. To be sure, the steep salary differential between the private and public sectors may operate to discourage many talented executives, corporate lawyers, and lobbyists from taking government positions in which they could make real contributions. Recusal from particular matters involving the former employer, discussed in the next section, could address the most troubling instances of actual or apparent partiality without discouraging entry into public service. But an award expressly keyed to the acceptance of public-service employment bears an uncomfortable resemblance to the prohibited payment of a private, supplemental salary for government employment. It suggests that the public servant may have divided loyalties and that government access, if not decisions, can be bought. Such payments should be prohibited.

(2) Cooling-off Period. The second basic element of revolving in regulation should be the mandate of a cooling-off period: a period of time in which the new public servant refrains from dealing with anyone who was an employer, client, partner, or business associate during a defined window before he or she entered public service. The case for some form of cooling-off period for incoming public servants is straightforward and comparable

[141] 494 U.S. 152, 159 (1990).
[142] 5 C.F.R. § 2635.503 (2026).
[143] Exec. Order No. 13989, 86 § 1(7) Fed. Reg. 7029 (Jan. 20, 2021).

to the analogous cooling-off period restriction on outgoing public servants dealing with their former offices or agencies. The new public servant may have continuing friendship or social ties with the former firm, client, or business associate, or simply continuing warm feelings from the time previously spent at or with that firm, client, or associate. Past direct personal contact may make the new public servant more likely to trust representations made by that firm, client, or associate, credit their concerns, or give them preferential access. This can result in an actual unintended predisposition to favor their concerns. Or at least the public could reasonably so believe.

A cooling-off restriction should have two components. Tracking the language of some state and local rules, the OGE's impartiality regulation, and elements of the presidential ethics executive orders, the first component should require recusal from participation in any "particular matter involving specific parties" that is likely to have a direct and predictable effect on the financial interest of the former employer, client, or business associate. "Particular matter involving specific parties" is a government ethics term of art intended to reach a government action or initiative that is focused on the interests of a specific person(s) or a discrete and identifiable class of persons. It can cover a wide range of types of government actions—a case, proceeding, application, request for a ruling, contract, claim, controversy, a targeted investigation, or enforcement action—that deal with a specific party or parties whose financial interest would be affected by the government action in a direct and substantial manner.[144] But it excludes policies, regulations, or legislation that affect the interests of a large and diverse group of people. Although most legislation involves broad policy matters of general applicability, special laws, targeted tax breaks, earmarked appropriations, and other measures narrowly focused on specific places, firms, or actions would fall within the particular-matter cooling-off period.

Second, building on the precedent provided by the Biden ethics pledge, public servants should be prohibited for a period of time from having any meeting or communication relating to the performance of their official duties with a former employer, client, or business associate.[145] Any direct contacts between former employer, client, or business associate sharply raise the prospects—and appearance—of special access and influence, even when the subject is not narrowly focused on the particular interest of the former private firm but is a broader policy matter or concern in which the firm has

[144] See 5 C.F.R. § 2640.103(a)(1). See also Principles of the L., Gov't Ethics §§ 311 cmt. f, 514 cmt. c. (A.L.I. 2025).

[145] See Exec. Order No. 13989, § 2(j), 86 Fed. Reg. 7029 (Jan. 20, 2021).

a stake. This restriction on meetings and communications would not be limited to "particular matters" but also applied to broader discussions of legislation, regulation, or policy. As lobbyists have long known, "meeting personally with legislators and/or their aides and meeting personally with executive agency personnel are the two most effective lobbying techniques."[146] Such direct contacts "allow them to forge personal relationships with government decision makers."[147] If, as may often be the case, the new public servant already has a personal relationship with the private interest seeking a meeting, the opportunity for special influence, and the appearance of such special influence, will be even greater. As a result, all direct contacts with the former firm should be barred, although, as with the Biden executive order, an exception should be made for meetings or other events that are open to and attended by "all interested parties."[148]

The restriction on participating in particular matters and having direct contacts with former employers, clients, or business associates may be limited in time on the assumption that the special influence potentially resulting from those former ties and the public perception of the influence from such ties will decline over time. There is no clearly correct cooling-off period for entering public servants. The OGE regulation uses one year, while the Obama, Trump I, and Biden executive orders—like the statutory revolving out restriction[149]—used two years. The scattering of state and local measures imposing cooling-off periods also use one or two years. It might also make sense to set the duration of the restriction according to the seniority of the position or the amount of time the incoming public servant had spent at the former firm. A longer restriction would be especially appropriate for individuals entering into high-level positions, those entering public service following a longstanding connection to a particular private-sector entity, or areas particularly sensitive to conflicts of interest, such as participation in procurement or other forms of government contracting.

As with many conflict of interest restrictions, there will need to be some opportunity for waiver, contingent on the approval of the public servant's agency and the jurisdiction's ethics officer or agency. Such waivers should be available only in situations in which the public servant "has unusual skills or knowledge," would be "very difficult to replace" in the matter, or had

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[146] See Anthony J. Nownes, Total Lobbying: What Lobbyists Want (and How They Try to Get it) 201 (Cambridge Univ. Press ed., 2006).

[147] Id.

[148] Exec. Order No. 13989, § 2(j), 86 Fed. Reg. 7029 (Jan. 20, 2021).

[149] 18 U.S.C. § 207.

only a "relatively minimal" relationship with the former private firm.[150] Any waivers should be publicly disclosed.

These revolving in restrictions would build on, but go beyond, the now-revoked presidential executive orders, the OGE regulations, and the handful of existing state and local measures. If enacted into law, a federal measure could not be revoked by presidential executive order, and could apply to the entire executive branch, not just senior appointees. Moreover, unlike the OGE regulations, a statute could go beyond the executive branch and apply to congressional staff. Recently revolved-in congressional staff should be barred from participating in particular party matters that directly affect their former employers or clients. State and local laws could similarly be made applicable to a wide range of public servants.[151] Most jurisdictions currently impose cooling-off periods on contacts by former public servants with the former agency or offices on behalf of their new private employers.[152] They should adopt the analogous rule limiting the contacts of new public servants with their former private-sector employers, clients, or business associates or participation in particular matters affecting their financial interests.

C. Special Restrictions for Lobbyists?

The presidential ethics executive orders on revolving-in also imposed special restrictions on revolving in by lobbyists, going beyond a cooling-off period for particular matters involving specific parties to include whole issue areas or matters of general applicability, and even to preclude former lobbyists from taking senior positions in agencies that deal with the kinds of matters the lobbyist had lobbied within the two years preceding their appointments. Do revolving in lobbyists pose such a special danger of improper partiality or bias that they should be subject to especially restrictive regulation?

Lobbyists certainly have a terrible reputation. The term "lobby agent" or lobbyist dates to the early nineteenth century, and "[f]rom the beginning it was a term of reproach and throughout the nineteenth century it was always

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[150] Principles of the L., Gov't Ethics § 514 cmt. e (A.L.I. 2025).

[151] Applying such a recusal requirement to elected officials poses special issues. Elected legislators cannot delegate their votes to a subordinate or colleague and barring a legislator from voting can denying representation to the legislator's constituents. Elected chief executives may also have non-delegable responsibilities. Jurisdictions divide over whether and when they require elected officials to recuse due to conflicts of interests. Whether a new elected official should recuse from a particular matter because of a prior relationship with a firm should track the jurisdiction's general approach to recusal for elected officials. Cf. Principles of the L., Gov't Ethics § 313 cmt. c (A.L.I. 2025) (discussing the general application of recusal to elected officials who participate in particular matters involving specific parties).

[152] See id. at § 513 Rptrs. Notes.

so used."[153] That has not changed, and lobbyists continue to be an attractive target for regulation. But lobbying is a constitutionally protected activity,[154] a point underscored by judicial pushback against one aspect of the Obama ethics executive order targeting lobbyists.

In addition to imposing revolving in restrictions on lobbyists, President Obama also "direct[ed] the heads of executive departments and agencies not to make any new appointments or reappointments of federally registered lobbyists to advisory committees and other boards and commissions."[155] Obama contended this move would further his commitment to change "the culture of special-interest access" that is furthered by lobbyists' "service in privileged positions within the executive branch."[156] That lobbyist ban was subsequently challenged as a violation of the First Amendment and of the equal protection component of the Fifth Amendment by six federally registered lobbyists who sought to be appointed to Industry Trade Advisory Committees ("ITACs") authorized by the 1974 Trade Act, which called for ITACs to be "representative of all industry, labor, agricultural, or service interests."[157]

In *Autor v. Pritzker*, the United States Court of Appeals for the District of Columbia Circuit, reversing a district court, found that the plaintiffs had pled a viable First Amendment claim "that the ban denies them a benefit available to others on account of their exercise of a fundamental right."[158] The court remanded the case for further consideration of the government's justification for special restrictions on lobbyists but expressed considerable doubt that there was a "justification for distinguishing, as the lobbyist ban does, between corporate employees (who may represent their employers on [an advisory committee]) and the registered lobbyists those same corporations retain (who may not)."[159] Instead of making the case on remand for more restrictions on lobbyists, the government sharply narrowed the scope of the ban, allowing federally registered lobbyists to serve on advisory bodies in a "representative capacity," that is, "for the express purpose of providing a

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[153] Karl Schriftgiesser, The Lobbyists: The Art and Business of Influencing Lawmakers 5–6 (1951).

[154] United States v. Harriss, 347 U.S. 612, 625 (1954) (restrictions on lobbying implicate "the freedoms guaranteed by the First Amendment—freedom to speak, publish, and petition the Government"); see also Citizens United v. FEC, 558 U.S. 310, 369 (2010) (noting "the Court has upheld registration and disclosure requirements on lobbyists, even though Congress has no power to ban lobbying itself").

[155] Memorandum on Lobbyists on Agency Boards and Commissions, 75 Fed. Reg. 35955 (June 18, 2010).

[156] Id.

[157] 19 U.S.C. § 2155(c)(2).

[158] Autor v. Pritzker, 740 F.3d 176, 183–84 (D.C. Cir. 2014).

[159] Id. at 184.

committee with the views" of an interest with a stake in the work of the committee, but not in an "individual capacity."[160]

Lobbyists who revolve in to accept full-time executive branch positions serve in an individual capacity and not as a voice for an interest group, so the question raised by the D.C. Circuit in *Autor* remains: What is the justification for barring lobbyists, but not corporate or organizational officers, lawyers, or other people closely affiliated with interests or groups affected by the agency the revolver-in would join?

The Obama Administration's lobbyist ban was sharply criticized by public interest organizations and their representatives, who contended that the executive order made it more difficult for them to recruit, hire, and retain public policy and advocacy staff.[161] As many lobbyists are often experts in their fields, the ban on agencies hiring lobbyists who had lobbied them was the biggest source of ethics pledge waivers. There is also some evidence that the ethics orders had the perverse consequence of causing a decline in lobbyist registrations, reducing the transparency of lobbying activity, without necessarily reducing the amount of lobbying.[162]

Lobbyists do regularly swing in and out of the revolving door. Lobbyists market a mix of "what they know" and "who they know." Scholars have debated which factor is more significant, but certainly both the personal ties lobbyists have with people in government and the inside knowledge they have of how particular agencies, bureaus, departments, or committees operate are valuable assets. Going into government—particularly Congress—is a critical means of obtaining, or renewing, the connections and insights that are so critical to lobbyists' success.[163] Nonetheless, although lobbyists may be especially eager to revolve in—to replenish the store of connections and information they can use when they revolve out—there is no obvious basis for assuming that they are less likely to be impartial than other revolvers-in who come directly from industry, a trade association, a law firm, or a non-profit whose activities are strongly influenced by government action. The differences among types of lobbyists could also matter. "Contract lobbyists" represent multiple clients, whereas "in-house"

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[160] Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions, 79 Fed. Reg. 47482 (Aug. 13, 2014).

[161] Dan Eggen, Public Interest Groups Decry Obama's Strict Lobbying Rules, Wash. Post (Apr. 1, 2009), https://www.washingtonpost.com/archive/national/2009/04/01/public-interest-groups-decry-obamas-strict-lobbying-rules/07d1d3a4-41bb-43ce-b936-aa102d646d1b/?_pml=1.

[162] Ctr. for Lobbying in the Pub. Int., supra note 49.

[163] See Egerod & McCrain, supra note 22, at 431 ("[W]hen lobbyists become public employees . . . this method of forging connections produces benefits to lobbying firms.").

lobbyists are employees who lobby only on behalf of their employer.[164] Although contract lobbyists are more likely to fit the K Street, hired gun image, they arguably might be less likely to be biased in favor of a single firm or interest.

Lobbyists will "often share their client's underlying interests to a considerable degree" and "often come to internalize the values and interests of their clients and to see things from their clients' points of view."[165] But they also have their own career concerns, professional goals, and policy preferences, and so they may act independently from the interests they represent.[166] As a result, "it is likely that the congruence of lobbyist and client interests will often be imperfect."[167]

Whether because of constitutional concerns or simple doubts about whether lobbyists as a category are less likely to be impartial compared with corporate officers, trade association executives, or attorney advocates, there seems to be little basis for applying more restrictive revolving in rules for lobbyists than for other revolvers-in.

That then raises the question of whether the more restrictive revolving in regulations on lobbyists found in the presidential ethics executive orders should be applied across the board to all revolvers-in. Should new public servants who enter government from the private sector be barred for a period of time from working on whole issue areas? Should they be barred from serving in agencies in which they would be regulating or making policy for the private sector from which they just came?

D. Limiting Revolving In Regulation

Extending the revolving in restriction from the prevention of potential bias or appearance of bias for particular individuals, firms, or organizations with which the new public servant had a prior relationship to entire issue areas or agency domains would go well beyond the traditional focus of conflict of interest regulation and government ethics: preventing government decisions influenced by personal or family financial self-interest or bias for or against a party. Instead, the justification for regulation would be that due to their prior work experience, these new appointees have attitudes, viewpoints, or perspectives on issues or the regulatory field

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[164] See Timothy M. LaPira & Herschel F. Thomas III, Revolving Door Lobbying: Public Service, Private Influence and the Representation of Interests 41–42, 216 (2017).

[165] Matthew C. Stephenson & Howell E. Jackson, Lobbyists as Imperfect Agents: Implications for Public Policy in a Pluralist System, 47 Harv. J. on Legis. 1, 8 (2010).

[166] LaPira & Thomas, supra note 164, at 61.

[167] Stephenson & Jackson, supra note 165, at 8.

generally that predispose them to take actions that favor the private interests they used to work with or represent.

Such a predisposition to favor the former sector may often occur. "[C]oming from industry may induce regulators to make certain pro-industry decisions because of the regulator having been 'socialized' in an industry environment."[168] Revolvers-in who hail from a certain type of business or industry may very well share with former coworkers an understanding of the issues that business or industry faces and how regulation ought to address them. This "cultural capture" could, and often will, affect how they exercise discretion in their policy-making positions.[169] But that is not corruption in the traditional sense. No financial favors are changing hands; no improper influence is being exerted to benefit a friend or family member. Rather, it is the consequence of appointing people who have particular experiences, backgrounds, and perspectives. And that, in turn, may be the result of the political commitments or policy beliefs of the elected official ultimately responsible for making these appointments.

Distinct from economic self-interest or bias with respect to particular parties, the attitudes an individual brings to government have traditionally not been matters of ethics concern. Indeed, the OGE impartiality regulation specifically excludes political views as the basis for an imputation of improper partiality. As the former OGE head Walter Shaub has pointed out, "the ethics restriction was never intended to regulate thought."[170] Pre-existing views about how a field ought to be regulated and how regulatory discretion over a subject ought to be exercised are an inevitable consequence of the experience and expertise that make someone an attractive appointee for their position. Where these do not involve commitments that affect decisions of particular matters involving specific parties, there is no ethics or conflict of interest mandate to exclude the new appointee from participating.[171]

Moreover, a broader restriction on the decisions a revolver-in can make or the actions the new public servant can take would mean much of the benefit that new people from the private sector bring to government would

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[168] Ernesto Dal Bó, Regulatory Capture: A Review, 22 Oxford Rev. Econ. Pol'y 203, 214 (2008).

[169] James Kwak, Cultural Capture and the Financial Crisis, *in* Preventing Regulatory Capture: Special Interest Influence and How to Limit It 71 (David Carpenter & David A. Moss eds., 2014).

[170] Bublé, supra note 49.

[171] See, e.g., FTC v. Facebook, 581 F. Supp. 3d 34, 64 (D.D.C. 2022) ("Although [FTC Chair Khan] undoubtedly expressed views about Facebook's monopoly power, these views do not suggest the type of 'axe to grind' based on personal animosity or financial conflict of interest' necessary to sustain a claim of bias"); Ass'n of Nat'l Advertisers v. FTC, 627 F.2d 1151, 1174 (D.C. Cir. 1979) (finding that public servants "may hold policy views on questions of law" prior to participating in a proceeding).

be lost. For all of the well-founded concern about cultural capture and ideological capture, revolvers-in can bring a deeper understanding of business practices, granular information about the inner workings of a regulated industry, and "practical knowledge with regards to how things are done" that result in better regulation[172] and more effective enforcement.[173] Sometimes the expertise essential for effective agency action is only available in the private sector. For example, the Treasury Department's Inspector General for Tax Administration ("TIGTA") found that "prospective employees with tax expertise generally come from accounting firms, law firms, and in-house tax departments" so that "to recruit experienced tax professionals, the IRS must draw from these sources of outside expertise."[174] TIGTA's report focused on assuring that processes were in place to prevent IRS staff from auditing or participating in decisions affecting the accounting or other firms where they had worked before joining the IRS. But given the need for the expertise of these new hires, a broader restriction on working in the area of their private sector experience would make little sense. More generally, what would be the point of hiring someone for their experience or specialized knowledge in an area if they are not allowed to participate in decisions in that area or work at agencies that focus on that area?

Revolving in brings in both expertise and experience—but also predispositions and perspectives. Government cannot gain the benefit of the former without the latter. Indeed, those predispositions and perspectives may be a significant part of the reason for the appointment. The decision to make those appointments is a political one, resulting from the politics that elects to office the particular leaders who make these appointments.[175] "Agency heads are appointed in a political process to serve avowedly political ends."[176] For those who have gone through the process of presidential nomination and Senate confirmation, that is "some indication" that their views on regulation "have been endorsed as appropriate at the higher levels of the political structure."[177]And, of course, once in office, they may appoint assistants and subordinates who also share their perspective. Similarly, by

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[172] Hadar Y. Jabotinsky, Revolving Doors – We Got it Backwards, 89 U. Cin. L. Rev. 432, 452 (2021).

[173] See Makkai & Braithwaite, supra note 5, at 73.

[174] Treasury Inspector General for Tax Administration, Processes Are in Place to Identify and Address Potential Conflicts of Interest in Large Corporate Tax Administration (Aug. 24, 2023), https://www.taxnotes.com/research/federal/other-documents/treasury-reports/tigta-examines-possible-conflicts-of-interest-among-irs-staff/7h7s7 (draft report).

[175] See Kwak, supra note 169, at 94.

[176] Strauss, supra note 75, at 1038.

[177] Id. at 1077.

the fact of their election, members of Congress and elected state and local officials have demonstrated popular support for their views and can make staff and other senior appointments for political reasons.

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The conflict of interest approach taken here seeks to address targeted bias or favoritism. The ban on golden parachutes and requiring a cooling-off period for substantive communication with and participation in particular matters involving former employers, clients, and associates should prevent the most egregious instances of biased decision-making and enhance the appearance of impartiality. But it stops short of a broader effort to keep private sector experience from affecting decisions with respect to more general matters or issue areas. To be sure, there may be difficulties drawing a line between "particular matters involving specific parties" and "issue areas" or matters of general policy-making concern. An industry may be so dominated by one or a very small number of firms that a rulemaking process or the criteria for a government grant or contract will practically be the equivalent of a specific-party matter. In such a situation, protecting impartiality would require a revolver-in from the affected firm or firms—or, perhaps, from a competitor or opponent of the firm or firms-—recusing themselves during the cooling-off period. There surely will be cases close to the line. But the line itself—recusal from matters involving one's former employer, clients or business associates but not from the broader regulatory field of the former firm—seems the right way to balance the interests in impartiality (and its appearance) with the ability of elected officials to choose the appointees with the views and expertise those officials want in government.

IV. CONCLUSION

The approach to revolving in suggested here—no golden parachutes, cooling-off periods for particular matters and on direct contacts with former employers, clients and business associates, but not broader restrictions on lobbyists or on participating in issue areas—will surely be unsatisfactory to many people concerned about the regulatory capture that may result from revolving in. However, it is important to distinguish the ethics/conflict of interest dimension of capture from the political dimension. The possibility that a new public servant's pre-existing personal and social ties to specific private firms, organizations, and individuals may predispose the new public

servant to favor their interests and give special attention to their concerns presents the kind of conflict of interest problem that ethics laws can and should address. But where actions result from a worldview that goes beyond favoring specific firms, organizations, or individuals and drives a particular approach to regulatory policy more broadly, that is not a question of ethics, but a matter of politics.[178] As one study of the impact of prior service in the broadcast industry on decisions by commissioners on the FCC found, although prior service had some effect, it was outweighed by party affiliation: "Entrance patterns are unimportant; political factors overwhelm them."[179]

This is not to deny that private interests and wealthy individuals wield disproportionate power in government and policy-making,[180] or that the appearance of private domination can undermine public trust and confidence in politics. But, again, that is a matter of politics, not ethics, and needs to be addressed politically. Focusing specifically on reducing the revolving in of appointees with viewpoints imprinted by the industries they will regulate would involve much deeper changes to the operation of the administrative state.

Laws could require expansion of the set of backgrounds from which regulators are drawn, mandate input from other interests affected by regulation, require consultation with sources of information or advice, or use the administrative process with judicial review to assure that private influence is more transparent and potentially subject to check.[181] There could also be targeted legal restrictions on appointments to certain positions from certain fields, like defense or energy, where the role of industry may be

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[178] Cf. Yglesias, supra note 45 (Senator Warren's opposition to Weiss's appointment was not based on anything he did because he represents a continuation of Obama administration's pro-Wall Street approach to financial regulation.).

[179] Cohen, supra note 36, at 704.

[180] See, e.g., Martin Gilens, Affluence & Influence: Economic Inequality and Political Power in America 1 (Princeton Univ. Press 2012) ("The American Government does respond to the public's preferences, but that responsiveness is strongly tilted toward the most affluent citizens"); Matilde Bombardini & Francesco Trebbi, The Political Power of Firms, NBER Working Paper 33696 (Apr. 2025), at 2, https://www.nber.org/papers/w33696 (reviewing the many tools business corporations wield to exercise "political clout," including lobbying, campaign contributions, charitable contributions and "the firm's roster of political connections and government links, such as employees who recently occupied positions in government or former employees serving in the executive branch or in regulatory agencies[]"); Noam Lupu & Zach Warner, Affluence and Congruence: Unequal Representation Around the World, 84 J. Pol. 276, 277 (2022) ("[A]ffluence bias appears to be widespread among modern electoral democracies.").

[181] See, e.g., David Moss & Daniel Carpenter, Conclusion: A Focus on Evidence and Prevention, *in* Preventing Regulatory Capture, supra note 169, at 453.

particularly problematic, as some lawmakers have proposed.[182] These or other actions would go beyond the government ethics issues that are the focus of this article.

New ethics rules are needed at all levels of government to address the conflict of interest issues raised by revolving in, but they should be focused on the particular issue of partiality implicated by recent ties to specific employers or clients, not the worldviews they bring to government from the private sector. Conflict of interest regulation cannot provide, and is not a substitute for, legislative examination of how government should operate, or the political determination of who holds elective office. Controlling agency capture is a matter not of ethics but of political will, and "political will emerges from the electoral process."[183]

[182] See Press Release, Senator Markey, Senators Markey, Merkley Introduce Legislation Prohibiting Fossil Fuel Executives from Controlling Energy-Related Agencies (Jan. 16, 2025).

[183] Pamela J. Clouser McCann, Douglas M. Spencer & Abby K. Wood, Measuring State Capture, 2021 Wis. L. Rev. 1141, 1157 (2021).