

## Regulating Lobbying

*Do current laws have too many loopholes?*

Lobbying is undergoing a transformation. Once seen mainly as glad-handing influence peddlers buttonholing lawmakers in Capitol corridors, federal government lobbyists today face multiple challenges: A gridlocked Congress, an end to special-interest funding provisions known as earmarks that once created big business for lobbyists and an Obama administration that has taken steps to curtail their access and influence. Increasing numbers of lobbyists are calling themselves “strategic advisers” effectively to skirt a 2007 law enacted in response to the Jack Abramoff lobbying scandal. Since then, Congress has shown little interest in closing loopholes in lobbying laws, and many observers predict it will take another major scandal for any action to occur. Meanwhile, lobbyists are forming closer alliances with public relations firms and other entities while trying to better explain the breadth of their services. Yet the industry continues to fight an image problem: In a 2013 poll, lobbying scored lowest among 22 professions on honesty and ethics.



*Bruce Josten is chief lobbyist for the U.S. Chamber of Commerce, which has become a powerhouse in American politics. During the 2010 election cycle, it spent nearly \$33 million on election-related ads and other communications. Most Chamber money supports Republican candidates or opposes Democrats.*

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# Regulating Lobbying

BY CHUCK MCCUTCHEON

## THE ISSUES

Nearly a decade ago, presidential candidate Howard Dean thrilled Democrats with his vow to stand up to the special interests in Washington. Lately, however, some Democrats have been accusing him of lobbying on behalf of those same interests.

Although not a registered lobbyist, Dean is a “senior strategic adviser” at McKenna, Long & Aldridge, a Washington law firm that lobbies on behalf of health care and pharmaceutical companies. Last July, in a *Wall Street Journal* column, he criticized a cost-control panel set up as part of President Obama’s health-care overhaul. Left-leaning publications rebuked him: “Dean has found a home in the K Street establishment he once held in such disdain,” wrote *The New Republic*, referring to the downtown area where many lobbying firms are located.<sup>1</sup>

Dean told *Time*: “I dare say some of the clients think [the column] is great, but I don’t write stuff because the clients like it. I write stuff because I believe it.”<sup>2</sup>

But one of Dean’s drug company clients told the publishing company BioCentury that Dean had been “very helpful” in his firm’s efforts to loosen federal regulations on drug development. Another said Dean “has been a great addition to our team.”<sup>3</sup>

Dean’s situation offers a window into the ongoing transformation of the lobbying industry in Washington. Increasingly, its practitioners are trying to influence the opinions of the public, the regulators and politicians with-



AFP/Getty Images/Pierre Verdy

*Howard Dean, a former presidential candidate and chairman of the Democratic National Committee, is now a “senior strategic adviser” for a Washington law firm that lobbies for health care and drug companies. Increasing numbers of lobbyists are calling themselves advisers to skirt a 2007 law passed in response to the Jack Abramoff lobbying scandal. There are now more such unregistered “shadow lobbyists” in Washington than registered lobbyists. Congress has shown little interest in recent years in closing loopholes in lobbying laws.*

out registering as lobbyists or having to formally disclose their contacts and income. The result, say government watchdogs, is a shadow world of lobbying that taxpayers know little about and that creates a potentially ripe environment for abuse.

“Today, to be really effective, a lobbyist not only has to be thinking about the inside game — going to Capitol Hill — but the outside game,” says David Rehr, a former lobbyist who now studies the industry as an adjunct professor at George Washington University’s Graduate School of Political Management.

The outside game, he says, includes “forming coalitions, getting third parties to augment your research or your economic arguments” and coordinating media coverage through opinion articles, such as Dean’s *Wall Street Journal* column.

Even the word “lobbying” is considered passé. The American League of Lobbyists — the main trade organization for the influence industry — changed its name last fall to the Association of Government Relations Professionals. (See sidebar, p. 486.) And, the traditional practice of “relationship lobbying,” based on head-to-head meetings to try to persuade elected officials, “is dead, or at least not where the growth will be” in the future, predicted Carter Eskew, founding partner of the lobbying and public relations firm Glover Park Group.<sup>4</sup>

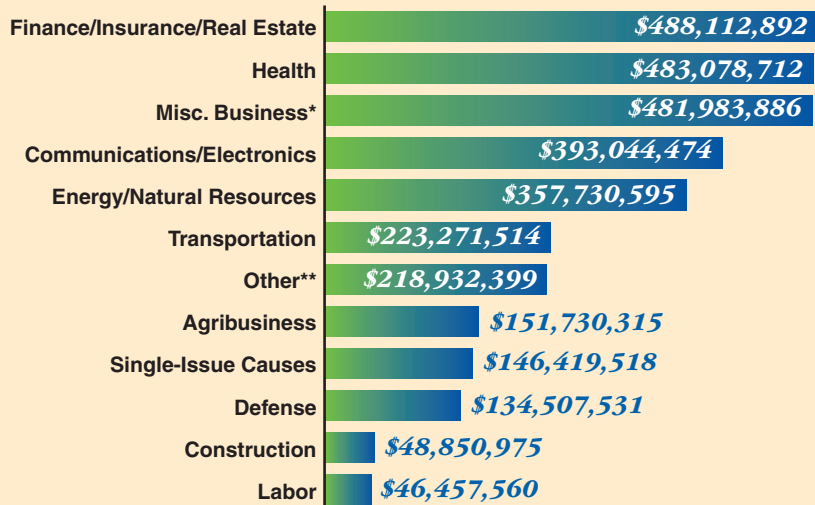
Instead, Rehr says, lobbying now requires a broader set of skills, the kind that public relations firms possess. “Lobbyists and public relations professionals no longer work in silos,” said an invitation to a recent Public Relations Society of America event. “Instead, we are expected to offer integrated services and bottom-line results in a seamless manner.”<sup>5</sup>

And lobbying does produce big bottom-line results. In 2012 and 2013, for instance, Whirlpool Corp. invested \$1.8 million in lobbying for legislation to create energy tax credits for making high-efficiency appliances — credits worth an estimated \$120 million.<sup>6</sup> And a 2009 study found that for every dollar spent on lobbying for a 2004 bill that provided tax breaks for large multinational corporations, companies

## Finance, Health Sectors Spent Most on Lobbying

The finance, health and business sectors spent the most on lobbying in 2013, more than 10 times as much as organized labor, whose expenditures on lobbying have shrunk over time as the number of unionized jobs has dwindled.

### Lobbying Expenditures by Sector, 2013



\* Includes manufacturing, textiles, steel, chemical, consumer retail, restaurants, gambling, tourism, food and beverages

\*\* Includes retirees, educators, government employees, nonprofit organizations, religious groups and members of the armed forces

Source: "Ranked Sectors, 2013" Center for Responsive Politics, undated, <http://tinyurl.com/okuphbb>

received more than \$220 as the result of beneficial language added to the bill.<sup>7</sup>

To achieve similar results, well-connected "advisers" such as Dean and former Senate Majority Leaders Tom Daschle, a Democrat, and Bob Dole, a Republican, are generously rewarded. Daschle reportedly makes more than \$2.1 million a year.<sup>8</sup> Such advisers are among the so-called "shadow lobbyists" or "unlobbyists" — a group that by 2013 had grown larger than the number of registered lobbyists, according to one estimate. Watchdog groups say the growth stems largely from loopholes in lobbying laws and lax enforcement.<sup>9</sup>

Congress has shown little interest in closing those loopholes, and many predict it will take a major scandal before lawmakers make a serious effort to

close them. The current system is the result of previous attempts to clean up the industry following earlier scandals.

The Lobbying Disclosure Act defines a lobbyist as someone who earns at least \$2,500 from lobbying over a three-month period, whose services include contacting more than one person on behalf of a client and who spends at least 20 percent of his or her time for each client on lobbying activity.

Both the number of registered lobbyists and the amount of money reported as spent on lobbying have declined in recent years. Data from the Center for Responsive Politics, a Washington watchdog group, shows the number of registered lobbyists dropped 17 percent from 2007 to 2013, to around 12,300. Meanwhile, the amount reported

as being spent on lobbying dropped from a high of \$3.55 billion in 2010 to \$3.23 billion last year.<sup>10</sup> (See graphic, left.) And in the first three months of this year, the amount reported as spent on lobbying was lower than in any quarter in four years.<sup>11</sup>

However, those figures do not include shadow lobbyists' work, which is not required to be reported. If their statistics are included, one political scientist estimates, the amount spent on lobbying tops \$6 billion a year — and is on the rise.<sup>12</sup>

Registered lobbyists face multiple challenges. Extreme political polarization means fewer bills are being considered, so the opportunities to lobby Congress have dwindled, while the special-interest earmarks in appropriations bills that once created big business for K Street are largely gone. And more than any other recent chief executive, President Obama has taken steps to curtail lobbyists' access and influence within the executive branch, such as barring them from serving on federal advisory boards.

Meanwhile, lobbyists are fighting a persistent image problem. In a December 2013 Gallup poll, lobbying scored lowest among 22 professions on honesty and ethical standards. Just 6 percent of those surveyed said lobbyists had high or very high standards — fewer than members of Congress (8 percent) and car salespersons (9 percent).<sup>13</sup>

"The lobbying profession . . . symbolizes a deep conflict of American values," wrote former *Washington Post* managing editor Robert G. Kaiser in his 2009 book *So Much Damn Money: The Triumph of Lobbying and the Corrosion of American Government*. "Lobbying is corrupt and deplorable . . . until one's own ox is gored or threatened; at which point, let the lobbying begin!"<sup>14</sup>

Lobbyists' image took a severe hit in the mid-2000s, with a scandal surrounding the activities of Jack Abramoff. Once one of Washington's top lobbyists, Abramoff served 43 months in prison after being convicted of conspiring to

bribe Republican elected officials, among other charges.<sup>15</sup> Rep. Bob Ney, R-Ohio, went to prison in connection with the scandal, and a number of congressional and George W. Bush administration officials were convicted of various related crimes.

But lobbyists say their profession is scorned because the public doesn't understand it. After the Gallup poll appeared, former Republican Mississippi Gov. Haley Barbour and Ed Rogers of BGR Group, a Washington government-affairs firm, wrote a response explaining three overlooked aspects of lobbying.

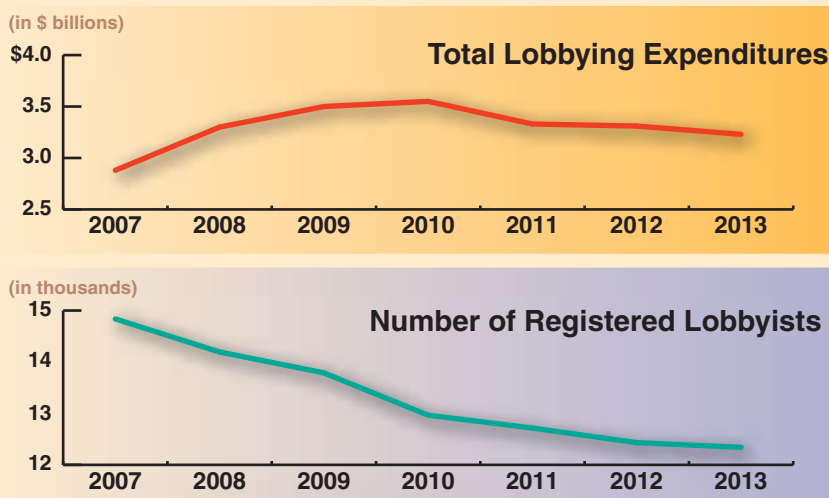
The first, they wrote, is identifying who to talk to: "The growth of bureaucracy is making it harder for a company or even an industry, much less an individual, to find out what is actually going on in government, and harder still to move the needle on any given measure." The second is providing lawmakers with solid information. "[T]he majority of policymakers want to thoroughly understand the policy and politics of whatever issue is on the table." The third is telling the truth: "If you want to be invited back to talk about an issue with members of Congress, government officials and other policymakers, you need to be credible."<sup>16</sup>

Contrary to what some voters believe, lobbyists do not always get their way. A broad coalition of powerful interest groups, ranging from Catholic and evangelical organizations to the U.S. Chamber of Commerce, has been lobbying the House heavily for months to follow the Senate in adopting a comprehensive immigration reform bill. But House Republican leaders have resisted the idea, and it is considered unlikely that a bill will pass before the November midterm elections.

Some lobbyists, finding less work at the federal level, are turning to the states, where disclosure laws vary widely. Nearly half of the states do not require registered lobbyists to file activity reports quarterly as they must at the federal level, and eight states re-

## Fewer Lobbyists, But Spending Still High

*Spending on lobbying peaked in 2010 at \$3.6 billion, while the number of registered lobbyists fell by 17 percent between 2007 and 2013. But according to the Sunlight Foundation watchdog group, the spending figures do not reflect fees paid to "shadow lobbyists" — advisers hired to influence policy but not required to disclose their fees or clients. When they are included, the total spent on lobbying may have been as high as \$6.7 billion in 2012, the group estimated.*



Source: "Lobbying Database," Center for Responsive Politics, <http://tinyurl.com/cbyu433>; also see Tim LaPira, "How much lobbying is there in Washington?" Sunlight Foundation (blog), Nov. 25, 2013, <http://tinyurl.com/mzkgm3f>

quire activity reports only once a year, according to a 2011 survey by the Sunlight Foundation watchdog group.<sup>17</sup>

Meanwhile, lobbying is becoming more international, as trans-border issues such as data privacy and financial regulation assume greater prominence. "There's more U.S. lobbying in the national and regional governments across the world; we never used to have that before," says Nicholas Allard, an ex-lobbyist who is now dean of Brooklyn Law School.

Allard is among those hoping that lobbyists' reputations improve as more of them consider a future in politics. Democrat Terry McAuliffe was elected Virginia's governor in 2013, and Republican David Jolly won a special House election in Florida's 13th District in March — both after overcoming heavy criticism of their lobbying backgrounds.<sup>18</sup>

As lobbyists, lawmakers, watchdog groups and others debate changes in the lobbying industry, here are some of the questions under discussion:

### **Do current laws sufficiently regulate lobbying?**

Since 1946, Congress has approved four separate measures to regulate lobbyists' contacts with congressional members. Each required lobbyists to register with both the House and Senate and to disclose receipts and expenditures.

The most recent was the Honest Leadership and Open Government Act (HLOGA) of 2007, adopted in response to the Abramoff bribery scandal. The law substantially revised the Lobbying Disclosure Act, adopted 12 years earlier. It refined the thresholds and definitions of lobbying activities

*Continued on p. 487*

# Lobbying Group Defends Name Change

*Lobbyists today “have so many more responsibilities.”*

Members of the main Washington trade group for lobbyists say the group's new name — which doesn't include the word “lobbyist” — isn't an attempt to disguise what they do but simply an effort to show how much the industry is changing.

Last fall the 1,100-member American League of Lobbyists voted to rename itself the Association of Government Relations Professionals (AGRP). Eighty-three percent of those voting supported the change.

Group members said the action reflects how lobbyists today do much more than the traditional efforts to influence how lawmakers write, and vote on, legislation. They now have to actively use social media, form alliances with grassroots organizations and public affairs firms and develop other innovative ways to represent their clients.

“If you're a lobbyist now, you have so many more responsibilities,” says Monte Ward, the organization's president.

Ward said the idea of renaming the association had been discussed since 2000. It was the subject of several focus groups in which he and other lobbyists discussed how much the profession has evolved. <sup>1</sup> “It just made sense to change the name to reflect the reality of D.C.,” says Robert Hay Jr., an AGRP board member.

Paul Miller, a former president of the group, opposed the name change at first: “I thought if you were a lobbyist and you were afraid to call yourself a lobbyist, you shouldn't be one,” he says. But he voted for the new name, he explains, because “I realized the profession has changed.”

Going forward, Ward said he wants the association to focus on increasing educational opportunities for lobbyists. That includes getting more people in the industry to take part in AGRP's lobbying certification program, which it set up in 2006 in response to the Jack Abramoff scandal. Abramoff, a former lobbyist for American Indian tribes, was convicted of mail fraud, conspiracy to bribe public officials and tax evasion and served 43 months in prison. <sup>2</sup>

The certification program is open to association members, who pay \$1,636, as well as nonmembers, who are charged slightly more. It requires enrollees to complete five one-day core courses and six electives within two years of signing up. One of the courses covers ethics training, which association members say lends credibility to those who graduate.

The group tells lobbyists on its website that obtaining a certificate “will set you apart as the cream of the crop. That's because this is the only certificate program that offers mastery of government relations strategies and best practices, the legisla-

tive process plus practical know-how for getting results while meeting the highest standards of ethics and professionalism.” <sup>3</sup>

Organization members often defend the lobbying profession in the news media. In particular, they frequently counter criticisms from Abramoff, who has drawn considerable publicity with his accusations that lobbyists still engage in the kind of payola practices that sent him to prison. In a speech last year at Georgetown University, he said: “I figured that I wasn't really doing anything wrong, because every lobbying firm on Capitol Hill was giving the same improper benefits. I was just doing it on a much larger scale.” <sup>4</sup>

Miller, who was the group's president when the Abramoff scandal broke in 2005, says the ex-lobbyist has no sincere interest in bettering the lobbying industry — and that if he did he would donate some of his income from speaking fees and book royalties to the certification program. “For a guy who screwed the entire profession, he should consider an apology to all of us following the rules,” Miller says. “At the end of the day, Jack Abramoff is a crook and only out for himself.”

In response, Abramoff accused association members of “Orwellian doublespeak” if they think he should donate to the lobbying certification program when they already are guilty of prospering in ethically suspect ways. Miller's suggestion “that the true path to reform is through donations to his organization would be funny if he were not serious,” Abramoff wrote in an email. “His problem does not lie only with Jack Abramoff, but rather with a nation which will no longer condone special-interest money buying legislative results.” <sup>5</sup>

Despite the low regard with which polls show the American public holds lobbyists, Ward says he's confident the group can help persuade people that the profession is essential and ethical. He contends he's already seeing some evidence of it.

“It's an educational process,” he says. “When I talk about what we do to people and say, ‘Here's what a lobbyist does’ — once you go through that process, they often go, ‘They do provide a valuable service.’”

— **Chuck McCutcheon**



*Former lobbyist Jack Abramoff served 43 months in prison for conspiracy to bribe public officials and other crimes. Abramoff says lobbyists still engage in illegal and unethical practices, a charge the industry vigorously denies.*

AFP/Getty Images/Jewel Samad

<sup>1</sup> Holly Yeager, “Lobbyists' Lobbying Group Wants a New Name — One That Doesn't Mention Lobbying,” *The Washington Post*, Oct. 15, 2013, <http://tinyurl.com/prvpvyo>.

<sup>2</sup> For background, see Susan Schmidt, *et al.*, “Investigating Abramoff: Special Report,” *The Washington Post*, undated, <http://tinyurl.com/8chq6>.

<sup>3</sup> “Lobbying Certificate Program,” Association of Government Relations Professionals, <http://tinyurl.com/oh5hrqu>.

<sup>4</sup> Sam Abrams, “Abramoff Talks Lobbying,” *The Hoyt* (Georgetown University), Oct. 11, 2013, <http://tinyurl.com/o5vvc38>.

<sup>5</sup> Chuck McCutcheon, “Abramoff Still Biggest Thorn in Lobbying Industry's Side,” CQ Press First Street Research Group blog, March 15, 2012.

Continued from p. 485

and doubled — to four — the number of yearly reports required for registered lobbyists and lobbying firms. It also required additional disclosures, created new semi-annual campaign contributions reports and required lobbying coalitions and associations to file disclosures.<sup>19</sup>

Senate Majority Leader Harry Reid, D-Nev., hailed the law in 2009 for providing “an unprecedented level of disclosure — both in quantity and quality — of the activities of lobbyists as they seek to influence federal policy-making.” Reid said the law addresses “one of the glaring weaknesses revealed by the Abramoff scandal — the lack of effective enforcement that helped lead to an attitude among some that the rules could be ignored with impunity.”<sup>20</sup>

However, watchdog groups, lobbyists and those who study the industry say the law is rife with deficiencies. “HLOGA doesn’t do much,” says Paul Miller, a former president of the Association of Government Relations Professionals, the main Washington trade group for lobbyists. “You’re never going to be able to legislate morality. There are just too many creative people who can find loopholes and jump through them.”

For instance, Miller and others say, lobbyists are required to disclose only money spent on lobbying in excess of \$12,500 per quarter. “Groups that spend \$12,499 or less in a quarter need not disclose,” said the Center for Responsive Politics, “and we know little about the ways they are trying to influence public policy.”<sup>21</sup>

And grassroots lobbying activities, such as when an interest group organizes “fly outs” of its members to Washington, D.C., do not have to be reported. For instance, the Christian Coalition reported spending up to \$6.4 million a year on lobbying in 1998, but after the faith-based group stopped reporting its grassroots spending, its official tally was just \$10,000 for 2013 and nothing for

2011 or 2012, said the Center for Responsive Politics.<sup>22</sup>

Lobbying experts say the offices that register lobbyists — the House clerk and secretary of the Senate — perform largely clerical duties, making sure that what lobbyists submit shows up in the database. “They only look into cases where disclosures have already arrived in their office and they suspect error,” said Timothy LaPira, a James Madison University political scientist who studies lobbying.<sup>23</sup>

Moreover, the U.S. Attorney’s Office for the District of Columbia, which is responsible for enforcing lobbying violations, has only four attorneys handling the issue, and their workloads include health care and housing fraud, false claims and other cases. “We have no ability to know if somebody doesn’t register unless some insider or a competitor comes and says, ‘We have reason to believe that this individual or this group is lobbying,’” said Keith Morgan, the office’s deputy chief.<sup>24</sup>

When Obama took office in 2009, he barred registered lobbyists from joining his administration. But experts say many lobbyists decertified themselves to avoid those and other restrictions, even though they continued to do similar work, many for the same employers.<sup>25</sup>

In a 2013 report for the Sunlight Foundation, LaPira estimated that for every registered lobbyist at least one “shadow lobbyist” is being paid to influence policy without disclosing fees or clients. Assuming that a shadow lobbyist collects the same amount in fees as a registered lobbyist, LaPira concluded that total spending in the industry did not decline in 2012, but doubled — from \$3.1 billion to \$6.7 billion.<sup>26</sup> (See graph, p. 485.)

HLOGA “had sort of a perverse outcome and unintended consequences,” LaPira says. “Instead of adding transparency, it’s actually decreased transparency.”

The use of shadow lobbyists has become known as “the Daschle Loophole,” after South Dakota Democratic

Sen. Daschle, who was defeated for reelection in 2004, three years before the law was enacted.<sup>27</sup> He is now a senior policy adviser at DLA Piper, a Washington law and lobbying firm. But Daschle said that while he makes speeches, gives advice and does other work for clients related to public policy, he personally doesn’t “lobby” by directly approaching ex-colleagues.

“I’ve never felt comfortable asking my former colleagues for access or for support for things that I want to do,” he told *The Hill* newspaper.<sup>28</sup>

Daschle is not the only former legislator to eschew the “lobbyist” tag. During the 2012 Republican presidential primary campaign, Mitt Romney accused former Republican House Speaker Newt Gingrich of Georgia of lobbying Congress on behalf of several clients, including mortgage giant Freddie Mac. Gingrich responded that he did not lobby but provided advice “as a historian.”<sup>29</sup>

To some industry observers and lobbyists, however, such explanations are unsatisfactory. “People say to me, ‘I don’t lobby. I engage in strategic planning and education,’” said Ken Gross, a lawyer who specializes in lobbying laws and ethics. “I say to them, ‘That’s exactly what lobbying is — if it’s for the purpose of influencing legislation or policy, not strategic planning on who’s going to win the Super Bowl.’”<sup>30</sup>

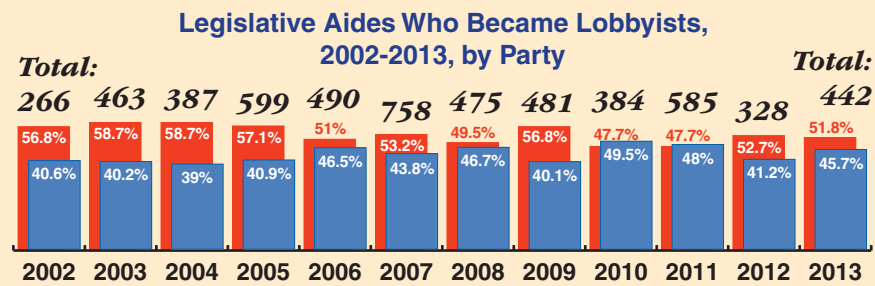
### ***Do lobbyists move in and out of government too easily?***

Watchdog groups have long complained about the “revolving door” between the government and K Street, saying too many lawmakers and staffers readily move into lucrative lobbying jobs. Critics say it gives the lobbyists privileged access to former colleagues.

People who shift from government to lobbying “are literally cashing in on their Rolodex,” said Craig Holman, a lobbyist for the consumer-interest group Public Citizen. “It distorts the legislative process in favor of those who can pay for that Rolodex.”<sup>31</sup>

## Congressional Aides Return as Lobbyists

More former Republican than Democratic legislative aides registered as lobbyists in 2012 and 2013. In 2007, after Democrats took control of both the House and Senate, 53 percent of the 758 aides-turned-lobbyists were Republicans. The number of aides becoming lobbyists typically increases in odd-numbered post-election years, when proposed new legislation creates more lobbying opportunities.



\* Note: Percentages do not add to 100 because some aides were not identified by party

● Republicans  
● Democrats

Source: "Charting the Revolving Door," LegiStorm, undated, <http://tinyurl.com/mtcxrz6>

The opposite scenario also occurs. Increasingly, so-called "reverse revolvers" leave corporations and lobbying firms to work in government — sometimes after receiving six-figure bonuses from their former employers — according to Public Citizen and other watchdog groups.

In January 2013, Ambrose "Bruce" Hock joined the Republican staff of the Senate Armed Services Committee after working as an executive and lobbyist at Northrop Grumman Corp. The defense giant gave him up to \$450,000 in bonus and incentive pay before he left. Another former lobbyist for the company, Thomas Mackenzie, received even more — \$498,334 — when he left to go to work for Republicans on the House Armed Services Committee in 2011.<sup>32</sup>

"The revolving door is maybe the most corrupting element of Washington," said Danielle Bryan, who heads the Project on Government Oversight, a watchdog group.<sup>33</sup>

Defenders of the revolving door, such as Indiana Republican Sen. Dan Coats, say it can provide lobbyists and

government with a more informed perspective. Coats went from serving in the Senate to lobbying and then became U.S. ambassador to Germany. He returned to K Street, but later moved back to Indiana and ran successfully for the Senate again in 2010. "Throughout my life, whenever a new door has opened, I chose to accept the challenge," Coats said.<sup>34</sup>

Other lobbyists say colleagues with prior backgrounds on Capitol Hill have helped to offset the declines in longevity among congressional staffers by providing critical knowledge and background needed to shape legislation. "Despite the increase in the scale and complexity of governance, the number of staffers in congressional offices has remained nearly the same over the past 20 years," said Allard, the former lobbyist. "Experience is spread thin."<sup>35</sup>

Former Oregon GOP Sen. Gordon Smith, who took a job as a senior adviser at the law and lobbying firm Covington & Burling after losing his seat in 2008, said he not only deals with Congress but also contacts officials in

the judicial and executive branches of government.<sup>36</sup>

In a study for the Sunlight Foundation, analysts Lee Drutman and Alexander Furnas found that most of the growth in lobbyists' fees between 1998 and 2012 came from revolving-door lobbyists. The number of active lobbyists who reported having prior government experience quadrupled during that period, they found.<sup>37</sup>

The Center for Responsive Politics counts more than 400 former House and Senate members who have moved into lobbying or related government-affairs work. Hundreds of their ex-employees also hold such jobs, including 61 one-time staffers for the late Democratic Sen. Edward M. Kennedy of Massachusetts, 50 for former Republican Sen. Kay Bailey Hutchison of Texas and 40 for former Democratic Sen. Max Baucus of Montana.<sup>38</sup>

The number of ex-Baucus staffers working as lobbyists became an issue in 2013, when the Senate Finance Committee — which Baucus chaired at the time — passed a bill to extend tax cuts that otherwise would have expired under the so-called "fiscal cliff." The measure included several tax-related provisions sought by companies for whom Baucus' ex-aides were lobbying.<sup>39</sup>

The Honest Leadership and Open Government Act (HLOGA) bans all lobbying contact for a period of time between government officials and the agency or body where they once worked. The length of time varies, depending on where the official worked and the position held.

The law distinguishes between members of Congress and their staffers and also makes a distinction between "senior" and "very senior" executive branch officials. Senators and "very senior" former executive officials, such as Cabinet members, are prohibited from lobbying for two years, while House members, senior congressional staffers and "senior" executive branch employees face a one-year ban. During this so-called "cooling-off period," affected individuals may not



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engage in any communications aimed at influencing decision-making at their former agency or government body.

Lobbyist Miller says the cooling-off period does an acceptable job of preventing new lobbyists from being able to influence legislation on which they worked as a member or aide. “I don’t have an issue with the revolving door,” he says. “You’ve got the two-year cooling-off period for a member or a year for a staffer.” If that period were extended any further, he adds, “you’re taking away their ability to earn a living.”

However, many former lawmakers and top federal officials have joined lobbying firms during the cooling-off periods, usually as senior advisers or in similar positions until they are legally permitted to lobby. Five months after he left office in 2011, former New Hampshire GOP Sen. Judd Gregg, who chaired the Senate Budget Committee, was named an international adviser to the Wall Street investment firm Goldman Sachs. He later became CEO of the Securities Industry and Financial Markets Association, a trade association for the financial industry.<sup>40</sup>

Watchdogs say it’s not always clear what lawmakers are doing during the cooling-off period. “There is no registration or public disclosure required for simply working at a firm that lobbies, and as such, the public may have little to no idea of what former politicians are doing behind the scenes,” said the Center for Responsive Politics.<sup>41</sup>

Former Senate Minority Whip Jon Kyl, R-Ariz., in discussing how the lobbying ban would affect him when he joined Covington & Burling in 2013, acknowledged that he couldn’t lobby current senators. But, he said, “I’m not prohibited from giving them my best advice.”<sup>42</sup>

Most “revolvers” come from Congress, according to researchers LaPira and Herschel Thomas III, a University of Texas-Austin doctoral candidate. Among 1,600 randomly selected lobbyists, nearly two-thirds came from Congress, the researchers found, compared

to 23 percent from federal agencies and 9 percent from the White House.<sup>43</sup>

*The New York Times* reported in February that many former House aides had taken advantage of loopholes in HLOGA to lobby within one year of leaving Capitol Hill. For instance, it found some aides had resisted pay raises to keep their annual salaries below the \$130,500 cutoff that would trigger being subject to lobbying restrictions.<sup>44</sup>

### ***Does lobbyists’ money have too much influence on policymaking?***

Lobbyists and interest groups are commonly caricatured as doling out campaign checks to politicians in exchange for access. But the role that such donations play in directly influencing law or policy remains a subject of debate.

Leon Panetta, who served as a House member from California before becoming CIA director and secretary of Defense, is among those lamenting lawmakers’ increasing financial dependence on lobbyists. Members of Congress “rarely legislate; they basically follow the money,” said Panetta, who now chairs a California State University public policy institute. “They’re spending more and more time dialing for dollars. . . . The only place they have to turn is to the lobbyists.”<sup>45</sup>

Panetta’s comments came before the Supreme Court’s landmark 2010 decision in *Citizens United v. Federal Election Commission*, which struck down limits on corporate political donations and opened the doors for even more spending.

Center for Responsive Politics Executive Director Sheila Krumholz emphasized that money is not given “as a quid pro quo to purchase a vote. But well-placed contributions, money spent on lobbying, well-placed former aides now working to lobby are all assets that can be used by private interests to influence policy.”<sup>46</sup>

A recent study that attracted substantial publicity indicated that a lobby-

ing group’s campaign contributions can pave the way for access. Two political science graduate students enlisted the help of a liberal organization, CREDO Action, based in San Francisco, which was seeking congressional cosponsors for a bill banning certain chemicals. The group sent two different emails to congressional offices. One had the subject line “Meeting with campaign donors about cosponsoring bill” and said that CREDO members “who are active political donors” were interested in meeting with the member. The second email removed the donor references and replaced them with “local constituents.” The researchers found that 12.5 percent of offices responded positively to the first email, while only 2.4 percent did so to the second.<sup>47</sup>

Some political scientists faulted the study’s methods. “Like all research in this area, this study is vexed by the problem of demonstrating a causal relationship between money and legislator behavior that is independent of a common underlying ideology,” said Jennifer Victor, an assistant professor of public and international affairs at George Mason University in Fairfax, Va.<sup>48</sup>

The HLOGA sought to restrict lobbyists’ financial influence in various ways, including barring a lobbyist for a corporate client from planning or paying for a lawmaker’s trip. The provision was adopted in response to the free out-of-town and overseas trips that Abramoff and his associates used to ingratiate their clients with members of Congress.

However, the law permits such trips if foreign governments foot the bill, so a lobbyist can pay for a trip on behalf of one of those governments. In addition, nonprofit organizations, some of which have close ties to lobbying shops, also can finance trips. As a result, lawmakers and their aides took more free trips in 2013 than in any year since the restrictions took effect — an estimated 1,887 excursions costing almost \$6 million.<sup>49</sup>

But some research disputes the direct correlation between money and the outcome of an issue. University of North Carolina political scientist Frank R. Baumgartner looked at 98 randomly selected cases of lobbying in Washington from 1999 to 2003, examining Federal Election Commission campaign finance reports and other information. He found “virtually no impact of money on outcomes.” He said it was because lobbying “is generally about changing the status quo,” and that “the huge business and corporate bias that per-

last among six measures. The highest-ranking measure cited by both lobbyists and staffers was “providing credible, reliable information.”<sup>51</sup>

Money is “a tool,” Rehr says. “As a lobbyist, I would rather have it than not. But it doesn’t play the dominant role people assume it does.”

Lobbyists note that even the most powerful among their ranks don’t always get what they want. Before the deep automatic spending cuts known as “sequestration” were scheduled to take effect in 2012, defense contractors

ing cost of running for office forces lawmakers to come to wealthy lobbying groups, hat in hand, asking for money. Between 1986 and 2010, the inflation-adjusted cost of winning a seat in the House doubled, while the cost of winning a Senate seat climbed by more than a third, according to a study by the nonpartisan Campaign Finance Institute.<sup>53</sup> In addition to individual candidates, well-funded issue-oriented interest groups are pouring ever-increasing amounts of cash into televised political messages and attack ads, without even mentioning a particular candidate. Yet, the unmentioned candidate then feels pressured to respond to the ads.

As a result, the airwaves during recent campaign seasons, especially in highly competitive districts, have been inundated by political ads. In 2010, the total number of TV political ads for House, Senate and gubernatorial candidates was two-and-a-half times greater than the number of ads for the same category of races in 2002, according to one study. In terms of spending, TV ads in House races cost 54 percent more in 2010 than they did two years earlier, while the cost of Senate race ads rose 71 percent over 2008.<sup>54</sup>

As a result, complain lobbyists, they must host or attend fundraiser after fundraiser. “I do not believe it would be possible to receive more fundraiser invitations,” lobbyist Pat Raffaniello said recently.<sup>55</sup> ■



Getty Images/Chip Somodevilla

*Religious leaders and lay people hold a prayer vigil for immigration reform outside the Capitol Hill office of House Speaker John Boehner, R-Ohio, on Oct. 8, 2013. A broad coalition of Catholic and evangelical groups has been lobbying the House for months to pass a comprehensive immigration reform bill, but House Republican leaders have resisted the idea.*

meates Washington is already built into the policies of the status quo.”<sup>50</sup>

Rehr, the former lobbyist, reached a similar conclusion in a survey he conducted in 2013 of more than 700 congressional staffers and 2,200 lobbyists. He asked the most important ways to get access to a member of Congress or their staff. Only 2 percent of staffers and 4 percent of lobbyists said the most important determinant of access was whether a lobbyist’s political action committee had donated to the member’s campaign. They ranked it

including some of the largest political contributors, such as Lockheed Martin Corp. and Raytheon Co., waged fierce lobbying campaigns against the cuts. But sequestration took effect anyway.

“People . . . have accused us of crying wolf,” said Dan Stohr, a spokesman for the Aerospace Industries Association, the trade group representing aerospace companies.<sup>52</sup>

Meanwhile, some lobbyists say the perception that they offer money in exchange for access and favors is misguided. Instead, they say, the spiral-

## BACKGROUND

### “Lobby Agents”

Lobbying, embedded in the First Amendment’s protection of citizens’ right “to petition the government for a redress of grievances,” has been part of American democracy since its earliest

*Continued on p. 492*

# Chronology

## **1800s** *States restrict lobbyists as their influence grows.*

**1829**

The phrase “lobby-agents” is used to describe favor-seekers in New York Capitol lobby.

**1872**

Credit Mobilier scandal reveals that senators and representatives received railroad stocks for supporting railroad legislation.

**1876**

House requires lobbyists to register.

**1877**

Georgia constitution outlaws lobbying of state legislators.

**1890**

Massachusetts requires lobbyists active on state issues to register.

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## **1940s-1960s** *Lobbying regulation evolves in modern political age.*

**1946**

Federal Regulation of Lobbying Act requires lobbyists to register.

**1950**

President Harry S. Truman complains about lobbyists’ influence. . . . House committee recommends strengthening 1946 law.

**1954**

Supreme Court upholds 1946 law.

**1962**

Congress redefines bribery to include offering or taking anything of value to influence a vote.

## **1970s** *Reform-minded lobbying groups blossom in the wake of political and social protest movements.*

**1970**

Ralph Nader founds watchdog U.S. Public Interest Research Group. . . . Politically oriented lobby groups formed following Watergate scandal.

**1978**

Ethics in Government Act requires former executive branch officials to wait a year before lobbying former colleagues.

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## **1990s** *Congress attempts further regulation of lobbyists.*

**1995**

Lobbying Disclosure Act broadens definition of lobbying to include contacts with congressional staff and executive branch officials. . . . Republicans launch K Street Project to influence lobby groups.

**1998**

Senate committee investigates a program offering lobbyists and other campaign donors coffee with President Bill Clinton, officials.

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## **2000s** *Lobbying business booms; President Obama cracks down.*

**2003**

Newspaper in Alexandria, La., reports Coshatta Tribe’s payments of \$16 million in one year to lobbyist Jack Abramoff and a public relations firm; investigations follow.

**2004**

Powerful Pharmaceutical Research and Manufacturers of America (Big Pharma), taps as its new president former Rep. W. J. “Billy” Tauzin, R-La., main sponsor of a 2003 Medicare bill supported by the drug industry.

**2006**

Abramoff sentenced to six years in prison for mail fraud, conspiracy to bribe public officials and tax evasion; he later becomes an advocate for tough restrictions on lobbying.

**2007**

Abramoff scandal sparks passage of Honest Leadership in Open Government Act, aimed at further regulating lobbying.

**2009**

Newly elected President Obama orders appointed members of his administration to refuse gifts from registered lobbyists and permanently refrain from lobbying the administration after leaving government.

**2010**

Total lobbying spending reaches a record \$3.6 billion. . . . House and Senate end special-interest “earmarks” in appropriations bills, which had been a boon for lobbyists.

**2013**

The 1,100-member American League of Lobbyists votes to rename itself the Association of Government Relations Professionals.

**2014**

A federal appeals court in January rules that a lower court must hear arguments that Obama’s 2009 ban on lobbyists serving on government advisory panels violates lobbyists’ First Amendment rights.

## Regulation Sought for “Political Intelligence”

*But critics see constitutional and other problems.*

Information is power, as the saying goes, and in Washington a new form of information — “political intelligence” — is flexing its muscles — and causing controversy.

Some consider it a variation of lobbying and think it should be regulated, though it has nothing to do with influencing laws being written. Instead, political intelligence seeks to help stock market investors by providing up-to-the-minute information about government actions.

Political intelligence came under new scrutiny last year when a Washington brokerage firm, Height Securities, revealed a Medicare funding decision to its clients before the Obama administration formally announced it. The move prompted a surge in the price of health care stocks in the minutes before the market closed.<sup>1</sup>

Political intelligence emerged as an industry in the pre-Internet 1980s, when investment banker Ivan Boesky hired lobbyists to attend committee hearings about a proposed oil merger in 1984, using the information they provided to eventually earn \$65 million.

“Investors started to realize that there was money to be made by knowing what was going on in Washington and knowing it as quickly as possible,” said Michael Mayhew, founder of the political-intelligence firm Integrity Research Associates.<sup>2</sup>

Some lawmakers say political intelligence practitioners should

be subject to the same regulations as registered lobbyists. “When a political intelligence professional is paid to gather inside information from congressional or agency sources that can be used to make investment decisions, that professional should have to register and disclose his or her activities to the public,” Sen. Chuck Grassley, R-Iowa, and Rep. Louise Slaughter, D-N.Y., said in a joint statement last year.<sup>3</sup>

Grassley won Senate approval in 2012 of an amendment requiring registration of political intelligence practitioners. But his amendment, attached to a stock-trading bill, was stripped from the final version of the bill.<sup>4</sup>

Not everyone endorses regulating the practice. A *Bloomberg View* editorial called it a “dumb idea,” stressing the difficulty of defining political intelligence. “The Internet has enabled an explosion of insider newsletters and websites that strive to give subscribers government information faster and better than the competition. . . . Would this information count as political intelligence? More broadly, political speech enjoys strong constitutional protection; it’s hard to see how political intelligence wouldn’t merit similar deference,” the editorial said.<sup>5</sup>

The Government Accountability Office (GAO), in a report last year, also cited the difficulties of pinpointing how political

*Continued from p. 490*

days. In 1792, a lobbyist for Continental Army veterans in Virginia invited other veterans groups to form a coalition to push for better compensation.

The term “lobbying” came into vogue in the 19th century. In 1829, the phrase “lobby-agents” was used to describe favor-seekers who hovered in the lobby of the New York Capitol in Albany. Within a few years, it had been shortened to “lobbyist” and was widely used around the U.S. Capitol.<sup>56</sup>

In a 1987 speech, Sen. Robert C. Byrd, D-W.Va., recalled how many of the first Washington reporters were in fact lobbyists for merchants and shippers, sent to the capital to provide information on pending tariffs. He noted that they worked in a free-wheeling atmosphere: “Clubs, brothels and ‘gambling dens’ became natural habitats of the lobbyists, since these institutions were occasionally visited by members of Congress, who, far from

home, came seeking good food, drink and agreeable company.”<sup>57</sup>

In such an environment, scandals flourished. In 1857, *The New York Times* published an exposé charging that lobbyists had rewritten a Pacific railroad bill to take control of federal lands. Four U.S. representatives had to resign after an investigation by the House. In the Credit Mobilier affair 15 years later, several members of Congress were accused of taking stock in return for helping the Union Pacific Railroad obtain large land grants. And in 1906, a *Cosmopolitan* magazine series accused prominent senators of representing special interests rather than the public interest. The resulting political pressure helped enact the 17th Amendment, requiring senators to be elected by the public rather than by state legislatures.<sup>58</sup>

By the end of the 19th century, the reputation of lobbyists was so bad that President William McKinley rebuffed a suggestion from his political mentor, Mark

Hanna, that McKinley appoint a friend to his Cabinet with the blunt remark: “Mark, I would do anything in the world for you, but I cannot put a man in my Cabinet who is known as a lobbyist.”<sup>59</sup>

In 1876 the House began requiring all lobbyists to register.<sup>60</sup> States also took action: In its 1877 constitution Georgia outlawed any lobbying of state legislators (these prohibitions survived until 1992, though they were not enforced), while Massachusetts in 1890 began requiring lobbyists to register and disclose their expenses.<sup>61</sup>

By 1946, lobbyists were required to disclose basic information about their activities under the Federal Regulation of Lobbying Act, passed as part of a legislative reorganization bill. The Supreme Court in *United States v. Harriss* upheld the constitutionality of the law in 1954 but narrowly interpreted its key aspects, including a finding that the law covered only direct contact with legislators and not their aides.<sup>62</sup>

intelligence is used. “The extent to which investment decisions are based on a single piece of political intelligence would be extremely difficult to measure. . . . Investors typically use multiple sources of information to influence their investment and business decisions,” the GAO said.<sup>6</sup>

Slaughter said any proposed legislation to regulate political intelligence would exclude journalists, prompting Reuters media critic Jack Shafer to ask: “But how practical is that? The primary difference between Bloomberg, Reuters, *The Wall Street Journal* and all the other collectors of conventional business-and-government news and the myriad political-intelligence outfits and research firms collecting fine-grain business-and-government information is 1) the price they charge for information and 2) how many clients (or readers) they have.”<sup>7</sup>

Grassley, the Senate Judiciary Committee’s top Republican, launched an investigation of the Height Securities Medicare information tip and the actions of another political intelligence firm, Capitol Street, which held a conference call with investors in which congressional staffers discussed the likely ruling on the Medicare funding.<sup>8</sup>

Grassley’s office said in a statement in April that the investigation stalled because the Obama administration refused to share emails from the Department of Health and Human Services, the

Office of Management and Budget and the White House.

Grassley “remains interested in the role of political intelligence firms in obtaining and sharing government information with Wall Street prior to public release and in making these interactions with the government more transparent,” the statement said.

— *Chuck McCutcheon*

<sup>1</sup> Tom Hamburger and Dina Elboghady, “Sen. Grassley: Political Intelligence Firms Need More Transparency, Disclosure,” *The Washington Post*, May 9, 2013, <http://tinyurl.com/n4rkxnh>.

<sup>2</sup> Tim Murphy, “The Fastest-Growing Washington Industry You’ve Never Heard Of,” *Motber Jones*, November/December 2013, <http://tinyurl.com/pblr9ot>.

<sup>3</sup> “Senator Grassley, Congresswoman Slaughter React to GAO Report on Political Intelligence,” Office of Sen. Chuck Grassley, April 4, 2013, <http://tinyurl.com/ndvm68b>.

<sup>4</sup> “Taking Stock of ‘Political Intelligence,’” Office of Sen. Chuck Grassley, April 29, 2013, <http://tinyurl.com/lkjw7wf>.

<sup>5</sup> “Regulating Political Intelligence is Dumb Idea,” *Bloomberg View*, May 28, 2013, <http://tinyurl.com/14c58t3>.

<sup>6</sup> “Political Intelligence: Financial Market Value of Government Information Hinges on Materiality and Timing,” Government Accountability Office, April 2013, <http://tinyurl.com/n7fh4pn>.

<sup>7</sup> Jack Shafer, “The Dumb War on Political Intelligence,” Reuters, May 8, 2013, <http://tinyurl.com/ohabye5>.

<sup>8</sup> Hamburger and Elboghady, *op. cit.*

Corporations interested in influencing policy continued to operate behind the scenes. Before its official formation in 1972, the industry group Business Roundtable consisted of executives meeting secretly at a Manhattan social club. “They were aware that if some journalist from *The Washington Post* got wind of a meeting in a social club of representatives of industrial interests, all hell would break loose,” says Benjamin Waterhouse, a University of North Carolina historian and author of the 2013 book *Lobbying America: The Politics of Business from Nixon to NAFTA*. “They said, ‘We need to keep this fairly under wraps.’ ”<sup>63</sup>

The group, no longer secret, now counts as members more than 200 chief executive officers of America’s largest companies. But two groups with a similar agenda — the National Association of Manufacturers (NAM) and the U.S. Chamber of Commerce — are better known.

NAM, established in 1895 to expand foreign trade opportunities, became a

counterweight in the 1930s to President Franklin D. Roosevelt’s New Deal social and economic programs. Its membership has remained constant at around 14,000 companies and subsidiaries. The Chamber, founded in 1912, now has nearly 3,000 state and local chapters.<sup>64</sup> It claims to represent the interests of more than 3 million businesses, but its critics have argued its actual membership is about one-tenth that size.<sup>65</sup>

Nevertheless, the Chamber has become a dominant powerhouse in American politics. During the 2010 election cycle, it spent nearly \$33 million on election-related advertisements and other communications, making it the biggest spender other than the national party committees. Most Chamber money promotes Republican candidates or opposes Democrats. However, like other non-profit business associations, the Chamber does not have to disclose its donors.<sup>66</sup>

Before the 1970s, organized labor was a dominant lobbying force. Its size-

able grassroots campaigns could effectively lobby the president and others directly. The American Federation of Labor was founded in 1886 and merged in 1955 with the rival Congress of Industrial Organizations to form the AFL-CIO, the largest union umbrella group. Although its membership totaled nearly 16 million at the time of the merger, the loss of unionized jobs over the subsequent decades caused the AFL-CIO’s membership to dwindle to around 10.5 million.<sup>67</sup>

## Watergate Reforms

The Watergate scandal of the 1970s created a clamor for more openness in government, as lawmakers sought to address the public’s general concerns about corruption.

A variety of post-Watergate reforms opened most congressional committee meetings to the public, while also increasing the power of subcommittees.



AFP/Getty Images/Jim Watson



Getty Images/Alex Wong

## Too Much Power?

*Protesters in Washington march to the Department of Justice during a rally against big banks and home foreclosures on May 20, 2013 (top). Bank executives testify about mortgage rules proposed by the new Consumer Financial Protection Bureau before the House Financial Institutions and Consumer Credit Subcommittee on Jan. 14, 2014. Many Americans feel that corporate lobbyists have more influence over — and access to — lawmakers and government officials than average citizens, especially since lobbyists and corporate executives are often called to testify on Capitol Hill on pending legislation. Such concerns intensified following the collapse of the real estate bubble in 2007, leading to hundreds of thousands of homeowner foreclosures.*

As the power that once was concentrated in each party's leadership became more diffuse, opportunities to directly lobby more members increased. Many new lobbyist groups were created, and others became even more powerful.

Issue-advocacy groups, which lobby on matters dealing with the government's ability to affect individual freedoms, also began to emerge. Such groups began on the political left, such as the U.S. Public Interest Research

Group (U.S. PIRG), founded by consumer advocate Ralph Nader in 1970, and Public Citizen, which Nader established in 1971 to address a broad array of interests, from consumer protection to pension rights. Public Citizen, which became one of the most prominent Washington advocacy groups, conducts both grassroots lobbying and direct lobbying, though it does not endorse candidates or make campaign contributions.

There are also advocacy groups on the political right, with the National Rifle Association regarded as the most powerful. Former Union Army officers founded the NRA after the Civil War with the goal of promoting better marksmanship among citizens.<sup>68</sup> Over time, it took on the cause of defending the rights of all gun owners, developing a lobbying operation that spent more than \$3.4 million in 2013.<sup>69</sup>

The NRA spends heavily on issue-advocacy advertisements and publishes a legislative scorecard that rates politicians on their positions on gun rights issues. The group has fought a variety of legislative attempts to restrict firearms, including after the 1999 shootings at Columbine High School in Littleton, Colo., and after the 2012 massacre at Sandy Hook Elementary School in Newtown, Conn. It also has sought to repeal existing gun laws. Many of its members tend to be "single-issue" voters who will look only at a candidate's position on guns in deciding how to vote.<sup>70</sup>

Conservatives depict the American Civil Liberties Union (ACLU) as a liberal interest group, but the organization — founded in 1920 — has defended political speech by groups as diverse as communists and the Ku Klux Klan. Since the Sept. 11, 2001, terrorist attacks, one of the ACLU's main focuses has been to protect individual privacy rights as the government enhances national security. It has lobbied against the USA Patriot Act anti-terrorism law and in favor of proposals to rein in the National Security Agency's domestic eavesdropping activities.<sup>71</sup>

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The powerful AARP, formerly the American Association of Retired Persons, spent more than \$9.6 million on lobbying in 2013, largely on health-care related issues and on protecting Social Security.<sup>72</sup>

Throughout the 1970s and '80s, most lobbyists did not bother to register, and between 1946 and 1980 the Justice Department prosecuted only six lobbying groups under the Federal Regulation of Lobbying Act. After Republicans gained control of both houses of Congress in 1994, they enacted the Lobbying Disclosure Act, which made several significant changes, including expanding the definition of lobbying to include contacts between lobbyists and non-elected officials, such as congressional staffers. The law also sought to increase prosecutions for violations by lowering the threshold for minor violations from felonies to misdemeanors.<sup>73</sup>

## Scandals Erupt

Republican leaders, meanwhile, relied on certain lobbyists to help them maintain their majority. Early in 1995, a group of GOP lawmakers, lobbyists and strategists launched the K Street Project, in which the advocacy group Americans for Tax Reform created and monitored a database of lobbyists' party affiliations and contributions. At the same time, Republican leaders urged their members to work only with lobbyists from the GOP, while pressuring lobby firms, corporations and trade associations to hire their former Republican staffers and colleagues as lobbyists.

Then-House Majority Leader Tom DeLay, R-Texas, solicited energy industry executives and lobbyists to attend a fund-raising retreat in 2002 shortly before a House-Senate conference committee was to begin work on a national energy bill. The House Ethics Committee admonished DeLay for violating House rules by creating an appearance of impropriety with the timing of the event.<sup>74</sup>

DeLay also had close ties to disgraced lobbyist Abramoff, whose dealings with Indian tribes became the subject of a Senate investigation that concluded he and his business partner, Michael Scanlon, billed six tribes \$66 million, much of it through fraudulent overcharges. A former aide to DeLay, Tony Rudy, pleaded guilty to bribing lawmakers while working for Abramoff.<sup>75</sup> Rep. Bob Ney, R-Ohio, also was convicted of corruption charges and served a 30-month jail term. The saga was made into the 2010 movie "Casino Jack" starring Kevin Spacey.

Democrats used the scandal in their successful 2006 effort to reclaim majorities in the House and Senate by promising to "drain the swamp" of what then-Minority Leader Nancy Pelosi, D-Calif., said was widespread GOP corruption.<sup>76</sup> When Pelosi ascended to the speakership of the House in 2007, she helped steer into law the Honest Leadership and Open Government Act (HLOGA), which passed 96-2 in the Senate and 411-8 in the House.<sup>77</sup>

Both the scandal and Abramoff's subsequent calls for further overhauling lobbying regulations put the industry on the defensive. Upon his release from prison in 2010, Abramoff wrote a book and advocated a life-long ban on legislators and their aides becoming lobbyists, as well as barring lobbyists from making contributions or giving gifts of any amount to any lawmaker. Many lobbyists dismissed those ideas as too draconian.<sup>78</sup>

During his presidential campaign in 2007-08, Obama often condemned the industry, asserting that "special interests" and lobbyists "think they own this government, but we're here today to take it back."<sup>79</sup> He later boasted that lobbyists "won't find a job in my White House." However, news media outlets reported during his first month in office that at least a dozen former lobbyists had been granted waivers in order to work there.<sup>80</sup>

Upon taking office, Obama ordered that appointed members of his administration must refuse gifts from reg-

istered lobbyists, imposed a two-year ban on appointees working on issues involving a former employer, and prohibited them from lobbying the administration after leaving government service. He later announced a controversial policy to restrict the number of registered lobbyists serving on federal advisory boards and commissions.<sup>81</sup>

Obama also began releasing White House visitor logs as part of an effort to show he and his aides weren't holding court with lobbyists. Some meetings, however, subsequently were held in a complex just off the White House grounds and thus weren't recorded on those logs. Lobbyists said the move was a deliberate attempt to conceal their visits, but administration officials denied that.<sup>82</sup>

Neither Obama's executive orders nor the HLOGA addressed the longstanding issue of "earmarks," federal money for local projects in lawmakers' home states and districts. Lobbyist Gerald Cassidy pioneered the use of earmarking as a specialty, becoming one of the most powerful figures in Washington. As members of both parties began using them in the 1990s as bargaining chips to pass bills, their use soared from a few dozen each year into the thousands.<sup>83</sup> The most infamous earmark was the proposed \$300 million "bridge to nowhere," a project connecting Ketchikan, Alaska, to the island of Gravina. It was never built.<sup>84</sup>

Earmarks were at the center of several political corruption scandals, including one that sent former Rep. Randy "Duke" Cunningham, R-Calif., to jail after he was convicted of accepting bribes in exchange for inserting earmarked provisions sought by lobbyists into spending bills. Cunningham steered government contracts to companies who had plied him with a luxury house, a Rolls-Royce and other gifts.

Earmarks eventually became a prime target of budget-cutting lawmakers and outside groups, and after Republicans regained control of the House in 2010 they pressured their leadership to end the practice. The Senate followed suit, and in 2011 Obama promised to veto

any appropriations bill sent to him that contained earmarks.<sup>85</sup>

The loss of earmarks led to a steep drop in business — and in income — for some lobbyists. “The fees I charged for clients seeking earmarks were quadruple what I am able to charge them now,” says veteran lobbyist Michael Fulton.

An American Bar Association task force made up of lobbyists and public interest groups released a comprehensive reform proposal in 2011 calling for lowering the threshold by which someone must register as a lobbyist. The group suggested reducing the requirement that lobbyists spend at least 20 percent of their time for a client on lobbying activity to an unspecified “reasonable” percentage. It also called for a two-year prohibition on lobbyists doing any fundraising for members that they lobby. However, Congress did not act on it.<sup>86</sup>

In 2012, Rep. Frank Wolf, R-Va., became concerned about the use of lobbyists by foreign governments, especially those whose interests differed from those of the United States. He introduced a bill to bar ex-presidents and members of Congress from lobbying on behalf of those governments for 10 years after leaving office. The measure drew just one cosponsor, and no action was taken on it.<sup>87</sup> ■

## CURRENT SITUATION

### Inaction by Congress

A variety of bills aimed at tightening federal lobbying restrictions have been introduced in the current session of Congress, but in the absence of scandals, lawmakers have shown little interest.

In March, Rep. Mike Quigley, D-Ill., introduced the Transparency in Government Act, which contained some of the

Bar Association task force’s recommendations. In addition to removing the 20-percent loophole and lowering the yearly lobbyist income ceiling from \$20,000 to \$12,000, Quigley’s legislation calls for establishing a Justice Department task force to prosecute lobbying violations.

But the measure, which Quigley also had introduced during the previous Congress, had attracted no cosponsors as of June 1.<sup>88</sup> Other lawmakers also had been unable, as of June 1, to attract support for lobbying-related legislation, such as:

- A bill introduced in February by Rep. David Cicilline, D-R.I., to bar former members of Congress from becoming lobbyists had no cosponsors as of June 1.<sup>89</sup>

- A bill introduced in 2013 by Rep. Bill Posey, R-Fla., to extend to five years the cooling-off period on lobbying by ex-members had only three cosponsors as of May.<sup>90</sup>

- A measure introduced in 2013 by Rep. Alan Grayson, D-Fla., requiring corporations to choose between using lobbyists or spending money on political campaigns had no cosponsors as of May.<sup>91</sup>

The Association of Government Relations Professionals also has found House and Senate members unwilling to hold committee hearings on regulating lobbying. Its members support many of the reforms that Quigley has proposed. Howard Marlowe, the group’s immediate past president, says members told him they feared it would touch off “partisan acrimony,” with both sides accusing each other of being dependent on lobbyists’ donations.

“Here’s the problem: We’re waiting for the next scandal,” Marlowe says of the lack of action. “And it’s going to come.”

### Court Decisions

A federal appeals court in January ruled that a lower court must hear arguments that President Obama’s

2009 ban on lobbyists serving on government advisory panels violates lobbyists’ First Amendment rights. Six lobbyists for trade associations had challenged Obama’s order, in which he said lobbyists could exert undue influence if they are on those panels.

The lobbyists sought appointments to the Industry Trade Advisory Committees, which provide the executive branch with input from the business community on trade matters. A U.S. District Court judge had dismissed the case (*Autor v. Pritzker*) in 2012, but the U.S. Court of Appeals for the D.C. Circuit said that decision was “premature.”

The appeals court instructed the lower court to focus on the justification for distinguishing between corporate employees — who are permitted to serve on advisory panels — and registered lobbyists for those same corporations.<sup>92</sup>

In another high-profile ruling with implications for lobbyists, the U.S. Supreme Court in April struck down so-called aggregate limits on political contributions. The decision, in *McCutcheon v. Federal Election Commission*, allows lobbyists and other contributors — who previously could give no more than \$123,000 directly to political candidates and party committees during an election cycle — to spend up to \$3.5 million.

The ruling is expected to put lobbyists under even more pressure to contribute vast sums to candidates and causes. Many of them had cited the prior aggregate restriction as a reason for turning down fundraising appeals from lawmakers. One unidentified GOP lobbyist told *The Hill* before the Supreme Court’s ruling: “I like the limit because it gives me an excuse not to give more.”<sup>93</sup>

### Executive Branch

President Obama has not proposed any new crackdowns on lobbying since he won re-election in 2012, but has continued to criticize the profession.

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# At Issue:

## *Is President Obama unfair to lobbyists?*



**HOWARD MARLOWE**  
**FORMER PRESIDENT, ASSOCIATION OF**  
**GOVERNMENT RELATIONS PROFESSIONALS**

WRITTEN FOR *CQ RESEARCHER*, MAY 2014

**f**rom the moment he began his race for the presidency, President Obama made demonization of lobbyists one of his signature dishes, so to speak. And during much of his first term, he clearly left the impression that “high-priced lobbyists” are behind every reprehensible legislative cause.

There are at least two sides to every issue, so there are at least two sets of lobbyists battling it out, yet he has attacked only those working for his opposition. He barred lobbyists from holding jobs in his administration and refused to take political contributions from lobbyists. To protest these maneuvers as a grave injustice is akin to lobbing a tennis ball into Obama’s court. Pigs squeal when you stick them, don’t they? It’s in Obama’s interest for lobbyists to object.

When the president’s rhetoric was fresh, many of us looked to his days as a community activist, law professor, state legislator or U.S. senator for clues to what might have sparked this apparent hatred for lobbyists. We found none. It quickly became apparent that his attacks were the work of a man whose advisers watched public opinion polls carefully. They knew that Obama could attack lobbyists and members of Congress with the assurance that the public held both groups in low esteem. They also knew that he could still raise as much money and have as many meetings as he wanted, as long as they were with unregistered lobbyists — the “unlobbyists.”

Aside from this rather expedient hypocrisy, President Obama’s anti-lobbyist rhetoric puts the devil’s horns on a profession that is an integral part of our representative system of government. We help give voice to the full spectrum of interests from local governments to small businesses and large corporations, to charities, farmers and gun owners. Lobbyists do not succeed unless they combine at least a modest level of expertise with essential ingredients such as honesty and trustworthiness. Members of Congress and their staffs rely on our knowledge of the issues and the legislative process. Like many of the university students I work with now, I got involved with public policy advocacy because I wanted to make a difference.

Before long, this president will “retire” to a millionaire’s life of corporate boards and speaking engagements, where rhetoric takes a back seat to fat checks. Perhaps Obama will even become the first ex-president to become a lobbyist. That would surely be the definition of poetic justice.



**ROBERT BAUER**  
**FORMER WHITE HOUSE COUNSEL (OBAMA**  
**ADMINISTRATION)**

EXCERPTED FROM REMARKS AT THE AMERICAN  
UNIVERSITY CONFERENCE ON LOBBYING REFORM  
IN THE U.S. AND E.U., MARCH 17, 2014

**w**hile in the U.S. Senate, when running for president and then while in office, President Obama has often spoken out about the risk to the development and advancement of public policy presented by well-financed lobbying campaigns. And he has been unsparing at times in his description of the problem, such that many have heard from lobbyists that he is offending them and giving a bad name to the processes by which people bring legitimate issues before the government for resolution.

Much of the attention is focused on a particularly controversial measure — the executive order the president signed on Jan. 21, 2009, his first day in office. With that order, he approved unprecedented restrictions on the hiring for senior positions of individuals who had been registered . . . as “lobbyists” any time within the previous two years and also on the lobbying or contacts permitted to Obama administration officials after they return to the private sector.

The first objection is that the president’s policy fails to distinguish between good and bad lobbyists and paints everybody whose business it is to shape government policy, through pressure and persuasion, in the same dark colors. It has never been clear how any reform policy that is concerned with the “revolving door” could meet this objection successfully.

As for the broader objection, that the executive order cast aspersions on the craft of lobbying, this, too, does not seem to allow for any practical answer. Either we have revolving-door restrictions or we don’t, but if we have them, we will necessarily, by virtue of the restrictions written into our rules and regulations, suggest that — in some ways and in some circumstances — lobbying activity or the role of lobbyists raise issues that are properly addressed by reforms.

To the very real question about shutting out of government service people with much to contribute, the answer lies in administrative flexibility through the waiver process. And perhaps there is other fine-tuning that, with experience and further reflection, could prove useful. For example, the two-year period could be shortened to one year, or other aspects of the policy could be revised to limit its more expansive applications.

For all the controversy over these policies, and indeed because of that controversy, they constructively moved reform, and the debate about reform policy, in a fresh direction when a fresh direction away from old and unproductive quarrels has been needed.

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“Ordinary folks can’t write massive campaign checks or hire high-priced lobbyists and lawyers to secure policies that tilt the playing field in their favor at everyone else’s expense,” he said in a December speech.<sup>94</sup>

However, Obama recently has turned to lobbyists to fill some administration posts. In February he nomi-

## State Actions

A handful of states are debating tougher lobbying laws, often in response to scandals and controversies.

Lawmakers in Alabama are barred from lobbying the chamber they worked in for two years after leaving office. The state Senate president pro tem, Republi-

U.S. House member and Secretary of Transportation Ray LaHood — said the Democratic majority in the Senate has blocked the measure from coming to a vote, knowing it would pass.<sup>100</sup>

Other states have focused on gifts and donations that lobbyists can give to lawmakers. In Virginia, Democratic Gov. McAuliffe in January imposed a \$100 limit on gifts to most executive branch employees following a gift-giving scandal involving his predecessor, Republican Robert McDonnell. McDonnell and his wife were indicted on charges that they lent the prestige of the governor’s office to businessman Jonnie R. Williams Sr. and a company he used to run, Star Scientific, in exchange for gifts and loans. They have pleaded not guilty. State lawmakers subsequently passed a bill limiting the value of gifts to lawmakers and public officials from lobbyists to \$250.<sup>101</sup>

In Kentucky, lawmakers this year strengthened an existing ethics law banning lobbyists from contributing to legislators or legislative candidates as well as prohibiting lobbyists’ employers and political action committees (PACs) from donating to candidates during the three-month legislative session.<sup>102</sup>

*The Philadelphia Inquirer* reported in March that four state lawmakers were caught on tape accepting cash from a lobbyist wearing a wire, an incident that spurred hearings to address strengthening Pennsylvania’s gift laws. Legislators now are allowed to accept gifts of any amount as long as they disclose gifts of more than \$250 and hospitality-related events, such as dinners, that exceed \$650.<sup>103</sup>

Meanwhile, the American Legislative Exchange Council (ALEC), a business-oriented group that brings together state lawmakers with corporate executives to try to pass conservative-oriented “model” bills, has been under scrutiny. In April, U.S. Rep. Raúl Grijalva, D-Ariz., asked the Interior Department to investigate the group for what he alleged was unregistered lobbying to change state laws regarding public-land uses.



Getty Images/The Washington Post/Eva Russo

A demonstrator marches near Washington’s K Street — center of the city’s lobbying industry — on Oct. 1, 2012, to protest the influence of lobbyists on Congress. Lobbying scored lowest among 22 professions on honesty and ethical standards in a poll in 2013, the same year the American League of Lobbyists changed its name to the Association of Government Relations Professionals.

nated Robert Holleyman, a former leader of the Business Software Alliance, as deputy U.S. trade representative.<sup>95</sup> Earlier he named lobbyist Joseph Hezir as the Department of Energy’s chief financial officer.<sup>96</sup>

Federal prosecutors, meanwhile, have filed charges against two lobbying firms. In March, the U.S. Attorney’s Office for the District of Columbia filed a complaint against Alexandria, Va., lobbyist Alan Mauk and his firm for allegedly failing to submit dozens of disclosure reports. Nine months earlier, the office had filed a civil suit against a New York consulting firm, Biassi Business Services, charging it with 124 disclosure violations.<sup>97</sup>

can Del Marsh, introduced a bill extending the ban to both chambers after three House members resigned, with one joining a lobbying firm and two working for political advocacy groups.<sup>98</sup> Senate Democrats successfully added language imposing new limits on lobbying for family members, but a House committee removed that language.<sup>99</sup>

In Illinois, where several lobbying-related scandals have erupted in the past, GOP state Sen. Darin LaHood this year reintroduced a measure he has sponsored since 2011 that would place a one-year ban on legislators becoming lobbyists as well as bar legislators from negotiating lobbying contracts while still in office. LaHood — the son of former

The group says it does not lobby, and a spokesman dismissed Grijalva's request as "high political theater."<sup>104</sup> But critics say ALEC's leadership is made up of former lobbyists and that its approach of writing model legislation "makes old-fashioned lobbying obsolete."<sup>105</sup> ■

## OUTLOOK

### Interest-Group Gridlock

Lobbying is here to stay — and experts say it will become more sophisticated as technology evolves. They also predict groups will devote ever-increasing amounts of time and money to advancing their causes.

"One of the things we need to figure out as a society is what happens when you have so many interests devoting so many resources to politics," says the Sunlight Foundation's Drutman. "There's a kind of interest-group gridlock where you have so much on both sides of an issue. . . . It crowds out other issues."

As an example, Drutman cited the recurring controversy over whether Congress should pass a resolution labeling as genocide the massacre of hundreds of thousands of Armenians during and following World War I. Armenian-Americans have lobbied persistently in support of such a measure, but Turkey's government has vigorously campaigned against the idea, hiring a lobbying firm led by former House Majority Leader Richard Gephardt, D-Mo.<sup>106</sup>

Experts say future attempts to rein in lobbyists' influence and encourage disclosure of their activities should not replicate old ones. Drutman has proposed that the Library of Congress create a website as the central online forum and clearinghouse for all public policy advocacy.

"Such a website would both level the playing field (it is much cheaper to post a web page than to hire an army of lobbyists to descend on Wash-

ington) and increase transparency and accountability (if all positions and arguments are public, everyone knows who is lobbying for what and why). This will result in more democratic and more thoroughly vetted public policy," he said in a research paper.<sup>107</sup>

The Sunlight Foundation also has proposed creating an online disclosure system of lobbying activities.<sup>108</sup> "Congress should examine and craft new lobbying disclosure laws that are strong enough to move at the pace of the influence they are intended to expose," said John Wonderlich, Sunlight's policy director.<sup>109</sup>

Other experts have offered additional suggestions for the future. Yale University law professor Heather Gerken has called for establishing "policy research consultants" for members of Congress and their staffs who can serve as an alternative to lobbyists providing advice on writing and passing bills.

"If we imagine a market-based solution for funding the legislative subsidy — allowing individual members to hire whomever they want — we would avoid the really hard constitutional question involved" in trying to regulate lobbying, she said.<sup>110</sup>

Allard, the former lobbyist who is now Brooklyn Law School's dean, suggests a way to make the information and expertise that lobbyists provide more accessible to small interest groups that cannot afford to hire lobbyists. He advocates having young lawyers work on behalf of such groups in exchange for reducing those individuals' law school debts. "We could adopt programs like Teach for America — you could have Lobby for America," he says.

Allard also says the current campaign-finance system and politicians' demands for donations "may make them more dependent on lobbyists — not for money, but to get the work of legislators done." As a result, he says, "The links between professional lobbying and elections should be better understood. The topic is rich and worthy of considerable further study." ■

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## About the Author



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## FOR MORE INFORMATION

**Association of Government Relations Professionals**, 300 North Washington St., #205, Alexandria, VA 22314; 703-960-3011; [grprofessionals.org](http://grprofessionals.org). A trade organization for lobbyists (formerly the American League of Lobbyists).

**Center for Congressional and Presidential Studies**, American University, Ward 109, 4400 Massachusetts Ave., N.W., Washington, DC 20016-8130; 202-885-3491; [www.american.edu/spa/ccps/PAAI.cfm](http://www.american.edu/spa/ccps/PAAI.cfm). Sponsors lectures by lobbyists and other experts through the center’s Public Affairs and Advocacy Institute.

**Center for Public Integrity**, 910 17th St., N.W., Suite 700, Washington, DC 20006; 202-466-1300; [publicintegrity.org](http://publicintegrity.org). A nonprofit dedicated to investigative journalism.

**Center for Responsive Politics**, 1101 14th St., N.W., Suite 1030, Washington, DC 20005; 202-857-0044; [www.opensecrets.org](http://www.opensecrets.org). A nonpartisan research group that tracks money in politics and its effect on elections and public policy.

**Sunlight Foundation**, 1818 N St., N.W., Suite 300, Washington, DC 20036; 202-742-1520; [www.sunlightfoundation.org](http://www.sunlightfoundation.org). A nonpartisan research group that tracks lobbying as part of its mission to promote greater transparency in politics.

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