

150040

GAO

Testimony  
Before the Subcommittee on Legislation  
and National Security  
Committee on Government Operations  
House of Representatives

For Release on Delivery  
Expected at  
10:00 a.m. EDT  
Thursday  
September 30, 1993

FEDERAL LOBBYING

Comments on The Adequacy of Federal  
Lobbying Laws

Statement of  
Johnny C. Finch  
Assistant Comptroller General,  
General Government Programs



150040

058159/150040

\_\_\_\_\_

\_\_\_\_\_

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here this morning to provide our views on certain questions regarding the adequacy of federal lobbying laws and regulations. You raised these questions in conjunction with your introduction of H. R. 1593, the Revolving Door Sunshine Act of 1993. This bill would require public disclosure, during a five year period after leaving office, of all contacts about an official action between former Members of Congress, senior congressional officials, or senior executive branch appointees, and current officials in either Congress or the executive branch.

In a May 24, 1993, letter to us, you asked three questions that are pertinent to your consideration of lobbying issues. First, you asked whether data on lobbying activities supplied pursuant to existing statutes and regulations are sufficient to identify all of the contacts about official actions between former senior government officials and either Congress or the executive branch. Our answer is no. Neither the Federal Regulation of Lobbying Act, the Foreign Agents Registration Act, nor the Byrd Amendment require lobbyists to supply information concerning prior governmental service.

Even if such information were required, the data supplied under these laws would not be sufficient to identify all of the contacts between former government officials and either Congress or the executive branch due to limitations and exemptions in their coverage. For example, the Federal Regulation of Lobbying Act covers only those individuals or organizations who lobby Congress -- not the executive branch. Although the Byrd Amendment covers those who lobby the executive branch, it limits coverage to only certain federal awards; furthermore, it does not apply when an organization uses its own employees to lobby. Finally, the Foreign Agents Registration Act, which requires foreign agents to register with the Justice Department, allows registration exemptions for certain types of activities. It does not require persons claiming an exemption to notify the Justice Department so that the basis for the exemptions can be evaluated.

In addition, our past work has identified problems with enforcement authority. Under the Federal Regulation of Lobbying Act, for example, the Senate and House offices designated to receive the registration and reports have no enforcement authority for nonfilings, late, or incomplete filings. Also, under the Byrd Amendment, agencies are not required to ensure filings are complete.

Second, you asked us to provide data on how many former Members of Congress and former senior officials of Congress or the executive branch have contacted either Congress or the executive branch about an official action during the last three years. For the reasons I just cited, that information is not available. Indeed, a number of individuals listed in Washington

Representatives 1990 but not registered under the lobbying laws with the House and the Senate told us that they had contacted a Member of Congress or sought otherwise to influence actions of the legislative or executive branch. Although these results did not necessarily mean that the individuals we talked to should have registered under the lobbying laws, they do suggest that many persons who are not registered are engaged in what are generally considered lobbying activities.

Your third question asked for a breakdown of the extent to which the contacts referred to in the second question involved the legislative and executive branches. Again, because adequate data are not available on such contacts, we are unable to provide an answer.

The attachments to my statement provide additional information pertinent to your questions, including a listing of our past reports and testimonies on the three primary federal lobbying statutes--The Foreign Agents Registration Act of 1938, as amended; The Federal Regulation of Lobbying Act of 1946; and the Byrd Amendment (Section 1352 of title 31, United States Code). In essence, we consider these statutes to be largely ineffective in that they have failed to result in the identification of all lobbyists and their activities.

We support your aim of strengthening the lobbying statutes, and agree that this objective is particularly important in terms of the lobbying activities of former high level government officials. However, we also note that one of the criticisms of the present lobbying requirements is that they are a patchwork approach to the problem. As you are aware, in addition to your bill (H.R. 1593), there are other ongoing legislative efforts to improve and strengthen the lobbying laws. Thus, we believe that the more consistently your bill meshes with the objectives of current law and other pending legislative improvements, the more likely your aim will be achieved. We will be happy to work with you and this Committee to achieve that end.

- - - - -  
Mr. Chairman, that concludes my prepared statement. We will be pleased to answer any questions you or your colleagues may have.

CHAIRMAN CONYERS' QUESTIONS AND GAO RESPONSES

Question 1: Are data on lobbying activities supplied pursuant to existing statutes and regulations sufficient to adequately identify all contacts between former senior government officials, including former Members of Congress, and either Congress or the Executive Branch concerning official actions?

**Response:** No. Neither the Federal Regulation of Lobbying Act, the Foreign Agents Registration Act, nor the Byrd Amendment require lobbyists to supply information concerning prior governmental service. And if such information were required, the data supplied under these laws would not be sufficient to identify all of the contacts between former government officials and either Congress or the executive branch due to limitations and exemptions in their coverage. There are several reasons for this.

The Federal Regulation of Lobbying Act of 1946 covers only those individuals or organizations that lobby Congress; it does not cover lobbying activities involving the executive branch. The law requires individuals and organizations who lobby Congress to register with the Clerk of the House of Representatives and the Secretary of the Senate, and quarterly to report lobbying activities and expenditures. This law does not require lobbyists to identify official contacts.

We have testified on several occasions about the ineffectiveness of this act because it has resulted in the disclosure of only a limited range of lobbying activities (see attachment II). First, the act's requirement that an individual's "principal purpose" must be to influence legislation is vague, making it difficult to determine whether a person is principally engaged in lobbying activities and, therefore, required to register and report. Second, in 1954, the Supreme Court (in United States v. Harriss<sup>1</sup>) narrowly defined lobbying under this act to include only direct communications with Members of Congress. One could argue that few, if any, individuals would be required to register as lobbyists given these narrow interpretations.

The Foreign Agents Registration Act of 1938, as amended, requires foreign agents to register with the Attorney General and file supplements to that registration every six months. The supplement form, which is prescribed by the Attorney General,

---

<sup>1</sup> 347 U.S. 612.

requires foreign agents to list contacts with U. S. government officials.

A weakness of this law is that it allows registration exemptions for certain diplomatic, commercial, humanitarian, and legal activities, but does not require an individual who claims an exemption to notify the Department of Justice. Thus, we have no way of knowing how many individuals fall into an exemption category and whether the exemptions are justified. For this reason, we recommended in 1980 that the Attorney General seek legislative authority to require written notice to the Department of Justice of all exemption claims prior to any agent activity.<sup>2</sup>

The third lobbying law is the Byrd Amendment. Enacted in 1989, the scope of this law is limited to organizations or individuals hiring lobbyists to influence certain federal awards (e.g., contracts and grants over \$100,000) on their behalf. The amendment, which covers both executive and legislative branch lobbying, requires those requesting or receiving these types of federal awards to file a disclosure form issued by the Office of Management and Budget (OMB) indicating whether they have paid or have agreed to pay lobbyists using nonappropriated funds.

An important exemption in this law is that an organization using its own employees to lobby for certain federal awards is not required to file a disclosure form, and contacts such employees have with federal officials are not required to be reported under this law. For example, a corporation would not have to file a disclosure form if it has as an employee a former Member of Congress who, as head of its government relations office, is lobbying for certain federal contracts.

Our work has also shown that, for all three laws, enforcement mechanisms have either been not provided or not fully implemented. For example, our past work reviewing the Federal Regulation of Lobbying Act of 1946 has shown that neither the Secretary of the Senate nor the Clerk of the House has any enforcement authority to ensure that those individuals and organizations seeking to influence legislation properly register and report their activities.<sup>3</sup> Of those who did register and report lobbying activities, we found that, for 1989, 62 percent

---

<sup>2</sup>Improvements Needed in the Administration of Foreign Agent Registration (ID-80-51, July 31, 1980).

<sup>3</sup>Federal Lobbying: Federal Regulation of Lobbying Act of 1946 Is Ineffective (GAO/T-GGD-91-56, July 16, 1991).

of the quarterly reports were filed late and that 94 percent of the filed reports were incomplete.

As we reported in 1990, a similar situation exists in the administration of the Foreign Agents Registration Act.<sup>4</sup> We found that the Justice Department maintained files on approximately 775 foreign agents. Our review of a random sample of 46 of these files indicated that (1) one-half of the agents had not fully disclosed their activities; and (2) over one-half registered their initial forms and filed their required semiannual reports late. We have recommended legislative changes to correct this situation.

With regard to the Byrd Amendment, OMB's instructions on the back of the disclosure form call for a specific and detailed description of the services performed or expected to be performed, the date of each service, and identification of federal personnel contacted. However, as noted in our 1991 testimony, of the 78 disclosure forms we examined for completeness of the description of service category, 45 (or 58 percent) lacked the identity of the officials contacted, and 65 (or 83 percent) lacked the dates of service.<sup>5</sup>

Neither the Byrd Amendment nor OMB's guidance requires agencies to ensure that disclosure forms are complete. Basically, agencies act as repositories for these forms; they are only required to compile them and semiannually to send the disclosure forms to the Clerk of the House and the Secretary of the Senate.

Question 2: During the last three years, how many former Members of Congress and former senior officials of Congress or the executive branch have contacted either Congress or the executive branch regarding an official action? How many of these contacts were on behalf of foreign governments, foreign political parties, or foreign businesses? In addition to information contained in official lobbyist registration data filed pursuant to the Federal Regulation of Lobbying Act of 1946 and the Foreign Agents Registration Act of 1938, please include information from other sources that the General Accounting Office has previously used in studying "lobbying" disclosure, such as the book Washington

---

<sup>4</sup>Foreign Agent Representation: Justice Needs to Improve Program Administration (GAO/NSIAD-90-250, July 30, 1990).

<sup>5</sup>Federal Lobbying: Lobbying the Executive Branch (GAO/T-GGD-91-70, September 25, 1991).

Representatives and data compiled pursuant to the Byrd Amendment of 1989 (section 1352 of P.L. 101-121).

Response: Adequate data are not available to determine how many former Members of Congress and former senior officials of Congress and the executive branch have contacted either Congress or the executive branch regarding official actions. As a consequence, data are not available to determine how many of these official contacts were on behalf of foreign governments, foreign political parties, or foreign businesses.

In our 1991 testimony on the Federal Regulation of Lobbying Act of 1946, we reported on a computer match of 13,501 entries of individuals and organizations listed in Washington Representatives 1990 with a computer tape of names of individuals and organizations that were registered with the Senate and House during the same period.<sup>6</sup> As we pointed out in our testimony, not all individuals listed in Washington Representatives 1990 engaged in congressional lobbying or contacted congressional employees on behalf of others. However, this directory was the most readily available source that contained names of individuals from a variety of circumstances who might engage in lobby-type activities.

We identified 9,800 individuals who were listed in Washington Representatives but who were not registered as lobbyists. We then attempted to interview 50 individuals, selected randomly, from the list of 9,800. We successfully interviewed 16 of the 50. Of these 16, 12 said that they (1) contacted either a Member of Congress or congressional staff person, (2) dealt with federal legislation, or (3) sought to influence actions of the legislative or executive branch. Although these results did not necessarily mean that the 12 individuals should have been registered with the House or Senate as lobbyists, they do suggest that many persons who are not registered are engaged in what are generally considered lobbying activities.

Because your question focused on former Members of Congress, we identified Members of the 100th and 101st Congresses who, for various reasons, did not return to office. Of the 92 such Members identified, 17 were listed in Washington Representatives 1993. Seven of these 17 were registered individually as lobbyists under the Federal Regulation of Lobbying Act of 1946 and the remaining 10 were not.

---

<sup>6</sup>Federal Lobbying: Federal Regulation of Lobbying Act of 1946 Is Ineffective (GAO/T-GGD-91-56, July 16, 1991).



With respect to the Foreign Agents Registration Act of 1938, our work in 1990 confirmed what we found in 1974 and 1980: lobbyists were not registering as foreign agents when they should have been. In our 1990 report we pointed out that, in a review of the Congressional Quarterly, the Justice Department had identified 70 individuals or firms acting as lobbyists for foreign interests.<sup>7</sup> According to a Justice Department official, preliminary indications at the time were that at least some of them should have registered as foreign agents.

Regarding the Byrd Amendment, we reported in 1991<sup>8</sup> that the Secretary of the Senate had received only 257 disclosure forms filed with 18 agencies for all types of funding actions in the first 15 months since the effective date of the act.<sup>9</sup> Of these 257, 79 disclosure forms were filed for contract actions. Of these 79 forms, only 24 reported a lobbying entity.

The 24 forms disclosing a lobbying entity appeared to be a very small number relative to all contract actions in the federal government. From information reported by the Federal Procurement Data Center, we found that within this 15 month period, 43 agencies reported awarding a total of 102,216 new contracts and/or modifications to existing contracts each over \$100,000. These awards amounted to \$196 billion.

We reported several reasons for the relatively small number of disclosure forms filed compared to the large number of federal funding actions, including the newness of the law and the ambiguity in the definition of lobbying. Also, organizations using their own employees to lobby did not have to disclose the use of nonappropriated funds for such activity.

Another significant reason for the small number is a limitation we identified in the generally accepted interpretation of this law. Certain types of program advocacy are not covered under the amendment. For example, a person lobbying for funding of an entire program, in which the person is one of many possible

---

<sup>7</sup>Foreign Agent Representation: Justice Needs to Improve Program Administration (GAO/NSIAD-90-250, July 30, 1990).

<sup>8</sup>Federal Lobbying: Lobbying the Executive Branch, (GAO/T-GGD-91-70, September 25, 1991).

<sup>9</sup>Such actions include contracts, grants, loans, and cooperative agreements over \$100,000, and loan guarantees and loan insurance over \$150,000.

recipients of grants or contracts, would not appear to be subject to the Byrd Amendment. Thus, the advocacy of earmarking of congressional funding to programs, which was one of the original concerns prompting the passage of this law, is not covered under this amendment.

Question 3: To what extent do official contacts by former Members of Congress and former senior officials involve (a) Congress and (b) the executive branch?

Response: Because adequate information is not available (for the reasons stated above), we do not know to what extent official contacts by former Members of Congress and former senior officials of either Congress or the executive branch involve Congress or the executive branch.

SELECTED GAO REPORTS AND TESTIMONIES ON  
FEDERAL LOBBYING LAWS

THE FEDERAL REGULATION OF LOBBYING ACT OF 1946

The Proposed Legislative Activities Disclosure Act (H.R. 5259),  
(Testimony, March 16, 1971).

The Federal Regulation of Lobbying Act--Difficulties in  
Enforcement and Administration (GAO/GGD-75-79, April 2, 1975).

Regulation of Lobbying (H.R. 15, H.R. 778, and H.R. 6864),  
(Testimony, September 12, 1975).

Disclosure of Lobbying Activities (H.R. 1180), (Testimony, April  
6, 1977).

Disclosure of Lobbying Activities (S. 1785), (Testimony, August  
2, 1977).

Disclosure of Lobbying Activities (H.R. 91 and related bills),  
(Testimony, March 7, 1979).

Disclosure of Lobbying Activities (S. 1564), (Testimony,  
September 26, 1979).

Disclosure of Lobbying Activities, (Testimony, November 15,  
1983).

Federal Lobbying: Federal Regulation of Lobbying Act of 1946 Is  
Ineffective (GAO/T-GGD-91-56, July 16, 1991).

FOREIGN AGENTS REGISTRATION ACT OF 1938

Effectiveness of The Foreign Agents Registration Act of 1938, As  
Amended, And Its Administration By The Department of Justice, (B-  
177551, March 13, 1974).

Improvements Needed in the Administration of Foreign Agent  
Registration, (ID-80-51, July 31, 1980).

Foreign Representation: Former High-Level Federal Officials  
Representing Foreign Interests (GAO-NSIAD-86-175BR, July 11,  
1986).

Foreign Agent Registration: Justice Needs to Improve Program Administration, (GAO/NSIAD-90-250, July 30, 1990).

Foreign Agent Registration and Former High-Level Federal Officials Representing Foreign Interests GAO/T-NSIAD-90-50, September 27, 1990).

Foreign Agent Registration: Former Federal Officials Representing Foreign Interest Before the U.S. Government (GAO/NSIAD-92-113, March 26, 1992).

Foreign Agent Contacts (GAO/GGD-93-32R, April 2, 1992).

EXECUTIVE BRANCH LOBBYING

No Strong Indication That Restrictions On Executive Branch Lobbying Should Be Expanded (GAO/GGD-84-46, March 20, 1984).

Federal Lobbying: Lobbying the Executive Branch (GAO/T-GGD-91-70, September 25, 1991).

(966610)

---

### Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

U.S. General Accounting Office  
P.O. Box 6015  
Gaithersburg, MD 20884-6015

or visit:

Room 1000  
700 4th St. NW (corner of 4th and G Sts. NW)  
U.S. General Accounting Office  
Washington, DC

Orders may also be placed by calling (202) 512-6000  
or by using fax number (301) 258-4066.

---

**United States  
General Accounting Office  
Washington, D.C. 20548**

**Official Business  
Penalty for Private Use \$300**

<p><b>First-Class Mail Postage &amp; Fees Paid GAO Permit No. G100</b></p>
--