

115TH CONGRESS
1ST SESSION

S. 1184

To amend the Ethics in Government Act of 1978 to require individuals nominated or appointed to Senate-confirmed positions or to positions of a confidential or policymaking character to disclose certain types of contributions made or solicited by, or on behalf of, the individuals.

IN THE SENATE OF THE UNITED STATES

MAY 18, 2017

Mr. WHITEHOUSE (for himself, Mr. CARPER, Mr. UDALL, Mr. FRANKEN, and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend the Ethics in Government Act of 1978 to require individuals nominated or appointed to Senate-confirmed positions or to positions of a confidential or policymaking character to disclose certain types of contributions made or solicited by, or on behalf of, the individuals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Conflicts from Political
5 Fundraising Act of 2017”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Public confidence in the Federal Govern-
4 ment is based on the expectation that officers and
5 employees will discharge their duties impartially, and
6 avoid either actual conflicts of interest or the ap-
7 pearance thereof.

8 (2) The risk of an actual conflict of interest, or
9 the appearance thereof, arises when a nominee or
10 appointee to a Senate-confirmed position or an indi-
11 vidual in a position of a confidential or policymaking
12 character has previously donated to, solicited for, or
13 received funds from a political action committee or
14 entity organized under section 501(c)(4) or section
15 501(c)(6) of the Internal Revenue Code of 1986.

16 (3) Since the 2010 decision by the Supreme
17 Court of the United States in *Citizens United v.*
18 *Federal Election Commission*, spending by corpora-
19 tions subject to Federal laws and regulations has in-
20 creased dramatically.

21 (4) While some corporate political spending is
22 done publicly, contributions to entities organized
23 under section 501(c)(4) of the Internal Revenue
24 Code of 1986 need not be disclosed, making this
25 spending effectively anonymous. The risk of an ac-
26 tual conflict of interest, or the appearance thereof,

1 arises whether political spending is public or anony-
2 mous.

3 (5) Current financial disclosure requirements do
4 not require filers to report funds they have donated
5 to, solicited for, or received from political action
6 committees or entities organized under section
7 501(c)(4) or section 501(c)(6) of the Internal Rev-
8 enue Code of 1986.

9 (6) Apparent or actual conflicts of interest are
10 best ameliorated through public disclosure of this ac-
11 tivity to the Office of Government Ethics so the ap-
12 parent or actual conflicts can be addressed in ethics
13 agreements negotiated between the filer and the
14 agency in which the filer will serve.

15 **SEC. 3. DISCLOSURE OF CERTAIN TYPES OF CONTRIBU-**
16 **TIONS.**

17 (a) DEFINITIONS.—Section 109 of the Ethics in Gov-
18 ernment Act of 1978 (5 U.S.C. App.) is amended—

19 (1) by redesignating paragraphs (2) through
20 (19) as paragraphs (5) through (22), respectively;
21 and

22 (2) by inserting after paragraph (1) the fol-
23 lowing:

1 “(2) ‘covered contribution’ means a payment,
2 advance, forbearance, rendering, or deposit of
3 money, or any thing of value—

4 “(A)(i) that—

5 “(I) is—

6 “(aa) made by or on behalf of a
7 covered individual; or

8 “(bb) solicited in writing by or on
9 behalf of a covered individual; and

10 “(II) is made—

11 “(aa) to a political organization,
12 as defined in section 527 of the Inter-
13 nal Revenue Code of 1986; or

14 “(bb) to an organization—

15 “(AA) that is described in
16 paragraph (4) or (6) of section
17 501(c) of the Internal Revenue
18 Code of 1986 and exempt from
19 tax under section 501(a) of such
20 Code; and

21 “(BB) that promotes or op-
22 poses changes in Federal laws or
23 regulations that are (or would
24 be) administered by the agency in
25 which the covered individual has

1 been nominated for appointment
2 to a covered position or is serving
3 in a covered position; or

4 “(ii) that is—

5 “(I) solicited in writing by or on be-
6 half of a covered individual; and

7 “(II) made—

8 “(aa) by an individual or entity
9 the activities of which are subject to
10 Federal laws or regulations that are
11 (or would be) administered by the
12 agency in which the covered individual
13 has been nominated for appointment
14 to a covered position or is serving in
15 a covered position; and

16 “(bb) to—

17 “(AA) a political organiza-
18 tion, as defined in section 527 of
19 the Internal Revenue Code of
20 1986; or

21 “(BB) an organization that
22 is described in paragraph (4) or
23 (6) of section 501(c) of the Inter-
24 nal Revenue Code of 1986 and

1 exempt from tax under section
2 501(a) of such Code; and

3 “(B) that is made to an organization de-
4 scribed in item (aa) or (bb) of clause (i)(II) or
5 clause (ii)(II)(bb) of subparagraph (A) for
6 which the total amount of such payments, ad-
7 vances, forbearances, renderings, or deposits of
8 money, or any thing of value, during the cal-
9 endar year in which it is made is not less than
10 the contribution limitation in effect under sec-
11 tion 315(a)(1)(A) of the Federal Election Cam-
12 paign Act of 1971 (52 U.S.C. 30116(a)(1)(A))
13 for elections occurring during such calendar
14 year;

15 “(3) ‘covered individual’ means an individual
16 who has been nominated or appointed to a covered
17 position; and

18 “(4) ‘covered position’—

19 “(A) means—

20 “(i) a position described under sec-
21 tions 5312 through 5316 of title 5, United
22 States Code;

23 “(ii) a position placed in level IV or V
24 of the Executive Schedule under section
25 5317 of title 5, United States Code;

1 “(iii) a position as a limited term ap-
 2 pointee, limited emergency appointee, or
 3 noncareer appointee in the Senior Execu-
 4 tive Service, as defined under paragraphs
 5 (5), (6), and (7), respectively, of section
 6 3132(a) of title 5, United States Code; and

7 “(iv) a position in the executive
 8 branch of the Government of a confidential
 9 or policy-determining character under
 10 schedule C of subpart C of part 213 of
 11 title 5 of the Code of Federal Regulations;
 12 and

13 “(B) does not include a position if the in-
 14 dividual serving in the position has been ex-
 15 cluded from the application of section
 16 101(f)(5);”.

17 (b) DISCLOSURE REQUIREMENTS.—The Ethics in
 18 Government Act of 1978 (5 U.S.C. App.) is amended—

19 (1) in section 101—

20 (A) in subsection (a)—

21 (i) by inserting “(1)” before “With-
 22 in”;

23 (ii) by striking “unless” and inserting
 24 “and, if the individual is assuming a cov-
 25 ered position, the information described in

1 section 102(j), except that, subject to para-
2 graph (2), the individual shall not be re-
3 quired to file a report if”; and

4 (iii) by adding at the end the fol-
5 lowing:

6 “(2) If an individual has left a position described in
7 subsection (f) that is not a covered position and, within
8 30 days, assumes a position that is a covered position, the
9 individual shall, within 30 days of assuming the covered
10 position, file a report containing the information described
11 in section 102(j)(2)(A).”;

12 (B) in subsection (b)(1), in the first sen-
13 tence, by inserting “and the information re-
14 quired by section 102(j)” after “described in
15 section 102(b)”;

16 (C) in subsection (d), by inserting “and, if
17 the individual is serving in a covered position,
18 the information required by section
19 102(j)(2)(A)” after “described in section
20 102(a)”;

21 (D) in subsection (e), by inserting “and, if
22 the individual was serving in a covered position,
23 the information required by section
24 102(j)(2)(A)” after “described in section
25 102(a)”;

1 (2) in section 102—

2 (A) in subsection (g), by striking “Political
3 campaign funds” and inserting “Except as pro-
4 vided in subsection (j), political campaign
5 funds”; and

6 (B) by adding at the end the following:

7 “(j)(1) In this subsection—

8 “(A) the term ‘applicable period’ means—

9 “(i) with respect to a report filed pursuant
10 to subsection (a) or (b) of section 101, the year
11 of filing and the 4 calendar years preceding the
12 year of the filing; and

13 “(ii) with respect to a report filed pursuant
14 to subsection (d) or (e) of section 101, the pre-
15 ceding calendar year; and

16 “(B) the term ‘covered gift’ means a gift that—

17 “(i) is made to a covered individual, the
18 spouse of a covered individual, or the dependent
19 child of a covered individual;

20 “(ii) is made by an entity described in item
21 (aa) or (bb) of section 109(2)(A)(i)(II); and

22 “(iii) would have been required to be re-
23 ported under subsection (a)(2) if the covered in-
24 dividual had been required to file a report

1 under section 101(d) with respect to the cal-
2 endar year during which the gift was made.

3 “(2)(A) A report filed pursuant to subsection (a), (b),
4 (d), or (e) of section 101 by a covered individual shall in-
5 clude, for each covered contribution made by or on behalf
6 of, or that was solicited in writing by or on behalf of, the
7 covered individual during the applicable period—

8 “(i) the date on which the covered contribution
9 was made;

10 “(ii) if applicable, the date or dates on which
11 the covered contribution was solicited;

12 “(iii) the value of the covered contribution;

13 “(iv) the name of the person making the cov-
14 ered contribution; and

15 “(v) the name of the person receiving the cov-
16 ered contribution.

17 “(B)(i) Subject to clause (ii), a covered contribution
18 made by or on behalf of, or that was solicited in writing
19 by or on behalf of, a covered individual shall constitute
20 a conflict of interest, or an appearance thereof, with re-
21 spect to the official duties of the covered individual.

22 “(ii) The Director of the Office of Government Ethics
23 may exempt a covered contribution from the application
24 of clause (i) if the Director determines the circumstances
25 of the solicitation and making of the covered contribution

1 do not present a risk of a conflict of interest and the ex-
2 emption of the covered contribution would not affect ad-
3 versely the integrity of the Government or the public's con-
4 fidence in the integrity of the Government.

5 “(3) A report filed pursuant to subsection (a) or (b)
6 of section 101 by a covered individual shall include the
7 information described in subsection (a)(2) with respect to
8 each covered gift received during the applicable period.”.

9 (c) PROVISION OF REPORTS AND ETHICS AGREE-
10 MENTS TO CONGRESS.—Section 105 of the Ethics in Gov-
11 ernment Act of 1978 (5 U.S.C. App.) is amended by add-
12 ing at the end the following:

13 “(e) Not later than 30 days after receiving a written
14 request from the Chairman or Ranking Member of a com-
15 mittee or subcommittee of either House of Congress with
16 jurisdiction of the agency in which a covered individual
17 has been nominated for appointment to a covered position
18 or is serving in a covered position, the Director of the Of-
19 fice of Government Ethics shall provide to the Chairman
20 or Ranking Member, respectively, each report filed under
21 this title by the covered individual and any ethics agree-
22 ment entered into between the agency and the covered in-
23 dividual.”.

24 (d) RULES ON ETHICS AGREEMENTS.—The Director
25 of the Office of Government Ethics shall promptly issue

1 rules regarding how an agency in the executive branch
2 shall address information required to be disclosed under
3 the amendments made by this Act in drafting ethics agree-
4 ments between the agency and individuals appointed to po-
5 sitions in the agency.

6 (e) TECHNICAL AND CONFORMING AMENDMENTS.—

7 (1) The Ethics in Government Act of 1978 (5
8 U.S.C. App.) is amended—

9 (A) in section 101(f)—

10 (i) in paragraph (9), by striking “sec-
11 tion 109(12)” and inserting “section
12 109(15)”;

13 (ii) in paragraph (10), by striking
14 “section 109(13)” and inserting “section
15 109(16)”;

16 (iii) in paragraph (11), by striking
17 “section 109(10)” and inserting “section
18 109(13)”;

19 (iv) in paragraph (12), by striking
20 “section 109(8)” and inserting “section
21 109(11)”;

22 (B) in section 103(l)—

23 (i) in paragraph (9), by striking “sec-
24 tion 109(12)” and inserting “section
25 109(15)”;

1 (ii) in paragraph (10), by striking
2 “section 109(13)” and inserting “section
3 109(16)”; and

4 (C) in section 105(b)(3)(A), by striking
5 “section 109(8) or 109(10)” and inserting “sec-
6 tion 109(11) or 109(13)”.

7 (2) Section 3(4)(D) of the Lobbying Disclosure
8 Act of 1995 (2 U.S.C. 1602(4)(D)) is amended by
9 striking “section 109(13)” and inserting “section
10 109(16)”.

11 (3) Section 21A of the Securities Exchange Act
12 of 1934 (15 U.S.C. 78u-1) is amended—

13 (A) in subsection (g)(2)(B)(ii), by striking
14 “section 109(11) of the Ethics in Government
15 Act of 1978 (5 U.S.C. App. 109(11))” and in-
16 serting “section 109 of the Ethics in Govern-
17 ment Act of 1978 (5 U.S.C. App.)”; and

18 (B) in subsection (h)(2)—

19 (i) in subparagraph (B), by striking
20 “section 109(8) of the Ethics in Govern-
21 ment Act of 1978 (5 U.S.C. App. 109(8))”
22 and inserting “section 109 of the Ethics in
23 Government Act of 1978 (5 U.S.C. App.)”;
24 and

1 (ii) in subparagraph (C), by striking
2 “section 109(10) of the Ethics in Govern-
3 ment Act of 1978 (5 U.S.C. App.
4 109(10))” and inserting “section 109 of
5 the Ethics in Government Act of 1978 (5
6 U.S.C. App.)”.

7 (4) Section 499(j)(2) of the Public Health Serv-
8 ice Act (42 U.S.C. 290b(j)(2)) is amended by strik-
9 ing “section 109(16) of the Ethics in Government
10 Act of 1978” and inserting “section 109 of the Eth-
11 ics in Government Act of 1978 (5 U.S.C. App.)”.

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