



# Occupy the SEC

<http://www.occupythesec.org>

December 8, 2014

United States Congress  
East Capitol St NE & First St SE  
Washington, DC 20004

**Re: Modification of 18 U.S.C. § 209 to Prevent Conflict of Interests Arising from Private Sector Bonuses Contingent Upon Acceptance of Government Employment**

Dear Congressman,

Occupy the SEC (“OSEC”)<sup>1</sup> is writing to request you to help close the spinning revolving door that exists between the private sector and government agencies. Specifically, we call your attention to morally bankrupt deferred compensation schemes through which private sector companies are able to indirectly influence executive branch employees.

During the nomination hearing of current Treasury Secretary Jacob Lew in 2013, it was revealed that Mr. Lew received an ethically-questionable \$940,000 bonus from his former employer, Citigroup upon his acceptance of his government position. More recently, investment banker Antonio Weiss revealed that he would receive a bonus of \$20 million dollars from Lazard if he were successfully nominated as Under Secretary of the Treasury. Needless to say, such contingent bonuses create perverse conflicts of interest for government employees hailing from the private sector, and threaten the integrity of vital government programs. Not surprisingly, this issue has recently received widespread media attention.<sup>2</sup>

In light of these revelations, we contend that legislative changes are needed to prevent a prospective executive branch employee from receiving a bonus from a former private employer, where such bonuses are explicitly contingent upon the employee taking a position in

---

<sup>1</sup> Occupy the SEC (<http://occupythesec.org>) is a group of concerned citizens, activists, and financial professionals that works to ensure that financial regulators protect the interests of the public, not Wall Street.

<sup>2</sup> See, e.g., Chris Frates, *Want \$20 Million to Work for the Government? Just Quit a Wall Street Job First*, CNN, Dec. 4, 2014.

government. This change is necessary to help close the “revolving door” between government and industry, which raises obvious questions about the impartiality of government employees.<sup>3</sup>

### **Bonuses Offered to Jack Lew and Antonio Weiss Are Emblematic of Quid Pro Quo Private Bonuses for Executive Branch Employment**

The bonus that Treasury Secretary Jack Lew received upon his nomination exemplifies the problems with such deferred compensation schemes. Mr. Lew’s employment contract with Citigroup guaranteed him a bonus of \$940,000, provided that he did not quit the firm. An important exception allowed him to keep the bonus if he took on a “high level position with the United States government or regulatory body.”<sup>4</sup> During his confirmation hearing, Mr. Lew defended this bonus by stating that he was only “compensated in a manner consistent with other people.”<sup>5</sup>

Several arguments have been proffered in defense of such bonuses. It has been suggested that Citigroup utilizes these bonuses because it aims to accommodate individuals who go on to perform public service.<sup>6</sup> Moreover, it can be argued that the \$940,000 bonus was an innocuous incentive scheme used to recruit Mr. Lew, a presumptively highly capable person. Mr. Lew came to Citigroup from a public service background, and the bonus would incentivize him to leave Citigroup for continued public service without suffering a significant loss in earnings.

These appear on the surface to be plausible justifications. However, it is likewise entirely plausible that such compensation arrangements are being utilized for more nefarious purposes. *That is, major firms may utilize such arrangements to amass political influence.* By offering bonuses to current employees for future public service, private firms gain sympathetic government allies down the road. Indeed, the fact that Lew’s contract rewarded “high level” placement – *and not just public service more broadly* – suggests that Citigroup was looking for a return on its \$940,000 investment. To put this figure into perspective, consider that, by becoming Treasury Secretary, Jacob Lew became entitled to a lump sum bonus that exceeds the amount that a Senator earns in a four-year term or an average American earns over twenty years. Discerning observers must question whether Citigroup was being more than just accommodating of Mr. Lew’s desire for public service.

When Lew was nominated there were concerns raised that his controversial bonus was only the tip of the iceberg -- a single instance that represented a much wider problem. Lew’s nomination

---

<sup>3</sup> Admittedly, the incentives that create the revolving door phenomena are multifarious and difficult to fully redress. However, the offering of compensation arrangements which are contingent upon private sector employees taking on government positions certainly casts a pall of doubt over the impartiality of such employees – regardless of the actual intent behind the compensation arrangement.

<sup>4</sup> Susanna Craig, *Windfalls for Wall Street Executives Taking Jobs in Government*, N.Y. Times, Mar. 21, 2013, available at <http://dealbook.nytimes.com/2013/03/21/financial-windfalls-for-wall-st-executives-taking-government-jobs/>.

<sup>5</sup> Jessica Silver-Greenberg & Annie Lowrey, *Treasury Pick Tries to Cast His History as Right for the Job*, N.Y. Times, Feb. 25, 2013, available at <http://www.nytimes.com/2013/02/26/business/economy/treasury-nominee-works-to-address-concerns.html>.

<sup>6</sup> *Jack Lew's Golden Parachute: His Citigroup contract paid him a bonus for returning to government*, Wall Street J., Feb. 24, 2013, available at <http://online.wsj.com/article/SB1000142412788732338460457832442830547044.html>.

hearing testimony serves as evidence that monetary incentives that are contingent upon an employee taking a government position are routinely offered to employees in the private sector. The recent revelations regarding Antonio Weiss's \$20 million potential bonus further amplify those concerns.

Moreover, a report by the Project of Government Oversight ("POGO") underscores this reality.<sup>7</sup> The list of companies that have offered payment plans rewarding the acceptance of influential government positions includes: Northern Trust, MF Global, Goldman Sachs, and Fannie Mae. Moreover, a former executive told POGO that many companies started offering payment plans that reward government service after a decisive Supreme Court case, *Crandon v. United States*,<sup>8</sup> held that existing restrictions on outside compensation of government employees do not prohibit a private payment to a government employee, so long as the payment is made *prior to the* employee's acceptance of the government position.

### **The Inability of Existing Law to Address Quid Pro Quo Private Bonuses for Prospective Executive Branch Employment**

The nation's law books already contain government ethics statutes that place limits on private compensation of government employees. The most salient of these laws is 18 U.S.C. § 209, which make it a crime for an executive branch employee to be compensated by non-government sources for the individual's government service. The rationale behind this statute is to avoid bribery or the appearance of impropriety.

Technically, the bonuses under consideration are not illegal under the current interpretation of 18 U.S.C. § 209, as construed by *Crandon v. United States*. In *Crandon*, the Supreme Court held that a severance payment that is made to encourage the payee to accept government employment does not violate § 209 if the payment is made before the payee becomes a government employee. The Court's decision stems from a close reading of the actual language of 18 U.S.C. § 209, which only envisions a restriction on outside payments to *current* government employees.

The special bonuses under examination, therefore, are not illegal under *Crandon* simply because the bonus payment is arranged before the recipient officially takes office. However, the harm to be avoided by private payments to government employees is no less palpable where such payments are made to *prospective* government employees (as opposed to current ones). Simply put, private parties seeking undue influence over government affairs should not be permitted to bribe government employees at any time. After all, the mere timing of a bribe (i.e., whether paid before or after the initiation of government employment) does not make the bribe any less troubling.

Thus, we believe that Congress must broaden the scope of 18 U.S.C. § 209 to apply regardless of whether an offending payment is made before or after initiation of government employment. Such a change would hardly be unprecedented. Indeed, a companion conflict of interest law, 18 U.S.C. § 203, explicitly prohibits quid pro quo private payments to certain government attorneys

---

<sup>7</sup> Michael Smallberg, *Big Businesses Offer Revolving Door Awards*, Mar. 21, 2013, available at <http://www.pogo.org/our-work/reports/2013/big-businesses-offer-revolving-door-rewards.html>.

<sup>8</sup> 494 U.S. 152 (1990).

and members of Congress, regardless of whether those payments are made prior to or during government service. In fact, the *Crandon* court argued that the key difference between § 209 and § 203 was that the former lacked language that prohibited pre-employment payments for services “to be rendered” in the future, as a government employee.<sup>9</sup> The Court impliedly acknowledged that if this language had been included in § 209, it would have construed § 209 to prohibit *all* bonus plans that reward the acceptance of government positions.<sup>10</sup>

### **Proposed Solution: Amendments to 18 U.S.C. § 209**

Accordingly, we advocate that language be added to Section 209 of Title 18 that specifically prohibits an executive branch employee from receiving any compensation arrangement that rewards the acceptance of a government position, regardless of whether the compensation is paid before or during government employment. The attached model bill contains a legislative proposal that would implement this change. This amendment to 18 U.S.C. § 209 would effectively prohibit the acceptance of private sector bonuses that are contingent upon an individual taking a government position.

This modified language would also ensure that those seeking to flout the spirit of 18 U.S.C. § 209 cannot do so by simply timing their payments early enough to avoid criminal liability. Language that addresses this timing issue is required to rectify the interpretation of the Supreme Court in *Crandon v. U.S.* After all, perverse incentives for private sector manipulation of government affairs would exist regardless of whether the individual received the compensation prior to or during government service.

We thank you for your support of this vitally necessary amendment. By adopting this change, Congress would be taking a strong stand against the revolving door that facilitates the capture of regulatory agencies by private industry.

Sincerely,

/s/

Occupy the SEC

Akshat Tewary  
Neil Taylor  
Eric Taylor  
George Bailey  
et al.

---

<sup>9</sup> *Id.* at 163.

<sup>10</sup> *See id.*

A BILL

1 To prevent conflicts of interest that stem from executive government employees  
2 receiving a bonus or other compensation arrangement from a non-government  
3 former employer, where such bonus or arrangement was contingent upon the  
4 employee accepting a government positions.

5

6 *Be it enacted by the Senate and House of Representatives of the United States of*  
7 *America in Congress assembled,*

8

9 SECTION 1: PROHIBITION OF BONUSES FOR GOVERNMENT SERVICE

10 (a) AMENDMENT TO 18 U.S.C. § 209. Section 209(a) of title 18, United  
11 States Code, is amended by striking “any salary” and inserting “any bonus,  
12 salary”, and by striking “his services” and inserting “services rendered or to  
13 be rendered”.

14 (b) Section 209 of title 18, United States Code, is amended by inserting at the  
15 end of subsection (b) a new subsection:

16 “(c) “No exemptions in subsection (b) above shall be construed as  
17 ‘bona fide’ if any compensation arrangement from a former employer makes  
18 payment of such arrangement contingent upon the employee having accepted  
19 a position in government.”

20