

Dear Mr. Carter:

I read with interest your recent remarks before the Public Citizen Forum. Having addressed that body myself, I am certain that we share the feeling that it is a most challenging and productive arena for the ventilation of new ideas and approaches to the many complex problems confronting our society today.

I write to address one of the issues you discussed before the Forum: the nature of prohibitions to be imposed on the employment of government personnel by industries that fall within the jurisdiction of federal agencies. While I recognize the concerns that prompted you to propose an absolute prohibition against government personnel accepting employment with industries falling within the jurisdiction of the federal agency they have left, I suggest that you reconsider your position in light of the impact such a restriction would have on the government's ability to attract talented and knowledgeable personnel. I believe that the problems to which your proposal is addressed can and should be resolved on a more selective basis.

I recognize that excessive job turnover between industry and federal regulatory agencies can create the destructive "revolving door" phenomenon that you identified in your remarks to the Forum. I believe, however, that some interchange between the government and the industries it regulates is a constructive factor that should be encouraged.

The government's need to attract dedicated and talented public servants is paramount. The most effective regulatory agency, I believe, is one that can call upon various perspectives and disciplines in constructing meaningful solutions to complex problems. This helps foster an attitude of creative tension within the federal government that is essential to the effectuation of proper federal regulatory policy. In many cases, the informed views of persons that have had experience in industry offer a valuable input into the decisional process that may be essential to the identification of effective and practical regulatory responses. I therefore am concerned that the imposition of a rigid and absolute prohibition against subsequent reemployment by these regulated industries would discourage persons from leaving industry to serve in the federal government.

I also believe that the imposition of excessively rigid restrictions on subsequent employment of federal government personnel could inhibit the government's ability to attract other talented persons. Relatively few enter the government with the firm expectation of remaining in its employment for the duration of their professional careers. Imposing an absolute prohibition against subsequent employment by industries regulated by the federal agency for which those persons work may effectively compel this decision in many cases, however, since many of the skills obtained through government service are not readily transferable to other fields and since the regulatory authority of some agencies, such as the Securities and Exchange Commission, is most pervasive. Confronted with the prospect of seriously limiting subsequent career opportunities, many persons will forego government service. I seriously question whether the public interest would be served by a system that forces persons considering public service to make such a choice.

I do not mean to imply that the "revolving door" phenomenon is not a real problem that requires meaningful solutions. However, in view of the substantial benefits obtained by the service of persons that may contemplate subsequent employment in private industry, I suggest that these solutions be more clearly tailored to the actual problems you have identified and that they be constructed in a manner that minimizes the curtailment of this source of talented public servants.

To the extent that your concerns relate to possible "sweetheart arrangements" that may produce undue deference to the demands or desires of the regulatees, I suggest that the answer lies in the identification and appointment of persons having the intelligence and integrity to place the public interest above the possibly more parochial interests of the regulated industries. I believe that our country is not lacking in such individuals. Many have served our government well in the past; many are serving with equal dedication and distinction at the present time.

Problems of conflict of interest that may arise when government employees leave federal employment to assume positions in the private sector likewise can and should be addressed by specific laws or regulations that impose limitations related to particular responsibilities assumed in the government or to particular knowledge obtained while serving in an official capacity. As you know, existing law imposes criminal restrictions against certain activities of ex-government employees. See 18 U.S.C. § 207. Moreover, the Securities and Exchange Commission and certain other federal agencies have promulgated additional restrictions on appearance before the agency. See, e.g. 17 C.F.R. §200.735-8.

I believe that we should carefully examine the efficacy of existing laws and regulations. In the case of the Securities and Exchange Commission, I believe that they have been adequate to the task; I am aware of no instances in which they failed to avert possible conflicts of interest. Equally important, I believe that the general approach embodied in these statutes and regulations is a far preferable means for dealing with this

aspect of the problem. Thus, should a careful examination reveal that existing laws and regulations are inadequate or contain gaps in the case of some federal agencies, I suggest that this framework be bolstered rather than replaced with an absolute and all-encompassing prohibition.

Finally, a separate problem may exist due to the public perception of some of the evils to which you referred, notwithstanding the actual efficacy of existing or proposed restrictions in eliminating them. This cannot be ignored, for its existence signals the potential for a continuing erosion in public confidence in our institutions of government. I believe, however, that this residual concern is best resolved by educating the public to the nature of the real problems and their solutions rather than by designing over inclusive responses that impair the operational effectiveness of our federal government.

In sum, I believe that the patterns of existing law and regulations provide the proper analytical framework for the resolution of this problem. I suggest that this system be supplemented, if necessary, but that it not be discarded.

I hope that these thoughts offer a constructive contribution to the dialogue on this issue. I will, of course, be happy to meet with you or members of your staff to discuss this matter further if you consider it appropriate.

Sincerely,

Roderick M. Hills  
Chairman