

Remedying Conflict of Interest Issues in Public Health Bodies

CONOR BIGLEY*

INTRODUCTION

Non-communicable diseases (NCDs) account for a majority of worldwide annual deaths. Common NCDs like heart disease, cancer, chronic respiratory disease, and diabetes cause decreased quality of life and premature deaths. The CDC states that 696,547 Americans died from heart disease in 2021, making it the leading cause of death in a year marked by the COVID-19 pandemic.¹ In the United States, risk factors like alcohol and tobacco consumption and unhealthy diets are major contributors to the development of these diseases. Government response to these issues beyond tobacco have taken on some of the characteristics of its confrontation with the tobacco industry—public health studies, product bans, and labeling requirements. However, food, a necessity, presents additional issues for governmental regulation. Research into the nutritional value of certain foods, regulation of advertising, and requiring producers of processed foods to label unhealthy ingredients prominently all provide a promising and important avenue for improving public health through nutrition. This paper will focus on the legal ethics implications of these government efforts to combat diseases and how conflicts of interest within research and regulatory entities complicate that effort.

This paper will address conflict of interest issues in the context of US governmental bodies that conduct research and regulatory operations related to the food and beverage industry. It will illustrate this problem through case studies of the Centers for Disease Control and Prevention (CDC) and United States Department of Agriculture (USDA) and then propose solutions for strengthening the *Model Rules of Professional Conduct* (“*Model Rules*”) or internal institutional standards of government bodies to address these ethical concerns.

Scholarship on the revolving door is extensive, but many authors have written about the phenomenon in general terms or have focused on its effects on financial

* J.D., Georgetown University Law Center (expected May 2024); M.A., The Johns Hopkins University (2020); B.A., American University (2013). © 2023, Conor Bigley.

1. *Leading Causes of Death*, CENTERS FOR DISEASE CONTROL AND PREVENTION [hereinafter CDC] (Sept. 26, 2022), <https://www.cdc.gov/nchs/fastats/leading-causes-of-death.htm> [https://perma.cc/C95F-F67Y]. Other NCDs are associated with consumptive habits, including unhealthy food, alcohol, and tobacco, are cancer, chronic lower respiratory diseases, and diabetes. These diseases accounted for more than 850,000 deaths.

regulation.² Some scholars have also written about its application to the Food and Drug Administration, though they tend to analyze that body's regulation of drugs and medicine more than its regulation of food.³ Others even view opposition to the revolving door as misplaced or evaluate litigation as a substitute for adequate regulation of the food industry.⁴ This paper fills in the literature gap by analyzing two key government institutions, the Centers for Disease Control and Prevention and the Department of Agriculture, as case studies. It seeks to answer the following question: how can the *Model Rules* and institutional conflict of interest policies better address conflicts of interest, including the revolving door phenomenon, within the food and beverage industry? More particularly, this paper will investigate how legal counsel can help government institutions navigate conflicts of interest with these industries through the example of the CDC and how conflict of interest rules can combat the revolving door phenomenon through the example of the USDA. Limitations in scope of the *Model Rules* and institutional policies do not adequately address conflicts of interest for attorneys working in public health capacities. When conflicts of interest influence, or are publicly perceived to influence, research and regulation of the food and beverage industry, the public may lose confidence in governmental nutritional and health guidance and may have fewer healthy food options for consumption. This situation, in turn, helps contribute to negative public health outcomes in relation to NCD proliferation.

This paper operates on the assumption that regulatory regimes and distribution of information, along with the research that underpins these efforts, are the most effective means for combatting the proliferation of NCDs. Proponents of litigation as a substitute for regulation of the health effects of the food and beverage industry can point to some successes.⁵ However, litigation has been met with only limited success to date and faces limitations in efficacy due to the slow pace of change that comes with litigation and jurisdictional fragmentation; favorable rulings often cover only portions of the United States or create liability for just one aspect of a product's unhealthy nature. Direct, consistent national policies

2. See generally TIMOTHY M. LAPIRA & HERSCHEL F. THOMAS, *REVOLVING DOOR LOBBYING: PUBLIC SERVICE, PRIVATE INFLUENCE, AND THE UNEQUAL REPRESENTATION OF INTERESTS* (2017); Sophie A. Shive & Margaret M. Forster, *The Revolving Door for Financial Regulators*, *REV. OF FIN.* 1445 (2017); Christoph Kumpan & Patrick C. Leyens, *Towards a Global Common Core in Conflicts of Interest Regulation*, 5 *EUR. CO. & FIN. L. REV.* 72 (2008).

3. See generally Erika Lietzan, *Advisory Committees at FDA: The Hinchey Amendment and 'Conflict Of Interest' Waivers*, 39 *J. HEALTH L.* 415 (2006); Colleen O. Davis, *Red Tape Tightrope: Regulating Financial Conflicts of Interest in FDA Advisory Committees*, 91 *WASH. U. L. REV.* 1591 (2014).

4. See generally David Zaring, *Against Being Against the Revolving Door*, 2013 *U. ILL. L. REV.* 507 (2013); Alyse Meislik, *Weighing in on the Scales of Justice: The Obesity Epidemic and Litigation Against the Food Industry*, 46 *ARIZ. L. REV.* 781 (2004).

5. See generally Alyse Meislik, *Weighing in on the Scales of Justice: The Obesity Epidemic and Litigation Against the Food Industry*, 46 *ARIZ. L. REV.* 781 (2004).

therefore would hold some advantages for accomplishing these public health goals in a more coherent manner.⁶

I. THE CENTERS FOR DISEASE CONTROL AND PREVENTION: RELATIONSHIP WITH COCA-COLA

The CDC Foundation presents a case of conflicts of interest through its structure. As discussed below, the organization has also experienced scandals due to close relationships with Coca-Cola. Improved transparency measures like ending anonymization of donations may help compensate for gaps in regulatory oversight.

A. THE ROLE OF CDC FOUNDATION WITHIN THE CONTEXT OF THE CDC

The CDC, an operating division of the Department of Health and Human Services,⁷ reached a new high point in the public consciousness since the start of the COVID-19 pandemic, but the organization has long been one of the most important public health organizations in the United States. Its public perception as an impartial source of accurate health information and actual position as a provider of that type of information is crucial for the US government to advance its public health goals nationally.

The organization explains its origin in terms of mobilizing private sector resources to support the CDC's goals.⁸ Its ability to take in gifts from private actors exists through the role of the CDC Foundation, which operates as a 501(c)(3) public charity. Congress authorized the creation of the entity in 1992 with the goal of supporting the CDC by creating partnerships with corporations, foundations, organizations, and individuals. The independent status of the CDC Foundation, however, places it in a different legal category from the CDC. This status, in turn, opens up the possibility for the CDC to encounter conflict of interest questions that would not have arisen in the absence of private funding. The CDC director has the authority to accept any gifts for anything related to the CDC's purpose, whether that gift is to be used for general or special-purpose funds.⁹ As will be noted later, anonymization of gifts creates transparency issues.

A monetary donation to an institution that conducts health research can be benign, even beneficial, in certain circumstances, but the identity of the donor has the potential to make a donation that is detrimental to that organization. If the donor has an agenda in some way adverse to the donee's goals, a donation may cause public perception of bias, which reduces the public legitimacy of research

6. See *infra* note 102.

7. HHS ORGANIZATIONAL CHARTS OFFICE OF SECRETARY AND DIVISIONS (Sept. 2, 2022), <https://www.hhs.gov/about/agencies/orgchart/index.html> [<https://perma.cc/S5TP-8QEQ>].

8. *Our Story*, CDC FOUNDATION (last visited Nov. 3, 2022), <https://www.cdcfoundation.org/our-story> [<https://perma.cc/L566-EQPT>].

9. 42 U.S.C. § 280e-11(h)(1).

results even if that donation had no influence on the research.¹⁰ Since research on public health does not only inform public policy but also may influence an individual's personal health decisions, avoiding perceptions of tainted research should be an important consideration for public policy. In addition, there is also a danger beyond perception of bias that accompanies gifts: actual influence on research results. A survey of seventeen published systematic reviews on the relationship between sugar-sweetened beverages and weight gain or obesity found that those with reported conflicts of interest were five times as likely to present a conclusion that there was no positive association between those beverages and weight gain or obesity than those that did not report conflicts of interest.¹¹ Other studies have found similar correlations between the results of health research and the interests of the party contributing funding to the research.¹² These correlations, in turn, may help fuel public perception of bias, especially since the CDC can accept anonymous gifts without reporting the exact amount.¹³ Furthermore, there is a less likely, yet still existent, threat that an organization that becomes financially reliant on one or several donees may alter its behavior to maintain its relationship with those parties.

B. STRUCTURAL ISSUES OF THE CDC

The CDC, an organization tasked with combatting diseases, including NCDs, does not necessarily have a hostile disposition to major players in the food and beverage industry. In fact, it even has had a friendly relationship at times. Brenda Fitzgerald, Director from 2017 to 2018, viewed Coca-Cola as an ally in the fight against obesity thanks to its funding of programs promoting exercise, and as Commissioner of the Georgia Department of Public Health, a role she held for six years prior to heading the CDC, launched the Power Up for 30 exercise program, largely funded by Coca-Cola.¹⁴ Fitzgerald explained her philosophy for encouraging diet choices as “‘concentrat[ing] on what you should eat,’ she said, making no recommendation for what children should not eat.”¹⁵ This approach to framing

10. Natalia Melgar, Máximo Rossi & Tom W. Smith, Research Note, *The Perception of Corruption*, 22 INT'L J. OF PUB. OP. RSCH. 120 (2010) (“High levels of corruption perception could have more devastating effects than corruption itself; it generates a ‘culture of distrust’ towards some institutions . . .”).

11. Maira Bes-Rastrollo, Matthias B. Schulze, Miguel Ruiz-Canela & Miguel A. Martinez-Gonzalez, *Financial Conflicts of Interest and Reporting Bias Regarding the Association between Sugar-Sweetened Beverages and Weight Gain: A Systematic Review of Systematic Reviews*, 10(12) PLOS MED 1, 2-3 (Dec. 2013).

12. Sheila Kaplan, *New C.D.C. Chief Saw Coca-Cola as Ally in Obesity Fight*, N.Y. TIMES (July 22, 2017), <https://www.nytimes.com/2017/07/22/health/brenda-fitzgerald-cdc-coke.html> [<https://perma.cc/Y5SS-D7HF>].

13. Jeffrey Mervis, *U.S. Lawmakers Want NIH and CDC Foundations to Say More About Donors*, SCIENCE (June 29, 2018), <https://www.science.org/content/article/us-lawmakers-want-nih-and-cdc-foundations-say-more-about-donors> [<https://perma.cc/4S4C-GXBT>].

14. Kaplan, *supra* note 12.

15. *Id.*

nutrition is a common tactic of the food and beverage industry since it shifts blame for bad public health outcomes away from its products.¹⁶

In contrast to Fitzgerald's relationship with Coca-Cola, CDC Director Tom Frieden (2009-17), reduced the scope of programs funded by Coca-Cola. He explained his decision citing the company's emphasis on a narrow view of health: "I don't think it's justifiable to have Coca-Cola run an obesity campaign that had an exclusive focus on physical activity . . . I basically canceled it and didn't renew it or have more grant agreements with them."¹⁷ The difference in how a CDC director may view partnerships with the food and beverage industry raises questions about the CDC's efficacy in addressing NCDs and about its ability to police itself; problems with conflicts of interest persist even under leaders skeptical of industry influence.

Most notably, Dr. Barbara Bowman, of the Division for Heart Disease and Stroke Prevention, resigned in 2016 following exposure of emails between her and Coca-Cola's senior vice president of external affairs, Alex Malaspina, who was also the founding president of the Coca-Cola-funded International Life Sciences Institute.¹⁸ The resignations of both Bowman and Fitzgerald appear on the surface to prove that a combination of watchdog groups, media reporting, and political pressures adequately defended the integrity of CDC activities. However, closer consideration reveals a different picture, thus creating a situation that demands intervention.¹⁹

Coca-Cola reported that between 2010 and 2015, it donated more than one million dollars to the CDC Foundation with the goal of building "global capacity for NCD prevention."²⁰ Although the donations from Coca-Cola do not represent a major portion of the CDC's overall budget, which in 2012 was just over six billion dollars, private sector donations of this magnitude are still significant.²¹ With many of its resources spread across many initiatives and big-ticket items, such as immunization efforts and HIV/AIDS prevention, a relatively small sum goes towards an anti-NCD agenda. For example, the CDC's enacted budget for nutrition, physical activity, and obesity in the 2011 fiscal year was less than thirty-five million dollars.²² Meanwhile, public-private partnerships create possibilities for

16. Luke N. Allen, *Commercial Determinants of Public Health*, HANDBOOK OF GLOB. HEALTH (2020) 19-21.

17. Kaplan, *supra* note 12.

18. Nason Maani Hessari, Gary Ruskin, Martin McKee & David Stuckler, *Public Meets Private: Conversations Between Coca-Cola and the CDC*, 97 THE MILBANK Q. 74, 76 (2019).

19. *Id.* at 80-83 (noting that emails between the parties suggest an inappropriate relationship).

20. *Id.* at 76.

21. Alex Philippidis, *NIH Spending Barely Budes, CDC Stays Flat as Congress Finalizes FY 2012 Budget*, GENETIC ENG'G & BIOTECH. NEWS (Dec. 19, 2011), <https://www.genengnews.com/insights/nih-spending-barely-budes-cdc-stays-flat-as-congress-finalizes-fy-2012-budget/> [<https://perma.cc/GY42-RFEN>].

22. CENTERS FOR DISEASE CONTROL AND PREVENTION, FY 2012 OPERATING PLAN (2012), <https://www.cdc.gov/budget/documents/fy2012/fy-2012-cdc-operating-plan-summary.pdf> [<https://perma.cc/CH5C-H87C>].

donor influence in program design.²³

In an apparent attempt at lobbying, Malaspina asked Bowman for contacts in the World Health Organization (WHO) after it published a report advocating limited soft drink consumption and taxes on sugar-sweetened drinks.²⁴ Bowman responded with suggestions of several people with whom Malaspina could make inroads.²⁵ In the email exchange, he also stated that the WHO should focus its efforts against obesity by not only focusing on sugar consumption, but also considering “the life style changes that have been occurring throughout the universe.”²⁶ This exchange strongly suggests Coca-Cola employed a strategy of shifting blame for obesity to causes other than its products. Moreover, Malaspina envisioned the WHO working “closely with the food industry to combat obesity.”²⁷ This close work with public health bodies included Malaspina arranging a dinner that included Bowman, Coca-Cola’s vice president of scientific and regulatory affairs and senior vice president of public affairs.²⁸

Coca-Cola’s deemphasis on sugary beverage consumption as a major cause of obesity also extended to emphasizing benefits of its own products. The company, in reference to its drinks with low-calorie sweeteners, claimed that ““associations between diet beverages and weight in the epidemiological studies is likely the

23. Coca-Cola, in particular, has a history of funding health research that reaches conclusions that are aligned with the company’s interest in selling soft drinks. For example, the International Study of Childhood Obesity, Lifestyle and the Environment (ISCOLE) involved 6,000 10 year-old children from 12 countries. Peter T. Katzmarzyk, Tiago V. Barreira, Stephanie T. Broyles, Catherine M. Champagne, Jean-Philippe Chaput, Mikael Fogelholm, Gang Hu, William D. Johnson, Rebecca Kuriyan, Anura Kurpad, Estelle V. Lamberts, Carol Maher, José Maia, Victor Matsudo, Tim Olds, Vincent Onywera, Olga L. Sarmiento, Martyn Standage, Mark S. Tremblay, Catrine Tudor-Locke, Pei Zhao & Timothy S. Church, *The International Study of Childhood Obesity, Lifestyle and the Environment (ISCOLE): Design and Methods*, 13 BMC PUBLIC HEALTH 11 (2013). By 2017, the program produced 40 peer-reviewed publications, 13 of which received funding from Coca-Cola. Scholars drawing on documents brought into the public domain thanks to civil society group U.S. Right to Know’s Freedom of Information requests concluded that Coca-Cola did have at least some role in study design. The aforementioned scholars submitted a Freedom of Information request of their own to Louisiana State University, the same institution that provided documents to U.S. Right to Know, but did not deliver the new emails requested, citing technology issues as an obstacle to collecting and distributing these records in a timely manner. This experience suggests that Freedom of Information requests are a tool with extreme limitations for watchdog actors seeking to investigate corporate influence in public health research or probe conflict of interest issues. David Stuckler, Gary Ruskin & Martin McKee, *Complexity and Conflicts of Interest Statements: A Case Study of Emails Exchanged Between Coca-Cola and the Principal Investigators of the International Study of Childhood Obesity, Lifestyle and the Environment (ISCOLE)*, J. PUB. HEALTH POL’Y 49, 55 (2018).

24. Hessari, *et al.*, *supra* note 18 at 82 (“Dear Barbara . . . Any ideas on how to have a conversation with WHO? Now, they do not want to work with industry. Who finds all the new drugs? Not WHO, but industry. She is influenced by the Chinese Govt [sic] and is against US. Something must be done.”).

25. *Id.* at 82.

26. *Id.* at 83.

27. *Id.*

28. Jesse Chase-Lubitz, *Coca-Cola tried to influence CDC on research and policy, new report states*, POLITICO (Jan. 29, 2019), <https://www.politico.com/story/2019/01/29/coke-obesity-sugar-research-1125003> [<https://perma.cc/Y5E8-V8KG>].

result of reverse causality.”²⁹ It also sent an advance copy of a publication it had funded that blamed heterogeneity in research methods for purported overestimation of sugar-sweetened beverage-related diabetes risk in pooled estimates.³⁰ This blame shifting strategy is an established practice for companies that contribute to NCDs.³¹ Emails revealed additional contacts with Coca-Cola. Rhona Applebaum, the company’s top science and health officer, “forwarded research to the CDC’s Michael Pratt, among others, regarding the health effects of prolonged sitting and the need to ‘amplify these messages.’”³² These particular desires, coupled with Coca-Cola’s donations, form a financial incentive for particular action or inaction by the CDC.

C. MODEL RULES

Model Rule 1.13(b), which governs organizations as a client for lawyers, requires a lawyer for an organization, if an officer or employee of that organization “intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization,” to “proceed as is reasonably necessary in the best interest of the organization.”³³ This portion of the rule takes a complementary relationship to the other rules and policies; the lawyer must first be aware that a colleague has violated a legal obligation to the organization. As a result, this rule is insufficient as a restraint on misconduct. If Friedan’s gradualist approach in phasing out programs backed by Coca-Cola is the largest rebuff of the beverage company’s influence in recent CDC history, then no strong standard exists by which a lawyer could challenge the financial relationship that the CDC has with the food and beverage industry. If Fitzgerald’s stance is that these types of companies make for good partners, then the CDC may even seek to deepen relationships with those types of partners.

Although the *Model Rules* are not exhaustive, they do constitute a broad structure of professional regulations for practitioners. The General Counsel and supporting legal staff must assess potential conflicts of interest consistently with the *Model Rules* and other regulations governing their employment.³⁴ Particularly, the *Model Rules* state that they operate within larger legal contexts and should be interpreted within the context of the legal profession.³⁵

29. Hessari, *et al.*, *supra* note 18 at 81.

30. *Id.* at 81.

31. Allen, *supra* note 16.

32. Hessari, *et al.*, *supra* note 18 at 84.

33. MODEL RULES OF PROF'L CONDUCT R. 1.13(b) [hereinafter MODEL RULES] (2009).

34. See Neil J. Wertlieb, *The Rules of Professional Conduct Apply to In-House Lawyers*, ABA (Dec. 20, 2021), <https://www.americanbar.org/groups/litigation/committees/corporate-counsel/articles/2021/fall2021-rules-professional-conduct-apply-in-house-lawyers/> [https://perma.cc/8F7J-TSV7].

35. MODEL RULES pmb1, ¶ 14-15.

As such, they may not be sufficient without institutional policies supplementing them. Therefore, a survey of those policies is necessary to examine additional constraints on public sector actors.

The Preamble to the *Model Rules* states that the legal profession, as a relatively autonomous one, “has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar.”³⁶ The General Counsel must distinguish between the interests of the public in terms of public health, which evidence from documents published by the CDC generally establishes as inclusive of close ties to major sugary soft drink producers, and those protecting the CDC as an organization based solely on the direction of senior officials.³⁷ Although such a stance may put the General Counsel in tension with these officials, it is incumbent upon the CDC’s legal counsel to advocate for stronger institutional conflict of interest policies and enforcement thereof.

The *Model Rules* have created specific categories of rules in anticipation of various professional situations in which attorneys may find themselves. Legal counsel for public entities is one category not comprehensively addressed at present, yet this position plays a critical role in the delivery of public goods by the government to the populace.³⁸ A rule for attorneys in such positions that elaborates on duties owed in Rule 1.13 would be a helpful starting point. The “best interest of the organization” is broad language that may not be well-suited for all types of organizations.³⁹ In large, federal organizations, deference to the agency head in determining those interests is a plausible position for an attorney to take. Language that shapes how an attorney should view those interests would be useful. For example, requiring attorneys to act in accordance with the primary mission or purpose of the organization would help. The statutory purpose of the CDC Foundation is “to support and carry out activities for the prevention and control of diseases, disorders, injuries, and disabilities, and for promotion of public health.”⁴⁰ The proposed language then would point counsel to consider this public health-oriented goal as their foremost responsibility. The advantages of working with external partners is implicit in the statute, but it does not state this purpose exclusively. This rule, therefore, would strengthen the ability of legal counsel to

36. MODEL RULES pmb1, ¶ 12. The *Model Rules* go on to state that “[n]eglect of these responsibilities compromises the independence of the profession and the public interest which it serves.”

37. See, *CDC’s Guiding Principles for Public-Private Partnerships: A Tool to Support Engagement to Achieve Public Health Goals*, CDC, 7 (Apr. 2018), <https://www.cdc.gov/partners/pdf/partnershipguidance-4-16-14.pdf> [<https://perma.cc/F7XW-9M5H>].

38. Rule 1.11 prohibits former public sector employees from taking on matters in which they participated personally and substantially as a public sector employee and defines a matter as inclusive of a “judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties.” MODEL RULES R. 1.11(e)(1).

39. See MODEL RULES R. 1.13(b).

40. 42 U.S.C. § 280e-11(b).

act within their organizations for their own protection, and doing so would also be more consistent with Congressional intent.

D. CONFLICT OF INTEREST POLICY SHORTCOMINGS

In addition to the *Model Rules*, which govern the General Counsel's conduct, several other sources direct the CDC's conflict of interest policy. The CDC provides guidelines in an April 2018 document entitled "CDC's Guiding Principles for Public-Private Partnerships" on when to engage with external partners.⁴¹ The organization states that it should not engage when the "CDC has an oversight function that would be in conflict (or perceived conflict) with a partnership."⁴² The CDC also directs its employees not to engage when a "[p]otential partner represents any product that exacerbates morbidity or mortality when used as directed."⁴³

The CDC outlines expectations to which its employees must adhere and suggests rationales for those restrictions within this text.⁴⁴ The organization should not engage potential partners whose interests are directly opposed to its own, such as a potential partner whose "product . . . exacerbates morbidity or mortality when used as directed."⁴⁵ A soft drink company, particularly one as significant as Coca-Cola, falls into that category, provided that soft drinks exacerbate morbidity and have a directed use that could lead to that outcome. A layman to health science would likely see sugary soft drinks as dangerous to health and possibly a contributor to morbidity and may even see that company's ubiquitous advertising and brand consistency as directing relatively frequent product consumption; more than six in ten Americans, according to a 2015 Gallup poll, try to avoid consuming regular or diet sodas.⁴⁶ Coca-Cola, however, has attempted to prove to the CDC that its products, in fact, do not exacerbate morbidity.⁴⁷ Exploiting the absence of establishment of the product's connection to morbidity, the company secured a partnership with the premier disease prevention organization.

Moreover, the CDC lists several additional considerations that should factor into a decision to partner. Many are practical, but its desire to retain the "independence of scientific judgment, credibility, and reputation" of the CDC centers on public perception.⁴⁸ Partnering with Coca-Cola certainly falls into the category of dangerous as a perceived conflict of interests. The company's perceived economic goals of selling large volumes of sugary drinks are directly at odds

41. Centers for Disease Control and Prevention, *supra* note 37.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. Rebecca Rifkin, *Majority of Americans Say They Try to Avoid Drinking Soda*, GALLUP (Aug. 3, 2015), <https://news.gallup.com/poll/184436/majority-americans-say-try-avoid-drinking-soda.aspx> [<https://perma.cc/PG89-AJH6>].

47. Hessari, *et al.*, *supra* note 18 at 83.

48. Centers for Disease Control and Prevention, *supra* note 38.

with public perception of promoting healthy diets. Even though the CDC itself reviews conflicts of interest, the CDC Foundation still does receive donations from private actors whose financial interests may run counter to the goals of the CDC.⁴⁹ This relationship between the CDC and the CDC Foundation requires them to potentially work at cross purposes.

The CDC website's Conflicting Financial Interests page outlines guidelines for its employees, prohibiting them from any matter that would pose a conflict of interest.⁵⁰ The CDC recommends employees seeking an alternative to recusal from a matter to obtain a waiver from the agency, to divest from the conflicting interest, and event to resign from the conflict position.⁵¹ The policy for employees draws from 18 U.S. Code § 208 - Acts affecting a personal financial interest.⁵² Per § 280e-11, the CDC Director may use any donations for any purpose without distinction between "general-purpose funds or special-purpose funds."⁵³ § 280e-11(h)(5) restricts board members from participating in decisions they have a direct or indirect financial interest affected.⁵⁴ These policies are laudable since they shrink the scope of opportunities for CDC conflicts of interest, but such conflicts escape policing. Transparency also factors into the statute's contemplation of conflicts of interest protections, and a gap in enforcement here has created additional issues.⁵⁵ The Foundation also must publish an annual report detailing the source and amount of all monetary gifts.⁵⁶ In practice, it often lists some as "anonymous," hiding donor identity from the public.⁵⁷

Transparency is an area that is currently a shortcoming but could become an asset given proper institutional rule changes. When *The Millbank Quarterly* published excerpts of the emails the researchers had obtained in January 2019, they only received information from three of the ten Freedom of Information Act requests that they had submitted in 2016 and 2017.⁵⁸ Taken together, this communication shows that even though media inquiry and public pressure addressed what institutional conflict of interest policies should have addressed, inquiry into the organization's activities only yielded a portion of the overall information that was potentially relevant. In effect, these requests for correspondence have proven inadequate to obtain information, let alone monitor interactions between these

49. Kaplan, *supra* note 12.

50. *Conflicting Financial Interests*, CDC (June 9, 2016), <https://www.cdc.gov/ethics/resources/topics/conflicts.html#:~:text=Potential%20Conflicts%20of%20Interest,a%20waiver%20from%20the%20agency> [<https://perma.cc/6KE3-K33G>].

51. *Id.*

52. *Id.*; 42 U.S.C. § 280e.

53. 42 U.S.C. § 280e-11(h)(1).

54. 42 U.S.C. § 280e-11(h)(5).

55. *See* 42 U.S.C. § 280e-11(h)(7). No anonymity provisions exist.

56. 42 U.S.C. § 280e-11(h)(7)(A).

57. Mervis, *supra* note 13.

58. Hessari, *et al.*, *supra* note 18 at 75. ("Of our 10 FOIA requests, 3 requests are still pending (at the time of this publication); 5 were rejected as too broad or because no records were found; and 3 returned 295 pages from 86 emails. The CDC withheld 102 pages to 'protect commercial or financial information'").

entities.⁵⁹ Under these conditions, legal transparency mechanisms have limited power to produce conflict of interest outcomes on their own. Additional legal mechanisms that can increase the burden on such organizations to follow specific codes of conduct could also help build pressure to be more transparent.

Naming all donors, rather than allowing some to be anonymous, and publicly disclosing all email communications with donors that are related to research would change dynamics of these public-private communications. A House of Representatives panel from the Appropriations Committee in 2018 issued a report demanding that the CDC Foundation, as well as the Foundation for the National Institutes of Health, not label donors as anonymous.⁶⁰ This attempt to buttress transparency would best be served by Congressionally-mandated institutionalization: requiring these types of institutions to always disclose this information. The desire and capacity of Congress to monitor these kinds of issues can shift from year to year, as even congressional funding can stay flat.⁶¹ This reform promises worthwhile change. Even if phone and interpersonal communications fell outside of this scope, sharing research inappropriately would be much more difficult for actors like Bowman and Malaspina.⁶² Moreover, limiting the scope of emails to those with donors that relate to research upon external request would help prevent the disclosure duty from becoming overly burdensome on CDC Foundation employees. With donations and email communications accessible to the media and Congress, public knowledge of and pressure in response to inappropriate relationships becomes more likely.

Coupling increased public funding for the CDC with eliminating the CDC Foundation presents an obvious answer to eradicating the problem of encountering agendas from donors. This path, however, eliminates the public-private planning benefits that the CDC Foundation purports to offer. If the US is to continue its prevention of disease through partnering with private institutions, these small, technical changes may still be significant in ensuring the CDC operates in the public interest alone.

E. CONSEQUENCES OF CONFLICT OF INTEREST AND TRANSPARENCY POLICY FAILURES

Although the CDC is not a regulatory agency, it still possesses major influence over public health policy through its research and data capabilities.⁶³ In the case of NCD prevention, placing the primary source of responsibility on diet versus physical activity has important policy implications since that may influence how policymakers choose to allocate resources. Ideally, a credible public health

59. *Id.*

60. See Mervis, *supra* note 13.

61. See Philippidis, *supra* note 21.

62. See Hessari, *supra* note 18.

63. See Claire Klobucista, *What Does the CDC Do?*, COUNCIL ON FOREIGN REL'S (Aug. 24, 2022), <https://www.cfr.org/backgrounder/what-does-cdc-do> [https://perma.cc/XRD8-5YAB].

organization can distribute information to citizens about best dietary and lifestyle choices, provide quality data to bodies that are tasked with regulation, and even prompt industries, through the availability of this information, to make voluntary changes aimed at improving public health. The loss of credibility and potential for bias in research undermine the efficacy of national public health efforts. The organization has become especially controversial due to the COVID-19 pandemic.⁶⁴ Reducing its public prestige due to conflicts of interest with companies whose operations are at odds with certain public health goals would only serve to undermine its ability to achieve its mission further. Similarly, public health research, whether conducted by public or private entities, should adhere to best practices within that discipline. The results of that research, whatever they may be, should then inform policy.

II. THE USDA AND THE REVOLVING DOOR: THE CASE OF TOM VILSACK

The revolving door between the public and private sectors presents another instance of conflicts of interest, and Tom Vilsack's tenure as Secretary of Agriculture offers a case study for the actual and potential conflict of interest issues that the revolving door presents.⁶⁵ He is by no means the only or the most prominent figure in modern American politics to move between high-level public sector and private positions.⁶⁶ However, this former attorney's roles in the private sector in between two stints as Secretary of Agriculture form an example that is illustrative of revolving door issues and bears particular relevance to policies affecting NCDs. Reforms should take his example into account.

A. TOM VILSACK AND DAIRY MANAGEMENT, INC.

Tom Vilsack, an attorney and law professor, started a political career as mayor of Mt. Pleasant Iowa.⁶⁷ He rose through the political ranks, serving as an Iowa state senator and governor.⁶⁸ He even ran for the 2008 Democratic presidential

64. See, e.g., James Bandler, Patricia Callahan, Sebastian Rotella & Kirsten Berg, *Inside the fall of the CDC*, PROPUBLICA, (Oct. 15, 2020), <https://www.propublica.org/article/inside-the-fall-of-the-cdc> [https://perma.cc/LM8G-RYMN]; Erin Banco & Adam Cancryn, *Mask controversy spurs CDC to rethink its pandemic response*, POLITICO (May 17, 2021), <https://www.politico.com/news/2021/05/17/cdc-covid-masks-walensky-489160> [https://perma.cc/5RC8-5KRU].

65. See Claire Kelloway, *Tom Vilsack for Agriculture Secretary Is Everything That's Wrong With the Democratic Party*, THE INTERCEPT (Dec. 11, 2020), <https://theintercept.com/2020/12/11/democrat-tom-vilsack-usda-secretary-farms/> [https://perma.cc/SQN5-AM5H].

66. See, e.g., former Senators Jon Kyl and Joe Donnelly. Ella Nilsen, *Capitol Hill's revolving door, in one chart*, VOX (June 19, 2019), <https://www.vox.com/2019/6/19/18683550/capitol-hill-revolving-door-in-one-chart> [https://perma.cc/3NXQ-9J8X].

67. *Vilsack Appointed Visiting Law Prof at Drake Law School*, DRAKE UNIV. (Jan. 29, 2007), <https://news.drake.edu/2007/01/29/vilsack-appointed-visiting-law-prof-at-drake-law-school/> [https://perma.cc/5P7A-JMH5]; *Secretary Vilsack visits Agricultural Law Center*, DRAKE UNIV. NEWS & EVENTS (Apr. 23, 2014), <https://news.drake.edu/2014/04/23/2014-vilsackaglawcenter/> [https://news.drake.edu/2014/04/23/2014-vilsackaglawcenter/].

68. *Tom Vilsack: A rise from orphanage to cabinet secretary*, CBS NEWS (July 20, 2016), <https://www.cbsnews.com/news/tom-vilsack-a-rise-from-orphanage-to-cabinet-secretary/> [https://perma.cc/B2M9-SEPP].

nomination.⁶⁹ Though unsuccessful, he served as Secretary of Agriculture from 2009 to 2017 and has held the role again since 2021.⁷⁰ In between these periods of service, Vilsack was executive vice president for trade group Dairy Management, Inc. and president and CEO for subsidiary US Dairy Export Council.⁷¹

During his career as an attorney, Vilsack became a partner with Dorsey and Whitney in 2007.⁷² The firm has a food, beverage, and agribusiness practice area and engages in political lobbying in Minnesota, a state home to major food companies like General Mills, Hormel, Pillsbury, and Land O'Lakes, some of which are also major players in the dairy industry.⁷³ He stepped down before his first term as Secretary of Agriculture in 2009.⁷⁴ Thanks to his education in law, his career history as an elected official, and his expertise in agricultural policy, Vilsack is well-positioned to understand the legal ethics implications of his actions.

The USDA, with the goal of mitigating price decreases, requires many agricultural producers, including dairy producers, to pay into a checkoff program.⁷⁵ These programs then use the money to promote those agricultural products.⁷⁶ The program for dairy farmers yielded \$159.7 million for Dairy Management in 2018, slightly more than the previous year.⁷⁷ In 2018, Vilsack's first full year with that organization, he received \$999,421 in compensation, more than four times his compensation as Secretary of Agriculture.⁷⁸ This compensation also represented more money than several executives with longer tenures at Dairy

69. *Id.*

70. *Id.*; Kelloway, *supra* note 65.

71. Kelloway, *supra* note 65.

72. *Former Iowa Gov. Thomas Vilsack Co-Chairs Task Force on Climate Change*, DORSEY & WHITNEY LLP (Sept. 28, 2007), https://www.dorsey.com/newsresources/publications/2007/09/former-iowa-gov-thomas-vilsack-cochairs-task-for__ [<https://perma.cc/XJN6-NNWG>].

73. *Food & Agriculture*, MINNESOTA (last visited Feb. 21, 2023), <https://mn.gov/deed/joinusmn/key-industries/food-agriculture/> [<https://perma.cc/B9TT-77JE>].

74. Alex Gangitano, *Sanders votes against Biden USDA nominee Vilsack*, THE HILL (Feb. 23, 2021), <https://thehill.com/homenews/senate/540137-sanders-votes-against-biden-usda-nominee-vilsack/> [<https://perma.cc/7D8D-F6UZ>]. The Biden campaign, which took advice on rural voter outreach from Vilsack, struggled with this demographic, and his renomination drew criticism from rural African-Americans. Alexander Sammon, *A Democratic Party with Tom Vilsack at Ag is not Serious About Winning Elections*, THE AM. PROSPECT (Dec. 10, 2020), <https://prospect.org/cabinet-watch/a-democratic-party-with-tom-vilsack-at-ag-is-not-serious-about-winning-elections/> [<https://perma.cc/358J-6JZ4>]. Spokespeople for the National Association of Black Farmers and Independent Black Farmers criticized President Biden's selection due to allegations of racial bias against black farmers by the USDA. Lisa Desjardins, *Head of Black farmers association wants apology from Graham, accountability from Vilsack*, PBS NEWS HOURS (Mar. 17, 2021), <https://www.pbs.org/newshour/politics/head-of-black-farmers-association-wants-apology-from-graham-accountability-from-vilsack> [<https://perma.cc/TH93-AHZW>].

75. Cary Spivak, *Ex-agriculture secretary Tom Vilsack is the top paid executive at Dairy Management*, MILWAUKEE J. SENTINEL (Dec. 2, 2019), <https://www.jsonline.com/story/news/special-reports/dairy-crisis/2019/12/02/former-secretary-agriculture-tom-vilsack-top-paid-dairy-management-exec/4265818002/> [<https://perma.cc/2LAP-CC3Y>].

76. *Id.*

77. *Id.*

78. *Id.*

Management.⁷⁹ The political power that Vilsack has wielded as Secretary of Agriculture has tremendous influence over the position he held in between, and he derived financial benefits from that position.⁸⁰ Public perception of corruption has been a significant feature of Vilsack's employment with Dairy Management.⁸¹

B. THE MODEL RULES

Two *Model Rules* are relevant to conflicts of interest in these contexts: 1.9 and 6.4.⁸² However, these rules, taken together, still leave gaps for institutional management in organizations like the USDA.

Model Rule 1.9, which governs duties to former clients, provides that: "A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client."⁸³ This rule establishes protections of former and future client's interests by placing restraints on the lawyer's ability to take on clients. It works from the assumption that conflicting interests that potential clients may have are both valid; therefore, the lawyer must bear the burden of refusing work in certain circumstances.

Vilsack's career history likely was the primary motivation for Dairy Management to bring him on as an executive. However, he was not acting as an attorney representing the USDA, and Dairy Management was not his law firm. Instead, his role as Secretary of Agriculture places him outside of the scope of what the *Model Rules* contemplate as client representation.⁸⁴ His duties for the USDA include "creating more, better, and fairer markets and ensuring that the food system of today and the future is more resilient and more competitive globally."⁸⁵ These interests run counter to promoting dairy sales, and presumably consumption, without regard to its impact on NCDs, let alone other public policy interests. Even though Vilsack's work is not consistent with this Model Rule, it does not constrain his behavior. A new rule may be necessary to remedy this gap; a potential change in conjunction with Rule 6.4 is needed.

79. *See id.*

80. *See* Dylan Matthews, *The fight over Joe Biden tapping Tom Vilsack as agriculture secretary, explained*, VOX (Dec. 12, 2020), <https://www.vox.com/future-perfect/22166303/gov-tom-vilsack-cabinet-picks-agriculture> [https://perma.cc/3N2R-23EW].

81. *Id.*

82. MODEL RULES R. 1.9; MODEL RULES R. 6.4. Rule 1.11 focuses on particular matters associated with an attorney who previously served as a public officer. MODEL RULES R. 1.11.

83. MODEL RULES R. 1.9.

84. MODEL RULES R. 1.9. cmt. 4. Similarly, Rule 1.11's prohibitions on former public officials working on matters in which they were personally and substantially involved in their public capacities fails to confront the full scope of private sector incentives because it limits those incentives to discreet matters rather than employment broadly. *See* MODEL RULES R. 1.11, *supra* note 38.

85. *Secretary of Agriculture Tom Vilsack*, UNITED STATES DEPARTMENT OF AGRICULTURE [hereinafter USDA] (last visited Oct. 31, 2022), <https://www.usda.gov/our-agency/about-usda/our-secretary> [https://perma.cc/HY4U-Q64G].

Model Rule 6.4, which governs law reform activities affecting client interests, provides that a lawyer may serve as director for an organization “involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client.”⁸⁶ Again, the restriction at play here does not apply in a strict sense to the type of work that Vilsack performs for the USDA.

In effect, this rule works off the assumption that changes in the law may have an adverse impact on the client; the attorney is permitted regardless of this impact to participate in reform of law. As long as a head of department, therefore, involved in administrative law, does not violate any other of the *Model Rules*, this one does not prohibit any actions by that individual. Furthermore, that department’s policies, including those affecting check-off programs, are not reforms of laws, and Vilsack’s departure from Dorsey & Whitney terminates his relationship with agricultural companies as clients. Even though a Cabinet member like Vilsack may find employment with an entity directly benefitting from his political decision-making, not holding that public sector job at the time of law formulation totally exempts that individual from regulation by Rule 6.4. This rule does not serve as a restraint on the USDA revolving door.

A new rule that considers policy and former clients may serve as more of a restraint. By combining some of the language in these two rules, a new rule should aim to hold attorneys responsible for positions reasonably connected to work as an attorney. Specifically, the comment could consider work for a former client, not just a current client, and it should only allow for assumption of a salaried policy-making position on the condition that the attorney does not return to do work for prior clients after the policy-making role. The rule and comment should make clear that this rule has a narrow scope, governing only behavior of attorneys who pursue public sector careers in policymaking. This reform may deter some capable individuals from policy-making, but it will deter those who are not disinterested, and this is the goal of fixing the revolving door. With this kind of change, the gap in regulation that enables revolving door movement would be smaller by constraining options for personnel thinking about entering the public sector.

C. THE REVOLVING DOOR AND INSTITUTIONAL SHORTCOMINGS

Scholarship on revolving door politics does not recognize the phenomenon as inherently pernicious or even as something that exists in the way that critics claim. David Zaring, a scholar of law and business ethics, argues that critics of the purported revolving door model tend to overestimate the phenomenon’s frequency and fail to take into account forces that may blunt an employee’s loyalty to private sector interests over public sector interests.⁸⁷ He notes several factors

86. MODEL RULES R. 6.4.

87. Zaring, *supra* note 4.

beyond legal constraints that act as guardrails against outsized corporate influence in government.⁸⁸

For example, employees have an incentive to perform well for future employers; if an employee has a professional track record of private sector actors consistently winning legal battles against that employee, that employee may actually appear incompetent to would-be private sector employers.⁸⁹ In addition, professional advancement within the public sector agency may ultimately draw employee's interest and therefore best efforts.⁹⁰ Moreover, agency supervisors may act in self-interest to get good results from their subordinates.⁹¹

However, an employee who occupies the top position in an organization lacks the incentive to win the approval of a higher-up. Vilsack, of course, was answerable to the President when he took the job of Secretary of Agriculture. Yet he returned to that job once the party of his first appointer returned to power.⁹² This show of confidence by one of the two major parties in Vilsack's first stint may deprive him of incentive to pursue a different agenda in his second stint than he did originally. Furthermore, a supervisor who appears to employees to not fully pursue the organization's mission may have trickle-down effects on employees. The supervisor-supervisee relationship that Zaring credits with keeping public sector staff working solely for the interests of their agency loses its potency.

One could argue that cabinet-level positions like the Secretary of Agriculture have less need of binding by legal ethics than lower-ranking government functionaries because they are directly subject to political forces. Yet even if the public pressures that civil society, the private sector, and other actors might be able to place on the executive branch were fully capable at all times of containing conflicts of interest in practice, legal ethics should not leave the management of conflicts of interest to these political vectors. Policies should fulfill their own goals by themselves without relying on external incentives.

Much of the USDA's policy formulation, like that of the CDC, focuses on policing the actions of its lower-ranking employees. The USDA even has a YouTube channel that features several videos that explain what a conflict of interest is and how employees can avoid them.⁹³ In addition, the USDA also provides conflict of interest guidelines to its programs like the National Organic Standards Board.⁹⁴

88. *Id.*

89. *Id.* at 516-21.

90. *Id.*

91. *Id.*

92. See *Secretary of Agriculture Tom Vilsack*, *supra* note 85.

93. USDA, *Ethics Illustrated: How to Avoid Conflicts of Interest*, YOUTUBE (Oct. 11, 2016), <https://www.youtube.com/watch?v=UH5r3EoM9cc> [<https://perma.cc/368K-VL8G>]; USDA, *What is a Conflict of Interest?*, YOUTUBE (Oct. 11, 2016), <https://www.youtube.com/watch?v=n0HRc-Wdjns> [<https://perma.cc/NZ93-4EVX>].

94. Memorandum from the Deputy Administrator of the National Organic Program to the National Organic Standards Board (Mar. 29, 2013), <https://www.ams.usda.gov/sites/default/files/media/NOSB%20Memo%20Conflict%20of%20Interest%20Guidelines.pdf> [<https://perma.cc/88WQ-U62G>].

This emphasis on employee-based conflicts of interest, however, do not contemplate the larger structural issues with the head of the organization. These policies target quid pro quo situations or direct relationships with entities that may have interests adverse to those of the USDA.⁹⁵ The USDA, drawing from § 2635.402, states that an employee about to retire faces a conflict of interest if that employee has secured a new job whose financial interests implicate the employee's remaining work for the USDA.⁹⁶ The statute considers an employee to have a conflict of interest when government work has a "direct and predictable effect" on those interests; they need not occur immediately, but attenuation or the work effecting the interests through its impact on the general economy do not apply.⁹⁷ The Secretary of Agriculture, by virtue of that unique influence at the head of the organization, could still benefit financially from that role without violating these regulations; if that position's high-profile position nature makes that departing employee more highly in-demand for outside employers than a lower-ranking employee may be, there may be more time at play to trade in on that position.

The department's website lists food and nutrition security as one of its four priority issues and states that poor nutrition is a critical driver of "risk of obesity, diabetes, and heart disease," several of the most prevalent NCDs.⁹⁸ Further, it recognizes diet-related chronic diseases and high health care spending as direct consequences of nutrition insecurity.⁹⁹ Promoting dairy consumption categorically—that is without regard to its appropriate place in a healthy diet, which Vilsack has done since first serving as Secretary of Agriculture and promoting processed food products of major Minnesota-based food companies, which Vilsack has the potential to do by virtue of his earlier career, would constitute the type of financial conflict of interest that these regulations seek to govern. These policies, however, do not regulate the revolving door effect since the Secretary of Agriculture can wait to move into those positions in question after public service.

Helming the USDA offers not only a cabinet position, and with that the chance to influence presidential decision-making, but a certain degree of control over the Department of Agriculture itself. The USDA's governance of US agricultural policy entails authority that gives it broad powers over the food that Americans consume.¹⁰⁰ For example, it administers the Supplemental Nutrition Assistance Program and school lunch programs and creates nutritional guidance, all of which

95. *Id.*; see USDA, *supra* note 93.

96. Subpart D - Conflicting Financial Interests, USDA (last visited Nov. 9, 2022), <https://www.usda.gov/oe/frequently-asked-questions/subpart-d-conflicting> [<https://perma.cc/VBF3-RZ6Z>].

97. 5 C.F.R. § 2635.402(b).

98. *Food and Nutrition Security*, USDA (last visited Oct. 30, 2022), <https://www.usda.gov/nutrition-security> [<https://perma.cc/F932-WR8T>].

99. *Id.* The USDA also acknowledges that diet-related chronic diseases have negative effects on military readiness, healthcare costs, and economic productivity and that food insecurity disproportionately affects black Americans. *Id.*

100. *Priorities*, USDA (last visited Oct. 30, 2022), <https://www.usda.gov/priorities> [<https://perma.cc/65GL-YXHB>].

combine to provide the USDA with the ability to directly provision Americans with nourishment and to shape how they see nutrition.¹⁰¹

D. POTENTIAL REFORM

In addition, private sector lobbying and campaign donations to elected officials implicate regulatory agencies.¹⁰² Senator Michael Bennet of Colorado introduced the Close the Revolving Door Act in 2015 with the goal of implementing lifetime bans on members of Congress from lobbying and bans of former lobbyists from holding government positions, though executive agencies that govern food regulation would not be covered.¹⁰³ This bill, which Senator Bennet has yet to pass, or even get a vote on, may help tighten the movement of employees between the public and private sector, but even this reform may not close off the revolving door at agencies like the USDA.¹⁰⁴

Other efforts to address the revolving door across government have fixated on lobbyists as a weakness. The Obama Administration addressed conflicts of interest through executive action on its first full day of the first term; it prohibited executive branch appointees from accepting gifts from lobbyists.¹⁰⁵ At the state level, many statutes targeting the revolving door phenomenon focus on elected legislators and lobbyists.¹⁰⁶ These efforts are a welcome addition to hindering the revolving door, but they do not resolve the issue fully.

Instead, prohibiting agency heads from moving to positions directly regulated by that agency is a natural starting point. This step, if implemented within each organization in question, would be able to take the specific contours of that organization's operations; the USDA preventing departing heads from occupying such positions, which it could specifically name, would address this issue directly. An executive order establishing this kind of standard across the branch would ensure a unified vision for this change. By thinking about the revolving door as inclusive of hiring by non-registered lobbying groups, the executive branch can restrict undesirable movement without waiting for Congressional support for a bill.

101. *See generally Initiatives and Highlighted Programs*, USDA (last visited Feb. 19, 2023), <https://www.usda.gov/our-agency/initiatives> [<https://perma.cc/C7AZ-E25Y>]; *About FNS*, USDA (last visited Feb. 19, 2023), <https://www.fns.usda.gov/about-fns> [<https://perma.cc/N4QF-SLRK>]; *Supplemental Nutrition Assistance Program*, USDA (last visited Apr. 17, 2023), <https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program> [<https://perma.cc/82HA-8J5M>].

102. *See* Christine Beaderstadt, *What's Really at Steak: How Conflicts of Interest within the FDA and USDA Fail to Protect Consumers* 36 N. ILL. U. L. REV. 97, 110-14 (2016).

103. *Id.*, at 125-26.

104. *See* Caitlin Chin, *Should Congress close the revolving door in the technology industry?* BROOKINGS INST. (Nov. 4, 2021), <https://www.brookings.edu/blog/techtank/2021/11/04/should-congress-close-the-revolving-door-in-the-technology-industry/> [<https://perma.cc/428D-ZVBC>].

105. *Shutting the Revolving Door*, THE WHITE HOUSE – PRESIDENT BARACK OBAMA (Jan., 21, 2009), <https://obamawhitehouse.archives.gov/21stcenturygov/actions/revolving-door> [<https://perma.cc/6BCH-4RCC>].

106. *Revolving Door Prohibitions*, NAT'L CONF. OF STATE LEGISLATURES (Aug. 24, 2021), <https://www.ncsl.org/research/ethics/50-state-table-revolving-door-prohibitions.aspx> [<https://perma.cc/R3TP-QTG7>].

Opponents may claim that changing who can move through the revolving door, or how frequently someone can move through that door, would disrupt labor market flows at that upper echelon of the public and private sectors. Immediately, some public sector employees like Vilsack may be caught on the wrong side of the revolving door. The movement between the public and private sectors should serve the goal of eliminating incentives for employees to act on interests that are not tied to public service. Someone in Vilsack's position may perceive less of an interest to act in public service in such a scenario. Once that individual makes an eventual exit from the public position, returning is foreclosed. Therefore, any favors that individuals can do for private interests during that remaining period in the public position may prove endearing to prospective private employers upon departure. While it is possible that this reform could still enable this kind of scenario, this scenario assumes a greater degree of attenuation. If one assumes the worst-case scenario does take place, that at least concedes an improved revolving door status after a turbulent initial response.

In addition, the two-party system in the United States may frustrate attempts to regulate the revolving door. The current nature of this system means that the president of the party entering the White House is virtually guaranteed to not keep the same personnel from the prior party's administration for most meaningful executive branch positions.¹⁰⁷ This necessitates replacement of personnel—more people moving through doors. Therefore, ignoring the existence of political parties is a shortcoming of conflict of interest regulation. Nonetheless, such policy changes are at least more likely to secure some level of improved outcomes when personnel depart.

E. CONSEQUENCES OF CONFLICTS OF INTEREST

Vilsack theoretically has many opportunities after this phase of public service, and these opportunities may compromise his public service. He could attempt returning to Dairy Management as an executive after he finishes his tenure as Secretary of Agriculture in hopes of securing compensation comparable to what he had there before. He could also seek employment with another organization in the food industry or leverage any connections from his career in Iowa and Minnesota.

Vilsack's renomination, which caused public criticism not only over the renomination, but also of his first stint with the USDA, threatens the integrity of the institution by undermining its perceived and real impartiality on matters of public interest in favor of private interests. Most critically for fighting NCDs, the USDA

107. Kathryn Dunn Tenpas, *Tracking Turnover in the Trump administration*, THE BROOKINGS INST. (Jan. 2021), <https://www.brookings.edu/research/tracking-turnover-in-the-trump-administration/> [<https://perma.cc/2MTY-XX9T>]; *How Bush and Obama Created a Gold Standard Transition*, P'SHIP FOR PUB. SERVICE (Nov. 7, 2020), <https://presidentialtransition.org/wp-content/uploads/sites/6/2020/11/How-Bush-and-Obama-Created-a-Gold-Standard-Transition.pdf> [<https://perma.cc/9VYW-YTQF>].

issues nutritional guidance, most infamously the food pyramid from 1992 to 2005, the reformed MyPyramid that replaced it until 2011, and the MyPlate guide since that year.¹⁰⁸ All have met with criticism on the dietary merits of these recommendations among scientific and popular publications; improper portion recommendations and groupings of foods have received much of this criticism, including the role of dairy in these guides.¹⁰⁹ The USDA's efforts to encourage agricultural production and consumption of products like dairy has long existed in tension with the issuance of objective nutritional guidelines.¹¹⁰ Failure of conflict of interest policies exacerbates these issues.

III. CONCLUSION

The CDC and USDA face real conflict of interest issues in connection with the food and beverage industry. In assessing two of the many governmental bodies responsible for researching public health and regulating industry's role in influencing public health, gaps exist in the legal architecture that aims to prevent conflicts of interest. The *Model Rules* do not adequately address conflicts of interest for attorneys working in public health capacities as related to regulating the food and beverage industry.

Furthermore, incentives are not sufficient to guard against conflicts of interest within government entities. The *Model Rules* and institutional conflict of interest policies aim to combat such issues through their own design. Shaping a legal environment in which public sector employees have some incentives to work exclusively in the interest of furthering that public institution's goals can be a helpful force in preventing conflicts of interest. However, this vector is necessary, not sufficient. Both of these sources of legal ethics should aim, and indeed claim to aim, for regulation in their own right.¹¹¹

Several potential means of ameliorating the flawed policies governing conflicts of interest emerge following review of the CDC and USDA. An elaboration of conflict of interest rules to articulate clearer standards for leadership positions with the *Model Rules* is necessary. Alternatively, or in conjunction with the aforementioned reform, the CDC, USDA, and other federal institutions similarly

108. The Food Pyramid and MyPyramid both offered nutritional guidance in the form of a visual pyramid. Both faced scientific scrutiny, notably for its heavy prioritization of grains. The new MyPlate model offers a divided plate visual to emphasize portion balance of different food groups. Patrick J. Skerrett, *Crumbling, confusing Food Pyramid replaced by a Plate*, HARV. HEALTH BLOG (June 3, 2011), <https://www.health.harvard.edu/blog/crumbling-confusing-food-pyramid-replaced-by-a-plate-201106032767> [<https://perma.cc/2PGF-PRAC>].

109. See, e.g., *Id.*; Gwen Farrell, *The Food Pyramid Was Never About Keeping You Healthy. It Was About Making Corporations Money*, EVIE MAG. (Aug. 3, 2021), <https://www.eviemagazine.com/post/the-food-pyramid-was-never-about-keeping-you-healthy-it-was-about-making> [<https://perma.cc/2WVM-Qwww>].

110. See generally Meir J. Stampfer & Walter C. Willett, *Rebuilding the Food Pyramid*, SCI. AM. (Dec. 1, 2006), <https://www.scientificamerican.com/article/rebuilding-the-food-pyramid/> [<https://perma.cc/EAK2-GEN6>].

111. See, e.g., MODEL RULES pmb1, *supra* note 35 at ¶ 12; CDC, *supra* note 37; Memorandum from the Deputy Administrator of the National Organic Program to the National Organic Standards Board, *supra* note 94 at 4-5.

situated could adopt heightened standards of determining when a conflict of interest exists, thereby deterring transactions that would otherwise materialize.

Attorneys, even those serving in positions open to non-attorneys, should still adhere to the call in the *Model Rules* to further regulation in the public interest. They are better situated than individuals in any other profession to regulate the field, and the *Model Rules* recognize that.¹¹² Consequently, the *Model Rules*, institutional standards, or both, require strengthening for attorneys to hew closer to the goals of these government entities tasked with combatting NCDs.

112. MODEL RULES pmbi, *supra* note 35 at ¶ 12.