

Financial Conflicts of Interest and Academic Economists in Law and Policymaking

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Academic economists working in and adjacent to government have tremendous influence in law and policymaking. Judges, elected officials, and federal regulators rely on economic opinions and scholarship to guide decisions that impact the greater public. At the same time, it is common practice for academic economists to have close ties to private industry—for example, serving as highly paid consultants for firms—and conflicts of interest inevitably arise. Yet, despite these dual roles, economics has no code of ethics or rules that proscribe conflicts of interest or require their disclosure—making it an outlier among peer disciplines like medicine and law.

This Article explores the role of academic economists in federal government and the issues that their financial conflicts of interest can create. Beginning with a foundational overview of ethics in government, this Article examines the history of conflict-of-interest laws for federal employees, as well as the emergence of professional ethical standards across many fields in the early 1900s. The Article then explores how courts and regulators have come to define conflicts of interest and the terms of their disclosure. Turning to economics, the Article traces the impact and role of economists in government, beginning before World War II and continuing through today, and discusses how, by failing to adopt ethical standards, the field of economics was and continues to be at odds with other professions that influence policy. This Article then provides a number of examples of how academic economists' financial conflicts of interest have impacted their

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findings, research, and work when advising government and the issues that have emerged as a result. Finally, this Article calls for greater disclosure standards for academic economists working in government and puts forth policy recommendations to advance greater transparency.

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INTRODUCTION

Academic economists are incredibly influential actors in federal government—they publish impactful scholarship relied upon by public officials, perform government-contracted research, and advise leaders on policy. At the same time, academic economists often maintain close ties to regulated private industry, and conflicts of interest inevitably arise. Yet economics as a discipline has no code of ethics or enforced financial disclosure requirements, and over time, academic economists' failure to disclose conflicts of interests has contributed to harmful public outcomes.

Consider the role of academic economists in Uber's efforts to advance its deregulatory agenda. During the period of 2013 through 2017, the ridesharing company's business and labor practices were facing heightened scrutiny by lawmakers, regulators, and the general public.¹ Litigants, news outlets, and legislators were engaged in debate regarding whether Uber should be subjected to the same regulations as taxis, as well as whether the company's independent contractors should receive the protections of regular employees.² Uber, a company that promised consumers a cheaper and more convenient alternative to taxis, contended that it should be exempt from regulations.³

As protests by Uber workers broke out across the globe and more and more drivers and riders filed lawsuits, city, state, and federal governments launched investigations into the company's business and labor practices.⁴ Uber

1. Felicity Lawrence, *Uber Paid Academics Six-Figure Sums for Research to Feed to the Media*, *GUARDIAN* (July 12, 2022, 1:00 PM), <https://www.theguardian.com/news/2022/jul/12/uber-paid-academics-six-figure-sums-for-research-to-feed-to-the-media> [<https://perma.cc/3U34-6QTG>]; Sydney P. Freedberg et al., *How Uber Won Access to World Leaders, Deceived Investigators and Exploited Violence Against Its Drivers in Battle for Global Dominance*, *ICIJ* (July 10, 2022), <https://www.icij.org/investigations/uber-files/uber-global-rise-lobbying-violence-technology> [<https://perma.cc/VQ9D-QFPD>]. The findings included 124,000 internal documents—leaked by Uber's former chief lobbyist in Europe, the Middle East, and Africa—which showed that the ridesharing company had “broke[n] the law, duped police and regulators, exploited violence against drivers and secretly lobbied governments across the world.” Lawrence, *supra* note 1; see Freedberg et al., *supra* note 1.

2. *Uber Lobbied and Used ‘Stealth’ Tech to Block Scrutiny, According to a New Report*, *NPR* (July 11, 2022, 12:27 AM), <https://www.npr.org/2022/07/11/1110794294/uber-lobbied-to-block-scrutiny-according-to-a-new-report> [<https://perma.cc/C32T-8X44>]; Lawrence, *supra* note 1; Freedberg et al., *supra* note 1.

3. Dan Blystone, *The History of Uber*, *INVESTOPEDIA* (Feb. 4, 2024), <https://www.investopedia.com/articles/personal-finance/111015/story-uber.asp> [<https://perma.cc/4S3U-8QUG>].

4. Lawrence, *supra* note 1; Freedberg et al., *supra* note 1.

countered with a global lobbying campaign.⁵ Among other aims, Uber sought to influence “public officials to drop probes, change policies on workers’ rights, draft new taxi laws and relax background checks on drivers.”⁶

Uber’s lobbying campaign was multifaceted, but a central feature was compensating academic economists to publish scholarly articles that would legitimize the company’s business practices and counter negative public relations.⁷ Indeed, in 2022, reporting by *The Guardian* and International Consortium of Investigative Journalists revealed that Uber had been paying academic economists hundreds of thousands of dollars to conduct research and publish studies in the field’s most respected scholarly journals.⁸ Through a series of Uber-commissioned articles published between 2014 and 2017,⁹ academic economists made a number of misleading claims that contradicted criticisms the company had been facing.¹⁰ For example, rebuking reports that the company was taking larger cuts of driver pay and creating unsafe work environments,¹¹ one working paper published by the National Bureau of Economic Research (“NBER”) “seriously overstate[d] Uber drivers’ earnings by using gross revenue instead of true take-home pay” and not calculating

5. In July 2022, investigative reports by *The Guardian* and the International Consortium of Investigative Journalists (“ICIJ”) leaked communications of senior executives at Uber, which revealed a global lobbying campaign to influence government leaders and regulators. Lawrence, *supra* note 1; Freedberg et al., *supra* note 1. Referred to as the “Uber files,” journalists at ICIJ and *The Guardian* obtained files that consisted of emails, iMessages, and WhatsApp exchanges between the Silicon Valley giant’s most senior executives, as well as memos, presentations, notebooks, briefing papers, and invoices. Freedberg et al., *supra* note 1. Uber’s lobbying was led by, among others, David Plouffe and Jim Messina, the political consultants “who managed President Barack Obama’s successful 2008 presidential campaign” *Id.* Uber’s first in-house lobbyist was a former aide to Speaker of the House Kevin McCarthy. *Id.*

6. *Id.*

7. Lawrence, *supra* note 1. Tommaso Valletti, an economist and former Chief Competition Economist of the European Commission, has referred to these kinds of economic articles that are bought and paid for as part of “academic lobbying” efforts. Tommaso Valletti, “*Doubt Is Their Product*”: *The Difference Between Research and Academic Lobbying*, PROMARKET (Sept. 28, 2020), <https://www.promarket.org/2020/09/28/difference-between-research-academic-lobbying-hidden-funding> [<https://perma.cc/9K6K-TU87>].

8. Lawrence, *supra* note 1; Freedberg et al., *supra* note 1.

9. See, e.g., Judd Cramer & Alan B. Krueger, *Disruptive Change in the Taxi Business: The Case of Uber* (Nat’l Bureau of Econ. Rsch., Working Paper No. 22083, 2016); Hubert Horan, *Uber’s “Academic Research” Program: How to Use Famous Economists to Spread Corporate Narratives*, PROMARKET (Dec. 5, 2019), <https://www.promarket.org/2019/12/05/ubers-academic-research-program-how-to-use-famous-economists-to-spread-corporate-narratives/> [<https://perma.cc/R3R2-MZ86>].

10. Horan, *supra* note 9; Lawrence, *supra* note 1.

11. See Freedberg et al., *supra* note 1.

vehicle expenses, for which drivers are entirely responsible.¹² Another article claimed that Uber had “created \$6.8 billion in sustainable consumer welfare gains”—i.e., financial benefits to the public—though a transportation economist found the purported benefits failed to account for \$2 billion in losses and a “negative 149 percent profit margin in 2015.”¹³ Meanwhile, an NBER article provided flawed claims that “Uber drivers think their scheduling flexibility is as valuable as 40 percent higher pay” and that driver services would be reduced by two-thirds if labor standards improved.¹⁴ Additionally, an article published in the *American Economic Review* “gave credibility to the claim that Uber had a huge productivity advantage (38 percent overall; 66 percent in some cities) over traditional taxis thanks to its cutting-edge technological innovations and its evasion of traditional regulations,” but the article did not consider Uber’s financial losses and its

12. Horan, *supra* note 9 (citing Jonathan V. Hall & Alan B. Krueger, *An Analysis of the Labor Market for Uber’s Driver-Partners in the United States* 20–26 (Nat’l Bureau of Econ. Rsch., Working Paper No. 22843, 2016)), <https://www.nber.org/papers/w22843> [<https://perma.cc/DMP7-AH43>]. The authors disclose that “Hall was an employee and shareholder of Uber Technologies before, during, and after the writing of this paper,” while Krueger “work[ed] as a consultant to Uber in December 2014 and January 2015 when the initial draft of this paper was written.” Hall & Krueger, *supra* note 12, at 1; *see also* Janine Berg & Hannah Johnston, *Too Good to Be True? A Comment on Hall and Krueger’s Analysis of the Labor Market for Uber’s Driver-Partners*, 72 ILR REV. 39, 46 (2019) (“Hall and Krueger state that drivers are attracted to Uber because of the ‘level of compensation’ (p. 705) and that ‘taking expenses into account, the average Uber driver-partner is likely to earn at least as much per hour, and probably more, than the average taxi driver and chauffeur’ (p. 727). We dispute the calculations provided by the authors of Uber driver earnings vis-à-vis taxi drivers. One problem concerns the reference group that Uber drivers are compared with: ‘employees.’ The other problem concerns their calculations, which understate Uber drivers’ expenses. Their flawed calculations overestimate Uber drivers’ earnings and position Uber as the higher-earning option for drivers, perpetuating the company’s long-standing practice of using inflated wage statistics to lure drivers.”).

13. Horan, *supra* note 9 (citing Peter Cohen et al., *Using Big Data to Estimate Consumer Surplus: The Case of Uber* 1 (Nat’l Bureau of Econ. Rsch., Working Paper No. 22627, 2017)), https://www.nber.org/system/files/working_papers/w22627/w22627.pdf [<https://perma.cc/PJ7G-2D28>]. By 2019, Uber had “lost an additional \$18 billion.” *Id.*

14. *Id.* (citing M. Keith Chen et al., *The Value of Flexible Work: Evidence from Uber Drivers* 1, 34, 45 (Nat’l Bureau of Econ. Rsch., Working Paper No. 23296, 2017)), <https://www.nber.org/papers/w23296> [<https://perma.cc/5VNL-5MRV>]. *But see* Luigi Zingales, *Uber and the Sherlock Holmes Principle: How Control of Data Can Lead to Biased Academic Research*, PROMARKET (Oct. 9, 2019), <https://www.promarket.org/2019/10/09/uber-and-the-sherlock-holmes-principle-how-control-of-data-can-lead-to-biased-academic-research> [<https://perma.cc/96W7-V24C>] (noting that “[t]he paper is very well executed and the results are very interesting and credible”).

subsidization of fares to undercut taxis.¹⁵ Despite receiving remuneration from Uber—and in some cases holding Uber equity or being employed by Uber—the economists that wrote these articles presented the findings as objective and neutral, and if they disclosed their conflicts of interest, the disclosure was minimized or failed to explain the receipt of funding from Uber.¹⁶

As early as 2019, Hubert Horan, an expert in transportation economics, as well as economists at the University of Chicago and International Labour Office in Geneva, Switzerland, had published articles critically examining the Uber-hired economists' articles and sounding the alarm about the skewed

15. Horan, *supra* note 9 (citing Judd Cramer & Alan B. Krueger, *Disruptive Change in the Taxi Business: The Case of Uber*, 106 AM. ECON. REV. 177, 179–81 (2015)), <https://www.aeaweb.org/articles?id=10.1257/aer.p20161002> [<https://perma.cc/SRR2-99ML>]. Based on Krueger's author footnote, his article does not appear to have been commissioned by Uber; however, it was being drafted while Krueger was employed as a consultant for Uber. Hall & Krueger, *supra* note 12, at 1. Furthermore, the authors thank Jonathan Hall, an employee and shareholder of Uber, for "providing comments and/or data tabulations." Cramer & Krueger, *supra* note 15, at 1.

16. See Hall & Krueger, *supra* note 12, at 1. The disclosure states: "Jonathan Hall was an employee and shareholder of Uber Technologies before, during, and after the writing of this paper. Krueger acknowledges working as a consultant to Uber in December 2014 and January 2015 when the initial draft of this paper was written." *Id.*; see also Cohen et al., *supra* note 13, at 1. Early versions of this published paper included no disclosure. In the current published version the disclosure stated, "[a]t least one co-author has disclosed a financial relationship of potential relevance for this research. Further information is available online at <http://www.nber.org/papers/w22627.ack>." Cohen et al., *supra* note 13, at 1. Following the hyperlink to the NBER website, and then locating and clicking on the dropdown disclosure arrow reveals the following disclosure: "Jonathan Hall was an employee and shareholder of Uber Technologies before, during, and after the writing of this paper," and "Peter Cohen transitioned from paid independent contractor to full-time employee of Uber during the writing of the paper." *Using Big Data to Estimate Consumer Surplus: The Case of Uber*, NAT'L BUREAU ECON. RSCH., <https://www.nber.org/papers/w22627> [<https://perma.cc/TPZ6-7PSB>]. There is no disclosure for Alan Krueger. *Id.* What Uber paid any of the authors is not included. *Id.*; see also Chen et al., *supra* note 14, at 1. The disclosure states: "Chevalier and Rossi have no material financial relationships with entities related to this research. Oehlsen is an employee of Uber Technologies. Chen is a former employee of Uber, and as a result, continues to hold stock options that may constitute a material financial position." *Id.*; see also Cramer & Krueger, *supra* note 15, at 1. The disclosure states: "Krueger acknowledges that he has coauthored a paper that was commissioned by Uber in the past, although he has no ongoing relationship with the company." *Id.* That being said, it is highly unlikely that Krueger was not working as a consultant for Uber while he was drafting and editing this article. See Hall & Kramer, *supra* note 12, at 1. As a current employee, he has an equity stake in the company. Some articles where financial conflicts of interest were not initially included were later disclosed. Although even where affiliation with Uber was disclosed, payment was not. *Id.*

results.¹⁷ Multiple news outlets reported that the Uber articles were “based on surveys fraught with serious methodological problems (very low response rate, loaded and deliberately misleading questions, sample bias, etc.),” and were flawed because the conclusions failed to account for “Uber’s massive losses and subsidies.”¹⁸ Funding for articles was inadequately disclosed, if at all,¹⁹ and communication by Uber executives revealed by *Guardian* reporting confirmed that Uber fully expected to manipulate the articles it commissioned by exercising editorial control.²⁰ But by the time the *Guardian* investigation revealed the economists’ financial incentives, the mainstream media had already disseminated the Uber-commissioned conclusions without attributing the funding source.²¹ Furthermore, the talking points that originated in the academic articles had already been reshared as though objective “in committee hearings of the U.S. Congress, at a Federal Trade Commission workshop on the sharing economy, [and] on the California State Treasurer’s website (as part of ‘peer-reviewed’ work).”²² The misinformation, facilitated

17. See Horan, *supra* note 9; Berg & Johnston, *supra* note 12; Zingales, *supra* note 14. Given the protracted publication process for economic articles, which typically require rounds of edits and review that often last at minimum up to a year, it is likely that economists were already aware of the results.

18. Horan, *supra* note 9; see also, e.g., Farhad Manjoo, *Uber’s Business Model Could Change Your Work*, N.Y. TIMES (Jan. 28, 2015), <https://www.nytimes.com/2015/01/29/technology/personaltech/uber-a-rising-business-model.html>.

19. See *supra* notes 12–16.

20. See Freedberg et al., *supra* note 1 (“[W]hen [Uber’s] agenda seemed in need of a scholarly push, it paid friendly academics to produce favorable research.”); Lawrence, *supra* note 1.

21. See, e.g., Tyler Cowen, *Computing the Social Value of Uber. (It’s High.)*, BLOOMBERG (Sept. 8, 2016, 6:00 AM MST), <https://www.bloomberg.com/view/articles/2016-09-08/computing-the-social-value-of-uber-it-s-high> [<https://perma.cc/4Q95-983B>]; Manjoo, *supra* note 18; Adam Creighton, *Uber’s Pricing Formula Has Allowed Economists to Map Out a Real Demand Curve*, WALL ST. J. (Sept. 19, 2016, 11:02 AM ET), <https://www.wsj.com/articles/BL-REB-36581> [<https://perma.cc/3K8N-NHVX>]; Tim Worstall, *Freakonomics’ Steven Levitt on How Inefficient Uber Really Is*, FORBES (Sept. 20, 2016, 8:26 AM EDT), <https://www.forbes.com/sites/timworstall/2016/09/20/freakonomics-steven-levitt-on-how-inefficient-uber-really-is> [<https://perma.cc/T944-UU3L>]; Anne-Sylvaine Chassany, *Uber: A Route Out of the French Banlieues*, FIN. TIMES (Mar. 7, 2016), <https://www.ft.com/content/bf3d0444-e129-11e5-9217-6ae3733a2cd1>; see also, Horan, *supra* note 9.

22. Berg & Johnston, *supra* note 12, at 39 (citing Joseph Kennedy, *Testimony Before the House Committee on Small Business on Gig Economy Workers*, INFO. TECH. & INNOVATION FOUND. (May 24, 2016), <https://www2.itif.org/2016-small-business-testimony.pdf> [<https://perma.cc/5JMN-JHMC>]); see Hall & Krueger, *supra* note 12; Cramer & Krueger, *supra* note 15; *The 21st Century Workforce: How Current Rules and Regulations Affect Innovation and*

by a lack of transparency around the funding source for the studies, shrouded the ridesharing company's harm to labor, economies, and local communities.²³

The Uber articles demonstrate not only the impact of private funding on academic research,²⁴ but also the influence of academic economists in our democratic institutions.²⁵ Indeed, in addition to the authoritative role of their scholarship, these economists today hold powerful positions in government and policymaking. This is especially true in the executive branch. Academic economists serve on the president's Council of Economic Advisers;²⁶ they also sit on advisory committees that provide counsel and leadership to a

Flexibility in Michigan's Workplaces: Hearing Before the Subcomm. on Workforce Prots. of the H. Comm. on Educ. & the Workforce, 104th Cong. 63 (2016), <https://www.govinfo.gov/content/pkg/CHRG-114hhrg99466/pdf/CHRG-114hhrg99466.pdf> [<https://perma.cc/4CN3-92UE>]; FED. TRADE COMM'N, THE "SHARING" ECONOMY: ISSUES FACING PLATFORMS, PARTICIPANTS & REGULATORS 25, 68, 74 (2016) (citing Cramer & Krueger, *supra* note 15, at 68, 74), https://www.ftc.gov/system/files/documents/reports/sharing-economy-issues-facing-platforms-participants-regulators-federal-trade-commission-staff/p151200_ftc_staff_report_on_the_sharing_economy.pdf [<https://perma.cc/4JCR-XEEJ>]; Jonathan Hall, *On-Demand Work and Income Inequality*, CAL. STATE TREASURER (Jan. 18, 2017), <https://www.treasurer.ca.gov/newsletter/2017/201701/column.asp> [<https://perma.cc/B8RQ-W82K>]. At a Congressional hearing on "The Sharing Economy: A Taxing Experience for New Entrepreneurs Part I," which was investigating ridesharing, a senior fellow at the Information Technology and Innovation Foundation referenced these articles and testified: "A survey of Uber drivers showed that the vast majority are happy working for the company. They greatly value the flexibility in terms of when and how much to work . . . They also seem happy with the pay." Kennedy, *supra* note 22.

23. See Hubert Horan, *Will the Growth of Uber Increase Economic Welfare?*, 44 *TRANSP. L.J.* 33, 86–90 (2017); see also, e.g., Lawrence, *supra* note 1; Freedberg et al., *supra* note 1; Horan, *supra* note 9; Manjoo, *supra* note 18.

24. Zingales predicts and shows through empirical analysis that economist capture is pervasive. Luigi Zingales, *Preventing Economists' Capture*, in *PREVENTING REGULATORY CAPTURE: SPECIAL INTEREST INFLUENCE AND HOW TO LIMIT IT* 124–26 (Daniel Carpenter & David Moss eds., 2013).

25. See *id.* at 150–51; see also Mike McIntire & Jodi Kantor, *The Gun Lobby's Hidden Hand in the 2nd Amendment Battle*, *N.Y. TIMES* (June 18, 2024), <https://www.nytimes.com/2024/06/18/us/gun-laws-georgetown-professor.html> (discussing how Georgetown University economist William English's NRA-backed, "largest-of-its-kind national survey," which concluded that "gun owners frequently used their weapons for self-defense[.] . . . has been cited in a landmark Supreme Court case that invalidated many restrictions on guns, and in scores of lawsuits around the country to overturn limits on assault weapons, high-capacity magazines and the carrying of firearms").

26. *Council of Economic Advisers*, WHITE HOUSE, <https://www.whitehouse.gov/cea> [<https://perma.cc/E9EP-8LJQ>].

number of regulatory bodies.²⁷ Beyond committees, agencies bring in academic economists as experts to advise on policy decisions and rulemaking.²⁸ Outside the executive branch, academic economists are regularly called on to testify in congressional hearings and serve as expert witnesses in litigation,²⁹ and they publish op-eds and are interviewed in mainstream news outlets that elected representatives and the public at large rely on to make informed decision-making.³⁰

Academic economists are highly respected, their opinions highly valued, and alongside lawyers, accountants, scientists, and doctors, they are among the most influential actors working in law and the federal government.³¹ It is troubling, then, that of these fields, economics stands apart in having no licensing requirements, no code of ethics, no mechanisms to prohibit or minimize conflicts of interest, and no standards that require disclosure of these interests. Furthermore, their leading scholarly journals have tepid or nonexistent conflict-of-interest disclosure policies, despite the fact that consulting for private firms is so widespread, and where disclosures are made, they are buried and must be downloaded.³² Had the funding of the Uber

27. See generally, e.g., *Advisory Committees of the FCC*, FED. COMM'NS BD., <https://www.fcc.gov/about-fcc/advisory-committees-fcc> [https://perma.cc/MYB6-5P4C] (providing lists of advisory committees currently active at federal agencies).

28. As one example, the Biden administration brought together a group of mostly academics to address climate change. See *Readout of the Inaugural Meeting of the National Academy of Sciences' Roundtable on Macroeconomic and Climate-Related Risks and Opportunities*, WHITE HOUSE (Nov. 1, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/01/readout-of-the-inaugural-meeting-of-the-national-academy-of-sciences-roundtable-on-macroeconomic-and-climate-related-risks-and-opportunities> [https://perma.cc/8ZYX-S54Q]. For a list of members appointed to the committee, many of whom are academic economists, see *Roundtable on Macroeconomics and Climate-related Risks and Opportunities*, NAT'L ACADS., <https://www.nationalacademies.org/our-work/roundtable-on-macroeconomics-and-climate-related-risks-and-opportunities> [https://perma.cc/6AAX-ZMUX].

29. See, e.g., *Building a Resilient Economy: Shoring Up Supply: Hearing Before the S. Comm. on Banking, Hous. & Urb. Affs.*, 117th Cong. 7–9 (2022), [https://www.banking.senate.gov/imo/media/doc/Stevenson%20Testimony%203-22-22.pdf](https://www.banking.senate.gov/imo/media/doc/Stevenson%20Testimony%20203-22-22.pdf) [https://perma.cc/S4UA-MTV4] (statement of Dr. Betsey Stevenson, Professor of Economics and Public Policy, University of Michigan).

30. See, e.g., Frederic Mishkin, *The Flaws in the Fed's Approach to Inflation*, FIN. TIMES (Jan. 9, 2022), <https://www.ft.com/content/f14f140d-3351-426c-a999-3b1496e57528> [https://perma.cc/M3TZ-AFS2]; Frederic S. Mishkin, *Is Monetary Policy Effective During Financial Crises?*, 99 AM. ECON. REV. 573 (2009).

31. Imed Bouchrika, *Public Policy Careers: 2024 Guide to Career Paths, Options & Salary*, RESEARCH.COM (Feb. 20, 2024), <https://research.com/careers/public-policy-careers> [https://perma.cc/7UWB-MD42].

32. For an example of how difficult it is to access conflict-of-interest statements, see Erik Hurst, Yona Rubinstein & Kazuatsu Shimizu, *Task-Based Discrimination*, 114 AM. ECON. REV. 1723 (2024), <https://www.aeaweb.org/articles?id=10.1257/aer.20220234>.

articles been more clearly stated, it is unclear whether mainstream news outlets like the *Wall Street Journal*,³³ *Bloomberg*,³⁴ *New York Times*, and others would have relied on them in their favorable reporting,³⁵ or whether the regulatory, administrative, and legal outcomes would have been different.³⁶

This Article examines the financial conflict of interests of academic economists working in or adjacent to the U.S. government, specifically federal agencies, and it situates this troubling problem in the context of federal conflict-of-interest laws and professional ethics standards. Part I provides a historical overview of federal conflict-of-interest laws and discusses the ethical standards of other disciplines. Part II then analyzes how the Supreme Court and federal agencies have defined conflicts of interest, why and how financial conflicts arise for academics working in or adjacent to government, and how disclosure of conflicts provides federal agencies and the American public with a minimum level of protection from private interests. Part III discusses academic economists' work in government, as well as their incentives to work for private and public firms. Part IV provides examples of academic economists who contributed to policy decisions while failing to disclose their conflicts of interest. Part V details a number of solutions to prevent academic economists' conflicts of interest from influencing government decisions to the detriment of the public.

I. HISTORY OF FEDERAL CONFLICT-OF-INTEREST LAWS AND STANDARDS IN THE PROFESSIONS

Conflicts of interest have long been a concern for the U.S. government. Although opposition to corruption was a bedrock principle in the founding era, early on, federal employees recognized that public office could be used

33. Creighton, *supra* note 21; *see also* Horan, *supra* note 9 (“The 2017 Cohen/Hahn/Hall/Levitt/Metcalf paper *Using Big Data to Estimate Consumer Surplus: The Case of Uber* claimed Uber annually creates billions in consumer welfare benefits. It also allowed Uber supporters to trumpet over-simplified versions of that claim in non-academic mainstream media channels. Steven Levitt, through his *Freakanomics* media franchise, played a major role in this process.”).

34. Cowen, *supra* note 21.

35. Horan, *supra* note 9.

36. *See* Freedberg et al., *supra* note 1 (reporting that “from 2014 to 2016 Uber executives held more than 100 meetings with public officials from 17 countries as well as representatives of European Union institutions,” and that to further its agenda, Uber “paid friendly academics to produce favorable research”).

for private gain.³⁷ It took very little time for the country's leaders to realize that the integrity of the entire nation was being undermined by public officials working for private actors.³⁸ This Part provides a historical overview of the emergence and evolution of U.S. conflict-of-interest laws and regulations; it also surveys ethical standards around conflicts of interest that exist in the professions.

A. Early U.S. Conflict-of-Interest Laws

Throughout the history of the United States, the impact of financial conflicts of interest on federal government has been an enduring concern. The founders were acutely aware of the specter of conflicts of interest,³⁹ and not long after the United States became a country,⁴⁰ the influence of private financial interests on government officials emerged as an issue of public importance. For example, when the westward expansion of the United States created a lucrative market for speculating, purchasing, and reselling land, President Thomas Jefferson's Postmaster General lobbied the U.S. Postal Service, in its move to establish post offices throughout North America, to employ land companies that he had personally invested in.⁴¹

The use of public office for private gain continued through subsequent administrations' use of the Spoils System, which supplanted merit-based hiring in the federal government. Under the Spoils System, government officials, notably the President, "pay[ed] political debts and discharg[ed] political obligations" by "reward[ing] personal friends" with jobs and opportunities in the federal government.⁴² Indeed, unlike today's career civil servants, government "[a]ppointments came to be regarded as proper

37. See Robert G. Vaughn, *Ethics in Government and the Vision of Public Service*, 58 GEO. WASH. L. REV. 417, 419 (1990).

38. See generally *id.*

39. "[E]ven before the Sermon on the Mount warned against serving two masters, Plato had forbidden his philosopher kings to hold any personal economic interests whatever." 107 CONG. REC. 14779 (1961) (statement of Rep. John Lindsay), <https://www.govinfo.gov/content/pkg/GPO-CRECB-1961-pt11/pdf/GPO-CRECB-1961-pt11-6-1.pdf> [<https://perma.cc/H6V8-LKNG>].

40. See Vaughn, *supra* note 37, at 419.

41. *Id.*; see also Winifred Gallagher, *A Brief History of the United States Postal Service*, SMITHSONIAN MAG. (Oct. 2020), <https://www.smithsonianmag.com/smithsonian-institution/brief-history-united-states-postal-service-180975627> [<https://perma.cc/YX9H-VAXU>].

42. S. REP. NO. 47-576, at II (1882).

payment for partisan service, not as long-term career opportunities.”⁴³ In the Spoils System, Presidential indebtedness and favoritism provided executive branch jobs to supporters, who were able to use their government position to derive significant earnings by “putting their private interests before the responsibilities of their office”—for example by taking advantage of “public works [projects], transportation projects, [or] the sale of public lands” for personal gain.⁴⁴

As the country, government, and federal expenditures continued to expand, so did the use of public office by elected officials to advance private financial interests.⁴⁵ By the middle of the nineteenth century, Congressmen had taken up the practice of representing parties who were bringing private claims against the federal government, which at the time were adjudicated by Congress, not the U.S. Court of Federal Claims.⁴⁶ Government officials served as counsel for both legitimate lawsuits—like those by claimants seeking to receive their pensions for military service or suing for property damage incurred during the Revolutionary War—and “fraudulent, exorbitant, or unjust claims.”⁴⁷ Litigants, on the other hand, intentionally sought out representation by Congressmen, who would “openly advertis[e] that they had the contacts to help expedite claims.”⁴⁸ Even more troubling, Congressmen would seek out or seize opportunities to represent claimants in order to gain from congressionally authorized expenditures.⁴⁹ For example, when Congress set aside \$3.25 million to compensate parties that incurred property damage in the Mexican War, Senator Thomas Corwin represented a claimant whose silver mine was destroyed.⁵⁰

The conflicts of interest that arose from elected officials representing private clients in adjudications before Congress were leading to such widespread corruption, the practice was becoming untenable if the U.S.

43. ROBERT N. ROBERTS, *WHITE HOUSE ETHICS: THE HISTORY OF THE POLITICS OF CONFLICT OF INTEREST REGULATION* 8 (1988).

44. *Id.*

45. *See generally* ASS’N OF THE BAR OF THE CITY OF N.Y., *CONFLICTS OF INTEREST AND FEDERAL SERVICE* (1960); Vaughn, *supra* note 37, at 419–20; ROBERTS, *supra* note 43, at 9–11.

46. ROBERTS, *supra* note 43, at 9; ASS’N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 30–33.

47. ROBERTS, *supra* note 43, at 9.

48. *Id.*

49. *Id.* at 10.

50. *Id.*; *see also* WILSON COWEN ET AL., *UNITED STATES COURT OF CLAIMS: A HISTORY*, PART II 8–10 (1978).

government wanted to maintain its integrity and the trust of the public.⁵¹ Therefore, in 1853, Congress enacted an ethics reform bill titled *An Act to Prevent Frauds on the Treasury of the United States*.⁵² The Act was designed to stop federal officials “from receiving anything of value for assisting private parties to prosecute claims against the United States or aiding in the prosecution of a claim.”⁵³ Indeed it sought to terminate the practice of federal government employees receiving compensation for “assist[ing], or act[ing] as an agent or attorney, in the prosecution of any claim against the United States.”⁵⁴ Although the statute sought to restore the public’s faith in government, ultimately, it “was a more symbolic than a serious effort”: The Act only prohibited a fraction of claims and activities that the public viewed as ethically and morally suspect.⁵⁵

With the onset of the Civil War, however, government officials could no longer ignore the hazards of financial conflicts of interest. “The spoils system and an undisciplined claims procedure created serious ethical problems for the federal government in time of peace. In time of war, the administrative immaturity of the governmental establishment invited outright fraud, dishonesty, and theft.”⁵⁶ The war opened up many contracting opportunities that led to profiteering by government officials.⁵⁷ Military leaders made financial gains through private procurement contracts and government employees profited when they arranged for the sale of defective weapons to the War Department, which were then resold to private individuals.⁵⁸

As a result, in 1862 Congress enacted 18 U.S.C. § 216, a conflict-of-interest law that included criminal provisions and required “each War, Navy[,] and Interior contract to be filed in a special office along with an affidavit of the contracting officer” affirming that the contract had been entered into “fairly without any benefit or advantage to [himself], or allowing

51. See ROBERTS, *supra* note 43, at 9–12; ASS’N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 34 (statement of Andrew Johnson) (“There must be something done to restore public confidence, for it is going very fast, if not already gone.”).

52. ASS’N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 36.

53. ROBERTS, *supra* note 43, at 11; see ASS’N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 36–37; An Act to Prevent Frauds upon the Treasury of the United States, ch. 81, § 3, 10 Stat. 170, 170 (1853).

54. ASS’N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 37.

55. ROBERTS, *supra* note 43, at 11.

56. ASS’N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 34.

57. *Id.*

58. ROBERTS, *supra* note 43, at 12; ASS’N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 34–35.

any such benefit or advantage corruptly to the [other party].”⁵⁹ That same year, Congress passed another criminal statute: *An Act to Prevent Members of Congress and Officers of the Government of the United States from Taking Consideration for Procuring Contracts, Office, or Place from the United States*.⁶⁰ In 1864, Congress passed 18 U.S.C. § 281, another criminal statute intended to mitigate conflicts of interest, this time more broadly prohibiting federal officials from receiving compensation for representing private parties in an executive forum. “[I]t forbid[] the government employee”—both in the executive branch and in Congress—“to render services in relation to any matter in which the United States is a party or is directly or indirectly interested.”⁶¹

In 1863, Congress passed 18 U.S.C. § 434—the precursor to 18 U.S.C. § 208,⁶² today’s statute that prohibits conflicts of interest among executive branch employees. Section 434 emerged out of “the same environment of wartime procurement frauds as . . . Sections 216 and 281.”⁶³ The provision criminalized conflicts of interest arising from government employees’ activities carried out in their official capacity.⁶⁴ Although later amendments broadened the statute’s reach, the initial language of § 434 limited its application both in terms of types of financial conflicts and scope of government personnel who were covered by the statute.⁶⁵ Additionally, prior to amendment, the statute applied only when the conflict arose from an interest in a “bank[], commercial corporation[], and mercantile or trading firm[]”; financial conflicts of interest involving other types of institutions did not trigger the statute.⁶⁶ As a result of these limitations, the New York Bar

59. ASS’N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 41 (quoting Act of June 2, 1862, ch. 93, 12 Stat. 411, 411–12).

60. Act of July 16, 1862, ch. 180, 12 Stat. 577.

61. ASS’N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 39. The Act had some limitations in scope. It did not prohibit representation in court proceedings, and it also did not prevent unpaid representation in executive proceedings. *Id.*; Act of June 11, 1864, ch. 119, 13 Stat. 123.

62. *See infra* Section I.B.

63. ASS’N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 43.

64. 18 U.S.C. § 434 (repealed 1962) (“Whoever, being an officer, agent or member of, or directly or indirectly interested in the pecuniary profits or contracts of any corporation, joint-stock company, or association, or of any firm or partnership, or other business entity, is employed or acts as an officer or agent of the United States for the transaction of business with such business entity, shall be fined . . . or imprisoned . . .”).

65. For a more detailed conversation on the limitations of § 434, see Roswell B. Perkins, *The New Federal Conflict-of-Interest Law*, 76 HARV. L. REV. 1113, 1129–36 (1963).

66. ASS’N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 43–44.

Association reported that “almost no cases [were] reported under Section 434.”⁶⁷

The statutes passed in the mid-nineteenth century, before and after the Civil War, were antecedents for the Pendleton Civil Service Reform Act of 1883, which was the result of debate and critique calling for reform of civil service and the need to regulate ethics in government.⁶⁸ Although §§ 216, 281, and 434 prohibited some financial conflicts of interest of federal employees, it did not stop the Spoils System, which “invited, if not required, personal corruption, and placed the powers of government in the hands of persons who used and manipulated that power for their own gain.”⁶⁹ The financial debts between elected officials and government employees “ha[d] come to dominate and to subordinate all other considerations.”⁷⁰ In hearings leading up to the Pendleton Act, the lack of ethics in government and general corruption was detailed in ominous terms: “The malign influence of political domination in appointments to office is wide-spread It poisons the very air we breathe. No Congressman in accord with the dispenser of power can wholly escape it. It is ever present.”⁷¹ Congress sought to change this and eradicate the Spoils System by creating a standard where public employees were required to be “politically neutral” and appointed based on “competence and professionalism, and . . . competitive examination.”⁷² Proponents of reform believed that job examination and merit would lead to a government comprised of employees who executed their duties as civil servants “free of pressures to base government decisions on personal or partisan motives.”⁷³ The Pendleton Act brought a standard of ethics to government actors and “established the premise that an employee was an agent for broadly defined public interests,” thereby holding a unique set of responsibilities.⁷⁴ Indeed, this principle resonates in federal ethics laws to this day.⁷⁵

67. *Id.* at 44.

68. Pendleton Act of 1883, ch. 27, 22 Stat. 403; Vaughn, *supra* note 37, at 419–20.

69. Vaughn, *supra* note 37, at 420.

70. S. REP. NO. 576, at 4 (1873).

71. *Id.* at 3.

72. Vaughn, *supra* note 37, 420–21 (citing 22 Stat. at 403–04).

73. *Id.* at 421.

74. *Id.*

75. *See infra* Part II.

B. Twentieth Century Conflict-of-Interest and Ethics Laws

Addressing financial conflicts of interest continued into the twentieth century. In 1962, Congress enacted new conflict-of-interest laws,⁷⁶ including 18 U.S.C. § 208, in part to clarify and consolidate the previously “scattered” federal conflict-of-interest provisions “into one unified act with a common set of definitions and a consistent approach.”⁷⁷ Congress also sought to address § 434’s deficiencies, which had become apparent since its enactment and subsequent amendments.⁷⁸

Section 434 had proven particularly inadequate in addressing the conditions of the post-World War II era, a “period [where] the activities of Government and the operation of the private economy . . . accelerated their complex interrelationship.”⁷⁹ In the decade after World War II, the federal government grew both “in terms of dollars and employees,” as well as in its “role . . . as a customer of American business.”⁸⁰ Indeed, the executive branch’s expansive and pervasive regulatory programs came to “affect the daily affairs of business and industry” more than ever before.⁸¹ Through large government contracts, subsidies, tax benefits, financing, grants, and other economic incentives, regulatory programs provided funding and financial support to private firms to create “[h]ousing, road building, oil exploration and imports, shipping, farm production, communications, small business financing, atomic energy, medical and other scientific research,” and more.⁸²

In addition to working with private firms, federal regulatory agencies came to rely deeply on the expertise of private individuals, “particularly in areas of science and technology.”⁸³ For example, in 1959, the “government spent nearly \$5 billion on research, engineering, and development, including procurement funds for research and development”⁸⁴ Additionally, the government saw a greater need to employ private individuals for intermittent periods to serve on advisory committees and commissions.⁸⁵ These

76. 18 U.S.C. §§ 201–218 (originally enacted as Act of Oct. 23, 1962, Pub. L. No. 87-849, 76 Stat. 1119).

77. Perkins, *supra* note 65, at 1122.

78. *Id.* at 1129.

79. *Id.* at 1114.

80. *Id.*

81. *Id.*

82. ASS’N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 132.

83. Perkins, *supra* note 65, at 1114.

84. ASS’N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 165 (citing THE PRESIDENT’S SCIENCE ADVISORY COMMITTEE, A REPORT ON STRENGTHENING AMERICAN SCIENCE 1 (1958)).

85. *See, e.g.*, Perkins, *supra* note 65, at 1123–24, 1123 n.36 (discussing the impact of the pre-1963 conflict-of-interest statutes on part-time and temporary consultants).

individuals were “appointed or employed to perform ‘temporary duties,’ with or without compensation.”⁸⁶

As the work of government and private actors became intertwined through the expanding executive agency programming of the 1950s, so did “the number of potential conflict-of-interest situations and the subtlety of their forms.”⁸⁷ For example, early in the decade, multiple advisors to President Harry Truman were charged with exerting their influence as White House officials in order to engage in and facilitate private loans, gifts, favors, and other “illicit business activities.”⁸⁸ A few years later, in 1954, the U.S. Atomic Energy Commission (“AEC”) entered into the Dixon-Yates contract with private energy firms in order to supply electric power to much of Tennessee.⁸⁹ Through Senate subcommittee hearings, it emerged that an expert consultant involved with the Bureau of Budget’s negotiation of the contract had benefitted from the deal because he was an officer at the investment bank that would become a principal player in the AEC contract.⁹⁰ Ultimately, this conflict-of-interest case was litigated and went all the way to the Supreme Court, which ruled that the Bureau of the Budget consultant had violated the criminal conflict-of-interest laws.⁹¹

With financial conflicts of interest among executive branch employees emerging as the cause of widely publicized government scandals, Congress acted. In the late 1950s, the Antitrust Subcommittee of the House investigated conflicts arising from the government’s use of experts and consultants both paid and unpaid, finding that the laws were inadequate and provided many loopholes to get around the existing conflict-of-interest laws.⁹² In 1957, 1958,

86. *Id.* at 1125.

87. *Id.* at 1114 (citing ASS’N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 131–34).

88. ASS’N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 124.

89. *Id.* at 127.

90. *Id.* at 127–28.

91. *United States v. Miss. Valley Generating Co.*, 364 U.S. 520, 559 (1961).

92. STAFF OF H. COMM. ON THE JUDICIARY, 85TH CONG., 2D. SESS., REP. ON FED. CONFLICT OF INT. LEGIS. 3 (Comm. Print 1958).

Manifestly, the conflict-of-interest statutes should be revised, simplified, and coordinated in order to clarify the obligations of Government employees. Such a revision would eliminate, or substantially reduce, the many present exemptions, whose very existence lends some credence to the contention that the Federal service is a perilous minefield, not to be entered by the discreet without special legislative assurance of immunity. The objective of the revision would be to assure the Federal service of maximum security against unethical practices on the part of its employees without at the same time

and 1961, three committees introduced (or reintroduced) separate and influential bills to address the inadequacy of the existing conflict-of-interest laws that applied to those working in government.⁹³ These bills were eventually combined into a single version, 18 U.S.C. §§ 201 through 218, which was enacted in 1962 and “br[ought] all of the prohibitions together as the first nine sections of chapter 11 of title 18 of the *United States Code*.”⁹⁴ Specifically, § 208 of the Act replaced 18 U.S.C. § 434 and prohibits executive branch employees from acting due to a financial conflict of interest. Section 208(a) states that, with limited exceptions,⁹⁵ criminal penalties will be brought against

whoever, being an officer or employee of the executive branch . . . or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest[.]⁹⁶

undermining the dignity of the service or making such service repugnant to able men and women.

Id.; see ASS’N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 116–30 (providing a more in-depth exploration of the conflict-of-interest controversies of the 1950s).

93. Perkins, *supra* note 65, at 1115–17. The committees that drafted the previous legislation were led by Congressman Emanuel Celler, the Association of the Bar of the City of New York, and an advisory panel appointed by President John F. Kennedy. *Id.* at 1115–16.

94. *Id.* at 1122 n.34 (“Bribery is the subject matter of § 201 and the definitions applicable to the conflict-of-interest prohibitions are set forth in § 202. The new §§ 203, 205, 207, 208, and 209 are based on (except in certain cases as to retired military officers) former §§ 281 [62 Stat. 697 (1948), as amended, 63 Stat. 90 (1949)], 283 [62 Stat. 697 (1948), as amended, 63 Stat. 280 (1949)], 284 [62 Stat. 698 (1948), as amended, 63 Stat. 90 (1949)], 434 [62 Stat. 703 (1948)], and 1914 [62 Stat. 793 (1948)] of title 18, respectively.”). The Act went into effect on January 21, 1963. *Id.*

95. See 18 U.S.C. § 208(a).

96. *Id.*

Section 208 addressed many of the nineteenth-century statute's deficiencies. First, the Act broadened the scope of who could be found to have a conflict of interest: Previously, and as noted above, only the decision-maker directly executing an interested transaction could be found to have a conflict of interest, but now a government employee who was less directly involved in decisions but still conflicted in the act could be found in violation.⁹⁷ Additionally, § 208 broadened what constitutes a government employee's financial interest: Whereas § 434 only banned financial interests where government agents held a position or otherwise had a financial interest in a business's profits or contracts, § 208 expanded violations to include any "financial interest" and not only of the employee, but also their spouse, child, or partner.⁹⁸

Although § 208 prohibited those working in the executive branch from "participating in matters that affect [their] financial interests,"⁹⁹ there was no requirement for employees to file financial disclosures.¹⁰⁰ This changed in 1978, when, in the aftermath of President Richard Nixon's Watergate scandal,¹⁰¹ Congress enacted the Ethics in Government Act.¹⁰² Title I of the Act implemented new requirements for government employees—specifically executive branch and agency employees who earn above a certain pay grade—to file financial disclosures within thirty days of taking office and to recuse themselves when conflicts of interest arose.¹⁰³ Title IV of the Act established the Office of Government Ethics ("OGE"), which today is charged with "overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency"¹⁰⁴ Furthermore, the Ethics in Government Act provided authority to the Office of Personnel Management ("OPM") to

97. *Id.*; Perkins, *supra* note 65, at 1131.

98. Perkins, *supra* note 65, at 1131–32.

99. *Summary of Government Ethics Rules for New Department Officials*, U.S. DEP'T JUST. (Jan. 15, 2015), <https://www.justice.gov/jmd/ethics/summary-government-ethics-rules-new-department-officials> [<https://perma.cc/BZZ9-5SSM>].

100. *Cf.* 18 U.S.C. § 201 (providing no express conflict-of-interest filing requirements for employees of the executive branch).

101. For more information on Watergate, see *Watergate*, FBI, <https://www.fbi.gov/history/famous-cases/watergate> [<https://perma.cc/D3FK-Y3PH>].

102. Ethics in Government Act of 1978, Pub. L. No. 95-521, § 101(c), 92 Stat. 1824, 1824 (codified as amended at 5 U.S.C. § 13103); *see also* Mark A. Adams et al., *Ethics in Government*, 30 AM. CRIM. L. REV. 617, 617 (1993).

103. Ethics in Government Act § 101(c).

104. *Id.* § 402(a).

promulgate 5 C.F.R. §§ 2634–2635, which implement and apply the federal conflict-of-interest and disclosure laws to executive branch employees.¹⁰⁵

Between § 208, the Ethics in Government Act, and the rules promulgated by OGE and OPM—as well as the important roles that these agencies have in enforcing against conflicts of interest—the federal government has implemented broad and comprehensive laws and regulations that apply to full-time executive branch employees, as well as others who serve in intermittent capacities or adjacent to government.¹⁰⁶ But as I discuss below in Part II, the current laws and regulations do not account for all the ways that conflicts of interest can arise and influence policy when those working in short-term intermittent capacities, such as policy advisors, researchers, and contractors, contribute research and expertise to federal agencies.

C. *Ethical Standards in the Professions*

Not long after the federal government began to implement legislation that penalized employee conflicts of interest, professional associations also started creating codes of ethics that prohibited conflicts of interest.¹⁰⁷ People in many fields were concerned that the corrupting influences of private financial interests were undermining the value and respect of their work.¹⁰⁸ As a result, today many professions—from journalists to doctors, school teachers, engineers, social workers, scientists, psychologists, and religious leaders—“have their own documented set of standards for professional conduct” and recognize they owe ethical duties to their clients and/or the general public.¹⁰⁹ This Section provides an overview of the ethical standards that exist in law, medicine, and accounting—three fields that play an active

105. 5 C.F.R. §§ 2634.101–.105, .201–.204 (2024).

106. See discussion *supra* Section I.B.

107. See, e.g., Carolyn A. Dubay, *Public Confidence in the Courts in the Internet Age: The Ethical Landscape for Judges in the Post Watergate Era*, 40 CAMPBELL L. REV. 531, 534, 546–47 (2018) (discussing the creation of the ABA Model Code of Judicial Conduct following the “the post-Watergate ethics revolution in the federal government”).

108. See, e.g., Laurel A. Rigertas, *Post-Watergate: The Legal Profession and Respect for the Interests of Third Parties*, 16 CHAP. L. REV. 98, 115 (2012).

109. Note, *The Good, the Bad, and Their Corporate Codes of Ethics: Enron, Sarbanes-Oxley, and the Problems with Legislating Good Behavior*, 116 HARV. L. REV. 2123, 2125 (2003); see also *Code of Ethics for Educators*, NAT’L EDUC. ASS’N (Sept. 14, 2020), <https://www.nea.org/resource-library/code-ethics-educators> [https://perma.cc/NZ9R-DFV5].

role in federal agencies—which serve as a point of comparison to economics, a field that, for all practical purposes, has no ethical standards.¹¹⁰

1. Lawyers

In order to practice, lawyers typically must take a course in professional responsibility, pass an ethics exam, and thereafter adhere to ethical standards that are adopted by state legislatures and enforced by a state’s attorney general and courts. The consequences of violating ethical standards can range from license suspension, to civil and criminal penalties.¹¹¹ The American Bar Association (“ABA”) and state bar associations began implementing ethical rules for lawyers in the late 1800s.¹¹² At the time, there was a growing realization that the lack of a bar association or legal code of ethics was leading to the “weakening of an effective professional public opinion” of lawyers.¹¹³ The first ABA Canon of Ethics, an early version of the Model Rules of Professional Conduct, was voted on and approved in 1908 to address this issue.¹¹⁴ Canon 6 stated that

[i]t is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to

110. The American Economic Association, a “scholarly association dedicated to the discussion and publication of economics research,” recently published a Code of Conduct, which is composed of four paragraphs of broad “principles of professional conduct [that] should guide economists” across the professional spectrum. *About the AEA*, AM. ECON. ASS’N (Apr. 20, 2018), <https://www.aeaweb.org/about-aea/code-of-conduct> [<https://perma.cc/73H7-DJ6D>]; *AEA Code of Professional Conduct*, AM. ECON. ASS’N (Apr. 20, 2018), <https://www.aeaweb.org/about-aea/code-of-conduct> [<https://perma.cc/7B86-9PND>]. One of the paragraphs addresses “intellectual and professional integrity.” *Id.* The Code continues: “Integrity demands honesty, care, and transparency in conducting and presenting research; disinterested assessment of ideas; acknowledgement of limits of expertise; and disclosure of real and perceived conflicts of interest.” *Id.* This short advisory sentence on integrity in research, and the four-paragraph Code of Conduct in general, do not amount in any way to the more rigorous ethical standards that have long been set by other professions. *Id.* Further distinguishing the Code of Conduct and economics in general is a lack of enforcement mechanism for the ethical standards. In sum, the AEA’s Code of Conduct is not in any way the type of ethical standards seen in other professions and discussed below in this Article.

111. HENRY S. DRINKER, *LEGAL ETHICS* 46–48 (1953).

112. Alabama was the first to have a code of ethics, which they adopted in 1887. *Id.* at 23.

113. *Id.* at 25.

114. *Id.* at 24; *ABA Timeline*, AM. BAR ASS’N, https://www.americanbar.org/about_the_aba/timeline [<https://perma.cc/EKD2-S73H>].

contend for that which duty to another client requires him to oppose.¹¹⁵

Versions of the conflict-of-interest prohibitions once proscribed by Canon 6 exist today in the ABA's Model Rules of Professional Conduct, Rules 1.7 and 1.8.¹¹⁶

Today, state courts adopt versions of the ABA's Model Rules, including the rules that address conflicts of interest, and these rules are binding on attorneys.¹¹⁷ As compliance mechanisms, a state agency monitors and enforces the ethical rules, and the rules of professional conduct require other lawyers to report ethical misconduct.¹¹⁸ The agencies also issue licenses to practice, which can also be revoked,¹¹⁹ and a disciplinary board typically handles attorney ethics violations.¹²⁰ These boards can investigate members for ethical misconduct and initiate disciplinary proceedings in state court.¹²¹ If a board finds that a lawyer has engaged in ethical misconduct, the lawyer can be fined, suspended, face censure, or be disbarred, among other penalties.¹²² Finally, lawyers in many capacities owe fiduciary duties of care, loyalty, and good faith—legal obligations outside of ethical standards.¹²³

115. CANONS OF PRO. ETHICS, Canon 6 (AM. BAR ASS'N 1908).

116. See MODEL RULES OF PRO. CONDUCT r. 1.7, 1.8 (AM. BAR ASS'N 1983).

117. *Alphabetical List of Jurisdictions Adopting Model Rules*, AM. BAR ASS'N (Mar. 28, 2018), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules [https://perma.cc/M57D-3EZA].

118. See e.g., IOWA RULES PRO. CONDUCT r. 32 (2009), <https://www.legis.iowa.gov/docs/ACO/CourtRulesChapter/01-31-2024.32.pdf> [https://perma.cc/L897-DT69]; see also MODEL RULES OF PRO. CONDUCT r. 8.3 (AM. BAR ASS'N 1983).

119. See *Lawyer Licensing*, AM. BAR ASS'N, https://www.americanbar.org/groups/legal_services/flh-home/flh-lawyer-licensing [https://perma.cc/3DGX-3TX2] (providing links to each state's licensing agency).

120. See, e.g., *Attorney Discipline*, IOWA JUD. BRANCH, <https://www.iowacourts.gov/opr/attorneys/attorney-discipline> [https://perma.cc/D8U4-UGN7].

121. See *id.*; DRINKER, *supra* note 111, at 33–42.

122. See, e.g., IOWA JUD. BRANCH, *supra* note 120; DRINKER, *supra* note 111, at 46–48.

123. Roy R. Anderson & Walter W. Steele, *Fiduciary Duty, Tort and Contract: A Primer on the Legal Malpractice Puzzle*, 47 SMUL. REV. 235, 236 n.5 (1994) (“[I]t is clear that the fiduciary duties and obligations and the breach of those obligations are separate concepts from the jurisprudence of legal ethics. Fiduciary obligation brings its own set of enforcement mechanisms and rules which are totally independent from the various state rules of ethics and enforcement procedures.”).

Violations of these duties can expose lawyers to civil and even criminal penalties.¹²⁴

2. Accountants

Public accountants also play an important role in government and public policy. Like lawyers, accountants are governed by a professional organization that promulgates ethical rules, which, if violated, can lead to license revocation, fines, and legal consequences.¹²⁵ The American Institute of Public Certified Accountants (“AIPCA”) is the body that issues licensing and publishes the *Code of Professional Conduct*, versions of which are adopted by state legislatures.¹²⁶ Under the “Integrity and Objectivity Rule,” public accountants, “[i]n the performance of any professional service . . . shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.”¹²⁷ The AICPA requires its members to be “independent in fact and appearance when providing auditing and other attestation services.”¹²⁸ The AICPA’s *Code* further clarifies that the principle of objectivity requires accountants “to be impartial, intellectually honest, and free of conflicts of interest,” and the principle of independence requires them to refrain from engaging in relationships that would appear to impair their objectivity.¹²⁹ Accountants must act with the highest ethical standards toward “clients, credit grantors, governments, employers, investors, the business and financial community, and others who rely on the objectivity and integrity of members

124. See, e.g., MICH. RULES PRO. CONDUCT r. 1.8 cmt. (2023), <https://www.courts.michigan.gov/4a5791/siteassets/rules-instructions-administrative-orders/rules-of-professional-conduct/michigan-rules-of-professional-conduct.pdf> [<https://perma.cc/XLP2-4RPV>] (discussing the civil and criminal risks associated with attorney sexual misconduct).

125. *Professional Responsibilities*, AICPA, <https://us.aicpa.org/interestareas/personal/financialplanning/resources/practicecenter/professionalresponsibilities> [<https://perma.cc/GX3K-UEK4>].

126. Some states also enact their own accountant codes of conduct. *Code of Professional Conduct Adoption*, AICPA (2016), <https://us.aicpa.org/content/dam/aicpa/advocacy/state/downloadabledocuments/code-of-conduct-map.pdf> [<https://perma.cc/8BSH-GPU3>].

127. AM. INST. OF CERTIFIED PUB. ACCTS., CODE OF PROFESSIONAL CONDUCT 29 (2014) (emphasis omitted), <https://us.aicpa.org/content/dam/aicpa/research/standards/codeofconduct/downloadabledocuments/2014-december-15-content-asof-2020-June-20-code-of-conduct.pdf> [<https://perma.cc/KT76-E7BJ>].

128. *Id.* at 6.

129. *Id.*

to maintain the orderly function of commerce.”¹³⁰ Additionally, there are circumstances where accountants must act independently from their clients, like when a CPA provides attestation services and must legally provide an objective evaluation.¹³¹ Indeed, accountants are often required and bound to not be influenced by their clients when performing their duties.¹³² Separate from the AIPCA’s *Code*, certified public accountants also owe fiduciary duties of care, loyalty, and good faith, duties that subject accountants to legal obligations.¹³³

3. Doctors

Doctors must also avoid conflicts of interest.¹³⁴ The American Medical Association (“AMA”) drafted its first *Code of Medical Ethics* in 1847,¹³⁵ and since then, it has received broad adoption: The AMA’s *Code* provides the ethical standards cited most by “courts, legislatures, administrative agencies, medical boards and other peer review entities.”¹³⁶ Additionally, “[m]ost medical societies, and virtually all state medical societies, accept the [AMA] code as the profession’s code.”¹³⁷

Like accountants and lawyers, doctors must avoid conflicts of interest. The AMA addresses Conflicts of Interest in Patient Care and states that “[t]he primary objective of the medical profession is to render service to humanity; reward or financial gain is a subordinate consideration. Under no

130. *Id.* at 5.

131. *Id.*; Vincent J. Love & John H. Eickemeyer, *Fiduciary Duty, Due Care, and the Public Interest: A Practical Dilemma for CPAs*, CPA J. (Apr. 2020), <https://www.cpajournal.com/2020/04/03/fiduciary-duty-due-care-and-the-public-interest/> [<https://perma.cc/EN5M-JCCS>].

132. Love & Eickemeyer, *supra* note 131.

133. *Id.*

134. A great deal of research has been done on the impact of undisclosed financial incentives on doctors’ decisions and the sometimes catastrophic consequences for their patients. See generally Deepa V. Cherla et al., *The Effect of Financial Conflict of Interest, Disclosure Status, and Relevance on Medical Research from the United States*, 34 J. GEN. INTERNAL MED. 429, 429 (2019).

135. *FAQ*, AMA CODE OF MED. ETHICS, <https://www.ama-assn.org/about/publications-newsletters/frequently-asked-questions-ethics> [<https://perma.cc/4KQR-T66D>].

136. FED’N OF STATE MED. BDS., ETHICS AND QUALITY OF CARE 3 (1995), <https://www.fsmb.org/siteassets/advocacy/policies/ethics-quality-care.pdf> [<https://perma.cc/A9S4-4LFN>]. See generally *Code of Ethics*, AMA, <https://www.ama-assn.org/delivering-care/ethics/code-medical-ethics-overview> [<https://perma.cc/8QF8-UMDS>]. The Code of Medical Ethics was comprehensively updated in 2016. *About*, AMA: CODE OF MED. ETHICS, <https://code-medical-ethics.ama-assn.org/about> [<https://perma.cc/J4ZR-G3J6>].

137. FED’N OF STATE MED. BDS., *supra* note 136, at 3.

circumstances may physicians place their own financial interests above the welfare of their patients.”¹³⁸ The AMA’s *Code* specifies that doctors should not prescribe treatment or care that would cause “needless expense” for the patient and where the only benefits are “for the physician’s financial benefit or for the benefit of a hospital or other health care organization with which the physician is affiliated.”¹³⁹ Indeed the AMA’s *Code* states that “[w]here the economic interests of the hospital, health care organization, or other entity are in conflict with patient welfare, patient welfare takes priority.”¹⁴⁰ Like lawyers and accountants, doctors also owe fiduciary duties to their patients. In contrast, economists, whose work also impacts the public, have none of these ethical safeguards. The next section examines why this is an issue.

II. FINANCIAL CONFLICTS OF INTEREST TODAY AND WHY THEY ARE AN ISSUE IN GOVERNMENT

As the previous Part details, the United States government and American professional organizations have long been concerned with financial conflicts of interest;¹⁴¹ however, the Supreme Court has observed that “[c]onflict of interest’ is a term that is often used and seldom defined.”¹⁴² This observation is certainly true; indeed, neither the criminal conflict-of-interest statute nor 5 C.F.R. § 2634 provide definitions of “conflict of interest.”¹⁴³ This Part first explores how different authorities today define conflicts of interest. It then discusses why financial conflicts of interests of those working in government, particularly those hired on intermittent bases, continues to be an issue.

A. Defining Conflicts of Interest

Dictionaries define conflicts of interest as arising when an individual’s private interests run counter to their official or fiduciary duties, the former of which may interfere with the individual’s judgment or decision-making in

138. *Conflicts of Interest in Patient Care*, AMA: CODE OF MED. ETHICS, <https://code-medical-ethics.ama-assn.org/ethics-opinions/conflicts-interest-patient-care> [<https://perma.cc/6QT8-GHC2>].

139. *Id.*

140. *Id.*

141. See *supra* Section I.A.

142. *Cuyler v. Sullivan*, 446 U.S. 335, 356 n.3 (1980) (Marshall, J., concurring in part).

143. See generally 18 U.S.C. §§ 201–208; 5 C.F.R. § 2634 (2024).

executing the latter.¹⁴⁴ *Black's Law Dictionary* defines a financial conflict of interest as “[a] real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.”¹⁴⁵ *Merriam-Webster* defines conflicts of interest as “[a] conflict between the private interests and the official responsibilities of a person in a position of trust.”¹⁴⁶ And the *Oxford English Dictionary*, in a proposed addition, defined conflict of interest, chiefly in the context of business, politics, and law, as “a situation whereby two or more of the interests held by, or entrusted to, a single person or party are considered incompatible or breach prescribed practice”; or more specifically, “a situation in which an individual may profit personally from decisions made in his or her official capacity.”¹⁴⁷ The Supreme Court has echoed dictionary definitions in interpreting the meaning of conflict of interest, most directly in a footnote where it stated that a conflict of interest is “a division of loyalties that affect[s] [a professional’s] performance.”¹⁴⁸

In the 1961 case *United States v. Mississippi Valley Generating Co.*,¹⁴⁹ a seminal conflict-of-interest case, the Supreme Court also weighed in on the meaning and purpose of the federal conflict-of-interest laws. In *Mississippi Valley*, it considered whether a corporation could enforce a government contract when the federal employee who negotiated the contract had a financial interest in the transaction.¹⁵⁰ The government had defended its breach of contract to the Court of Claims by presenting evidence that the government employee had violated the criminal financial conflict-of-interest statute, 18 U.S.C. § 434.¹⁵¹ The Court found that the purpose of § 434 was to ensure “honesty in the Government’s business dealings by preventing federal agents who have interests adverse to those of the Government from

144. See, e.g., *Conflict of Interest*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/conflict-of-interest> [<https://perma.cc/568G-D75E>].

145. *Conflict of Interest*, BLACK’S LAW DICTIONARY (11th ed. 2019).

146. *Conflict of Interest*, MERRIAM WEBSTER’S DICTIONARY, <https://www.merriam-webster.com/dictionary/conflict%20of%20interest> [<https://perma.cc/7ZBE-FPP7>].

147. *Conflict of Interest*, OXFORD ENG. DICTIONARY, https://www.oed.com/dictionary/conflict-of-interest_n?tab=meaning_and_use.

148. *Mickens v. Taylor*, 535 U.S. 162, 172 n.5 (2002).

149. 364 U.S. 520 (1961).

150. *Id.* at 523 (“[T]he conflict-of-interest problem presented by this case has a far-reaching significance in the area of public employment and involves fundamental questions relating to the standards of conduct which should govern those who represent the Government in its business dealings.”).

151. *Id.* at 523–25. The employee in *Mississippi Valley* had violated 18 U.S.C. § 434, which, as noted in Section I.A, was replaced by 18 U.S.C. § 208 in the following year. See *supra* Section I.A; see also 18 U.S.C. § 208.

advancing their own interests at the expense of the public welfare.”¹⁵² Concluding that the government’s breach was legitimate, the Court found that the criminal financial conflict-of-interest law “applie[d], without exception, to ‘whoever’ is ‘directly or indirectly interested in the pecuniary profits or contracts’ of a business entity with which he transacts any business ‘as an officer or agent of the United States.’”¹⁵³

The conflict-of-interest laws apply to both permanent federal government employees, at issue in *Mississippi Valley*, as well as among professionals and academics that are hired as Special Government Employees (“SGEs”), who typically serve as contractors, advisors, or researchers.¹⁵⁴ Although SGEs are not subject to the same demanding conflict-of-interest requirements as full-time employees,¹⁵⁵ 5 C.F.R. § 2635 regulates when an executive branch employee, including SGEs,¹⁵⁶ must recuse themselves “from participating

152. *Miss. Valley Generating Co.*, 364 U.S. at 548–49 (citing *United States v. Chem. Found.*, 272 U.S. 1, 18 (1926)).

153. *Miss. Valley Generating Co.*, 364 U.S. at 549.

154. *See* 18 U.S.C. § 202(a).

155. SGEs are not subjected to the same heightened conflict of interest standards as full-time employees:

[S]ection 203 and Section 205 are limited . . . in their application to SGEs. 18 U.S.C. § 203(c) and 18 U.S.C. § 205(c) contain identical provisions that substantially narrow the prohibitions with respect to SGEs. One of the most significant limitations is that SGEs are restricted by sections 203 and 205 only in connection with “particular matters involving specific parties.” Such matters typically involve a specific proceeding affecting the legal rights of parties, or an isolatable transaction or related set of transactions between identified parties; examples would include contracts, grants, applications, requests for rulings, litigation, or investigations. Unlike regular employees, SGEs may represent others or receive compensation for representational services in connection with particular matters of general applicability—such as broadly applicable policies, rulemaking proceedings, and legislation—which do not involve specific parties.

Furthermore, the restrictions on SGEs are narrowly drawn to focus only on those matters in which the SGE actually participated for the Government, as well as, in some cases, those matters actually pending in the SGE’s own agency. More specifically, all SGEs are subject to the prohibitions of sections 203 and 205 with respect to those matters in which the SGE “at any time participated personally and substantially as a Government employee or special Government employee.”

Memorandum from Stephen D. Potts, Dir., U.S. Off. of Gov’t Ethics, to Designated Agency Ethics Offs., Gen. Couns., & Inspectors Gen. (Feb. 15, 2000) (citations omitted), <https://www.oge.gov/Web/oge.nsf/Resources/DO-00-003:+Summary+of+Ethical+Requirement+s+Applicable+to+Special+Government+Employees> [<https://perma.cc/83SF-EXJQ>].

156. 5 C.F.R. § 2635.102(h) (2024) applies the conflict of interest requirements to SGEs.

personally and substantially in an official capacity in any particular matter”¹⁵⁷ or must divest themselves of a “specific financial interest.”¹⁵⁸ When considering whether an employee or SGE “is prohibited from acquiring or holding” a financial interest, the *Code of Federal Regulations* defines “financial interest” as any interest “owned by the employee or by the employee’s spouse or minor children.”¹⁵⁹ A “financial interest”

includes any current or contingent ownership, equity, or security interest in real or personal property or a business and may include an indebtedness or compensated employment relationship. It thus includes, for example, interests in the nature of stocks, bonds, partnership interests, fee and leasehold interests, mineral and other property rights, deeds of trust, and liens, and extends to any right to purchase or acquire any such interest, such as a stock option or commodity future. . . . [It also] includes service, with or without compensation, as an officer, director, trustee, general partner or employee of any person, including a nonprofit entity, whose financial interests are imputed to the employee¹⁶⁰

Additionally, both regulatory bodies and congressionally funded research entities have their own definition or standards for academics who contribute research and policy advice. For example, the Department of Health and Human Services has financial conflict-of-interest regulations that apply to researchers who receive funding through Public Health Service grants, like the National Institute of Health (“NIH”).¹⁶¹ The NIH expects “that the design, conduct, or reporting of NIH-funded research (grants and cooperative agreements) will be free from bias resulting from any Investigator’s conflicting financial interest” and requires compliance from recipients.¹⁶² According to the NIH,

[a] financial conflict of interest exists when . . . an investigator’s . . . financial interest . . . is related to the NIH-supported research (i.e., could . . . be affected by the research or is . . . in an entity whose financial interest could be affected by the research) and [] could

157. *Id.* § 2635.402(a).

158. *Id.* § 2635.401.

159. *Id.* § 2635.403(c)(1).

160. *Id.* § 2635.403(c)(1)–(2).

161. Promoting Objectivity in Research, 42 C.F.R. §§ 50.601–.602 (2024).

162. *Financial Conflicts of Interest*, NAT’L INSTS. HEALTH, <https://grants.nih.gov/grants/policy/coi/index.htm> [https://perma.cc/S9WA-U9RN].

directly and significantly affect the design, conduct, or reporting of the NIH-funded research.¹⁶³

The Environmental Protection Agency (“EPA”) likewise expects grant recipients to create unbiased work product and defines conflicts of interest as

[a]n actual or potential situation that undermines, or may undermine, the impartiality of an individual or non-federal entity because their self-interest conflicts, or may conflict, with their duty and obligations to EPA and the public in performing an EPA financial assistance agreement. The term also includes situations that create, or may create, an unfair competitive advantage, or the appearance of such, for an applicant in competing for federal financial assistance from EPA.¹⁶⁴

The Department of Energy (“DOE”) and U.S. National Academies of Science, Engineering, and Medicine (“National Academies”) also have conflict-of-interest policies. The DOE policy states that

a conflict of interest exists for individuals with a personal interest in the investigation or outcome of the action, or whose position creates the appearance of actual or perceived conflict of interest due to their participation as a representative; conflict of interest also applies to an employee of the Department whose release from his/her official position to act as a representative would give rise to unreasonable costs or whose priority work assignments preclude his/her release.¹⁶⁵

Meanwhile, the National Academies state that a conflict exists for academics appointed to its committees when: (1) “[t]he individual has a financial interest that could be affected directly and predictably by the outcome of the committee’s work”; (2) “[t]he individual’s spouse, domestic partner, or dependent child has a financial interest that could be affected directly and predictably by the outcome of the committee’s work”; or (3) “[t]he individual has a current relationship with an entity that has a financial interest that could be directly and predictably affected by the

163. *Id.*

164. *EPA’s Revised Interim Financial Assistance Conflict of Interest Policy*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/grants/epas-revised-interim-financial-assistance-conflict-interest-policy> [<https://perma.cc/7ELL-VEU9>].

165. U.S. DEP’T OF ENERGY, DOE O 333.1, ADMINISTERING WORK FORCE DISCIPLINE, ADVERSE AND PERFORMANCE BASED ACTIONS 11 (2015), <https://www.directives.doe.gov/directives-documents/300-series/0333.1-BOrder-chg1-minchg/@images/file> [<https://perma.cc/K9HR-DRXZ>].

outcome of the . . . work.”¹⁶⁶ The National Academies define financial interests to “include stocks, bonds, and other financial instruments; patents, copyrights and other intellectual property interest; and ownership interests in for profit business enterprises.”¹⁶⁷ Scientists, engineers, health professionals and other experts “may not be appointed to a [National Academies] committee charged with developing findings, conclusions or recommendations if the individual has a financial conflict of interest.”¹⁶⁸ Indeed, as the next section details, there are practical, policy, and legal reasons why agencies and federal research institutions prohibit conflicts of interest from interfering or overlapping with academic experts’ work for the federal government.

B. Why Conflicts of Interest Are an Issue for Agency Research

There is good reason why federal agencies and government-adjacent institutions like the National Academies are concerned about academic researchers’ or advisers’ conflicts of interest: financial conflicts of interest impact research outcomes. Indeed, in addition to the historical record surveyed in Part I, which sheds light on the impact of government employees’ conflicts of interest during the Spoils System and congressional claims adjudication, financial conflicts of interest arising in the context of government-sponsored academic research have long been a cause for concern. Empirical research shows that conflicts of interest can bias judgment, distort outcomes, compromise findings, and ultimately undermine the government’s integrity.¹⁶⁹

In 1965, the American Association of University Professors (“AAUP”) published a report on the “increasingly necessary and complex relationships among universities, government, and industry” and “call[ed] for more

166. NAT’L ACADS. OF SCIS., ENG’G & MED., POLICY ON COMPOSITION AND BALANCE, CONFLICTS OF INTEREST, AND INDEPENDENCE FOR COMMITTEES USED IN THE DEVELOPMENT OF FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS 2–3 (2021), <https://www.nationalacademies.org/docs/D4D336B1CB9047B19928EA8785ED2E43C913B841539A> [<https://perma.cc/74L9-PXU3>].

167. *Id.* at 3.

168. *Id.* at 2.

169. See *Research Conduct and Conflicts of Interest*, NAT’L BUREAU ECON. RSCH., <https://www.nber.org/research-conduct-and-conflicts-interest> [<https://perma.cc/R6A6-D5Z8>]; Annie Lowrey, *The Economics of Economists’ Ethics*, SLATE (Jan. 5, 2011, 5:22 PM), <https://slate.com/business/2011/01/if-they-read-their-own-research-economists-might-disclose-conflicts-of-interest-more-often.html> [<https://perma.cc/3L8Y-V5FM>]; Cherla et al., *supra* note 134, at 429.

intensive attention to standards of procedure and conduct in government-sponsored research.”¹⁷⁰ As academics became more and more involved as advisors, contractors, and researchers for the federal government, there was a simultaneous growth in “[c]onsulting relationships between university staff members and industry.”¹⁷¹ When AAUP issued its report, the organization was specifically concerned about observed favoritism of academics toward private interests. Thus, the report advised that “[w]hen a university staff member (administrator, faculty member, professional staff member, or employee) undertaking or engaging in government-sponsored work has a significant financial interest in or a consulting arrangement with, a private business concern, it is important to avoid actual or apparent conflicts of interest.”¹⁷² The AAUP identified three “potential hazards” that could arise when academics engaged in government-sponsored research while also having relationships with private businesses. First, the AAUP warned that financial conflicts of interest could lead an academic to favor the private firm’s interests over other considerations, while at the same time presenting their findings as neutral and objective scholarship.¹⁷³ Second, the AAUP cautioned that “competing demands on energies of a faculty member” could lead to disproportionate efforts, with more work contributed to the interests of the private firm.¹⁷⁴ Finally, the AAUP observed that conflicts of interest would arise when academics consulted for government agencies or a government contractor while also working for a private firm.¹⁷⁵

In academic research, some refer to the presence of conflicts of interest—the “competing demands and financial interests” that the AAUP warned against—as the “funding effect.”¹⁷⁶ The funding effect occurs when direct or indirect financial interests skew how an academic interprets, prioritizes, and/or presents research results.¹⁷⁷ A funding effect can manifest in research in a number of ways, including when an academic uses their government-funded university research to benefit a private firm without disclosing this

170. *On Preventing Conflicts of Interest in Government-Sponsored Research at Universities*, in AAUP POLICY DOCUMENTS & REPORTS 158–60 (1984).

171. *See, e.g., id.*

172. *Id.*

173. *Id.*

174. *Id.* at 159.

175. *Id.*

176. Sheldon Krinsky & Tim Schwab, *Conflicts of Interest Among Committee Members in the National Academies’ Genetically Engineered Crop Study*, 12 PLOS ONE 1, 2 (2017).

177. *Id.*

activity.¹⁷⁸ Funding effects can also lead academics to make certain data collection decisions that distort a research question.¹⁷⁹

Studies indicate that the funding effect is real: financial conflicts of interest influence research outcomes.¹⁸⁰ When financial conflicts of interest are present in research, there is “a statistically significant association between the source of funding and the outcome of the study” in favor of the institution providing the funding.¹⁸¹ Indeed, “[e]mpirical research unambiguously shows that industry-sponsored research is more likely to produce results favorable to the sponsoring industry than independently funded research.”¹⁸² Furthermore, funding effects have been found to produce more biased results when the financial support comes from private, as opposed to public, entities.¹⁸³ One study concluded that research “funded by private companies, compared to independent non-profit and government sources as controls, tended to produce outcomes consistent with the financial interest of those companies.”¹⁸⁴

There are different types of conflicts of interest. Direct and indirect financial interests (e.g., a family member’s financial interest) can have an

178. *On Preventing Conflicts of Interest in Government-Sponsored Research at Universities*, *supra* note 170, at 158.

179. See Krimsky & Schwab, *supra* note 176, at 3.

180. Sheldon Krimsky, *Combating the Funding Effect in Science: What’s Beyond Transparency?*, 21 STAN. L. & POL’Y REV. 101, 109 (2010).

181. Richard A. Davidson, *Source of Funding and Outcome of Clinical Trials*, 1 J. GEN. INTERNAL MED. 155, 155, 157 (1986); see also Krimsky, *supra* note 180; Paul L. Romain, *Conflicts of Interest in Research: Looking Out for Number One Means Keeping the Primary Interest Front and Center*, 8 CURRENT REVS. MUSCULOSKELETAL MED. 122, 123 (2015).

182. Shi-Ling Hsu, *The Accidental Postmodernists: A New Era of Skepticism in Environmental Policy*, 39 VT. L. REV. 27, 60 (2014).

183. Robin Feldman et al., *Open Letter on Ethical Norms in Intellectual Property Scholarship*, 29 HARV. J.L. & TECH. 339, 341 (2016) (“[A] 2003 study in the *Journal of the American Medical Association* [] concluded that ‘industry-sponsored research tends to draw pro-industry conclusions.’ In a meta-analysis of eight articles addressing the issue of industry-sponsored research, which together had covered more than eleven hundred original medical research studies, Bekelman et al. found that industry-sponsored trials were 3.6 times more likely to reach conclusions favorable to industry than those without industry sponsorship.”).

184. Krimsky & Schwab, *supra* note 176, at 2; see also Feldman et al., *supra* note 183, at 341. For a study into the funding effects of medical research in the pharmaceutical context, see Lee S. Friedman & Elihu D. Richter, *Relationship Between Conflicts of Interest and Research Results*, 19 J. GEN. INTERNAL MED. 51 (2004). See generally Frank Davidoff, *Between the Lines: Navigating the Uncharted Territory of Industry-Sponsored Research*, 21 HEALTH AFFS. 235 (2002).

impact on research outcomes.¹⁸⁵ For example, one study found that a source that pays for food and travel expenses can impact research.¹⁸⁶ Gifts in the form of food and travel, therefore, can impact outcomes. Data provided to academics by private sources can also be a form of consideration that creates a direct financial interest.¹⁸⁷ Furthermore, indirect incentives that do not provide immediate remuneration can also impact research.¹⁸⁸

In addition to direct and indirect funding effects, research shows that both relevant, apparent, and potential financial interests can undermine research or lead to biased results.¹⁸⁹ Relevant conflicts of interest arise when an academic receives a direct or indirect benefit from a private source that could

185. Although in the context of accountants, and therefore of limited applicability given the nature of academic economists' work, the AICPA *Code of Professional Conduct's* definitions of direct and indirect conflicts of interest are nonetheless helpful. An indirect conflict of interest is

[a] financial interest beneficially owned through an investment vehicle, an estate, a trust, or an other intermediary when the beneficiary neither controls the intermediary nor has the authority to supervise or participate in the intermediary's investment decisions. When used in this definition, control includes situations in which the covered member has the ability to exercise such control, either individually or acting together with his or her firm or other partners or professional employees of his or her firm.

AICPA, *supra* note 127, at 12 (emphasis omitted).

The AICPA's *Code* defines a direct conflict of interest as

[a] financial interest that is

- a. owned directly by an individual or entity, including those managed on a discretionary basis by others.
- b. under the control of an individual or entity, including those managed on a discretionary basis by others.
- c. beneficially owned through an investment vehicle, estate, trust, or other intermediary when the beneficiary
 - i. controls the intermediary or
 - ii. has the authority to supervise or participate in the intermediary's investment decisions.

Id. at 11 (emphasis omitted).

186. Cherla et al., *supra* note 134, at 432.

187. Sheldon Krinsky, *When Conflict-of-Interest Is a Factor in Scientific Misconduct*, 26 MED. & L. 447, 450, 452 (2007) (discussing academic ghostwriters, who are paid by companies to sign off on articles even though they "frequently do not even see the raw data about which they are writing").

188. Cherla et al., *supra* note 134, at 432–33.

189. *Id.* at 432.

impact research results.¹⁹⁰ Apparent conflicts of interest create the appearance of bias and therefore can seriously undermine the integrity of research or an institution that relies on the research.¹⁹¹ Finally, potential conflicts of interest are those where a private interest is “currently not [a] relevant interest” but has the potential to become a relevant interest.¹⁹² Although relevant conflicts of interest are generally agreed to present the greatest possibility for biased research, at least one study has found that even more remote potential conflicts do bias research.¹⁹³ Because of the distortion effects of different types of funding, the conflict-of-interest policies of some agencies, like the EPA and DOE, proscribe not just relevant conflicts but potential conflicts as well.¹⁹⁴

C. *The Impact of Disclosing Conflicts of Interest*

Conflict-of-interest disclosure is a widely used mechanism for counterbalancing the impact of conflicts of interest, and it is “attractive for its simplicity.”¹⁹⁵ Disclosure helps facilitate transparency and mitigate against the corrupting influence of funding effects.¹⁹⁶ Indeed, academic institutions and scholarly journals often require disclosure of financial interests,¹⁹⁷ which “is widely seen as a minimal requirement.”¹⁹⁸ Disclosure is also one of the

190. ORG. FOR ECON. COOP. & DEV., *MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR: A TOOLKIT* 23 (2005); Cherla et al., *supra* note 134, at 430 (defining a relevant conflict of interest as a direct connection between products discussed in an article and the company producing those products or competing products).

191. ORG. FOR ECON. COOP. & DEV., *supra* note 190, at 24; *see also* Cherla et al., *supra* note 134, at 429. For example, “[a] study claiming that exposure to asbestos-containing roofing products was within safe limits had to be withdrawn following criticism concerning” conflicts of interest arising from “associations with the asbestos industry.” *Id.* The asbestos research provides an example of both relevant and apparent conflicts of interest.

192. ORG. FOR ECON. COOP. & DEV., *supra* note 190, at 25; *see also* Cherla, *supra* note 134, at 432.

193. Cherla et al., *supra* note 134, at 432 (“Financial [conflicts of interest (“COI”)], disclosed or undisclosed, ‘relevant’ or ‘irrelevant,’ may influence published scientific studies compared to studies with no COI. Financial support provided by relevant COI may affect results by providing authors a material incentive to favor the source of monetary support.”).

194. *See supra* Section II.A.

195. Romain, *supra* note 181, at 124–25.

196. ORG. FOR ECON. COOP. & DEV., *supra* note 190, at 70.

197. *See, e.g., Completing and Submitting Disclosures*, IND. UNIV., <https://research.iu.edu/compliance/conflict-interest/disclosure.html> [<https://perma.cc/R5KV-37YL>].

198. Romain, *supra* note 181, at 124.

federal government's primary mechanisms to counteract the potential harms of financial conflicts of interest.¹⁹⁹

Disclosure laws first emerged after the 1929 stock market crash, specifically in the areas of corporate law, bankruptcy law, and regulatory law pertaining to market regulation, as well as healthcare and the sciences.²⁰⁰ It was not until the Ethics in Government Act of 1978 that Congress first required government employees to disclose financial conflicts of interest.²⁰¹ In a report on the need for financial disclosures by federal employees, the Senate Judiciary Committee identified a number of motivating reasons for imposing the requirement,²⁰² including that disclosure would bring integrity to government²⁰³ and therefore “increase public confidence in the government.”²⁰⁴ The committee found that disclosure played a role in “deter[ring] conflicts of interest from arising” in the first place and kept those with incompatible financial interests from otherwise engaging in service to the public.²⁰⁵ The committee also reported that “public financial disclosure [would] better enable the public to judge the performance of public officials . . . in light of the official's outside financial interests.”²⁰⁶ In hearings leading up to the 1978 Act, Senator Clifford P. Case observed before Congress that “such a public reporting requirement is far and away the most effective means to provide the assurance to which the public is entitled—that a public office will be treated as a public trust. Moreover, it is an affirmative approach aimed at preventing abuse of public confidence.”²⁰⁷

Courts have observed that there are four policy concerns animating conflict-of-interest disclosure laws: “the public's right to know an official's interest, deterrence of corruption and conflicting interests, creation of public

199. ORG. FOR ECON. COOP. & DEV., *supra* note 190, at 70.

200. See Margaret Kwoka & Bridget DuPey, *Targeted Transparency as Regulation*, 48 FLA. ST. U. L. REV. 385, 388 (2021).

201. Ethics in Government Act of 1978, Pub. L. No. 95-521, § 101(c), 92 Stat. 1824, 1824. The Ethics in Government Act was largely in response to the Watergate scandal. See S. REP. 95-170 (1977); Adams et al., *supra* note 102, at 617, 619.

202. S. REP. NO. 95-170, at 21–22.

203. *Id.* at 21; see also Vaughn, *supra* note 37, at 432 (“Corruption and conflict of interest violations undercut public confidence in government because they indicate a bureaucracy out of control and raise the specter that public employees will use the power of government for their own purposes.”).

204. S. REP. NO. 95-170, at 21.

205. *Id.* at 22.

206. *Id.*

207. *Disclosure of Financial Interests by Persons Engaged in the Operation of the Federal Government: Hearing on S. 343 and S. 344 Before the Subcomm. on Privileges & Elections of the S. Comm. on Rules & Admin.*, 92d Cong. 49 (1971) (statement of Sen. Clifford P. Case).

confidence in . . . public officials, and assistance in detecting and prosecuting officials who violate the law,” or use their positions for private gain to the detriment of the public.²⁰⁸ Disclosure to a university, government, publication, or other platform, facilitates transparency of financial conflicts and reduces information asymmetries so that citizens have a better understanding of an academic’s motivations. Indeed, disclosure can provide citizens with information to make better and more informed decisions,²⁰⁹ and it helps keep the “discloser from abusing its superior position.”²¹⁰ Disclosure represents a pragmatic compromise that aims to provide information and transparency while also allowing an individual to serve in government. Additionally, “it is easier to require disclosure” from an agency employee “than to regulate substantively,” which is much more resource-intensive.²¹¹

On the other hand, disclosure is a highly imperfect solution. “Compelling arguments can be made that disclosure does not effectively prevent, help identify, or avoid the appearance of investigator bias.”²¹² For example, critics point out that in the academic research context, disclosure policies often fail to achieve their stated goals.²¹³ Disclosure, it is argued, does little to nothing to prevent an author’s bias, whether conscious or unconscious.²¹⁴ Furthermore, “[e]ven when reviewers have access to [conflict-of-interest] information, disclosures of conflicts do little to help [reviewers] in the identification of biases.”²¹⁵ In other words, disclosure of conflicts are

208. See, e.g., *Plante v. Smathers*, 372 So. 2d 933, 937 (Fla. 1979) (discussing the legislative purpose of the Sunshine Amendment).

209. Omri Ben-Shahar & Carl E. Schneider, *The Failure of Mandated Disclosure*, 159 U. PA. L. REV. 647, 650 (2011) (“More information helps people make better decisions, thus bolstering their autonomy.”); see also Kwoka & DuPey, *supra* note 200, at 388 (“The idea of disclosure . . . is that it can correct imperfect or one-sided information . . . and allow for consumers or investors to decide what level of risk they are willing to tolerate alongside other factors in their decision-making.”).

210. Ben-Shahar & Schneider, *supra* note 209, at 649.

211. Paula J. Dalley, *The Use and Misuse of Disclosure as a Regulatory System*, 34 FLA. ST. U. L. REV. 1089, 1092 (2007) (explaining that substantive regulation, as opposed to disclosure, “requires identifying desirable and undesirable behaviors, showing them to be beneficial or harmful, showing that the proposed regulation will have the desired effect on the behavior, and showing that the costs of compliance with the regulation and the unintended consequences of the regulation will not outweigh its benefits”).

212. Romain, *supra* note 181, at 124; see also Dalley, *supra* note 211, at 1104–06 (discussing the limitations of disclosure’s effectiveness). In a future paper, I plan to explore in greater depth the inadequacies of disclosure and ways to remedy conflicts of interest concerns, extending my analysis beyond economics to a range of disciplines engaged in law and policymaking.

213. Inmaculada de Melo-Martín & Kristen Intemann, *How Do Disclosure Policies Fail? Let Us Count the Ways*, 23 FASEB J. 1638, 1638 (2009).

214. *Id.* at 1638–39.

215. *Id.* at 1639.

minimized, overlooked, or ignored, which may explain why some of the Uber articles explored in the Introduction were cited extensively despite conflict-of-interest disclosures.²¹⁶ That being said, where disclosures are not readily available, the lack of information helps explain why the articles were referenced by others without more hesitation.

Although disclosure on its own is inadequate to fully mitigate against funding effects, research supports its use as a mechanism to deter the pernicious effects of conflicts of interest.²¹⁷ The New York City Bar Association's study on ethics in government, which provided the foundation for the Ethics in Government Act of 1978,²¹⁸ found that disclosure assisted in "[p]reventing the use of public office for private gain."²¹⁹ Other evidence shows that when government employees disclose their financial conflicts of interest, they are less likely to abuse their position and more likely to exercise self-restraint.²²⁰

Another approach to disclosure has been to have private firms disclose payments that they make to academics. In 2010, Congress passed the Physician Payments Sunshine Act, which "requires manufacturers of drugs, medical devices, and biological products to report all payments to clinicians."²²¹ These disclosures are made available to the public.²²²

Today, all federal full-time employees in the executive branch are required to make public or confidential disclosures.²²³ Academics that serve intermittent roles as government advisors, experts, and consultants, however, are not always subject to the same conflict-of-interest and disclosure requirements as full-time employees, and where disclosure is made, it is often confidential.²²⁴ As discussed in the next Part, despite advising policy makers, providing research for government agencies, conducting and publishing studies that are relied upon and cited by federal employees as they carry out their duties, and publishing scholarship in top academic journals, economists

216. As noted earlier, however, some of the articles did not include disclosures, or, where disclosures were available, they were buried and/or not readily accessible. *See supra* notes 1–36 and accompanying text.

217. S. REP. NO. 95-170, at 21–22 (1977).

218. Ethics in Government Act of 1978, Pub. L. No. 95-521, § 101(c), 92 Stat. 1824, 1824.

219. ASS'N OF THE BAR OF THE CITY OF N.Y., *supra* note 45, at 7.

220. Vaughn, *supra* note 37, at 438.

221. Cherla et al., *supra* note 134, at 430; Physician Payments Sunshine Act, Pub. L. No. 111-48, § 6002, 124 Stat. 119, 689 (2010).

222. Cherla et al., *supra* note 134, at 430.

223. 5 C.F.R. § 2635 (2024).

224. Memorandum from Director Stephen D. Potts, *supra* note 155, at 10–18 (distinguishing 5 C.F.R. § 2635's application to federal full-time employees versus special government employees).

do not have professional ethical standards.²²⁵ There is no body that issues licenses or certifications, and economists typically do not owe fiduciary duties.²²⁶ Therefore, ethical standards for academic economists are often dictated only at the university level, if at all.²²⁷ Universities may be the only entities to require disclosure of outside financial interests—e.g., consulting for private companies—but these conflict-of-interest disclosures are typically not available to the public.²²⁸ Thus, disclosure to the institution does not provide the public and government leaders who rely on economists’ “publications, presentations, congressional testimony, and media appearances and interviews” with information to properly gauge any biases that may influence the work.²²⁹

III. ACADEMIC ECONOMISTS’ IMPACT AND INCENTIVES

The Bureau of Labor estimates that there are more than 16,000 economists working in the United States, and nearly 12,000 are employed as academic

225. See GEORGE F. DEMARTINO, *THE ECONOMIST’S OATH: ON THE NEED FOR AND CONTENT OF PROFESSIONAL ECONOMIC ETHICS* 20 (2011).

226. See *id.*

227. See Jessica Carrick-Hagenbarth & Gerald Epstein, *Considerations on Conflict of Interest in Academic Economics*, in *THE OXFORD HANDBOOK OF PROFESSIONAL ECONOMIC ETHICS* 476 (George F. DeMartino & Deirdre N. McCloskey eds., 2016).

228. Annie Waldman, *Reporting Recipe: How to Investigate Professors’ Conflicts of Interest*, PROPUBLICA (Jan. 7, 2020, 3:41 PM), <https://www.propublica.org/article/reporting-recipe-how-to-investigate-professors-conflicts-of-interest> [https://perma.cc/4DU9-E8ER] (explaining that private institutions are not required to disclose faculty conflict of interests). State laws require various degrees of disclosure to the public, often via state freedom of information requests. See, e.g., 5 ILL. COMP. STAT. 140/1 (2024) (“[T]he people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people.”); IOWA CODE § 22.2 (2024); IND. CODE § 5-14-3-1 (2024) (“[A]ll persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.”). However, when I sought financial conflict-of-interest disclosures via the freedom of information process, both Iowa State University and Purdue University claimed that the disclosures were protected under their state laws’ exceptions for “personnel files.” Email from Ann Lelis, Pub. Recs. Officer, Off. of Legal Couns., Iowa State Univ. (Feb. 9, 2022, 11:56 AM CST) (on file with author); Email from Kaity Heide, Legal Servs. Coordinator, Off. of Legal Couns., Purdue Univ., to author (Feb. 9, 2022, 8:48 AM CST) (on file with author). Illinois, on the other hand, does not consider financial disclosures personnel files. Email from Kirsten Ruby, Chief Recs. Officer, Univ. of Ill., to author (Mar. 7, 2022) (on file with author).

229. Carrick-Hagenbarth & Epstein, *supra* note 227, at 476.

economists.²³⁰ The remaining are applied economists,²³¹ who are employed by federal, state, and local governments; by private and nonprofit firms; and by research and development services.²³² Career economists employed by the federal government are not the discussion of this Article. Neither are economists employed by private management and consulting firms, whose work is transparently geared toward advancing the private interests of their employer or employer's clients.²³³ Instead, this Article focuses on academic economists—those employed by universities, who often, in their position of expertise and authority, are hired by both the government and private firms to lend insight and advise on policy.

Before discussing academic economists' conflicts of interest and issues around nondisclosure, the following Section provides an overview of the impact that economists have on policy and lawmaking, as well as the financial and career incentives that can influence their work.

A. Academic Economists' Impact on Federal Agencies and Policymaking

1. A Brief History of the Increasingly Important Role of Economists in Government

Beginning in the late nineteenth century, economics as a discipline grew in both prominence and influence. At that time, economists were seeking to position the field as an "objective deductivist science," and one that received natural "science status and prestige."²³⁴ Economists adapted mathematical formulas that emulated those used in the hard sciences and sought to create

230. *Occupational Employment and Wage Statistics: 19-3011 Economics*, U.S. BUREAU LAB. STATS., <https://www.bls.gov/oes/current/oes193011.htm#nat> [<https://perma.cc/F8BD-6JVL>]; *Occupational Employment and Wage Statistics: 25-1063 Economics Teachers, Postsecondary*, U.S. BUREAU LAB. STATS., <https://www.bls.gov/oes/current/oes251063.htm> [<https://perma.cc/UFS6-ME6J>].

231. See generally, e.g., DEMARTINO, *supra* note 225, at 19–22 (discussing the differences between the work of academic and applied economists).

232. *Id.* at 23–25.

233. For a discussion of the ethical challenges facing economists that work for consulting firms, see DEMARTINO, *supra* note 225, at 41–46. However, where economists in the private sector do participate as advisors, consultants, or researchers for the federal government, or author research that impacts government, they play a similar role as academic economists, and therefore the examination of this article would apply to them. For simplicity, I am focusing on academic economists.

234. *Id.* at 60.

“a pure science of economics on par with physics.”²³⁵ Though economics is a social science based on human dynamics and social interaction, over time, “many . . . economists [came] to believe that the economy was an object of study little different from the natural world that lent itself to rigorous value-free investigation, both abstractly and empirically,” and they “view[ed] the economy as comprising regularities that were reducible to universal attributes of human nature.”²³⁶

The idea of economics’ objectivity and place among the natural sciences “proved to be extraordinarily durable,”²³⁷ and after the First World War, economists began to emerge as influential actors in government. During the 1920s and ’30s, the federal administrative state expanded, along with “the importance of experts within it, and [economists] were very visible in this expansion,” along with scientists and doctors.²³⁸ At the time, there was movement “to make [the] government more ‘businesslike,’” and therefore “policies and administrative actions were to be based on carefully conducted investigations and on theories that were fully verified by the facts.”²³⁹ Economists were deployed to meet this objective. One year after its founding, the Federal Trade Commission (“FTC”) added an Economic Division in 1915,²⁴⁰ while the Department of Agriculture (“USDA”) created its Bureau of Agricultural Economics in 1922.²⁴¹ Economists were placed on the Executive Branch’s Industrial Relations Commission and U.S. Permanent Tariff Commission.²⁴² Thereafter, in 1946, Congress created the Council of

235. JEREMY WALKER, *MORE HEAT THAN LIFE: THE TANGLED ROOTS OF ECOLOGY, ENERGY, AND ECONOMICS* 7 (2020); DEMARTINO, *supra* note 225, at 60–61.

236. DEMARTINO, *supra* note 225, at 61.

237. *Id.* at 62. Indeed, economics is still very much perceived as objective to this day, despite extensive scholarship on the value judgements embedded into the profession. A full conversation on the debate about economics’ embedded value systems is outside the scope of this Article. For a discussion on these value systems, see generally ELIZABETH POPP BERMAN, *THINKING LIKE AN ECONOMIST: HOW EFFICIENCY REPLACED EQUALITY IN U.S. PUBLIC POLICY* (2022); BINYAMIN APPELBAUM, *THE ECONOMISTS’ HOUR: FALSE PROPHETS, FREE MARKETS, AND THE FRACTURE OF SOCIETY* (2019).

238. BERMAN, *supra* note 237, at 28; *see also* Robert H. Nelson, *The Economics Profession and the Making of Public Policy*, 25 J. ECON. LIT. 49, 53 (1987).

239. Nelson, *supra* note 238, at 52.

240. Paul A. Paulter, *A History of the FTC’s Bureau of Economics* 2 (Am. Antitrust Inst., Working Paper No. 15-03, 2015), <https://ssrn.com/abstract=2657330> [<https://perma.cc/8JQR-9S8Z>].

241. *ERS History*, U.S. DEP’T AGRIC., <https://www.ers.usda.gov/about-ers/ers-history> [<https://perma.cc/B9CL-UYK2>] (Sept. 21, 2021) (explaining that the Bureau of Agricultural Economics was the predecessor agency to the USDA’s Economic Research Service).

242. BERMAN, *supra* note 237, at 28.

Economic Advisors, which became an important advisory body for the executive branch.²⁴³

It was after the Second World War that economists, including academic economists, cemented themselves as extraordinarily influential actors in lawmaking and public policy.²⁴⁴ During this period, the modern federal administrative state that we know today was growing and taking form. The Departments of Education (“DOE”), Housing and Urban Development (“HUD”), and Human Services (“DHS”) all expanded, while the government established for the first time the Environmental Protection Agency (“EPA”), Occupational Safety and Health Administration (“OSHA”), and National Highway Traffic Safety Administration (“NHTSA”).²⁴⁵ As these agencies formed or grew, economists became increasingly active in “policy domains.”²⁴⁶

At that time,²⁴⁷ Keynesian economics was the dominant school of macroeconomics in the post-War decade.²⁴⁸ These macroeconomists “took the entire economy as their object of analysis, focusing on large-scale issues like employment levels, economic growth, inflation rates, and business cycles.”²⁴⁹ Keynesians “saw recessions and depressions as a constant threat that government could avoid through careful management.”²⁵⁰ Meanwhile, neoclassical economics emerged as the dominant microeconomic theory in the 1960s, and this school of thought would ultimately have “both broader and deeper” and more lasting influence in government.²⁵¹ For neoclassical microeconomists, the “starting assumptions were that individuals (or firms) could be treated as rational actors who sought to maximize their utility (or

243. BERMAN, *supra* note 237, at 28–29.

244. Connor Borowski, *American Identity Through the Lens of Economic Success*, U.S. BUREAU LAB. STATS. (Jan. 2020), <https://www.bls.gov/opub/mlr/2020/book-review/american-identity-economic-success.htm> [<https://perma.cc/Y4TT-9QG9>]; *see also* Nelson, *supra* note 238, at 54–56.

245. BERMAN, *supra* note 237, at 12–13; *see also* Borowski, *supra* note 244.

246. BERMAN, *supra* note 237, at 13.

247. Prior to Keynesian macroeconomics, Institutional Economics was more dominant. Institutional Economics was a school that “thought the workings of capitalism changed with the social, legal, and cultural institutions that governed it, rather than being ruled by unchanging laws of supply and demand.” BERMAN, *supra* note 237, at 25. This school was interested in historical understandings of the economy, “had little interest in mathematical theory,” and “were avid gatherers of quantitative data.” *Id.* By the 1950s, the influence of this school of thought had largely dissipated. *Id.*

248. Borowski, *supra* note 244; BERMAN, *supra* note 237, at 32.

249. BERMAN, *supra* note 237, at 25.

250. *Id.*

251. *Id.* at 26, 35; Mary S. Morgan, *Technocratic Economics: An Afterword*, 52 HIST. POL. ECON. 294, 297–99 (2020).

profits).”²⁵² But the guiding value and metric of neoclassical economics was, and continues to be, efficiency.²⁵³

As microeconomists’ influence in federal government grew, they brought the concept and value of efficiency to issues like fiscal spending, while also applying efficiency values to overarching policy goals.²⁵⁴ Indeed, Charles Schultze, who served as Chairman of the Council of Economic Advisors for the Carter administration, “stated that an economist in government appropriately serves as a ‘partisan advocate for efficiency.’”²⁵⁵ The influence of microeconomists in bringing efficiency to federal agencies cannot be overstated. For example, economists introduced cost-benefit analysis to the EPA, whereafter rules and regulations were understood to be only worth promulgating if the agency could “achieve [the] goal at minimum cost,” rather than weighing other values like air quality, quality of life, or even human life.²⁵⁶ Thus, in a field like environmental protection, efficiency often supersedes qualitative goals and is used as a justification to impede or veto rules that have immeasurable non-quantitative benefits.²⁵⁷

Although “economists who advocated for [efficiency] saw it as a neutral, technocratic framework for decision-making” and viewed its goals as “inherently unobjectionable, and its methods as objective and apolitical,”²⁵⁸ efficiency became a tool for proponents of less or no government intervention—it was advanced by private businesses and organizations like the Koch Brother’s Cato Institute, the Chicago School of Economics, the Olin

252. BERMAN, *supra* note 237, at 35. Neoclassical economics became and continues to be very influential in policymaking today. Tejvan Pettinger, *Neo-Classical Synthesis*, ECONS. (Feb. 25, 2017), <https://www.economicshelp.org/blog/6930/economics/neo-classical-synthesis/> [<https://perma.cc/X3EV-QVSU>]. When Keynesian analysis combines with neoclassical economics, it is referred to as the neoclassical synthesis. *Id.*

253. See BERMAN, *supra* note 237, at 37–38; David Colander, *What Economists Teach and What Economists Do*, 36 J. ECON. EDUC. 249, 252–54 (2005).

254. BERMAN, *supra* note 237, at 37–39.

255. Nelson, *supra* note 238, at 50.

256. BERMAN, *supra* note 237, at 38, 161–64; see Nelson, *supra* note 238, at 75–76.

257. Press Release, U.S. Env’t Prot. Agency, EPA Rescinds Unnecessary Benefit-Cost Rule (May 13, 2021), <https://www.epa.gov/newsreleases/epa-rescinds-unnecessary-benefit-cost-rule> [<https://perma.cc/87RL-4UW8>]; Exec. Order No. 13990, 86 Fed. Reg. 7037 (Jan. 20, 2021); Nelson, *supra* note 238, at 75–76. For a discussion of the benefits of cost-benefit analysis and how financial regulators like the Federal Reserve, Federal Deposit Insurance Company, and Office of the Comptroller of the Currency are not required to perform cost-benefit analysis, see David Zaring, *The Corporatist Foundations of Financial Regulation*, 108 IOWA L. REV. 1303, 1348–52 (2023).

258. BERMAN, *supra* note 237, at 38.

Foundation, and the Mont Pèlerin Society.²⁵⁹ Well-funded conservative foundations saw the focus on economic efficiency as a way to advance their deregulatory objectives, which they did by funding academic economists who had ever-greater influence in law and policy,²⁶⁰ embedding economics and economists into law and policy schools,²⁶¹ and funding federal judicial training camps on economics.²⁶² Despite some efforts by the Biden administration to move away from microeconomics, economic ideas are still extremely influential in agencies to this day, and efficiency is still often of paramount importance over other factors like fairness or public health.²⁶³

2. The Impact of Academic Economists' Research and Private Consulting

In addition to bringing microeconomic ideas and values to agencies, academic economists have enormous influence on policy through their individual research. Economists publish their research findings in the most respected academic journals, and these findings influence policy decisions.²⁶⁴

259. See PHILIP MIROWSKI & DIETER PLEHWE, *THE ROAD FROM MONT PÈLERIN: THE MAKING OF THE NEOLIBERAL THOUGHT COLLECTIVE* 30–31 (2009); see also Peter Van Doren, *Economic Efficiency*, CATO INST. (Mar. 17, 2011), <https://www.cato.org/commentary/economic-efficiency> [<https://perma.cc/PRQ2-XHU8>]. See generally BERMAN, *supra* note 237, at 73–81; Herbert J. Hovenkamp & Fiona Scott Morton, *Framing the Chicago School of Antitrust Analysis*, 168 U. PENN. L. REV. 1843 (2020); Nelson, *supra* note 238, at 60–64.

260. See DAVID AUSTIN WALSH, *CONSERVATIVE PHILANTHROPY IN HIGHER EDUCATION*, URB. INST. 1 (2019), https://www.urban.org/sites/default/files/publication/100448/literature_review_conservative_philanthropy_in_higher_education_1.pdf [<https://perma.cc/L73K-8XH4>]; Jane Mayer, *How Right-Wing Billionaires Infiltrated Higher Education*, CHRON. HIGHER EDUC. (Feb. 12, 2016), <https://www.chronicle.com/article/how-right-wing-billionaires-infiltrated-higher-education/> [<https://perma.cc/7Y3S-9Q3S>].

261. BERMAN, *supra* note 237, at 79–84; Mayer, *supra* note 260.

262. David Dayen, *Corporate-Funded Judicial Boot Camp Made Sitting Federal Judges More Conservative*, INTERCEPT (Oct. 23, 2018), <https://theintercept.com/2018/10/23/federal-judiciary-henry-manne-law-economics> [<https://perma.cc/QQ9U-2ZY3>].

263. See, e.g., BERMAN, *supra* note 237, at 7; Douglas K. Owens, *Interpretation of Cost-Effectiveness Analyses*, 13 J. GEN. INTERNAL MED. 716, 717 (1998) (“Cost-effectiveness analysis is a tool to help us understand what we get in return for the money we spend on health care. In a determination of whether to offer an intervention, economic efficiency is only one of many factors that deserve consideration. There may be good reasons to offer an inefficient intervention, and there may be good reasons not to offer an efficient intervention (such as concerns about equity or ethics). Used with an understanding of their limitations, cost-effectiveness analyses can inform decisions about the use of an intervention. We should not confuse the scalpel with the surgeon, however: cost-effectiveness analysis is a tool that cannot substitute for value judgments. We must still decide how much money we are willing to spend to improve our health.”).

264. See *supra* notes 33–36 and accompanying text.

Additionally, academic economists engage in “policy advocacy through public lectures, the publication of newspaper and magazine Op-Ed pieces and blogs, interviews, and participation as policy advocates in political campaigns.”²⁶⁵ Academic economists’ influence is bolstered by their status at a university, which provides “a seal of objectivity and credibility regarding information conveyed in articles, interviews, or Congressional testimony,” among other influential platforms.²⁶⁶

Academic economists are also influential through their work for private firms.²⁶⁷ Private firms, industry trade groups, and nongovernmental organizations seek out academic economists because “[t]heir knowledge and ‘stature’ can contribute greatly to these institutions’ boards and management, and as consultants.”²⁶⁸ Firms hire economists to serve as expert witnesses or consultants, and their opinions can impact American case law and legal precedent.²⁶⁹ Furthermore, as the Uber lobbying campaign demonstrated, the research and articles that academic economists produce for private firms can be disseminated under the appearance of independent scholarship.²⁷⁰ Taking advantage of this, companies in regulated industries combine resources to fund research centers at universities, where they deploy academic economists to write articles and white papers that have the appearance of neutral scholarship.²⁷¹ Economics is far from the only field where this practice occurs—indeed, in the natural sciences, private firms will also fund “research centers” that “typically resemble government research agencies or private

265. DEMARTINO, *supra* note 225, at 19.

266. Carrick-Hagenbarth & Epstein, *supra* note 227, at 477.

267. Luigi Zingales, *Preventing Economists’ Capture*, CHI. BOOTH REV. (July 1, 2014), <https://www.chicagobooth.edu/review/preventing-economists-capture> [<https://perma.cc/U6KJ-DPQS>] (“[O]utside of academia, the natural audience of academic economists’ work is either business people or the government officials applying some of that knowledge.”).

268. Jessica Carrick-Hagenbarth & G. Epstein, *Dangerous Interconnectedness: Economists’ Conflicts of Interest, Ideology and Financial Crisis*, 36 CAMBRIDGE J. ECON. 43, 46 (2012); see DEMARTINO, *supra* note 225, at 19.

269. See, e.g., John E. Lopatka & William H. Page, *Economic Authority and the Limits of Expertise in Antitrust Cases*, 90 CORNELL L. REV. 617, 633–37 (2005) (discussing the Court’s adoption of Chicago School models in *Sylvania* and *Matsushita*, two seminal antitrust cases that broke from established precedent).

270. See *supra* notes 7–23 and accompanying text.

271. See Valletti, *supra* note 7; see also, e.g., Daniele Rotolo et al., *Why Do Firms Publish? A Systematic Literature Review and a Conceptual Framework*, 51 RSCH. POL’Y 1, 5–8 (2022); Daisuke Wakabayashi, *Big Tech Funds a Think Tank Pushing for Fewer Rules. For Big Tech.*, N.Y. TIMES (July 24, 2020), <https://www.nytimes.com/2020/07/24/technology/global-antitrust-institute-google-amazon-qualcomm.html>.

foundations, and they often employ the traditional model of soliciting and approving research proposals from interested researchers in academia.²⁷²

3. Academic Economists' Impact as Experts, Advisers, and Consultants in Federal Agencies

As noted above, academic economists remain incredibly influential in federal policy and lawmaking. Academic economists publish empirical work that is relied on by federal officers, and they draft comments that are submitted during agency notice and comment periods, which policymakers are required to consider when drafting rules and regulations.²⁷³ Agencies frequently host workshops and panels where academic economists are invited to provide their insight into issues facing the American public.²⁷⁴ Academic economists are also routinely brought in to testify before Congress on a range of topics—from the financial industry, to deregulation, to agriculture, to antitrust.²⁷⁵

Additionally, academic economists are hired directly by federal agencies to serve in paid and unpaid executive branch positions. Academic economists often accept term appointments to serve as government advisors²⁷⁶ in the

272. THOMAS O. MCGARITY & WENDY E. WAGNER, *BENDING SCIENCE: HOW SPECIAL INTERESTS CORRUPT PUBLIC HEALTH RESEARCH* 80 (2008).

273. See, e.g., Paul A. Paulter, *A History of the FTC's Bureau of Economics* 82–84 (Am. Antitrust Inst., Working Paper No. 15-03, 2015); *A Guide to the Rulemaking Process*, OFF. FED. REGISTRAR, https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf [<https://perma.cc/P4DU-TX9R>] (“At the end of the process, the agency must base its reasoning and conclusions on the rulemaking record, consisting of comments, scientific data, expert opinions, and facts accumulated during the pre-rule and proposed rule stages.”).

274. See, e.g., Paulter, *supra* note 273, at 24 n.105, 91 n.335.

275. *Id.* at 59–60; see also, e.g., *In re Engle Progeny Cases Tobacco Litigation*, No. 08-80000(19), 2008 WL 7328585 (Fla. Cir. Ct. Nov. 12, 2008).

276. Gerald Epstein & Jessica Carrick-Hagenbarth, *Financial Economists, Financial Interests and Dark Corners of the Meltdown: It's Time to Set Ethical Standards for the Economics Profession* 2 (Pol. Econ. Rsch. Inst., Working Paper No. 239, 2010). See generally Martin Feldstein, *The Council of Economic Advisers and Economic Advising in the United States*, 102 *ECON. J.* 1223 (1992) (providing an overview of how appointed economic advisors work in federal government, with specific emphasis on the U.S. president's Council of Economic Advisers). Academic economists are often hired as experts or consultants on “temporary and intermittent” bases through 5 U.S.C. § 3109, and more than 130 agencies obtain experts and consultants under this provision. 5 U.S.C. § 3109.

White House,²⁷⁷ agencies like the FTC²⁷⁸ and the USDA,²⁷⁹ and government institutions like the Federal Reserve Bank.²⁸⁰ Academic economists will be brought in to provide expertise or advise agencies on policies and regulations.²⁸¹ They also take temporary or permanent leadership positions in these agencies.²⁸² Because of their influence in federal government, commentators have observed that economists have “tremendous influence today over the life chances of others—innumerable others.”²⁸³ Indeed, economists’ work can “introduce and restrict liberties and freedoms, incentives, rewards, punishments, and risk; they affect incomes, careers, entitlements and all the other factors that contribute to economic security.”²⁸⁴

Academic economists are also often appointed to advisory committees.²⁸⁵ “Advisory committees are generally perceived as an indispensable aid to policymakers across a wide range of technical decisions. They offer a flexible, low-cost means for government officials to consult with knowledgeable and up-to-date practitioners in relevant scientific and technical fields”²⁸⁶ Regulatory agencies like the Consumer Financial

277. *Council of Economic Advisors*, WHITE HOUSE, <https://www.whitehouse.gov/cea> [<https://perma.cc/TU4V-3YN4>].

278. See Paulter, *supra* note 273, at 36–37.

279. See *Economic Research Service*, U.S. DEP’T AGRIC.: ECON. RSCH. SERV., <https://www.ers.usda.gov/about-ers/> [<https://perma.cc/GS7M-9GE8>].

280. See, e.g., *Board Members: Lisa D. Cook*, FED. RSRV. BD., <https://www.federalreserve.gov/aboutthefed/bios/board/cook.htm> [<https://perma.cc/5SPU-KLH6>] (Sept. 13, 2023).

281. See, e.g., Jerry Ellig & Catherine Konieczny, *The Organization of Economists in Regulatory Agencies: Does Structure Matter?* 1–7 (Fed. Comm’ns Comm’n, Off. of Econ. & Analytics, Working Paper No. 48, 2019), <https://docs.fcc.gov/public/attachments/DOC-356879A1.pdf> [<https://perma.cc/H6UP-QXRG>].

282. See, e.g., Press Release, Fed. Trade Comm’n, Chair Khan Names Aviv Nevo as Agency’s Director of Bureau of Economics (Dec. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/12/ftc-chair-khan-names-aviv-nevo-agencys-director-bureau-economics> [<https://perma.cc/8XCL-QYQ3>] (announcing the appointment of Aviv Nevo as Director of the Bureau of Economics, a permanent leadership position).

283. George F. DeMartino & Deidre N. McCloskey, *Introduction* to THE OXFORD HANDBOOK OF PROFESSIONAL ECONOMIC ETHICS 6 (Jessica Carrick-Hagenbarth & Gerald Epstein eds., 2016).

284. DEMARTINO, *supra* note 225, at 4.

285. CONSUMER FIN. PROT. BUREAU, ADVISORY COMMITTEES: FREQUENTLY ASKED QUESTIONS 10, https://files.consumerfinance.gov/f/documents/cfpb_advisory-committees_faq.pdf [<https://perma.cc/FVM4-TEGL>] (“In appointing members to the committee, the Director shall seek to assemble members who are economic experts and academics with diverse points of view; such as experienced economists with a strong research and publishing or practitioner background, and a record of involvement in research and public policy, including public or academic service.”).

286. SHEILA JASANOFF, THE FIFTH BRANCH: SCIENCE ADVISERS AS POLICYMAKERS 1 (1990).

Protection Bureau and the USDA routinely bring in academic economists to serve on advisory committees.²⁸⁷ Academic economists will often be brought in as SGEs “‘who [are] retained, designated, appointed, or employed’ by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days.”²⁸⁸ Because they are employed for less than 130 days, they are “subject to less restrictive conflict of interest requirements” and disclosures.²⁸⁹ Specifically, 5 C.F.R. § 2635.402(d)(3) provides for individual waivers of conflict-of-interest prohibitions for SGEs on advisory committees.²⁹⁰ Thus, academic economists who work for federal agencies in these intermittent capacities can be subject to more relaxed conflict-of-interest prohibitions or disclosure requirements than full-time employees.

287. See, e.g., *Academic Research Council*, CONSUMER FIN. PROT. BUREAU, <https://www.consumerfinance.gov/rules-policy/advisory-committees/academic-research-council> [<https://perma.cc/U7R6-YCA3>]; *ATAC for Trade in Animal and Animal Products*, U.S. DEP’T AGRIC., <https://fas.usda.gov/atac-trade-animals-and-animal-products> [<https://perma.cc/9ZQG-ABF2>].

288. Memorandum from the Off. of Gov’t Ethics on Ethical Requirements Applicable to Special Gov’t Emps. to Designated Agency Ethics Off. 1 (Feb. 15, 2000), [https://www.oge.gov/Web/oge.nsf/0/5E9A1888068E7CDE852585BA005BED9D/\\$FILE/DO-00-003-2.pdf](https://www.oge.gov/Web/oge.nsf/0/5E9A1888068E7CDE852585BA005BED9D/$FILE/DO-00-003-2.pdf) [<https://perma.cc/SKJ8-DZDP>].

289. JASANOFF, *supra* note 286, at 1; see also 5 C.F.R. § 2634.905 (2024). Interestingly, this was not always the case. Until the modern conflict of interest laws were passed in the 1960s, those who would today qualify as SGEs were held to the same conflicts and disclosure standards as full-time government staff. As noted in a 1962 Senate Report on the conflict of interest laws:

In considering the application of present law in relation to the Government’s utilization of temporary or intermittent consultants and advisers, it must be emphasized that most of the existing conflict-of-interest statutes were enacted in the 19th century—that is, at a time when persons outside the Government rarely served it in this way. The laws were therefore directed at activities of regular Government employees, and their present impact on the occasionally needed experts—those whose main work is performed outside the Government—is unduly severe. This harsh impact constitutes an appreciable deterrent to the Government’s obtaining needed part-time services.

S. REP. NO. 87-2213, at 6 (1962).

290. 5 C.F.R. § 2635.402(d)(3). Some commentators are quite critical of the lax disclosure requirements for advisory committees:

[A]dvisory committees occupy a curiously sheltered position in the landscape of American regulatory politics. In an era of bitter ideological confrontations, their role in policymaking has gone largely unobserved and unchallenged. . . . Yet, given the centrality of their role in the regulatory process, the activities of scientific advisers are poorly documented and their impact on policy decisions is difficult to understand or evaluate.

JASANOFF, *supra* note 286, at 1.

Finally, academics also influence policy through research supported by federal grants. Grant recipients do not have conflict-of-interest requirements imposed by the federal government, but as a condition of the grant, recipients or their institutions can be “required . . . to set up their own systems for monitoring their employees’ conflicts of interest, including requirements that individuals working on government grants annually disclose to their employers any conflicting interests or certify that no conflicts exist.”²⁹¹ This is referred to as “delegated monitoring,” which makes it more difficult for the government to understand if the research is biased due to conflicts of interest.²⁹²

In sum, there are many ways that academic economists work with or influence the federal government, directly or indirectly, and each circumstance presents unique rules regarding conflicts of interest and their disclosure.

B. Pressures and Incentives That Animate Business-Friendly Scholarship

There are a number of career and financial incentives that can motivate academic economists to work for private firms and incentivize them to produce business-friendly scholarship. First, economists “gain prestige, income and useful knowledge” by working with private firms.²⁹³ Academic economists work for private firms as consultants and by sitting on corporate boards.²⁹⁴ Consulting in particular can be career-enhancing and incredibly lucrative. “Nearly two-thirds of academic economists have taken on work as paid consultants at some point in their careers—and two in five have done so within the past five years.”²⁹⁵ Indeed, faculty have remarked that “[a] perk of academic employment [for academic economists] is the ability to earn additional income from non-university entities by consulting.”²⁹⁶ Academic economists are paid on average \$267 per hour, but those who consult for large

291. Kathleen Clark, *Ethics, Employees and Contractors: Financial Conflicts of Interest in and out of Government*, 62 ALA. L. REV. 961, 990 (2011).

292. *Id.*

293. Carrick-Hagenbarth & Epstein, *supra* note 268, at 46.

294. *Id.*

295. David A. Price, *The Economist as Consultant*, ECON FOCUS, Second/Third Quarter 2021, at 28, https://www.richmondfed.org/-/media/RichmondFedOrg/publications/research/econ_focus/2021/q2-3/profession.pdf [<https://perma.cc/VP8D-NPS8>].

296. Kelsey L. Conley et al., *Consulting Activities of Agricultural Economists and Response to University Policies*, 41 APPLIED ECON. PERSPS. & POL’Y 650, 650 (2019).

corporations can be paid much more.²⁹⁷ But in order to obtain positions, academic economists typically have to show that their research is friendly to business—if the economist takes a position that “might signal an antibusiness bias,” the firm would understandably be cautious in paying them to advise or bringing them on in a leadership capacity.²⁹⁸

For an academic economist to obtain a high-paying consulting position, they typically must be tenured at a well-respected institution.²⁹⁹ But obtaining a faculty position is quite difficult because the academic market for economists is highly competitive.³⁰⁰ In order to be a viable candidate and subsequently get promoted, publication is necessary, and because of this, there are a number of reasons why academic economists’ research might have a favorable bias toward private firms.³⁰¹ First, empirical research suggests that pro-business findings are cited by others with greater frequency.³⁰² This could be attributed to journal editors, who are gatekeepers—indeed, “the ability to publish is mostly determined by editors and referees.”³⁰³ Editors are typically successful academic economists, and given that so many academic economists work for private interests and industry, authors would not be unreasonable in thinking that taking a pro-business bias would increase their odds of publication—indeed there is a correlation between research findings that reflect positively on businesses and greater publication frequency.³⁰⁴ Although economic journals are peer reviewed and have an editorial staff and board,³⁰⁵ the editor has immense power in deciding what will be published.³⁰⁶ Part of an editor’s power arises from the fact that, unlike with legal publications, economists are prohibited from submitting articles simultaneously to multiple journals.³⁰⁷ Additionally, the peer review timeline

297. Price, *supra* note 295.

298. Zingales, *supra* note 24, at 131; *see also, e.g.*, Horan, *supra* note 9 (explaining how the rideshare company Uber started its own academic research program to support its business objectives and “engaged the participation of well known, often brand name economists, who usually were open public supporters of Uber’s agenda. The articles were published in journals considered prestigious”).

299. Zingales, *supra* note 24, at 131.

300. *See id.*

301. *Id.* at 132–38, 141–43.

302. *Id.* at 137–38.

303. *Id.* at 132.

304. *See id.* at 136–37.

305. *See generally* AEA Journals, AM. ECON. ASS’N, <https://www.aeaweb.org/journals> [<https://perma.cc/9DUQ-TUZE>] (showing the mastheads of various journals published by the AEA).

306. Zingales, *supra* note 24, at 132–33.

307. *Id.* at 133.

can be quite elongated—“manuscripts are subjected to many lengthy revisions”³⁰⁸—and therefore economists eager to avoid additional delays have further incentive to write toward a journal editor’s biases.³⁰⁹

Another incentive for economists to author business-friendly scholarship is the need to cultivate relationships. First, for the academic, their research and publications “will gain credibility by winning popularity and support among business people or the government.”³¹⁰ Additionally, academic economists may develop friendly relationships with their private sources: “It’s not just the money, it’s also the social aspect—[academic economists] become friends with the people they work with, which can change their perspective of reality.”³¹¹ However, most importantly, economic research almost always depends on large datasets, and building relationships with private firms is therefore often essential.³¹² Indeed, accessing a company’s “proprietary dataset can make a researcher’s career.”³¹³ Therefore, a transactional dynamic between the firm providing the data and researcher can emerge:

Generally, the first concern [of the firm] is not to damage the business in any possible way. Thus, any business protects itself with some right of refusal, in case the data amount to some evidence that could harm the business. Researchers, anticipating that the company that provided the data may prevent controversial evidence from being published, will prefer to focus on either noncontroversial topics or topics for which the results are likely to cast the company in good light.³¹⁴

This “implicit agreement” to tailor research to the interests of the firm that provides the data³¹⁵ can be an important part of the relationship, and it has been shown to impact research by making it more favorable toward the private firm.³¹⁶ Additionally, as was demonstrated with the Uber research, not

308. *Id.* at 125.

309. *Id.* at 137–38.

310. *Id.* at 125.

311. Emily Flitter et al., *Special Report: For Some Professors, Disclosure Is Academic*, REUTERS (Dec. 20, 2010), <https://www.reuters.com/article/us-academics-conflicts/special-report-for-some-professors-disclosure-is-academic-idUSTRE6BJ3LF20101220> [https://perma.cc/NBQ8-DTA6] (quoting Dan Ariely, a professor of psychology and behavioral economics at Duke University).

312. Zingales, *supra* note 24, at 142.

313. *Id.*

314. *Id.*

315. *Id.*

316. *Id.* at 142–43.

only do firms have a say in who can use their data, they have been known to target specific economists whose research is dependably favorable to their business, or who use the data “only in ways that are blessed by the corporation.”³¹⁷

Finally, incentives can also arise from fundraising considerations and grant funding at universities.³¹⁸ Universities receive substantial federal grant funding, and they are also top fundraisers.³¹⁹ Among public schools, “[r]educed funding and the promotion of a business model for public universities” have led universities to seek funding from major private donors, who are often private firms or affiliated with private businesses.³²⁰ Although tenured faculty have academic freedom that donations and grants are not supposed to constrain,³²¹ these financial ties may incentivize academic economists to bias their research to secure future funding.³²² Indeed,

[u]niversities now urge their faculty members to seek corporate sponsorship and privatize the gains from their research. Following the money often means abandoning any pretense of objectivity. It de-incentivizes the pursuit of risky, creative ideas that have little chance of gaining funding. It can also lead to downright corruption. Many studies document the impact of financial incentives on the results of drug trials, the development of new genetic engineering

317. Zingales, *supra* note 14.

318. David W. Chen & Michael Corkery, *A New Playbook for College Donors: Power Politics*, N.Y. TIMES (Dec. 13, 2023), <https://www.nytimes.com/2023/12/13/us/universities-donors-penn-harvard.html>.

319. Zingales, *supra* note 24, at 138. *See generally* GENEVIEVE G. SHAKER & VICTOR M.H. BORDEN, HOW DONORS GIVE TO HIGHER EDUCATION: THIRTY YEARS OF SUPPORTING U.S. COLLEGE AND UNIVERSITY MISSIONS 7–43 (2020), <https://www.tiaa.org/content/dam/tiaa/institute/pdf/research-report/2020-03/tiaa-institute-how-donors-give-to-higher-education-rd-shaker-march-2020.pdf> [https://perma.cc/8CZ3-Y328] (discussing research on the growth of private donations to higher education institutions by a small group of institutional donors who are particularly targeting research in their donor intent).

320. Zingales, *supra* note 24, at 138.

321. Chen & Corkery, *supra* note 318; *see also* Maureen Farrell & Rob Copeland, *Bill Ackman’s Campaign Against Harvard Followed Years of Resentment*, N.Y. TIMES (Dec. 12, 2023), <https://www.nytimes.com/2023/12/12/business/bill-ackman-harvard-antisemitism.html>; Peter Rudegeair, *Bill Ackman’s Clash with Harvard over Stock Gift Reveals the Messy World of Big Donations*, WALL ST. J. (Dec. 13, 2023), <https://www.wsj.com/us-news/education/bill-ackmans-clash-with-harvard-over-stock-gift-reveals-the-messy-world-of-big-donations-2d12dc4b>.

322. *See* SHAKER & BORDEN, *supra* note 319, at 3–4 (discussing the influence of private donations).

methods (in which genes themselves can be patented), and even researcher participation in insider trading.³²³

Additionally, donors establish centers and think tanks at academic institutions that can further bias research findings in favor of business and private interests.³²⁴

C. Economics' Lack of Code of Ethics or Prohibition Against Conflicts of Interest

Although academic economists' work for private industry is common, economics as a field does not have a code of ethics or rules governing conflicts of interest and their disclosure.³²⁵ As noted earlier, the fact that economics continues without professional ethics standards is unusual. Indeed, around the time that the American Bar Association was publishing its first Canon of Ethics in the early twentieth century, other "emerging professions formed new professional associations and took care to craft bodies of professional standards to guide the privileged members of their communities as they sought to achieve their purposes."³²⁶ Members of professions sought to "elevate the status" and respect for their field, and one way of achieving this was by creating uniform ethical standards.³²⁷ These ethical rules endowed professions with greater integrity and therefore sustainability: Professions without ethical standards were seen as "jeopardiz[ing] the standing of the [professional] group as a whole," while also "depreciat[ing] the value of its service. The enforcement of the [ethical] standard [was] a matter of self-preservation."³²⁸ At least 130 codes were created by various associations and professions—"ranging from accountants, architects, and doctors to ice cream makers, peanut butter manufacturers, shoe wholesalers, and most everything in between."³²⁹ One explanation for the adoption of ethical standards by a broad range of professions was the emphasis on the need to serve the public.³³⁰ Despite the fact that, like other professions at the time, there was momentum behind establishing economics

323. Carrick-Hagenbarth & Epstein, *supra* note 227, at 480 (citations omitted).

324. For an example of this, see Wakabayashi, *supra* note 271.

325. George DeMartino, *A Professional Ethics Code for Economists*, 48 CHALLENGE 88, 89 (2005).

326. DEMARTINO, *supra* note 225, at 57.

327. *Id.*

328. *Id.* (citing EDGAR L. HEERMANCE, CODE OF ETHICS: A HANDBOOK 1 (1924)).

329. *Id.*

330. *Id.*

as respectable, authoritative, scientific, and “on par with its most prominent peers,” “[t]he profession did not adopt a code of any sort.”³³¹ Although economics overcame many of the reputational concerns that, in part, motivated other professions to adopt professional ethics standards, the dearth of ethical standards in economics has contributed to the misleading scholarship and corrupted policy outcomes seen with Uber and discussed in the next Part. This lack of independence and the harm that economists’ conflicts of interest have caused is undermining economics, leading many to question the value that economics brings to policymaking and federal agencies when the outcomes and conclusions are too frequently biased by nondisclosed financial interests.³³²

IV. ACADEMIC ECONOMISTS’ CONFLICTS OF INTEREST

So far, this Article has discussed conflicts of interest and why the federal government has traditionally prohibited them or required their disclosure. This Article has also surveyed how academic economists advise and influence government and how, despite this influence, economics as a profession does not have an ethical code or rules regarding conflicts of interest and their disclosure. This Part focuses on the work of academics from different economics disciplines—financial, agricultural, and environmental—and details examples of how academic economists influence policy and lawmaking, as well as the issues that have arisen when conflicts of interest exist.

A. *Academic Financial Economists and the Great Recession*

Academic economists’ role in crafting policies that led to the Great Recession provides a stark example of the detrimental effects that conflicts

331. *Id.* at 58.

332. See Jesse Eisinger & Justin Elliott, *These Professors Make More Than a Thousand Bucks an Hour Peddling Mega-Mergers*, PROPUBLICA (Nov. 16, 2016), <https://www.propublica.org/article/these-professors-make-more-than-thousand-bucks-hour-peddling-mega-mergers> [<https://perma.cc/8BQR-TZ5H>]; Matt Stoller & Austin Frerick, *Should We Break Up the Tech Giants? Not if You Ask the Economists Who Take Money from Them*, FAST CO. (Oct. 19, 2018), <https://www.fastcompany.com/90253465/should-we-break-up-the-tech-giants-not-if-you-ask-the-economists-who-take-money-from-them> [<https://perma.cc/29VP-6FYH>]; Tim Wu, *Tim Wu Responds to Letter by Former Agency Chief Economists*, PROMARKET (Dec. 5, 2023), <https://www.promarket.org/2023/12/05/tim-wu-responds-to-letter-by-former-agency-chief-economists> [<https://perma.cc/CBF6-S9K6>].

of interest can have when they are permitted to persist.³³³ The documentary *Inside Job*, which detailed the influence of academic economists in facilitating the Great Recession, exposed how “the economics discipline ha[d] been systematically subverted . . . by money” and the ways in which academic financial economists advising on financial policy leading up to 2008 were influenced by private interests.³³⁴ The film showed that some of the most prominent academic economists in America at the time “had lucrative connections with private financial firms that they did not disclose to the public even when they were proffering policy advice on financial matters that could [beneficially] affect the financial fortunes” of those very firms.³³⁵ The documentary detailed the ways that academic economists were paid by companies “to testify in Congress, to serve on boards of directors, testify in antitrust cases and regulatory proceedings, and to give speeches to the companies and industries they stud[ied] and wr[ote] about.”³³⁶ A study that looked into the conflicts of interest of academic economists specializing in the financial industry found that while nearly eighty percent of these academics “worked in some capacity with private institutions,” they overwhelmingly failed to disclose these conflicts in “media op-eds, interviews, testimonies,” and their scholarship.³³⁷

The work of Federic Mishkin highlights the impact that academic economists’ conflicts of interest had on policy and government decision-making leading to the Great Recession. Mishkin has been an academic economist at Columbia Business School since 1983 and served as a governor on the Federal Reserve Board (“Fed”) from September 2006 through August 2008.³³⁸ A few months prior to joining the Fed, Mishkin received \$124,000 from the Icelandic Chamber of Commerce to cowrite a report, which, when

333. Kate Conlow, *Digging In: Ethics, Disclosure, and Conflicts of Interest in Academic Agricultural Economic Publishing*, in REFORMING AMERICA’S FOOD RETAIL MARKETS 129 (2022).

334. *INSIDE JOB* (Sony Pictures Classics 2010); Jonathan Wight, *The Ethical Economist*, in THE OXFORD HANDBOOK OF PROFESSIONAL ECONOMIC ETHICS 139 (George F. DeMartino & Deirdre N. McCloskey eds., 2016) (quoting Charles Ferguson, *The Director of ‘Inside Job’ Replies*, FIN. TIMES (Oct. 14, 2010), <https://www.ft.com/content/f4cc3383-a742-38ca-9a06-a8181a22eb24>; see also Conlow, *supra* note 333, at 127–31.

335. Carrick-Hagenbarth & Epstein, *supra* note 268, at 43–44.

336. Wight, *supra* note 334, at 139; see also Conlow, *supra* note 333, at 129.

337. Carrick-Hagenbarth & Epstein, *supra* note 268, at 45.

338. *Federic Mishkin*, COLUM. BUS. SCH., <https://business.columbia.edu/faculty/people/federic-mishkin> [<https://perma.cc/F2FZ-89NB>].

published, was titled *Financial Stability in Iceland*.³³⁹ The report countered credible studies raising the alarm about Iceland's pending banking crisis.³⁴⁰ Nonetheless, Mishkin's work, which was relied upon by Iceland's government, found that "financial fragility is not high and the likelihood of a financial meltdown is very low."³⁴¹ "Two years later, the Icelandic financial system collapsed."³⁴²

In the wake of the economic collapse, Lawrence H. Summers—a Harvard professor and the university's former president, who also served as Treasury Secretary under President Clinton—became President Obama's chief economic advisor and had much authority and influence over decisions related to recovering from the 2008 financial crisis.³⁴³ However, from 2001 through 2008, Summers earned "more than \$20 million from the financial-services sector."³⁴⁴ In the two years leading up to his position under Obama, Summers was teaching at Harvard while also advising the hedge fund D.E. Shaw on a part-time basis,³⁴⁵ for which he earned more than \$5 million.³⁴⁶ Furthermore, leading up to the 2008 economic crash, Summers earned nearly \$3 million from speaking engagements to the Wall Street firms that the government then bailed out while under his leadership.³⁴⁷ Summers has also been a "long-standing advoca[te] of financial deregulation,"³⁴⁸ and although

339. Wight, *supra* note 334, at 138. Like chambers of commerce in the United States, the Iceland Chamber of Commerce engages members of the business community "to participate in any type and form of work aimed at reforming and improving the business environment and enhancing prosperity." *About Us*, ICE. CHAMBER OF COM., <https://www.chamber.is/about-us> [<https://perma.cc/NN3Z-WZ2B>].

340. Gylfi Zoega & Jon Danielsson, *Entranced by Banking*, CEPR: VOXEU (Feb. 9, 2009), <https://cepr.org/voxeu/columns/entranced-banking> [<https://perma.cc/783D-RKS3>] (contrasting critical reports to official reports, such as the one coauthored by Mishkin and the Icelandic Chamber of Commerce).

341. FREDERIC S. MISHKIN & TRYGGVI T. HERBERTSSON, *FINANCIAL STABILITY IN ICELAND* 56 (2006).

342. Wight, *supra* note 334, at 138.

343. Jeanne Sahadi, *Obama Names His Economic Team*, CNN MONEY (Nov. 24, 2008, 3:19 PM), https://money.cnn.com/2008/11/24/news/economy/obama_economic_team/ [<https://perma.cc/RJX9-EA57>].

344. Carrick-Hagenbarth & Epstein, *supra* note 268, at 44.

345. Louise Story, *A Rich Education for Summers (After Harvard)*, N.Y. TIMES (Apr. 5, 2009), <https://www.nytimes.com/2009/04/06/business/06summers.html>; Jeff Zeleny, *Financial Industry Paid Millions to Obama Aide*, N.Y. TIMES (Apr. 3, 2009), <https://www.nytimes.com/2009/04/04/us/politics/04disclose.html>.

346. Zeleny, *supra* note 345.

347. *Id.*

348. Carrick-Hagenbarth & Epstein, *supra* note 268, at 44.

his history of preferencing large businesses is well-documented,³⁴⁹ his conflicts of interest were not until he was required to disclose them by federal law.³⁵⁰

Although the Great Recession is now in the past, Summers' practice of not disclosing his conflicts of interest continues.³⁵¹ Summers is still one of the most influential economists, regularly appearing on news channels ranging from *Bloomberg's* Wall Street Week to CNN and Fox News to give expert opinions and insight on topics like inflation and the state of the economy; he also regularly publishes a column on the economy in the *Washington Post*.³⁵² Although his biographies provided to the public in his interviews and writing highlight his role in government and at Harvard, these public appearances omit his continued work advising and serving on the boards of Square, States Title/Doma, SkillSoft Corporation, D.E. Shaw & Co., Citi, Digital Currency Group, and the Peterson Institute.³⁵³

B. Academic Agricultural Economists and the USDA

Like the financial sector, academic economists are actively involved in the agriculture sector and influence federal policy through their work for the USDA.³⁵⁴ At the same time that they advise government, academic economists often consult or serve on the boards of companies or industry

349. See, e.g., Maxwell Strachan, *The Larry Summers Hall of Shame*, SALON (Sept. 25, 2010, 3:01 PM), https://www.salon.com/2010/09/25/larry_summers_top_ten_blunders [<https://perma.cc/Z7HQ-EJB9>]; Letter from Revolving Door Project to Lawrence Bacow, President, Harvard Univ., John Micklethwait, Ed.-in-Chief, Bloomberg News, Sally Buzbee, Exec. Ed., Washington Post (July 11, 2022) <https://therevolvingdoorproject.org/rdp-urges-president-lawrence-bacow-mr-john-micklethwait-and-ms-sally-buzbee-to-publish-larry-summers-corporate-funding-in-new-letter/> [<https://perma.cc/R2ZR-GQTM>].

350. Zeleny, *supra* note 345.

351. See Letter from Revolving Door Project, *supra* note 349.

352. For example, Summers was a contributing columnist in a 2022 *Washington Post* article. Lawrence H. Summers, Opinion, *Curbing Inflation Comes First, but We Can't Stop There*, WASH. POST (Oct. 31, 2022), <https://www.washingtonpost.com/opinions/2022/10/31/inflation-interest-rates-economy-federal-reserve> [<https://perma.cc/2976-XU9W>].

353. *Biography*, LARRY SUMMERS, <http://larrysummers.com/press-contacts/biography> [<https://perma.cc/BBF4-HMPW>]; see also Jeff M.A. Hauser, Opinion, *Larry Summers' Undisclosed Corporate Ties Threaten Harvard's Credibility*, HARVARD UNIV.: THE HARVARD CRIMSON (Mar. 1, 2024), <https://www.thecrimson.com/article/2024/3/1/hauser-summers-corporate-ties/> [<https://perma.cc/6TY8-C3R7>].

354. See, e.g., U.S. DEP'T OF AGRIC., THE ROLES OF ECONOMISTS IN THE U.S. DEPARTMENT OF AGRICULTURE (2008), https://www.ers.usda.gov/webdocs/publications/42701/11260_ap031.pdf?v=0 [<https://perma.cc/3PYC-MBFG>].

groups like the National Cattlemen’s Beef Association (“NCBA”).³⁵⁵ Despite the influence they have over policies that impact the public, disclosure of conflicts of interest among these academic economists is uncommon.

For example, in August 2020, Collin Peterson and Michael Conaway, the chairman and ranking member of the U.S. House of Representatives’ Committee on Agriculture, wrote to Secretary Sonny Perdue requesting that the USDA’s Office of the Chief Economist look into “unprecedented stress” faced by the U.S. beef sector as a result of the COVID-19 pandemic.³⁵⁶ This was when the grocery store prices for beef had become extremely high.³⁵⁷ Congress was concerned with how the “[c]urrent issues and trends in cattle markets, including structure of the industry, price discovery and methods to address deficiencies, price reporting, purchasing mandates, and barriers to entry in the packing sector” had contributed to the beef price fluctuations, meat shortages, and lower prices received by the ranchers who sell their cattle to the meatpackers.³⁵⁸ The letter also came on the heels of a major cyberattack on JBS, a Brazilian-owned meatpacker that controls a quarter of the United States’ beef processing capacity.³⁵⁹ Congress wanted academic economists to provide a report and quarterly briefings so that the government could “fully examine and bolster the beef sector, ameliorating [concentration] concerns and ensuring food security for America’s future.”³⁶⁰

355. Conlow, *supra* note 331, at 130; Flitter et al., *supra* note 309.

356. Letter from Collin Peterson, Chairman, U.S. House of Representatives Comm. on Agric., and Michael Conway, Ranking Member, U.S. House of Representatives Comm. on Agric., to Sonny Perdue, Sec’y of Agric., U.S. Dep’t of Agric. (Aug. 7, 2020), https://agriculture.house.gov/uploadedfiles/080720_letter_to_sec.pdf?utm_campaign=498-520 [<https://perma.cc/8FV2-WPJH>].

357. James Stratton, *KCCI Investigates: Why Are Beef Prices Rising?*, KCCI DES MOINES (Nov. 11, 2021), <https://www.kcci.com/article/as-consumer-beef-prices-rise-farmers-look-to-level-the-playing-field/38225523> [<https://perma.cc/ZK5A-62Y2>].

358. Letter from Collin Peterson, *supra* note 356.

359. Amelia Pollard, *‘Big Four’ Meatpackers Are Crushing Small Ranchers*, AM. PROSPECT (June 9, 2021), <https://prospect.org/power/big-four-meatpackers-crushing-small-ranchers> [<https://perma.cc/PN3G-58XV>].

360. Letter from Collin Peterson, *supra* note 356. At the same time the House Agriculture Committee issued its request, Congress was also “considering whether to revise the Livestock Mandatory Reporting Act of 1999 (LMRA), which mandates price reporting and transparency in the beef sector.” Conlow, *supra* note 333, at 126; *see also*, Jacqui Fatka, *Congress Gets More Time to Work on Livestock Price Reporting*, FARMPROGRESS (Dec. 9, 2021), <https://www.farmprogress.com/farm-policy/congress-gets-more-time-work-livestock-price-reporting> [<https://perma.cc/PUH2-4C7W>]. The potential revisions to the Act aimed to address a number of concerns regarding continued lack of price transparency, which were brought up in the letter to Secretary Perdue.

The beef industry is structured so that ranchers and farmers breed cattle, then sell the cattle to feedlots where they are fattened.³⁶¹ After that, feedlots sell the cattle to meatpackers that kill and process the meat, which is then sold to wholesalers and grocery stores.³⁶² In this vertical supply chain, the feedlot and meatpacking stages have largely been consolidated and are controlled by four firms: Cargill, JBS, National Beef, and Tyson.³⁶³ Ranchers refer to them as the “Big Four,” and they “purchase and process 85 percent of beef in the United States, giving them immense economic control.”³⁶⁴ Indeed, “these four middlemen firms are both the buyers and the sellers”—they hold both monopsonies and monopolies in the market, and as a result they have “significant sway on both the price of cattle bought off the ranch and the price of beef bought at the supermarket.”³⁶⁵

It was against this backdrop that Congress issued its requests to Secretary Perdue. The final USDA-commissioned report is titled *The U.S. Beef Supply Chain: Issues and Challenges*. At nearly 200 pages, the report is comprised of ten papers edited and written by academic agricultural economists from land grant universities.³⁶⁶ Overall, the papers in the report minimize the impact of the four packers on the stress of the beef cattle market.³⁶⁷ Instead, the report concludes that both the market concentration and nontransparent pricing in the vertical supply is better for consumers, and it argues for no changes to the status quo.³⁶⁸ Furthermore, although the report includes biographies for each economist, there is no disclosure of consulting work or other conflicts of interest that might impact the objectivity of the research.³⁶⁹ This is despite the fact that multiple economists work for companies and

361. *Sector at a Glance*, U.S. DEP’T AGRIC.: ECON. RSCH. SERV., <https://www.ers.usda.gov/topics/animal-products/cattle-beef/sector-at-a-glance> [<https://perma.cc/6JAC-GME9>] (Aug. 30, 2023).

362. *Id.*; Pollard, *supra* note 359.

363. Tom Polansek, *Explainer: How Four Big Companies Control the U.S. Beef Industry*, REUTERS (June 17, 2021), <https://www.reuters.com/business/how-four-big-companies-control-us-beef-industry-2021-06-17/> [<https://perma.cc/8ZJN-KJ4T>].

364. Pollard, *supra* note 359.

365. *Id.*

366. AGRIC. & FOOD POL’Y CENTER, TEX. A&M UNIV., *THE U.S. BEEF SUPPLY CHAIN: ISSUES AND CHALLENGES, PROCEEDINGS OF A WORKSHOP ON CATTLE MARKETS* xii–xiv (Bart L. Fischer et al. eds., 2021) [hereinafter *USDA CATTLE MARKET REPORT*]; *see also* Conlow, *supra* note 333, at 126.

367. *See* *USDA CATTLE MARKET REPORT*, *supra* note 366.

368. *Id.* at x–xi.

369. *Id.* at xii–xiv.

industry associations whose business practices and market shares the report was supposed to examine objectively.³⁷⁰

Take as an example Steven Koontz, an academic agricultural economist at Colorado State University.³⁷¹ His contribution to the Report was *Another Look at Alternative Marketing Arrangement Use by the Cattle and Beef Industry*, which portrayed alternative marketing arrangements (“AMAs”)—a controversial mode of selling due to the lack of price discovery that is preferred by the Big Four to more transparent cash markets—as preferable to negotiated cash markets advocated for by ranchers and local communities.³⁷² Koontz concluded that if the use of AMAs were limited, as was the proposal by those concerned about the Big Four’s market power, “the cattle feeding and beef packing industries will decrease efficiency, increase processing and marketing costs, and ha[ve] the potential to reduce beef product quality.”³⁷³ Koontz’s conclusion aligned with the position of industry, so it is troubling that the report failed to disclose the fact that since at least May 2020, the National Cattlemen’s Beef Association, the beef industry’s largest trade association and lobbying group, “ha[d] been working closely with Dr. Steven R. Koontz to develop . . . industry-led solutions on the best methods to increase cash market activity without causing financial harm to the industry.”³⁷⁴ For context, Congress has been introducing bills and the USDA has been introducing requirements that would increase negotiated cash markets, but the NCBA has a documented interest in preserving the current AMA selling arrangements in beef markets,³⁷⁵ which is beneficial to the Big Four and contributes to concentration in the beef market.³⁷⁶ Indeed, Koontz clarified in a letter to NCBA members that “[m]andating the use of the negotiated cash market will have negative economic consequences” for

370. See Letter from Collin Peterson, *supra* note 356; see also U.S. DEP’T OF AGRIC., *supra* note 354, at 3.

371. Conlow, *supra* note 333, at 130.

372. USDA CATTLE MARKET REPORT, *supra* note 366, at 124.

373. *Id.*

374. Dr. Stephen R. Koontz Sends Letter on How Marketing Mandates May Negatively Impact Cattle Industry, NCBA NEWS (May 4, 2020), <https://www.ncba.org/ncba-news/news-releases/news/details/26080/search.aspx> [<https://perma.cc/C2V9-NXUG>].

375. Grassley, Fischer, Wyden, Tester Reintroduce Cattle Market Reform Bill, CHUCK GRASSLEY (Feb. 2, 2023), <https://www.grassley.senate.gov/news/news-releases/grassley-fischer-wyden-tester-reintroduce-cattle-market-reform-bill> [<https://perma.cc/UFY6-595E>]; NCBA NEWS, *supra* note 374.

376. Conlow, *supra* note 333, at 130.

ranchers and meatpackers,³⁷⁷ and his article reinforces the value of AMAs and emphasizes that any costs that result from AMAs are “not market power related.”³⁷⁸

The USDA’s cattle market report also excluded the conflicts of interest of Glynn T. Tonsor, a professor of agricultural economics at Kansas State University. Tonsor has served as a contractor for the Cattlemen’s Beef Board, Keystone Foods (the beef, pork, and chicken supplier for such consumer brands as McDonald’s), CAFO’s BEST, and the National Pork Board (“NPB”).³⁷⁹ Tonsor has also served as chair of the Livestock Marketing Information Center, whose members include and funding comes from “lobbying and industry groups like the American Farm Bureau Federation, the NCBA, and the NPB, among others.”³⁸⁰

Jayson Lusk, another influential agricultural economist at Purdue University, also contributed to the USDA’s cattle market report. Lusk “has been paid to consult or give presentations for” industry associations like the “Beef Cattle Research Fund, Corn Refiners Association, National Pork Board, National Pork Producers Council, North American Meat Institute, Food Marketing Institute, and Cattlemen’s Beef Promotion and Research Board.”³⁸¹ “Yet, these disclosures are not included in his *New York Times* op-eds”³⁸² or his *Wall Street Journal* articles,³⁸³ nor in Lusk’s article cited by the

377. See Letter from Stephen R. Koontz to Colin Woodall & Ethan Lane, Nat’l Cattlemen’s Beef Ass’n (Apr. 28, 2020), <https://mtbeef.org/wp-content/uploads/2020/05/Price-Discovery-Issues-2020-042.pdf> [<https://perma.cc/4FME-JFZZ>] (clarifying to the NCBA CEO and Vice President of Government Affairs that he does not support mandating a certain percentage of negotiated cash market transactions). See generally Yuliya V. Bolotova, *Competition Issues in the U.S. Beef Industry*, 44 APPLIED ECON. PERSPS. & POL’Y 1340 (2021).

378. USDA CATTLE MARKET REPORT, *supra* note 366, at 118.

379. Conlow, *supra* note 333, at 130 (citing Curriculum Vitae, Glynn Tonsor, Professor, Kansas State Univ., at 53–54, 57–58, https://www.ageconomics.k-state.edu/directory/faculty_directory/tonsor [<https://perma.cc/6EC8-FMCP>]).

380. *Id.*

381. Conlow, *supra* note 333, at 130–31; see Jayson L. Lusk et al., *Impact of Plant-Based Meat Alternatives on Cattle Inventories and Greenhouse Gas Emissions*, 17 ENV’T RSCH. LETTERS 1, 5 (2022).

382. Conlow, *supra* note 333, at 131 (citing Jayson Lusk, *Why Industrial Farms Are Good for the Environment*, N.Y. TIMES (Sept. 23, 2016), <https://www.nytimes.com/2016/09/25/opinion/sunday/why-industrial-farms-are-good-for-the-environment.html>).

383. Jayson L. Lusk & Michael D. Boehlje, *For Farmers and Consumers, a Crazy Year in Food*, WALL ST. J. (Dec. 16, 2020), <https://www.wsj.com/articles/for-farmers-and-consumers-a-crazy-year-in-food-11608071329>.

USDA cattle market report³⁸⁴ or the bio that was provided to the House Committee on Agriculture when he testified in Congress in July 2021 on the “State of the Beef Supply Chain.”³⁸⁵

C. Academic Environmental Economists and the EPA

Academic environmental economists also contribute to federal policy through their work for the U.S. Environmental Protection Agency (“EPA”),³⁸⁶ but economists and economic thinking has not always been central to this agency.³⁸⁷ The EPA was created in 1970 when President Richard Nixon signed into law the National Environmental Policy Act, which created the agency to administer legislation like the Clean Air Act of 1970.³⁸⁸ The decade prior to forming the EPA, the environmental movement had taken hold “as a result of heightened public concerns about deteriorating city air, natural areas littered with debris, and urban water supplies contaminated with dangerous impurities.”³⁸⁹ In cities across the country, protests calling for greater industry regulation and protection of the environment were starting to rival Vietnam War protests in both size and crowd energy.³⁹⁰ It was in this cultural moment that the EPA was founded, and, comprising mostly of lawyers but also scientists “ranging from civil engineering to entomology,” the agency had a

384. USDA CATTLE MARKET REPORT, *supra* note 366, at 39 (citing Joshua G. Maples et al., *Unintended Consequences of the Quest for Increased Efficiency in Beef Cattle: When Bigger Isn't Better*, 74 FOOD POL'Y 65 (2017) (arguing for thicker cuts of steak)).

385. *State of the Beef Supply Chain: Shocks, Recovery, and Rebuilding: Hearing Before the H. Agric. Subcomm. on Livestock and Foreign Agric.*, 117th Cong. 8 (2021), <https://www.congress.gov/event/117th-congress/house-event/113973/text> [<https://perma.cc/GQ9S-E7AL>] (statement of David Scott, Chairman, H. Comm. on Agric.).

386. *About the Office of Policy (OP)*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/aboutepa/about-office-policy-op> [<https://perma.cc/8XJN-S22G>] (Sept. 22, 2023). Environmental economists also contribute to agencies like the Bureau of Land Management, Federal Energy Regulatory Commission, and the now-defunct Minerals Management Service (“MMS”). For an in-depth account of the corruption and capture of the MMS by industry, which ultimately played an integral role in the *Deepwater Horizon* oil spill, one of the “worst environmental disasters in U.S. history,” see generally Cristopher Carrigan, *Captured by Disaster? Reinterpreting Regulatory Behavior*, in PREVENTING REGULATORY CAPTURE: SPECIAL INTEREST INFLUENCE AND HOW TO LIMIT IT 140 (Daniel Carpenter & David A. Moss eds. 2014).

387. BERMAN, *supra* note 237, at 163.

388. WALKER, *supra* note 235, at 22. The EPA also administers the Wilderness Act.

389. *The Origins of EPA*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/history/origins-epa> [<https://perma.cc/78GK-W6YK>] (June 5, 2023); WALKER, *supra* note 235, at 22.

390. WALKER, *supra* note 235, at 22.

“culture of enforcement” and “dived headfirst into action” to protect America’s environment.³⁹¹

It took very little time for the business community to notice the impact that the agency’s initiatives were having on profits and industry. In August 1971, six months after the EPA was created, Lewis F. Powell, Jr., the corporate lawyer who would later be appointed to the Supreme Court by President Nixon, wrote a confidential memorandum that was sent to the U.S. Chamber of Commerce. The memo was a call to action aimed at the business community, whom Powell accused of becoming apathetic and complacent with the environmental movement led by people in the “New Left” like Ralph Nader.³⁹² The memo, titled “Attack on American Free Enterprise,” called on the business community and Chamber of Commerce to start a public relations campaign specifically targeting academia.³⁹³ The memo charged the Chamber with strategizing a long-term plan of aggressive action to place more conservative, business-minded social sciences faculty “who believed in the [free enterprise] system” in university departments, and academic economists were a natural target.³⁹⁴ Not long after Powell’s memo, “big business responded [to the environmental movement’s progress in government] by forming the Business Roundtable, a powerful federal lobby of the CEOs of 130 of the largest US firms, chaired by the CEO of the Exxon [O]il [C]ompany.”³⁹⁵

In the congressional hearings for the Clean Air Act, “the Chamber of Commerce had advocated for cost-benefit weighing” as part of the new legislation,³⁹⁶ but this proposal was not adopted by an enforcement-minded Congress, and indeed the Act “intentionally excluded language that would account for the cost of cleaning the air.”³⁹⁷ However, pressure from industry-

391. BERMAN, *supra* note 237, at 163.

392. Memorandum from Lewis F. Powell, Jr. to Eugene B. Sydnor, Jr., Chairman, Educ. Comm., U.S. Chamber of Com. 6–9 (Aug. 23, 1971) [hereinafter Powell Memo].

393. *Id.* at 12–14.

394. *Id.* at 19–21.

395. WALKER, *supra* note 235, at 23. The U.S. Chamber of Commerce took the lead in the Conservative Legal Movement that emerged in the early 1970s in part in response to the impact of the social and environmental movements. STEVEN TELES, *THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT: THE BATTLE FOR CONTROL OF THE LAW* 58 (2008). In 1973 and 1974, the Olin Foundation, Heritage Foundation, and Charles Koch Foundation (later renamed the Cato Institute) were founded. WALKER, *supra* note 235, at 24. All these conservative think tanks were bankrolled by businesses who had made their fortunes in the fossil fuel, chemical, and beer industry. *See id.* at 23; *Heritage Foundation*, DESMOG, <https://www.desmog.com/heritage-foundation> [<https://perma.cc/CD9N-LMSE>].

396. BERMAN, *supra* note 237, at 163.

397. *Id.*

influenced administrations, starting with Nixon's, to create advisory committees comprised of members of the business community.³⁹⁸ Industry pressure also eventually led to rolling back enforcement and regulatory efforts while increasing the use of cost-benefit analysis ("CBA") in determining whether the EPA should take regulatory action.³⁹⁹ Today, "CBA in environmental law applies a cost-benefit test to a legal or policy change. Public projects are almost always subjected to a CBA to determine if the project's benefits will outweigh the costs, or if the value of the outputs will exceed the value of the inputs."⁴⁰⁰

Cost-benefit analysis has been a central feature of the EPA for nearly four decades, but it remains controversial—especially the practice of applying CBA to determine whether to adopt a regulation that protects human health or life.⁴⁰¹ Indeed, "how much human lives are worth compared to the cost of saving or prolonging them" through regulation was introduced in the 1970s to the EPA and other agencies and is called the value of statistical life or "VSL."⁴⁰² The idea is that "the only legitimate way to value human life [is] to treat it like any other market good: to see how much people [are] willing to pay for it."⁴⁰³

The person most credited with promoting and developing the theory that the government can set a price on a human life is W. Kip Viscusi, an academic economist at Vanderbilt University. Viscusi has served on advisory boards for the EPA's Environmental Economics Advisory Committee and the Clean Air Act Compliance Analysis Council.⁴⁰⁴ Viscusi is one of the most highly cited academic economists⁴⁰⁵ and has published more than five hundred influential economics articles.⁴⁰⁶ In the course of his career, Viscusi has also

398. WALKER, *supra* note 235, at 22.

399. Hsu, *supra* note 182, at 39–42.

400. *Id.* at 39.

401. *Id.* at 39–40. ("It is in this area that CBA generates the most controversy: The suggestion that a regulation to protect human health or the environment should pass some sort of 'test' is viewed as being just an extra obstacle to regulation.")

402. Katherine Hood, *The Science of Value: Economic Expertise and the Valuation of Human Life in U.S. Federal Regulatory Agencies*, 47 SOC. STUD. SCI. 441, 442 (2017).

403. *Id.* Critics of CBA have pointed out that "no one—not . . . [W. Kip] Viscusi, nor anyone else who has criticized environmental law for making people poorer—has suggested that the military or public schools or, in fact, any program that does not save lives should be scrutinized for their indirectly lethal effects." FRANK ACKERMAN & LISA HEINZERLING, PRICELESS: ON KNOWING THE PRICE OF EVERYTHING AND THE VALUE OF NOTHING 59 (2005).

404. W. Kip Viscusi Court Filed Expert Resume, Baker v. Chevron USA, Inc., 2009 WL 6810532 (S.D. Ohio Sept. 29, 2009).

405. *Id.*

406. *Id.*

served the EPA as a “[c]onsultant on public smoking restrictions.”⁴⁰⁷ Additionally, he has served as an expert witness for Phillip Morris and R.J. Reynolds Tobacco Company in defending against class actions brought in response to the harms caused by their cigarettes.⁴⁰⁸ Indeed, Viscusi’s work for tobacco companies—which involved serving in a consultant capacity and reviewing scholarship—began in the mid-1980s.⁴⁰⁹ In exchange for consulting and serving as an expert witness, Viscusi received data from the tobacco companies and was paid vast sums, including six figures in a one-year period.⁴¹⁰ Despite Viscusi’s impact and clear conflicts of interest, in the two-dozen publications reviewed for this Article, none had disclosures of any conflicts of interest. This includes in his books on the risks of tobacco, *Smoke-Filled Rooms: A Postmortem on the Tobacco Deal* and *Smoking: Making the Risky Decision*, where Viscusi concluded that research shows that states actually save money when their citizens smoke.⁴¹¹ The savings Viscusi refers to are the result of premature deaths. Though Viscusi is quick to clarify that he is not “lauding premature death as a sound social policy,” he did conduct in-depth research calculating detailed cost savings that result from smoking deaths, published multiple articles and books on the topic, and spoke publicly about the cost-savings of tobacco deaths.⁴¹² Significantly, Viscusi’s conclusion supports a deregulatory argument for tobacco: If smoking actually is a financial benefit to states, even if through increased deaths, the federal government should not be regulating tobacco, or as Viscusi put it, “cigarette smoking should be subsidized rather than taxed.”⁴¹³ Through the ’90s and 2000s, Viscusi’s research on the purported financial gains of smoking

407. *Id.*

408. *In re Engle Progeny Cases Tobacco Litigation*, Nos. 08-80000(19), 2008 WL 7328585 (D.D.C. Nov. 12, 2008).

409. *Id.*

410. *Id.* As discussed *supra* Section II.A, data is incredibly valuable to economists, indeed so much so that the American Economic Association defines them as “in-kind support” that should be disclosed. *Disclosure Policy*, AM. ECON. ASS’N, <https://www.aeaweb.org/journals/policies/disclosure-policy> [<https://perma.cc/9FM5-N7F3>].

411. ACKERMAN & HEINZERLING, *supra* note 403, at 72; W. KIP VISCUSI, *SMOKE-FILLED ROOMS: A POSTMORTEM ON THE TOBACCO DEAL* (2003); W. KIP VISCUSI, *SMOKING: MAKING THE RISKY DECISION* (1992). Had Viscusi disclosed his conflicts of interest, it might be also revealed that in addition to advising agencies like the EPA, Viscusi also was hired by General Electric to serve as an expert witness in litigation against the EPA. *General Electric Co. v. Johnson*, Declaration of W. Kip Viscusi, No. 1:00CV02855, 2008 WL 5743998 (Jan. 30, 2008).

412. *See generally* VISCUSI, *supra* note 411; *see* W. Kip Viscusi, *Cigarette Taxation and Social Consequences of Smoking*, 9 TAX POL’Y & ECON. 51 (1995).

413. Viscusi, *supra* note 412, at 75; *see also* Robert Kuttner, *Reclaiming the Deep State*, AM. PROSPECT (Oct. 4, 2022), <https://prospect.org/day-one-agenda/oira-reclaiming-the-deep-state> [<https://perma.cc/P6UJ-6H3Y>]; ACKERMAN & HEINZERLING, *supra* note 403, at 41.

tobacco were shared across mainstream media like NBC News, *The New Yorker*, the *New York Times*, and others.⁴¹⁴ Notably, Viscusi's conflicts of interest working as a consultant and expert witness for tobacco companies were not included in these publications.

* * *

This Part has provided a few examples of the conflicts of interest that are pervasive among academic economists and the impact these financial conflicts of interest can have. Given the influence of academic economists, as well as the country's historic stance against the corrupting influence of financial conflicts of interest in federal government, these conflicts of interest are deeply problematic. The next Part provides proposals to address the influence of academic economists' financial conflicts of interest.

V. PROPOSALS TO ADDRESS ACADEMIC ECONOMISTS' CONFLICTS OF INTEREST

As described above, academic economists' conflicts of interest impact research and policy outcomes, but these financial interests too often are not deterred or even disclosed. Congress has long understood that conflicts of interest are problematic and therefore has required disclosure, promulgated regulations, and enacted laws to address their impact. Despite this, academic economists serving the government in advisory capacities or conducting research are less exposed to the federal conflict-of-interest and disclosure laws. Where federal conflict-of-interest laws come up short for other academics, professional ethics requirements normally serve as a stopgap. But economics has no ethical standards or body that enforces against conflicts of interest—despite economists' influence in policy and lawmaking *and* despite the fact that working for private firms is standard practice for many academic economists. This Part provides a number of solutions that should be adopted by scholarly and mainstream publications, federal agencies, the economics profession, and others, to mitigate against the harms caused by conflicts of

414. *Smokers May Not Be Financial Burden on Society*, NBC NEWS (Apr. 7, 2009), <https://www.nbcnews.com/health/health-news/smokers-may-not-be-financial-burden-society-flna1c9465671> [<https://perma.cc/77CF-BXSJ>]; James Surowiecki, *Up in Smoke*, NEW YORKER (Nov. 13, 2005), <https://www.newyorker.com/magazine/2005/11/21/up-in-smoke>; Laura Mansnerus, *Tobacco on Trial; Making a Case for Death*, N.Y. TIMES (May 5, 1996), <https://www.nytimes.com/1996/05/05/weekinreview/tobacco-on-trial-making-a-case-for-death.html>.

interest and to avoid further harmful outcomes that arise because of private financial interests.⁴¹⁵

A. Disclosures in Academic Economic Journals

Despite the frequency with which academic economists work for industry, their scholarly journals have long had inadequate or nonexistent conflict-of-interest disclosure requirements for the authors whose work they publish—a practice that needs to change. After the *Inside Job* exposed the role that financial academic economists' conflicts of interest played in leading to the Great Recession, the American Economic Association (“AEA”), a flagship scholarly organization for economists that publishes nine academic journals, instituted for the first time a conflict-of-interest disclosure policy.⁴¹⁶ Not long after that, the Agricultural and Applied Economics Association (“AAEA”), which produces six publications, adopted a version of the AEA's disclosure policy.⁴¹⁷

Despite the presence of disclosure policies, today the financial interest disclosures appear to be prescriptive or nonexistent. The AEA, for example, still has a disclosure policy for authors, though it is unclear if it is required for publication: The policy's stated language says that “[s]ubmissions to the AEA journals *should* conform to the AEA disclosure principles,” not that they *must* conform.⁴¹⁸ There are additional limits on what must be disclosed: only “relevant non-profit organizations or profit-making entities” where the author is paid or unpaid.⁴¹⁹ As noted in Section II.B, there are multiple types of financial interests: relevant, apparent, and potential conflicts.⁴²⁰ Additionally, the AEA only requires disclosures when an author has received more than \$10,000 from a financial source “in the past three years, in the form of consultant fees, retainers, grants[,] and the like.”⁴²¹ Because any financial support, no matter how small, can have a “funding effect,” the AEA's artificial cap on disclosures precludes transparency in all cases.

415. See *supra* Part IV.

416. Wight, *supra* note 334, at 139; AM. ECON. ASS'N, *supra* note 410.

417. AGRIC. & APPLIED ECON. ASS'N, AGRICULTURAL & APPLIED ECONOMICS ASSOCIATION DISCLOSURE POLICY, https://academic.oup.com/DocumentLibrary/ajae/aaea_disclosure_policy_board.pdf [<https://perma.cc/9MZ5-P5FU>] (adopting conflict-of-interest disclosure policy from the AEA); AM. ECON. ASS'N, *supra* note 410.

418. AM. ECON. ASS'N, *supra* note 410 (emphasis added).

419. *Id.*

420. See *supra* Section II.B.

421. AM. ECON. ASS'N, *supra* note 410.

The disclosure statements are also very difficult to access. Readers have to type in a URL which takes them to an AEA webpage with a download button, which, when clicked, downloads a zip file, that then has to be unzipped.⁴²² The new unzipped folder has a Word file within it, which, when opened, has a disclosure statement. In the December 2022 issue of *American Economic Review*, each article had a disclosure zip file, and the majority repeated a similar disclaimer that they had not received “relevant or material” financial support.⁴²³ For the funding conflicts that did exist, it was unclear why the information was not accessible to readers in a footnote in the article. After all, that is what other professions’ publications do.

Even though the AAEA has conflict-of-interest disclosure policies, the association does not seem to enforce them in any way. The work of Timothy Richards, who writes for and edits an AAEA journal, highlights the organization’s lack of disclosure enforcement. Richards’s own faculty webpage at Arizona State University states that he “does extensive consulting work in the food retailing and manufacturing industries for clients that include Walmart, Kroger, SuperValu, Hormel, Sara Lee, JBS Swift, Foster Farms, and a number of others”;⁴²⁴ yet, despite relevant, apparent, and potential conflicts of interest, nowhere in the articles that he recently published in the AAEA’s *American Journal of Agricultural Economics* were they disclosed.⁴²⁵

Given the role and influence of economists on federal policies that impact the outcomes of Americans, academic economic publications need more robust conflict-of-interest disclosure policies to avoid misleading policymakers and the public. Academic journals for accounting—which, like economics, is a field that is influential in policy, as well as adjacent to and often overlapping with law—provide a template. The *Journal of Accountant Research*, a well-respected publication and “the oldest private research

422. Conlow, *supra* note 333, at 129; *see also, e.g.*, Niklas Engbom & Christian Moser, *Earnings Inequality and the Minimum Wage: Evidence from Brazil*, 112 AM. ECON. REV. 3803, 3803 n.† (2022).

423. *See, e.g.*, Jacob D. Lesion, *Dynamic Matching in Overloaded Waiting Lists*, 112 AM. ECON. REV. 3876 (2022).

424. Timothy Richards, ARIZ. ST. UNIV., <https://search.asu.edu/profile/92424> [<https://perma.cc/M3QE-5U55>].

425. *See, e.g.*, Timothy J. Richards et al., *Retail Intermediation and Local Foods*, 99 AM. J. AGRIC. ECON. 637 (2017); Koichi Yonezawa et al., *The Robinson-Patman Act and Vertical Relationships*, 102 AM. J. AGRIC. ECON. 329 (2020); Timothy J. Richards & Jura Liaukonyte, *Switching Cost and Store Choice*, 105 AM. J. AGRIC. ECON. 195 (2023); Lauren Chenarides et al., *Dynamic Model of Entry: Dollar Stores*, 106 AM. J. AGRIC. ECON. 852 (2024).

journal in the field,⁴²⁶ has a conflict-of-interest policy that acknowledges the impact that perceived and potential financial interests can have on the integrity of the research it publishes. The policy explains that its purpose is to “provide readers of published manuscripts with information about the authors’ other interests, which in turn could influence how readers receive and understand the manuscript.”⁴²⁷ Furthermore, the policy requests that authors “err on the side of full disclosure” explaining that “it is better to disclose a relationship than not to do so.”⁴²⁸ The policy further states:

The journal and its publisher . . . require that all authors disclose any potential sources of conflict of interest. Any interest or relationship, financial or otherwise, which might be perceived as influencing an author’s objectivity, is considered a potential source of conflict of interest. These sources must be disclosed when directly relevant or indirectly related to the analyses and conclusions that the authors describe in their manuscript. Potential sources of conflict of interest include but are not limited to: Advisory Positions, Board membership, Consultancy, Employment, Funding, Grants, Litigation Support, Patents, Royalties, Stock or Stock Options or Speaking Fees.⁴²⁹

Economics should have full disclosure requirements like accounting. Furthermore, articles written by economists who are employees for private companies, like with Uber, should have heightened disclosure standards: Academic economic publications should make abundantly clear that the work is sponsored by industry, not just through a disclosure but through unique formatting that provides clear visual indications that the work is subjective and biased.

B. Disclosures at Public Speaking Engagements and in Publications, Law Reviews, and Op-Eds

Academic economists are regularly asked by news outlets to interview and provide insight into current affairs. When their professional bios are shared

426. *Journal of Accounting Research*, CHI. BOOTH CHOOKASZIAN ACCT. RSCH. CTR., <https://www.chicagobooth.edu/research/chookaszian/journal-of-accounting-research> [https://perma.cc/E29Q-PPAT].

427. *Journal of Accounting Research*, *Author Guidelines*, WILEY ONLINE LIB., <https://onlinelibrary.wiley.com/page/journal/1475679x/homepage/ForAuthors.html> [https://perma.cc/72BC-XT24].

428. *Id.*

429. *Id.*

by a news anchor or published alongside an article or op-ed, in addition to the common practice of sharing their academic title or past work in government, academic economists should share their past and present work for private firms that create relevant or potential conflicts of interest.

Additionally, law reviews and legal publications should be sure that work written by academic economists, or work that focuses centrally on academic economists' research or data, is not biased by private interests. Given the impact of law review scholarship in courts and public policy, these publications should require more in-depth disclosure than their economic peers currently do—for example, if private funding has potentially or facially caused a conflict of interest, that should be disclosed.⁴³⁰ If it is unclear whether an academic economist had a conflict of interest to disclose, student editors should ensure that they are uncovered—otherwise the economics articles should be substituted. Screening for nondisclosure in economics literature is especially critical when editors are considering whether or not to accept an article. This is particularly true in areas of law where economics and economic analysis have become influential if not dispositive: personal injury, antitrust, environmental law, corporate law, and patent law. This means that when law students run citation checks on law review articles, they need to be verifying the disclosures within the economics articles, as well as their datasets, and any disclosures should be included in a parenthetical in the article. Indeed, I recommend that legal publications begin to include footnote citations to inform readers where a scholarly piece has a financial conflict.

C. More Robust Regulatory Requirements

When working directly with the federal government or receiving federal grant funding, academic economists should always provide disclosure of their conflicts of interest. When writing reports, appearing before an agency or committee, or producing studies as part of an advisory committee or in an expert or consultant capacity, academic economists' apparent, potential, or relevant conflicts of interest should be disclosed. This is especially true when the academic economist's activity or work product is not internal to the agency but rather accessible to the public. For example, the USDA cattle market report should have had a conflict-of-interest disclosure. Furthermore, reports supported by federal research grants should also have a public disclosure. Relatedly, agencies hiring academic economists should adopt a

430. Legal publications in general should adopt and implement more explicit and robust conflict of interest guidelines and disclosure policies for all authors.

version of the Department of Health and Human Services' Public Health Service regulation, Promoting Objectivity in Research, which "promotes objectivity in research by establishing standards that provide a reasonable expectation that the design, conduct, and reporting of research funded under . . . grants or cooperative agreements will be free from bias resulting from Investigator financial conflicts of interest."⁴³¹

Furthermore, the Office of Personnel Management and Office of Government Ethics should consider adopting more robust rules and disclosure processes for agencies modeled off the Security and Exchange Commission's ("SEC") conflict-of-interest standards for broker-dealers and investment advisers.⁴³² Congress passed the Investment Advisors Act of 1940 in response to investment advisers' inherent conflicts of interest as well as their broad impact on policy and the public that made them a "national concern."⁴³³ Because of these securities laws, today the SEC has a rigorous process, enforced through administrative guidance and rulemaking,⁴³⁴ to address conflicts of interest, which they define as "an interest that might incline a broker-dealer or investment adviser—consciously or unconsciously—to make a recommendation or render advice that is not disinterested."⁴³⁵ The SEC's conflict of interest screening process imposes upon broker-dealers and investment advisers multiple obligations.⁴³⁶ Under the SEC's rule, "identifying and addressing conflicts should not be merely a 'check-the-box' exercise, but a robust, ongoing process that is tailored to each conflict. It is therefore important that firms and their financial professionals review their business models and relationships with investors to address conflicts of interest specific to them."⁴³⁷ Advisors are required to then identify and disclose, or ideally eliminate all conflicts of interest.⁴³⁸ Second, disclosure to retail customers is required: "[P]rior to or at the time of making a recommendation, a broker-dealer or associated person must make full and

431. 42 C.F.R. § 50.601 (2024); *see also id.* §§ 50.602–.607.

432. *Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Conflicts of Interest*, U.S. SEC. & EXCH. COMM'N (Aug. 3, 2022), <https://www.sec.gov/tm/iabd-staff-bulletin-conflicts-interest> [<https://perma.cc/7S5H-ZUNS>]. Alternatively, the executive branch could adopt a conflict of interest policy similar to the Treasury Circular No. 230.

433. Investment Advisors Act of 1940, 15 U.S.C. § 80b-1.

434. U.S. SEC. & EXCH. COMM'N, *supra* note 432.

435. *Id.*

436. The Rule has four obligations, including the fiduciary standards of care and loyalty which are required under the Investment Advisors Act. The adoption of fiduciary standards to academic economists is another possible safeguard to conflicts of interest, though this Article does not address them.

437. U.S. SEC. & EXCH. COMM'N, *supra* note 432.

438. *Id.*

fair disclosure to the retail customer of all material facts relating to conflicts of interest that are associated with the recommendation.”⁴³⁹ Finally, advisors and broker-dealers “must establish, maintain and enforce written policies and procedures reasonably designed to achieve compliance” with the conflict-of-interest disclosure rules.⁴⁴⁰ This framework can be adapted to academic economists, and, given the frequency of conflicts among academic economists, the conflict-of-interest and disclosure requirements should be more rigorous.

D. Additional Measures

Additional measures to mitigate against the harms caused by academic economists’ conflicts of interest include state action and culture reform. First, state legislatures should enact professional ethical requirements for economists, just like they do with doctors, accountants, and lawyers. Additionally, scholars, students, government officers and employees, and, most importantly, the public, need to start taking conflicts seriously, paying attention to them, and scrutinizing whether biased work is really just glorified marketing. Furthermore, professional cultures should promote integrity through enforced ethical standards and encouraged avoidance of conflicts of interest. This is especially true for economics, where patterns of biased work and policymaking are leading to broader public skepticism around the professions’ value and contributions, while undermining its integrity. Indeed, so long as these insidious conflicts of interest issues persist, other fields, and especially areas of law, should seriously consider the merits of economic contributions.

E. Adoption and Enforcement of a Code of Conduct by the Economics Profession

Finally, the field of economics needs to adopt “professional standards akin to those required of lawyers,” accountants, scientists, psychologists, doctors, and others whose expertise and opinions can influence federal policy, lawmaking, and the wellbeing of the general public.⁴⁴¹ Professions with ethical standards provide “important services,” “[m]ake[] a commitment to

439. *Id.*

440. *Id.*

441. Conlow, *supra* note 333, at 132.

serve the public,” and “[c]laim[] a special relationship to the marketplace.”⁴⁴² “This describes economics.”⁴⁴³ Economists’ “beliefs and practices constitute a vast and unseen institutional force” in federal government.⁴⁴⁴ Given the fact that it is standard practice for academic economists to work for both government and private firms, economics needs professional standards as a counterbalance to the corrupting influences of financial conflicts of interest. Finally, just like other professions who have the power to impact national policy and hold the trust and confidence of the public, academic economists “should be beholden to professional standards, which also come with professional sanctions.”⁴⁴⁵

VI. CONCLUSION

Economics today has become an important field in law and policymaking, and academic economists in particular are incredibly influential. Yet, unlike other influential professions like accounting and medicine, economics never adopted a code of ethics or rules that proscribe conflicts of interest from impacting their scholarship. This is despite the fact that working for private interests is common practice among academic economists. The absence of these ethical standards undermines the integrity of economics, but more importantly, it has led to policies and actions that have caused harm to Americans.⁴⁴⁶ Furthermore, when academic economists work with federal agencies but have financial conflicts of interests that impact their advice, it undermines and corrodes our public institutions. Economics, and specifically academic economists, need to adhere to ethical standards and their scholarly publications need to adopt rigorous disclosure policies. In the meantime, the legal community cannot wait until the next Great Recession or environmental calamity occurs to see if academic economists will disclose the private interests that may be guiding their policy advice. The legal community needs to proactively screen academic economists for conflicts of interest, and regulatory bodies need to impose rules and regulations to discourage and monitor the role of private interests in the field.

442. *Id.*

443. *Id.* at 132.

444. JONATHAN B. WIGHT, *ETHICS IN ECONOMICS: AN INTRODUCTION TO MORAL FRAMEWORKS* 4 (2015); Conlow, *supra* note 333, at 132.

445. Conlow, *supra* note 333, at 132.

446. *See supra* Section IV.D.