Business will never embrace regulation. The market yearns to be free and regulation, most of the time, places restrictions on unbridled capitalism. Some rules improve the competitive landscape for nearly all stakeholders, but that is the rare case.

One constant problem regarding regulation is the question of who does the regulating.

In order to provide proper oversight of something, you naturally must know a good deal about it. For example, if you have never traded securities on Wall Street, it is very difficult to have enough knowledge of all the nuanced realities that take place in that arena. This is just common sense. You can study, research and inquire as
much as you want, but there will always be something lacking in your understanding if you have no first-hand experience.

Generally, the ideal person to oversee something, particularly when it is a complex, specialized marketplace, is a person from that marketplace.

Of course, the rub is that anyone who has existed within that marketplace long enough to learn all these complexities will also have developed relationships and biases. If Steve the securities trader worked in a trading room for 20 years, he likely was passed over for jobs by some companies and had a bi-weekly steak dinner with peers from various firms. He developed affinity for some companies and colleagues while developing resentment for other industry players and practices. So if he is to later become a watchdog of those people, it is hard to believe he will not bring those biases with him — intentionally or not — in his rule enforcement.

The SEC and Treasury departments have long been criticized for this.

The offshore drilling regulation world is similar. And a new report by AP shows just how pervasive the concern is among industry players and regulators with interests in the Gulf of Mexico.

Documents obtained by The Associated Press show that about 1 of every 5 employees of 109 involved in inspections in the Gulf has been recused from some duties because of the risk of coming into contact with a family member or friend working for a company the inspector regulates. Ten people hired since mid-August 2008 were barred for two years from performing work where they could be in a position of policing their previous employer—a company or contractor operating offshore.

In the Lafayette, La., office of the Bureau of Ocean Energy Management, Enforcement and Regulation nearly 35 percent of inspectors have been disqualified because a friend or relative works for a company they could interact with on the job. In Lake Charles, La., nearly 30 percent of inspectors held their last job with an oil and gas company, meaning they can’t perform any duties involving their former employer for two years.

The numbers come from recusal forms under a new ethics policy instituted last year by the Obama administration to identify and prevent possible conflicts of interest before they arise.

Offshore drilling regulation does not have the man power of the SEC. So it is important that the smaller number of people regulating this segment of the energy sector do so well. And who else but industry vets could know all the ins and outs surrounding practices like ensuring proper anchoring standards for various types of oil rigs, installing blowout preventers and determining safe levels for gas releases?

Then again, if so many of the public servants (at least in name) transitioning from industry to the regulation side of things, how can you trust them to leave their biases at the door? (Especially when there is, like Wall Street, a revolving door practice of people who go from industry to regulation and then back to industry?)
In an ideal world, you would hope that a person who becomes a regulator could take that responsibility seriously enough that their conflicts of interest, while real, do not impede them from creating and enforcing good rules to govern the industry.

And I’m sure that in many instances, that would be the case. But these recusal policies are understandably necessary. And the degree to which they are being issued perhaps highlights a larger question.

**How can a regulatory body properly operate when up to 35% of its inspectors are deemed to have conflicts of interest?**

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