

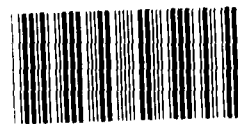


Briefing Report to the Chairman,
Subcommittee on Seapower and
Strategic and Critical Materials,
Committee on Armed Services, House
Representatives

June 1987

POST-DOD EMPLOYMENT

Evaluation of the Dra Regulation Implementing 10 USC 2397b



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United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-218976

June 2, 1987

The Honorable Charles E. Bennett
Chairman, Subcommittee on Seapower and Strategic
and Critical Materials
Committee on Armed Services
United States House of Representatives

Dear Mr. Chairman:

On October 27, 1986, you requested that we evaluate the conflict-of-interest provisions of section 931 of the National Defense Authorization Act for Fiscal Year 1987. Section 931 amends Title 10 of the United States Code by adding section 2397b, which prohibits certain former Department of Defense (DOD) procurement personnel from accepting compensation from certain defense contractors. This legislation attempts to regulate the "revolving door," where DOD personnel leave DOD to work for defense contractors, thus creating at least the appearance that federal employment has been used to further private interests.

In discussions with your staff, we agreed to review and comment on DOD's regulation implementing section 2397b. Your staff were also interested in the number and types of positions DOD determined to be covered by the prohibition; we were unable, however, to develop that data because DOD does not plan to identify those positions. DOD officials explained that identification of specific positions covered by the prohibition would not be feasible.

To evaluate the conflict-of-interest provisions, we reviewed various DOD drafts of the implementing regulation, DOD Directive 5500.7, "Standards of Conduct," and compared the draft regulations with the enacted law. We also discussed the implementation of the law with DOD General Counsel personnel responsible for the draft regulation. The latest draft regulation we evaluated was dated March 23, 1987.

SECTION 931 OF THE NATIONAL
DEFENSE AUTHORIZATION ACT OF
FISCAL YEAR 1987

Section 931 of the National Defense Authorization Act for fiscal year 1987 prohibits three groups of procurement personnel from accepting compensation from major defense contractors (those with at least \$10 million in defense contracts) for 2 years after they leave DOD. The groups are

- those who performed a procurement function at a contractor's site on a majority of their working days in their last 2 years at DOD;
- those who performed a procurement function that related to a major weapons system and participated personally and substantially in a manner involving decision-making responsibilities through contact with a contractor and, as with the first group, performed this function on a majority of their working days during their last 2 years at DOD;
- those who acted as a primary representative of the United States in the negotiation of a contract or claim in excess of \$10 million in their last 2 years at DOD.

These restrictions apply to personnel at or above certain salary levels. The prohibition concerning the first two groups applies only to civilian personnel paid at or above the base rate for a grade GS-13 of the General Schedule and military personnel in pay grade O-4 and above. The prohibition concerning the third group applies to civilians paid at or above the minimum Senior Executive Service (SES) rate and to military generals or Navy admirals.

DOD draft regulation
on 10 U.S.C. 2397b

In early drafts of the regulation implementing section 2397b, we noted several instances where the language appeared to limit the coverage of the post-employment ban to a narrower class than the law required. However, DOD's revised draft regulation, dated March 23, 1987, eliminates much, though not all, of this language.

For example:

- Early drafts excluded persons below grade GS-13 in the first two groups and persons below SES in the third group who would have been covered because their salaries are equivalent. The March 23, 1987, draft regulation has clarified coverage to include persons in lower grades who are paid at the same rate as the minimum rate for a GS-13 or an SES employee.
- Early drafts did not define "majority of working days," which could have led to misinterpretation of how the number of days should be calculated for the first two groups. The March 23, 1987, version clearly defines "working days" to exclude weekends, holidays, and leave. In addition, any day on which the person spent any time on a procurement function is counted as a full day toward calculating the majority of working days.
- The March 23, 1987, draft regulation also states that the employment ban applies to persons working on a major weapon system during the majority of their working days in their last 2 years at DOD and having any contact with a defense contractor involving decision-making responsibilities with respect to a contract for that system. An earlier draft would have required such contact to have occurred on a majority of the employee's working days. We believe this would have excluded many people.
- Initially, DOD excluded "part-time" personnel without defining the term. We were concerned that someone who worked 39 hours might have been considered part-time for determining if they were covered by the post-employment prohibition. DOD later defined "part-time" under an existing law that limits part-time work to 32 hours per week.

Although these changes represent a stricter interpretation of the statute than earlier draft regulations, DOD has adopted some regulatory language that tends to limit the scope of coverage. DOD's definition of "employee" excludes part-time employees who work less than 32 hours a week. We

find nothing in the language of this law that excludes part-time employees. DOD officials told us that they consider part-time employees in the same context as special government employees who have a short tenure and are excluded from certain other conflict-of-interest laws. DOD officials also told us that they believe that few part-time employees will meet the criteria in the law.

The March 23, 1987, draft regulation that applies to former DOD personnel who serve as the government's primary representative in certain contractual negotiations contains language that may limit the scope of the prohibition. The regulation states that the prohibition applies when "the actual contractual action taken by the individual" is in an amount in excess of \$10 million. We are concerned that this statement could be interpreted to mean that the prohibition applies only to individuals, such as those with contracting officer warrants, who have the authority to bind the government or otherwise to take contractual actions, and would exclude an official who has authority to negotiate an agreement but has no final authority to obligate the government to that agreement. DOD officials told us that they do not believe that this section will be interpreted in this manner.

The draft regulation also stipulates that when a number of government representatives are involved in a transaction, only one can be the primary representative, and the primary representative will be the supervisor. To illustrate, assume that a contractor has submitted a claim for \$15 million and that an SES employee heads the negotiating team that has dealt with contractor personnel for 6 months in an attempt to resolve the claim. When negotiations reach an impasse, the SES employee's supervisor participates in a single negotiating session that ultimately results in an \$11-million settlement. DOD would appear to view the employment prohibition as covering only the supervisor. Under the proposed regulation, the intervention of the supervisor would free the subordinate SES employee from the 2-year prohibition on employment with that particular contractor. DOD officials agreed that our example fairly presented their interpretation of "primary representative."

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As agreed with your office, we did not request official DOD comments. We discussed a draft of this briefing report with agency officials who are responsible for drafting the regulation and included their comments where appropriate. One of these officials later told us that they plan to

reconsider their limited interpretation of "primary representative."

We are sending copies of this report to Congresswoman Barbara Boxer because of her interest in the area, other interested members of the Congress, and DOD. If you should have any questions about this report or our our earlier reports on post-DOD employment, please contact me on 275-8412.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Martin M. Ferber", with a long horizontal flourish extending to the right.

Martin M Ferber
Associate Director

(391068)

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