

**PUBLIC INTEGRITY AND ANTI-CORRUPTION LAWS
AT THE DEPARTMENT OF DEFENSE**

HEARING

BEFORE THE

SUBCOMMITTEE ON
PERSONNEL

OF THE

COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

APRIL 26, 2023

Printed for the use of the Committee on Armed Services



Available via: <http://www.govinfo.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

60-359 PDF

WASHINGTON : 2025

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PUBLIC INTEGRITY AND ANTI-CORRUPTION LAWS AT THE DEPARTMENT OF DEFENSE

WEDNESDAY, APRIL 26, 2023

UNITED STATES SENATE,
SUBCOMMITTEE ON PERSONNEL,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 3 p.m., in room 222, Russell Senate Office Building, Senator Elizabeth Warren (Chairman of the Subcommittee) presiding.

Subcommittee Members present: Senators Warren, Kaine, Scott, and Budd.

OPENING STATEMENT OF SENATOR ELIZABETH WARREN

Senator WARREN. I am pleased to welcome you all to today's hearing to receive testimony on public integrity and anti-corruption laws at the Department of Defense (DOD). The people who choose to serve at the Department of Defense are talented and dedicated professionals who are committed to their mission of keeping American lives safe.

Like all Americans, I appreciate their service and I appreciate their commitment to our Nation. But respect for these individuals cannot blind us to an ugly underbelly at DOD. There has long been a too cozy relationship between the Department and the increasingly powerful group of defense contractors that reap huge profits from hundreds of billions of dollars in Government contracts.

The appearance and the reality of the Pentagon being captured by the defense industry undermines our public confidence and threatens our National Security. Every year, the Department of Defense receives more discretionary taxpayer dollars from the Federal budget than any other part of Government.

DOD and the defense industry often defend the enormous Pentagon budget by pointing out that it supports substantial investments in development and research to make our country more innovative and more competitive, but that story does not fit the facts.

A recent DOD study reported that defense contractors' Federal investments are increasingly going to their shareholders rather than being invested in more research and development.

In fact, from 2010 to 2019, big defense companies spent 73 percent more on stock buybacks and dividends than they did during the previous decade. Because Federal contracts are so profitable for defense companies, these companies want the inside track on how to win those contracts.

A preferred strategy is to hire former Pentagon employees to put together the bids and then to present them to their former colleagues in Government. After all, if a defense industry staffer used to work in the next cubicle over from a Pentagon acquisitions officer, there is a better chance that the industry staffer can get his phone calls and emails returned. A better chance the industry staffer can schedule a sales pitch.

A better chance that the sales pitch will go well, and with all the latest intelligence on what the Department wants to fund, the industry staffer who just left the Department of Defense, has the best possible chance of turning former friendships into dollar signs for the defense industry.

This model is not hypothetical. A 2019 analysis by the Government Accountability Office (GAO) found that the Pentagon's 14 largest contractors have on staff 1,700 former Department of Defense senior civilian and military officials—1,700 former DOD people using their DOD contacts on behalf of the defense industry.

That is an entire small town working full time just to gather in Government contracts for the defense industry. Now, those who defend the revolving door between the Pentagon and the defense industry say that these Government employees are hired for their expertise. But again, the facts belie that story.

In fact, a new analysis released today by my office, which is right here, check out the graphics, found that 91 percent of Government employees hired by the top defense industries don't become top executives. Nope, 91 percent of the Government employees hired by the top defense industry companies become registered lobbyists for their new employers.

The biggest weapons contractors all have former senior Pentagon officials on their board. Their star-studded cast includes Lockheed Martin with a former Chairman of the Joint Chiefs of Staff and a former DOD General Counsel on their board. Boeing with a former Chief of Naval Operations.

Raytheon with a former Deputy Secretary of Defense and Vice Chairman of the Joint Chiefs. General Dynamics with a former Secretary of Defense, and Northrop Grumman with a former Air Force Chief of Staff and Chief of Naval Operations. It is clear that these companies think that the best way to succeed is to buy influence with the DOD.

Influence peddling occurs in multiple forms. Instead of going to work directly for a single giant defense industry contractor, some former military officers hang out a shingle when they retire and offer their services to foreign governments. They rake in the cash. A former Navy SEAL earned \$258,000 a year as a special operations adviser for Saudi Arabia.

An Air Force colonel received \$300,000 a year to work for a Russian-owned satellite company. These foreign governments claim they are buying advice, but no one is fooled. In reality, they are purchasing favors, influence, and a good name for themselves in Washington, whether that is in America's National Security interest or not. Ethics lapses take other forms as well.

The Wall Street Journal reported on DOD and other Executive Branch officials who own stock in companies that stood to benefit from their official activities. In one case, a Pentagon official owns

stock in Alibaba while weighing in on whether the United States Federal Government should bar other Americans from investing in Alibaba because of its ties to the Chinese Government.

The worst part, the DOD signed off on the official's work and didn't see a problem. Ethics requirements are essential to safeguard the integrity of the Pentagon's work, but too often, legislation has moved our ethics laws in the wrong direction.

Last year's National Defense Authorization Act (NDAA) got rid of a requirement for the DOD Inspector General to report on certain aspects of the Department's ethics compliance. A few years ago, I barely defeated a proposal that DOD advocated for writing into Federal law that would have further watered-down lobbying restrictions on former Pentagon officials. We need more oversight of ethics enforcement, not less.

I was concerned to see that DOD's written testimony for today's hearing claims that DOD specific rules can be, and I quote, "counterproductive" and "undermine rather than promote a shared commitment to ethics." What undermines this commitment is DOD fighting laws passed by Congress instead of enforcing those laws.

Now, to be clear, problems of undue influence are not unique to the Department of Defense. I have introduced comprehensive legislation to address ethics failures both at DOD and across the Federal Government.

But failure to strengthen ethics laws elsewhere in Government is not an excuse for tolerating terrible ethics lapses at DOD. Ultimately, these conflicts of interest hurt competition, and they create an uneven playing field.

At today's hearing, I want to hear from our witnesses about the threats posed by conflicts of interests, whether current protections in Federal law are sufficient to protect those conflicts, the process for approving retired National Security officials who are working for foreign governments, and any other areas where law and policies could and should be strengthened.

In 1959, Congress held 25 hearings to investigate the revolving door between defense contractors and senior military officials. General Omar Bradley, our country's first Chairman of the Joint Chiefs of Staff, testified that he did not believe any former Government official should, "bring any influence" to win contracts for a company.

The generation that fought World War II took ethics responsibility seriously and we should do the same. When defense contractors have an outsized influence over the Pentagon, or when senior leaders see no issue with selling their credentials to the highest bidder, our National Security is compromised and it is time to put a stop to this.

So, to our witnesses, I say thank you and welcome for appearing. I want to turn to Ranking Member Scott for his comments to open this hearing.

STATEMENT OF SENATOR RICK SCOTT

Senator SCOTT. Sure. First, I want to thank Chair Warren. First of all, I look forward to reading your report. I want to thank Chair Warren for one, to make sure individuals and industry do not ex-

exploit American taxpayers to gain unfair advantage over others or jeopardize our National Security.

My understanding is that under current law, former Department of Defense employees, whether military or civilian, are held to a higher standard of ethical conduct than former employees of any other Federal agency.

Also, my understanding that DOD employees are subject to standard conflict of interest rules for which violations are punishable by jail time. They are also subject to enhanced restrictions on post Government appointment.

They are enforced through a variety of civil punishments, including recoupment of pension payments. I know there have been some recent reports in the press about perceived issues with DOD ethics rules.

You can also read in these articles evidence that our current rules are working. In all the media reports, personnel had undergone a rigorous screening process from the Department of Defense and State to read them waivers to work.

In fact, much of this reporting reveals that in many circumstances, applicants are denied by the Government, and the individuals discussed in the articles have been extensively vetted and cleared. This is supported by a report issued by the GAO in September 2021.

Additionally, in Section 1073 of Fiscal Year 2023 National Defense Authorization Act, a study is required to evaluate these issues. I think Chair Warren was instrumental in that. I hope we will wait for the results of that study before imposing any additional requirements on the DOD.

Now, let me be clear, I think it is wrong and we do not want individuals or industry to exploit situations to gain unfair advantage over others or jeopardize the interest of our National Security. It is important that we not let people game the system and should never tolerate someone doing so in a way that risks National Security. I think it is important the two things exist at the same time.

One, military and civilian personnel should be able to pursue meaningful employment to further advance U.S. National Security interests. Two, DOD must be able to protect against and punish unethical behavior without making service so much a sacrifice that we drive away those we truly need to protect our country.

While it appears that we are doing a good job of this right now, I think it is important to always do exactly what Senator Warren is doing and be an advocate for improvements and second looks. We should be constantly reviewing policies and spending, and everything else that Government does to make sure it is working the right way.

Again, I want to thank Chair Warren for holding this hearing today. I would also like to address my concerns regarding one of our witnesses today. I appreciate Colonel Wilkerson's service to our country, but I am highly troubled by his repeated and longstanding criticism in the harshest terms of Israel and those who disagree with the Colonel.

I am referring to his repeated public statements calling Israel an apartheid State, certain that controls United States foreign policy. Clearly, the Obama, Iran deal blows that assertion out of the

water. Israel did not support that deal. Colonel Wilkerson has also suggested that Israel, not Syria, used chemical weapons, and has asserted the United States should never have recognized the State of Israel because it has been a disaster for us and the world.

I think countries like Jordan, which also wouldn't exist without Israel's help, and the Abraham Accords states would say differently. I would like to think those countries around the world whose trade, economy, and security have improved because of their ties to Israel, like India, would also disagree with the Colonel.

The Colonel's continued attacks against former U.S. Government officials fails to add to reasonable debate that can improve policy-making. As to the Colonel's references to former Government officials he thinks are too close to Israel and favor too much, I remind us all that every country represents itself to the United States Government and each of us to attempt to influence our directions, our decisions, as do interest groups and private companies.

I hardly think those representing Israel or its interests deserve more scrutiny than anyone else. I am particularly bothered by what appears to be an obsession by Colonel Wilkerson with the Jewish State of Israel and some of the most ardent defenders who, of course, are Jewish Americans.

With the Colonel's past comments, it makes it difficult to have high expectations he will be able to contribute to our hearing today. With that, thank you to the witnesses for appearing before the Subcommittee today. I look forward to your testimony and want to thank Chair Warren for hosting this meeting.

Senator WARREN. I want to thank my partner here, Senator Scott, and we will get started with our panels. We are going to have two panels today. The first panel consists of outside witnesses to provide their perspective on where current ethics and public integrity laws are falling short.

We will have Lawrence Wilkerson, Retired Colonel and Former Special Assistant to Chairman of the Joint Chiefs of Staff, Colin Powell, and we will have Danielle Brian, Executive Director of the Project on Government Oversight.

Mr. Wilkerson, I am going to recognize you first. With apologies, I am going to go vote, handing the gavel over to Senator Scott, and I will return as quickly as I can. In the meantime, it is up to you.

**STATEMENT OF COLONEL LAWRENCE B. WILKERSON, USA
(RET.), FORMER SPECIAL ASSISTANT TO THE CHAIRMAN OF
THE JOINT CHIEFS OF STAFF**

Mr. WILKERSON. Well, thank you, Madam Chairwoman, and Ranking Majority, or Minority Leader, and also the two Senators, at least one now who are in attendance, my own Senator from Virginia, Senator Tim Kaine.

Let me respond to some remarks that were just made by the minority leader. George Washington was the one who opined first and most powerfully that any nation that ties its interests totally with the interests of another nation is bound to be punished for it. Of course, he was talking about France at the time, but that is applicable to any relationship that the United States might have with a friend, ally, non-NATO ally, or whatever.

Let me thank you for asking me to come here today to talk about this. I think this is a serious issue, but I want to put it in some context, if I may, with a few minutes that I have and take it to a wider writ, if you will, but with pertinence and relevance, to be sure.

We have been at war for more than 20 years. I see in Houston, Los Angeles, San Francisco, Chicago, where I was last week, soldiers of all components, marines and others walking around in battle dress uniform. First of all, I can tell you that would have been anathema to my old boss, Colin Powell, but it is not what we are. We are not a Republic that has soldiers in the street dressed for combat all the time.

Twenty years of war plus and trillions of dollars spent, and yet we have nothing like was created on the 1st of March 1941 and created essentially by SR71, and called essentially a committee to investigate the national Defense Program and chaired by, of course, Harry Truman, who said, "this is going to be my main task," to ensure the big man doesn't get away with things that hurt the little man.

Typical Harry Truman language, and that Senate investigating committee did enormous service for America. It pointed out many problems with an existential conflict, if you will. That is to say, one that we had to win on two fronts, in the Pacific and in Europe. Great service done by Harry Truman. I would say it was as great a service as he did as in the Executive Office. We have nothing like that today.

I know the rejoinder would be we have all kinds of committees like the Senate Budget Committee, Senate Appropriations Committee, Armed Services Committees in the House and the Senate to do this or do that, but nothing like this, which is focused on what I call the National Security budget, which, ladies and gentlemen, is over \$1.6 trillion annually now.

That is including everything that should be under National Security. That is a lot of money. That is a huge amount of money. We have even got CBO [Congressional Budget Office] reports that postulate it might take all discretionary Federal spending in a few years just to pay for defense if we keep up at this rate.

So, contributory to this and to these policies is another story I will relate to you about Norman Augustine. Many of you probably know who Norman Augustine is. He was head of the Red Cross. He was CEO [Chief Executive Officer] of Lockheed Martin. He was Assistant Secretary of Defense for Defense and Engineering. He was head of the Defense Science Board. His portfolio goes miles, associated mostly with National Security.

Norm told Colin Powell and others of us when President H.W. Bush decided to downgrade the defense industrial base in the armed forces by about 25 to 30 percent, depending on what you are talking about. Norm said, "you know what you are going to get with the defense contractors, don't you?"

"You are going to get six or seven that run everything, and they are going to monopolize, and they are going to build shoddy products and charge you a maximum price. That is what is going to happen," and by God, that is pretty much what has happened.

The Chairman actually indicated that in some ways, with the stock sell offs and the share price increases and all the money going to the CEO and the VPs [Vice Presidents], and the CFO [Chief Financial Officer] rather than to the floor workers and such—Halliburton, I think, by some estimates, made \$44 billion off Afghanistan and Iraq alone.

When there is that much influence out there from the defense contractors, it is not like you call up, for example, Vice President Dick Cheney and say, “give me a war,” but there is a hell of a lot more influence for National Security decisionmaking whose objective is just that.

That is what these Generals and Admirals and others contributed to by constant movement through what we call a revolving door and out to help that industry. Thank you.

[The prepared statement of Mr. Lawrence B. Wilkerson follows:]

PREPARED STATEMENT BY COLONEL LAWRENCE B. WILKERSON

In late August 1993, I was helping Colin Powell move into his new home in McLean, Virginia. We were admiring a beautiful over-and-under shotgun that Mikhail Gorbachev had given Powell when he was Ronald Reagan’s final national security advisor, and at the same time we were resting momentarily in the lobby of the spacious new house, having unloaded quite a few items to that point. I took the moment to ask Powell an important question—for both of us.

“What’s next for you, boss?”

He looked at me with that enigmatic, slight smile of his and said he didn’t know. I followed up with a matter-of-fact statement that he could emulate one of his heroes, George Marshall, and shoot for a cabinet position, SecDef or SecState.

He answered with words that stunned me somewhat and that I will never forget.

“I’d need several millions of dollars to do that. You can’t go after a cabinet position such as those without lots of money—particularly if you’re a Black man with 300 Jamaican cousins, at least.”

Again he smiled—more widely—as I logged that trenchant thought without comment on what it meant, if true, for our democracy, both in terms of millionaire cabinet officers and the feeling that Blacks needed more insurance-for-the-future than Whites.

Then he followed up with a statement that did not stun me and with which I completely agreed and about which I felt similar disgust.

“One thing’s for certain”, he said. “I won’t be a beltway bandit.”

I knew precisely what he meant.

Powell and I had had several pithy conversations over the previous four and a half years about flag officers who departed the Pentagon, or other high perches in the military, and went almost directly to defense contractors or similar corporate entities and traded their “rolodex’s” for six-figure salaries and perks. Rather than rolodex, today the term would be “cellphone contact list”.

We both knew why they were hired by the likes of Lockheed, Grumman, Raytheon, Boeing, Booze Allen, SAIC, CACI, United Technologies (now merged with Raytheon), and so on. They were hired for the high-level people they knew and could influence, from their contemporaries still on Active Duty to the key people in other government departments and agencies, to the Saudi, Japanese, Korean, European, Israeli and other potentates and near-potentates, in uniform and in mufti, with whom they had worked during Active service. Those related to Saudi Arabia seemed particularly egregious and compromised, partly if not largely because so much money, both above-board and “dark”, could be in play.

Both Powell and I held such flag officers (and not a few Colonels/Navy Captains) in some disdain.

We both knew that the lives to which they had become accustomed were difficult to shed, both from a power perspective and a standard of living point of view. But we also believed there were several other ways to provide for a rough continuation of such lifestyles rather than prostrating oneself and one’s honor to the beltway bandits, which is precisely what we both labeled them—and not just in humor.

One could contend that we also knew there might be one or two officers who could go, say, to Lockheed, accept a position that paid six or seven times what they had earned in the military, and still make sound decisions and give sound advice and

not put national interests in jeopardy. Adding in a very robust flag officer retired pay, they were, as we described it, sitting pretty—and maintaining their honor and dignity. But—and it’s a huge “but”—we both thought we could count such officers on one hand.

Call it a deterioration of ethics in the military officer corps, the lure of filthy lucre, the lifestyle preferences, the elixir of continued power and influence, call it what you will, we knew that the Army did not usually produce many giants of integrity, as sometimes the American people seemed to think. We knew too that Hamilton and Madison had been right when they said men were no angels—and that’s why governments were instituted and the rule of law established.

And we often talked about how the process had become just too easy, that what had begun to be called the “revolving door” was well-lubricated and passing through it took almost no effort and carried little stigma at all. And, usually, came with quite a few perks.

Later, when we both were growing old, we had occasion to comment on one particularly egregious example that appalled us both. Powell opened his criticism with a blow to the solar plexus of the general officer involved, because he had been a staff member for Powell when Powell was chairman of the Joint Chiefs of Staff.

This officer, in 2002 and 2003 and later, was not only working for a media outlet and being paid, he was also advising the boards of one or two of the defense contractors in position to benefit enormously from the 2003 Iraq War.

From his media perch, he advocated strenuously for the war and for its positive progress after “the statue came down” (the apparent end of combat). It was very hard to believe this particular officer actually thought the war would be a cakewalk, and certainly not the post-hostilities phase because we all knew there were simply too few troops for the war and far too few for the war’s aftermath. Indeed, Powell had even discussed such matters with the officer in question earlier as well as with the Commander of Central Command, General Franks.

Both Powell and I, with some expressed disgust, concluded this officer was shilling for the war to increase share prices—which subsequently rose dramatically—as well as fulfill and secure his well-compensated media role.

This is only one example, perhaps one of the most egregious, but only one.

For instance, both Powell and I discussed the number of USAF officers who pushed for the F-35 while in uniform and then went to work in some way for one of the several contractors involved. What troubled us most was that on the inside, so to speak, they knew of the cost overruns, the shoddy performance, the outright lies being offered about the logistics package and the associated costs, but they went right out and took positions with the contractors and became an integral part of the deceit.

Likewise as the mission of Close Air Support (CAS) arose with regard to the F-35. These officers knew well that the USAF would never risk such an expensive aircraft supporting soldiers on the ground; yet they joined the chorus asserting the F-35 would perform CAS missions, perform them well, and thus the very best airframe for that purpose, the A-10 Warthog, could be retired. That made us furious. We also knew that even if the F-35 were somehow committed to CAS, it would perform the mission atrociously, risking unnecessarily soldiers’ lives. Both Powell and I had discussed the “Roles and Missions” debate numerous times—including going over the Key West Agreement as one of our first actions upon Powell’s assuming the position of CJCS; so, we knew the history of the debates and how often CAS had fared very poorly in them since WWII. For both of us, this was a sacred matter of soldiers’ lives on the ground.

Both Powell and I realized how having partisan flag officers, more interested in making money and securing their futures than in the very best defense of sound policies and procedures, was putting not only vast resources at risk but more substantially, lives on the battlefield.

Let me provide an example of how this revolving door situation actually confronted me.

As a colonel, I had only a couple of offers from contractors as I departed the Army with 31 years of service. I believe this was largely because to the contractor empire I became a lost entity, so to speak. After Powell’s 4-year chairmanship, I was asked by the Marine Corps Commandant, General Charles Krulak, to go to Quantico, VA and “make his new war college joint.” Having served with Marines before—and truly revering them—and having been on the faculty of the Naval War College in Newport, RI, as well as being a graduate of both that school’s junior and senior courses, I knew the Navy and its Marine Corps very well. I accepted the Commandant’s offer and served at Quantico for 4 years and was “ceremoniously” retired from the Marine Corps at Quantico and administratively, with no fanfare, retired from the Army at Ft. Myers (I wasn’t even present).

And to their credit, the two contractors that did discover me at Quantico followed all the rules in making me an offer, i.e., they made it post-both retirements.

Later, when I became Secretary of State Powell's chief of staff, I was approached—illegally—while I was still in office and propositioned. Twice.

Actually, in both instances the individual who was supposed to make me an offer, tried to do so but in both cases I cut him off, cited the rules, and politely asked him to leave my office. With some obvious embarrassment, both gentlemen did so with no debate. From their countenances and parting apologies, however, I could tell my actions were wholly unexpected.

I relate this personal story simply to demonstrate how widespread such a recruiting practice is and how eager the defense industry is to get its hands on you if you are serving in high places. An acquaintance of mine, a West Point graduate and Army colonel upon his retirement, eventually accepted an offer not too dissimilar to one of those made to me and wound up serving his "security contractor"—headed by a retired US Army four-star flag officer—in the Ministry of Defense in Tbilisi, Georgia and making hundreds of thousands of dollars as a consequence. His wealth at this stage vastly exceeds my own.

The practice of stepping through the revolving door is well in place. It is, in my view, pernicious, corrupting, and damaging to the interests of the country.

There is an indirect aspect of this revolving door story that needs mentioning too because it is at the least contributory to the problem. Powell and I discussed this issue several times as well.

The issue is there are too many flag officers.

The "bloat of flags", as we used to call it, is frankly incredible.

One statistical indicator, which I find overwhelmingly convincing, is a simple set of ratios: in WWII, with roughly 12 million Americans in service, the ratio of flag officers to "the ranks" was one to six thousand. Today, with all Service components comprising roughly two million Americans (and one must be careful here in writing "Americans" because a recruiting procedure today enlists non-Americans with a promise of eventual citizenship), the ratio of flag officers to "the ranks" is one to 14 hundred. A dramatic difference.

Today we have brigadier generals performing tasks, exercising authority and managing roles that in the past majors and lieutenant colonels performed quite well.

Additionally, we have unnecessary three-and four-star positions, even in ostensibly leadership and management roles.

But the staff officer ranks are by far the worst in this regard, whether the positions are inside the U.S. or on the increasingly bloated staffs of organizations such as the NATO military alliance.

One Navy Captain, writing in 2019, had this to say:

A cursory examination of the historical record makes clear that the number of flag officers serving in the United States Navy operates independently from either the number of ships in service or the number of personnel in uniform. Today, the number of flag officers seems to be more a political concoction or a runaway administrative outgrowth, but has little to do with the sea or the ability to sustain combat operations on it.

I would agree wholeheartedly and apply the description to each of the other Services in addition to the Navy, with its Marine Corps being somewhat of an exception. I say somewhat because it too has had some inexplicable growth in numbers.

And I am well aware that I keep describing the Marines Corps as if it were an integral part of the Navy and that any one of the present crop of Commandants would likely smack me for that description. The leaders of the Marine Corps today by and large consider the Corps a separate and independent entity in their heart of hearts—and the Congress has afforded them ample evidence of late to that effect, particularly by adding a Marine four-star to the Joint Chiefs of Staff—a decision this body might regret in a real war, say, with China. Unity of command has long been a principle of war and what is the Marine Corps divorced from the Navy except another Army?

For a comprehensive look at what violating unity of command does to a military, see the eminent naval historian Dr. Craig Symonds' new book (2022), *Nimitz at War*, which relates the history of the Pacific Theater in WWII. Because Franklin Roosevelt would not intervene with Admiral King, Admiral Nimitz, and General Douglas MacArthur and establish and empower one overall commander in the Pacific, America suffered tens of thousands of casualties needlessly.

Clearly, today's bloat of flag officers contributes to, if nothing else, the sheer number of retired flag officers available to defense and security contractors. I would contend that it also contributes to the less than stellar character of some of these individuals because, as I have earlier intimated, the ranks of solid-character Americans

fit for such lofty service are not replete with individuals. There are some flag officers I have known whom I would not follow to a tea party let alone in a war.

I vividly recall Powell's debriefing me on a call he had just received from Senator Chuck Hagel when the Senator was a member of the Senate Armed Services Committee.

The Senator told Powell that he—the Senator—was looking over the proposed promotion lists of two-stars to three-stars and three-stars to four-stars.

Hagel, Powell informed me, was angry. He told Powell that there was not a single individual on the prospective four-star list that he would want as a Service Chief, a Unified Command Commander, or a Chairman. Same with the prospective three-star list should any of them be so fortunate to make it to four. "What is wrong?" Hagel asked Powell.

Powell then engaged the Senator in a somewhat lengthy and complex discussion of how the various Service personnel systems were simply not working very well when it came to who did and who did not make flag rank—and, more seriously, that the crop of prospects was not necessarily the best ever.

Now, I had known Powell and worked for him directly about 3 years at that juncture of our 12 professional years together and I knew him even at that early stage to be somewhat of a historian when it came to American history, particularly military history.

"In our history," I asked him, "has it ever been any better in decades of no significant war?"

"You've got a point," he responded. "But it's not as if we haven't had plenty of combat practice."

"Yea," I responded. "And we haven't actually won a war in half a century-plus—except that little fracas in the Gulf in 1990-'91, kicking Saddam's Army out of Kuwait." (After all, my mother did not raise a complete fool. . . .)

"So what should I have told the Senator?" Powell asked.

"Precisely what you did tell him—the truth as you see it. After all, the Constitution assigns the Congress the responsibility to look after the armed forces, the Army in particular, as it's raised as the occasion demands. Since they provide for a navy, their diligence perhaps should be more acute in that direction."

"It isn't any better there, and you know it," Powell conjectured.

"So what should we do?" I pleaded. "Pray for a big war?"

"Probably the only thing that would change the situation," he said, sadly.

These are my thoughts and, clearly, I have conveyed some of the thoughts, as expressed to me, of General and Secretary of State Colin Powell as well. We had many conversations about such matters but, other than a real war to cleanse the ranks, we had no real solution—that is, a politically possible solution—to offer.

We often remarked on just how many such people, the majority of them flag officers, General George Marshall had to root out and release from service in the late 1930's. The exigencies of a looming world war demanded it. I would not wish for that solution, but it just might be the only one that would work.

I'm pleased to answer any questions you might have, if I'm able to do so.

STATEMENT OF DANIELLE BRIAN, EXECUTIVE DIRECTOR AND PRESIDENT, PROJECT ON GOVERNMENT OVERSIGHT

Ms. BRIAN. Thank you, Chairman, and thank you, Senator Scott, for inviting me to testify today. I want to focus on three legal but corrupting phenomena that undermine integrity at DOD.

The revolving door, as has been mentioned now, while some important reforms were passed in the 2018 and 2022 NDAA's, there really remain some significant loopholes. Let me give you three examples and why they matter.

When the Chief of Naval Operations announced his intention to retire nine littoral combat ships, he stated that one more dollar in that system would result in a less capable, less lethal, and less ready Navy.

But an intense lobbying campaign led by former Navy officials who had gone to work for companies with contracts to support

those ships successfully prevented the Navy's retirement of five of those ships.

Now, current lobbying restrictions did not prevent this because they only prohibit a very narrow definition of lobbying activities for very senior officials. When then Undersecretary of Defense Pete Aldridge served on the Pentagon's Defense Acquisition Board, he helped decide that the Air Force's F-22 program should proceed.

Two months later, he joined the board of Lockheed Martin, the maker of the F-22. After only 6 years, Defense Secretary Gates canceled production of that aircraft, saying they weren't relevant to current wars. The revolving door laws did not apply to Aldridge because he was too senior to be considered an acquisition official.

When Lieutenant General Heebner was Assistant to the Army Chief of Staff Shinseki, they announced moving to an all-wheeled army away from tracked vehicles. One month later, General Heebner was hired to become Senior Vice President of General Dynamics, and you guessed it, the maker of the wheeled Stryker vehicle.

Now, as we are supplying Ukraine with equipment to defend themselves, we are sending over 40-year-old tracked Bradley fighting vehicles because they are preferable for the offroad mobility, especially in mud. Revolving door restrictions did not apply to General Heebner because he became an executive and not a lobbyist for the company.

These examples demonstrate the impact of the revolving door. This is not just a nicety. It is about military readiness and effectiveness, and whether we are actually putting our troops' interests and our National Security first.

My written testimony includes specific recommendations to close these and other loopholes. The second phenomenon, undermining the integrity of DOD is the occurrence of former U.S. Military and Reserve personnel receiving waivers of the Constitutional Emoluments Clause to work for foreign governments.

POGO's [Project on Government Oversight] investigation that was concurrent with the Washington Post identified more than 500 instances of these waivers over 10 years. Shockingly, the State Department is even approving waivers to work for countries notorious for serial human rights violations, including for former National Security adviser James Jones, who reportedly increased his work for Saudi Arabia even after their horrifying murder of United States resident and journalist Jamal Khashoggi.

These waivers have most frequently benefited the United Arab Emirates (UAE), which had 280 former United States Military on their payroll during that timeframe. Our investigation even found four people who were approved to work for entities owned by the Chinese Government.

We have several recommended reforms in my written testimony, but there should be no waivers for former U.S. military personnel going to work for countries identified by the State Department as guilty for a pattern of human rights violations, or which are our country's rivals, and finally, ownership of defense stocks by senior officials.

Currently, only acquisition officials are banned from owning stock in the top ten defense companies. But until a few years ago,

this Committee, the Senate Armed Services Committee, required every nominee to divest all stock from any defense contractor before being confirmed.

I have brought with me two examples of ethics agreements from officials who agreed to this committee's requirements in 2010 and 2014 to divest from and not invest in any company identified as a DOD contractor as a condition of their confirmation.

In the short term, I encourage the Committee to revive that rule, but Congress should codify a more expansive plan. If the Congress does accomplish this suite of reforms, it will increase public confidence in the integrity of the DOD, and more importantly, it will improve our military readiness and capability, and we at POGO would be thrilled to help you do so.

[The prepared statement of Ms. Danielle Brian follows:]

PREPARED STATEMENT BY DANIELLE BRIAN

Chairwoman Warren and Ranking Member Scott, thank you for inviting me to testify today. The subject of this hearing is one of the primary reasons my organization was created.

Founded in 1981, the Project On Government Oversight (POGO) is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable Federal Government that safeguards constitutional principles.

We made our mark in the 1980's by investigating Pentagon waste, fraud, and abuse, spotlighting overspending on \$640 toilet seats, \$7,600 coffee makers, and \$435 hammers.¹ Four decades later, things have mostly changed for the worse and this hearing on public integrity at the Department of Defense (DOD) could not have come at a better time. Congress can and must act to improve the laws that are meant to ensure policymakers spend tax dollars pragmatically and are acting in the interest of our national security.

Improving these laws will require tackling three legal—but corrupting—phenomena that skew public policy for personal and private gain. We have practical solutions for each of these persistent problems. First, close remaining loopholes to slow the revolving door between the Pentagon and defense companies. Second, end the rubberstamp approval of former military personnel working for foreign governments, and third, mitigate the risk and appearance of financial conflicts of interest for senior Pentagon officials.

SLOW THE REVOLVING DOOR BETWEEN PENTAGON AND DEFENSE CONTRACTORS

The United States spends more on defense than the next nine highest-spending countries combined, including our principal rivals, Russia and China.² The military budget proposal submitted by the Biden administration for 2024 totals some \$842 billion and stands to be the largest appropriations of military funds since 1960.³

This money represents the intent of this Congress to maintain the most capable and advanced military in the world. But it also presents opportunities for waste, mismanagement, and predatory abuse. Recent history has borne this out time and again. Now is the time to eliminate opportunities for corruption. Congress took important steps to address this problem in the National Defense Authorization Acts

¹Project On Government Oversight, *Defense Waste and Fraud Camouflaged as Reinventing Government* (September 1999), 5, <https://docs.pogo.org/report/1999/report-19990901.pdf>.

²"The United States Spends More on Defense than the Next 9 Countries Combined," Peter G. Peterson Foundation, accessed April 21, 2023, <https://www.pgpf.org/blog/2022/06/the-united-states-spends-more-on-defense-than-the-next-9-countries-combined>.

³Department of Defense, "Department of Defense Releases the President's Fiscal Year 2024 Defense Budget," Press Release, March 13, 2023, <https://www.defense.gov/News/Releases/Release/Article/3326875/department-of-defense-releases-the-presidents-fiscal-year-2024-defense-budget/>; "U.S. Military Spending/Defense Budget 1960–2023," Macrotrends, accessed April 21, 2023, <https://www.macrotrends.net/countries/USA/united-states/military-spending-defense-budget>.

(NDAAs) for fiscal years 2018 and 2022,⁴ but more work must be done to close the remaining loopholes.

The past 20 years of major weapons systems development from the Pentagon and its industry partners has been a litany of failures. The F-35 Joint Strike Fighter, the littoral combat ship, the *Zumwalt*-class destroyer, and the *Ford*-class supercarrier have all suffered major and costly challenges.⁵ These systems have cost American taxpayers hundreds of billions of dollars, and they still don't fulfill their intended missions even after years of delays and retrofits.⁶ These setbacks have burdened our armed forces with decades of opportunity costs. Taxpayer money could instead have gone to systems that actually work as intended.

Defense companies and their lobbyists, rather than practical military strategy, have guided significant budgetary and strategic decisions by Congress, over the objections of top military leaders. And it is no secret that the defense industry owes this success in no small part to defense companies having hired former military and civilian DOD personnel to shape the lobbying efforts. According to OpenSecrets, in the last Presidential election cycle in 2020 the defense industry spent over \$100 million on lobbying.⁷

A 2018 POGO report identified 380 instances of high-ranking former Pentagon officials who transitioned from the DOD to private companies between 2008 and 2018 and almost immediately became lobbyists, board members, executives, or consultants for defense contractors. These instances included work performed for defense contractors by 25 former generals, nine former admirals, 43 former lieutenant generals, and 23 former vice admirals.⁸ Nearly 90 percent of these former officials became registered lobbyists, where the operational skill is influence-peddling.⁹

In clashes between industry lobbying and military judgment, the lobbyists all too often win. We saw this in 2022 when the Navy attempted to retire nine *Freedom*-class littoral combat ships, with Chief of Naval Operations Admiral Mike Gilday telling the Senate Appropriations Subcommittee on Defense that he “refused to put an additional dollar against that system.”¹⁰ He also said that, while keeping these ships in service would allow for a “larger Navy,” it would also be a Navy that was “less capable, less lethal, and less ready.”¹¹ The Navy justified cutting these ships, which have faced significant problems with their powerplants as well as failures to develop weapons and systems for their hulls, by showing that their early retirements would save some \$4.3 billion over the next 5 years that could be used to support more pressing Navy priorities.¹²

In a recent investigation, the New York Times reported that “A consortium of players with economic ties to the ships—led by a trade association whose members had just secured contracts worth up to \$3 billion to do repairs and supply work on them—mobilized to pressure Congress to block the plan, with phone calls, emails and visits to Washington to press lawmakers to intervene.”¹³

Lobbying efforts like this are often led by former career DOD officials and retired military officers, who have managed to turn their military connections and flag ranks into lucrative careers in the private sector. That was the case with the littoral combat ships. A nearly 20-year retired Navy veteran, Timothy Spratto, led the lobbying effort to thwart their retirement. At the time, Mr. Spratto was general man-

⁴ 10 U.S.C., Chapter 49, “Miscellaneous Prohibitions and Penalties,” Notes, <https://www.law.cornell.edu/uscode/text/10/subtitle-A/part-II/chapter-49>.

⁵ Geoff Wilson, Project On Government Oversight, “Ushering in a New Generation of Accountable Defense Spending,” Baker’s Dozen: Thirteen Crucial Issues Policymakers Can Act on Now, February 2, 2023, <https://www.pogo.org/report/2023/02/bakers-dozen-thirteen-crucial-issues-policymakers-can-act-on-now#heading-9>.

⁶ Dan Grazier, “The F-35 and Other Legacies of Failure,” Project On Government Oversight, March 19, 2021, <https://www.pogo.org/analysis/2021/03/the-f-35-and-other-legacies-of-failure>.

⁷ OpenSecrets, “Defense Summary,” <https://www.opensecrets.org/industries/indus.php?Ind=D>.

⁸ Project On Government Oversight, Brass Parachutes, 9, https://s3.amazonaws.com/docs.pogo.org/report/2018/POGO_Brass_Parachutes_DOD_Revolving_Door_Report_2018-11-05.pdf.

⁹ Project On Government Oversight, Brass Parachutes, 9-10 [see note 8].

¹⁰ Senate Appropriations Subcommittee on Defense Hearing on the fiscal year 2023 Navy and Marine Corps Budget Request, 117th Cong. (May 26, 2022) (Remarks of Admiral Mike Gilday, Chief of Naval Operations) <https://www.navy.mil/Press-Office/Testimony/display-testimony/Article/3046510/senate-appropriations-subcommittee-on-defense-holds-hearing-on-the-fiscal-year/>.

¹¹ Senate Appropriations Subcommittee on Defense Hearing, Remarks of Admiral Mike Gilday [see note 10].

¹² Eric Lipton, “The Pentagon Saw a Warship Boondoggle. Congress Saw Jobs,” New York Times, February 4, 2023, <https://www.nytimes.com/2023/02/04/us/politics/littoral-combat-ships-lobbying.html>.

¹³ Lipton, “The Pentagon Saw a Warship Boondoggle. Congress Saw Jobs” [see note 12].

ager of BAE Systems’ Jacksonville, Florida, shipyard where the littoral combat ships on the East Coast are serviced and which recently won part of a \$1.3 billion Navy contract to do repairs on the vessels.¹⁴ According to his LinkedIn page, Spratto’s last role before leaving the Navy was “Assistant Chief of Staff, Material Readiness and Assessments, Naval Surface Forces Atlantic”—the exact sort of position he would later lobby to gin up support for underperforming ships.¹⁵ According to the New York Times, the lobbying effort started almost immediately after the Navy announced its plans to retire nine of the ships, “with a burst of phone calls to Capitol Hill, local officials in Jacksonville, and the Navy’s ship-maintenance division.”¹⁶

Mr. Spratto was not alone in this effort. Take, for example, retired Rear Admiral James A. Murdoch, who served as program executive officer for the littoral combat ship program from 2011 to 2013. After his retirement, he became the international business development director for ship and aviation systems at Lockheed Martin, one of the prime contractors that built the failing *Freedom*-class littoral combat ships.¹⁷ Or retired Captain Tony Parisi, who penned an op-ed in 2022 for Real Clear Defense titled “Don’t Give Up the Ship,” which defended continuing the littoral combat ship program but failed to mention that he was a member of the General Dynamics team responsible for training crews to operate the ships.¹⁸ While writing an op-ed would not trigger post-employment restrictions even if they had covered Captain Parisi (whose rank placed him below their coverage), this contribution to the fight illustrates how the defense industry can deploy the credibility of prior military service to sway public opinion. In the end, this lobbying effort was successful in undermining the Navy and preventing five of the ships from being retired.¹⁹

Existing restraints on lobbying the Pentagon after leaving government are clearly inadequate. Despite the reforms Congress has made in recent years, none of the previously mentioned activities would have been prohibited.²⁰ This is either because post-government employment restrictions don’t apply to most military personnel below an O-7 rank and most civilian personnel below the Senior Executive Service level; the ban that applied to Rear Admiral Murdoch was only for 1 year; or because an activity like writing an op-ed isn’t considered lobbying and the prohibitions only apply to narrowly defined lobbying activities and contacts.²¹ These weak guardrails risk prioritizing the financial interests of former senior officials and arms contractors over our national security.

Congress should strengthen the post-government employment restrictions for former uniformed and civilian defense personnel. And those restrictions should not be limited to former contracting officials, who are not the only individuals influencing the Department’s acquisition decisions. Senior officials make strategic decisions that can influence the Department’s budgetary requests, contracting plans, and policy formulation. Officials with no direct role in procurement activities make recommendations and decisions that can shape departmental needs that drive acquisition decisions. While the final call on which bidder receives a particular contract award may not be theirs to make, these officials can influence the criteria that will ultimately determine which companies are eligible to compete for contracts or are likely to succeed. Other officials can shape day-to-day decisions affecting the delivery of contracted services or the evaluation of performance.

In 2017, information technology expert Deap Ubhi helped shape the early direction of what would become the Joint Enterprise Defense Infrastructure (JEDI) contract. A civilian worker for the Pentagon, Mr. Ubhi did market research for the JEDI project in his last 2 months on the job. He eventually recused himself from the project and, 2 weeks later, went to work for Amazon in October 2017.²² When his participation in the project and employment negotiations with Amazon came to

¹⁴ Lipton, “The Pentagon Saw a Warship Boondoggle. Congress Saw Jobs” [see note 12].

¹⁵ “LinkedIn page for Timothy Spratto,” LinkedIn, accessed April 18, 2023, <https://www.linkedin.com/in/tbspratto/>.

¹⁶ Lipton, “The Pentagon Saw a Warship Boondoggle. Congress Saw Jobs” [see note 12].

¹⁷ Project On Government Oversight, Brass Parachutes, 19 [see note 8].

¹⁸ Lipton, “The Pentagon Saw a Warship Boondoggle. Congress Saw Jobs” [see note 12].

¹⁹ Lipton, “The Pentagon Saw a Warship Boondoggle. Congress Saw Jobs” [see note 12].

²⁰ 10 U.S.C., Chapter 49, “Miscellaneous Prohibitions and Penalties,” Notes [see note 4].

²¹ 10 U.S.C., Chapter 49, “Miscellaneous Prohibitions and Penalties,” Notes [see note 4].

²² Karen Weise and Thomas Kaplan, “Giant Military Contract Has a Hitch: A Little-Known Entrepreneur,” New York Times, March 20, 2019, <https://www.nytimes.com/2019/03/20/technology/military-contract-deap-ubhi.html>.

light in 2018,²³ the contract, which DOD had awarded to Amazon, was upended.²⁴ Another bidder, Oracle, challenged the award. That revolving door case was among the reasons the contract bid was the subject of costly protests, court-ordered holds and investigations, and finally cancellation of the contract.²⁵ The reforms Congress later passed in 2021 to extend recusals would have prevented this calamity.²⁶

Two additional examples also stand out. As undersecretary of defense for acquisition, technology, and logistics, Edward “Pete” Aldridge was head of the Defense Acquisition Board that made the controversial decision to pursue procurement of the Lockheed Martin F/A-22 fighter jet. Two months after he ensured Lockheed would be awarded the contract, he secured a position on the company’s board of directors.²⁷ The Procurement Integrity Act only bars those directly involved with contracting decisions at a granular level from receiving compensation from a contractor for a year after they leave government. It fails to cover higher level officials whose decisions steer the director of contracting efforts.²⁸ When Mr. Aldridge left DOD to work for Lockheed Martin, a spokesperson for the company emphasized that the compensation restriction did not apply to him. As a director, Mr. Aldridge received a \$75,000 retainer and \$75,000 in Lockheed Martin stock.²⁹ After only 6 years then-Secretary of Defense Robert Gates canceled production of the F-22, stating, “The more they buy of stuff we don’t need, the less we have available for the stuff we do need. . . . It ain’t a complicated problem.”³⁰

So far, we’ve given examples from the Navy and Air Force to illustrate the weaknesses of current revolving door restrictions on senior officials. Let us round things out with one from the Army. Army Lt. General David K. Heebner was a top assistant to Army Chief of Staff General Eric Shinseki. Three months before Heebner retired, the Army announced it was “prepared to move to an all wheel formation as soon as technology permits,” in a shift away from tracked vehicles. General Dynamics, which manufactures the wheeled Stryker, was the beneficiary of this new vision, essentially putting United Defense, which produced tracked vehicles, out of the running. Just 1 month after the Army announced the plan to procure more wheeled vehicles, General Dynamics revealed that it had selected Lt. General Heebner to be its senior vice president of planning and development.³¹ While the Stryker remains in service, the battle in Ukraine has demonstrated the benefit of having tracked vehicles for the purpose of off-road mobility.³²

The law did not prevent these former senior officials from going to work for these companies. Additional restrictions Congress later enacted also would not have prevented these trips through the revolving door. Congress must do more. There is no time to delay in making the necessary reforms to give the public confidence that our weapons procurement decisions and military budget are crafted with integrity and put genuine national security needs first.

Very real national security challenges face us today, but not all of them need high-tech answers or the investment of hundreds of billions of dollars in exquisite new weapons systems. It is critical that lawmakers do all in their power to ensure that decisions regarding the largest part of our annual discretionary spending, on which our national security depends, are made without bias or undue influence from corporate or self-interests.

²³ Aaron Gregg, “‘Once an Amazonian, always an Amazonian’: Former Pentagon official’s business ties draw scrutiny,” *Washington Post*, December 18, 2018, <https://www.washingtonpost.com/business/2018/12/18/once-an-amazonian-always-an-amazonian-former-pentagon-officials-business-ties-draw-scrutiny/>.

²⁴ Alex Emmons, “Amazon Offered Job to Pentagon Official Involved with \$10 Billion Contract it Sought,” *Intercept*, June 3, 2019, <https://theintercept.com/2019/06/03/amazon-defense-department-jedi-contract/>.

²⁵ Aaron Gregg and Jay Greene, “Fierce backlash against Amazon paved the way for Microsoft’s stunning Pentagon cloud win,” *Washington Post*, October 30, 2019, <https://www.washingtonpost.com/business/2019/10/30/fierce-backlash-against-amazon-paved-way-microsofts-stunning-pentagon-cloud-win/>.

²⁶ 10 U.S.C., Chapter 49, “Miscellaneous Prohibitions and Penalties,” Notes [see note 4].
²⁷ Renae Merle, “Lockheed Adds Director Fresh from the Pentagon,” *Washington Post*, June 27, 2003, <https://www.washingtonpost.com/archive/business/2003/06/27/lockheed-adds-director-fresh-from-the-pentagon/1f65541e-56c7-42be-892b-d2c416f33739/>.

²⁸ 41 U.S.C. § 2104 (2023), <https://www.law.cornell.edu/uscode/text/41/2104>.

²⁹ Merle, “Lockheed Adds Director Fresh From the Pentagon” [see note 27].

³⁰ Greg Jaffe, “Gates Makes Impassioned Case for Ending F-22 Program,” *Washington Post*, July 17, 2009, <https://www.washingtonpost.com/wp-dyn/content/article/2009/07/16/AR2009071603872.html>.

³¹ Revolving Door Working Group, “The Government-to-Industry Revolving Door,” 32 [see note 26].

³² Lara Seligman, Lee Hudson, and Paul McLeary, “Pentagon weighs sending Stryker combat vehicles to Ukraine,” *Politico*, January 9, 2023, <https://www.politico.com/news/2023/01/09/pentagon-stryker-combat-vehicles-ukraine-00077083>.

In 2017, lawmakers included a provision strengthening revolving door restrictions on senior Defense Department officials in Section 1045 of the fiscal year 2018 NDAA.³³ That provision expanded post-government restrictions related to lobbying for military officers at the O-7 level and above, as well as their civilian counterparts in Senior Executive Service and Executive Schedule positions. Except for the secretary, these officials were previously covered by a 1-year restriction on communicating with, or appearing before, their former employing components of the Defense Department.³⁴ (The secretary was already covered by a longer and broader restriction.) The new provision expanded the scope of the restriction to cover contacts with any part of the Department—not just the former employing components—and to cover behind-the-scenes work, such as research and preparation for lobbying contacts.³⁵ For officials at the O-9 level and above, as well as civilians at Executive Schedule Level III and above, the new provision also extended the length of the restriction to 2 years.³⁶ POGO supported this important legislation.³⁷ We applauded its passage as a remarkable advancement in protecting the government against former officials seeking undue influence over the government on behalf of their new employers and clients.³⁸

However, established interests inside the Pentagon had a different reaction. The Department dragged its feet on implementing the law for over 2 years, stalling until March 2020 before releasing a policy.³⁹ Even before issuing this policy, the Pentagon requested a legislative rollback that would strip the behind-the-scenes lobbying restriction and narrow the scope of the no-contact ban to only the former official's former employing component.⁴⁰

POGO and other watchdogs objected to this effort to weaken government ethics in the DOD, and the measure failed.⁴¹ However, Pentagon leaders may try again. If they do, Congress should reject the rollback.

The fiscal year 2022 NDAA added another ethics restriction, now requiring those coming into the Defense Department to recuse for 2 years from any particular matter involving specific parties in which a former employer is a party or represents a party.⁴² The recusal obligation should be expanded beyond “particular matters involving specific parties” to any “particular matter” affecting the former employer. But we can't stop there.

Congress should enact several additional commonsense measures to slow the revolving door between the Pentagon and the military industrial complex and build a more transparent, accountable, and capable national security policy.

First, lawmakers must close remaining loopholes in current ethics rules, which give former high-ranking officials room to evade post-government employment restrictions.⁴³ The primary post-government employment law, 18 U.S.C. § 207, mainly covers traditional lobbying activities (contacts with parts of the Department of Defense). But it should cover behind-the-scenes work of all types, to prevent former officials from selling their expertise and insider knowledge to defense contractors, as well as to remove the temptation of future employment prospects for current defense officials making decisions that affect contractors.⁴⁴ Another loophole in that

³³ 10 U.S.C., Chapter 49, “Miscellaneous Prohibitions and Penalties” [see note 4].

³⁴ 18 U.S.C. § 207(c) (2023), <https://www.law.cornell.edu/uscode/text/18/207>. Regulations of the Office of Government Ethics designate various components of the Department of Defense as separate agencies for the purpose of applying the statutory post-employment restrictions only to communications and appearances before the component that previously employed a former senior or very senior employee. 5 C.F.R. pt. 2641, app. B, https://www.law.cornell.edu/cfr/text/5/appendix-B_to_part_2641.

³⁵ 10 U.S.C., Chapter 49, “Miscellaneous Prohibitions and Penalties” [see note 4].

³⁶ 10 U.S.C., Chapter 49, “Miscellaneous Prohibitions and Penalties” [see note 4].

³⁷ Daniel Van Schooten, Mandy Smithberger, and Scott Amey, “POGO Tells National Defense Authorization Act Conferees to Prioritize Troops and Taxpayers, Not Contractors,” Project On Government Oversight, October 13, 2017, <https://www.pogo.org/letter/2017/10/pogo-tells-national-defense-authorization-act-conferees-to-prioritize-troops-and-taxpayers-not-contractors>.

³⁸ Scott Amey, “Defense Lobbying Ban Might Drain the Pentagon Swamp,” Project On Government Oversight, March 12, 2018, <https://www.pogo.org/analysis/2018/03/defense-lobbying-ban-might-drain-pentagon-swamp>.

³⁹ Office of the General Counsel of the Department of Defense, DOD Instruction 1000.32, “Prohibition of Lobbying Activity by Former DOD Senior Officials,” March 26, 2020, https://irp.fas.org/DODdir/DOD/i1000_32.pdf.

⁴⁰ Katie Porter and Jackie Speier, “The Pentagon’s Proposal to Fill the Swamp,” *Lawfare*, June 10, 2020, <https://www.lawfareblog.com/pentagons-proposal-fill-swamp>.

⁴¹ John M. Donnelly, “Pentagon Looks to Undo Parts of McCain Anti-Lobbying Law,” *Roll Call*, April 14, 2020, <https://rollcall.com/2020/04/14/pentagon-looks-to-undo-parts-of-revolving-door-law/>.

⁴² 10 U.S.C., Chapter 49, “Miscellaneous Prohibitions and Penalties” [see note 4].

⁴³ Project On Government Oversight, *Brass Parachutes*, 11 [see note 8].

⁴⁴ 18 U.S.C. § 207(c) [see note 34].

law allows the Office of Government Ethics to designate separate components of the DOD for treatment as distinct Federal agencies, meaning former officials can contact any part of the DOD other than their former employing component without restriction. While the fiscal year 2018 NDAA may have closed this loophole, 18 U.S.C. § 207 should be amended to incorporate that change.⁴⁵

The Procurement Integrity Act imposes a 1-year post-government employment bar on a former defense official receiving compensation for employment with a defense contractor that holds a contract award worth more than \$10,000,000.⁴⁶ However, the restriction applies only if the former official served in one of several specified procurement-related capacities with respect to the contract.⁴⁷ This restriction should be expanded to apply to all former senior and very senior employees of the Department of Defense in the chain of command of covered procurement officials, not just to those who were directly involved in procurements. This change would track the concept of a restriction applying to certain matters under a former employee's "official responsibility," which is used in 18 U.S.C. § 207(a)(2). The prohibition as to employers should apply to all divisions, affiliates, and subcontractors of a contractor, and language in the law making it applicable to work as a "consultant" should be amended to explicitly refer to attorneys, lobbyists, and other representatives or advisors to defense contractors.⁴⁸ The loopholes in these restrictions leave room for defense contractors to stack the decks in their favor by bringing former high-ranking officials onto their boards and into executive suite offices, or by otherwise engaging in advocacy that has the impact of lobbying but is not explicitly banned.

Second, Congress should extend the post-government ban on lobbying the DOD. For generals, admirals, and career members of the Senior Executive Service, this restriction should last 4 years; for political appointees at the Senior Executive Service level and above, the restriction should last either 4 years or until the end of the Presidential administration, whichever is longer. As discussed previously, the recent reforms extended that ban to 2 years for former military officials at the O-9 level and above and their civilian counterparts. But a 2-year ban on lobbying the Department of Defense should also apply to former military officials at the O-7 and O-8 levels, and their civilian counterparts in Senior Executive Service and Executive Schedule positions.

Presidents George H.W. Bush, Bill Clinton, Barack Obama, Donald J. Trump, and Joe Biden all issued ethics Executive Orders or standards of conduct at the start of their presidencies, addressing these ethics issues for their administration. Presidents Clinton and Trump extended the post-government employment lobbying ban on their appointees to 5 years, and President Biden extended the lobbying ban on his appointees to 2 years or the duration of his administration, whichever is longer.⁴⁹ It is time for Congress to codify what the public clearly wants from their government.

We are well aware of the objection that expanding post-employment restrictions would make it impossible for former Pentagon officials to find post-government work. But there are terrific examples of senior government officials finding lucrative work in the private sector by leveraging their management experience without exploiting the relationships they developed inside the government. One example is the Bush administration's Deputy Secretary of Energy Kyle McSlarrow, who went on to run the National Cable and Telecommunications Association (now known as NCTA—The Internet & Television Association) after leaving government.⁵⁰ Other famous examples include former Secretary of Defense Robert Gates, who became the president of the Boy Scouts of America and then chancellor of William & Mary after leaving the government.⁵¹ There's also former Secretary of State, Defense, and

⁴⁵ 18 U.S.C. § 207(c) [see note 34]; 5 C.F.R. pt. 2641, app. B [see note 34].

⁴⁶ 41 U.S.C. § 2104(a)(1) [see note 28].

⁴⁷ 41 U.S.C. § 2104(a)(1) [see note 28].

⁴⁸ 41 U.S.C. § 2104(a) [see note 28].

⁴⁹ Project On Government Oversight, "Comparing Ethics Orders: Biden's Is on Top, But it Could be Stronger," January 28, 2021, <https://www.pogo.org/resource/2021/01/comparing-ethics-orders-bidens-is-on-top-but-it-could-be-stronger>.

⁵⁰ Kyle McSlarrow, Senior Vice President, TPX Business Planning and Development, Comcast Cable, Comcast, accessed April 18, 2023, <https://corporate.comcast.com/news-information/leadership-overview/kyle-mcslarrow>.

⁵¹ Erin Zagursky, "Robert M. Gates to be reappointed as W&M Chancellor," *William & Mary News Archive*, September 20, 2018, <https://www.wm.edu/news/stories/2018/robert-m.-gates-to-be-reappointed-as-wm-chancellor.php>.

Army Chief of Staff George C. Marshall, who served as president of the American Red Cross and chairman of the American Battle Monuments Commission.⁵²

Third, Congress should require defense contractors to certify that their employees are in compliance with the requirements of Section 1045 of the NDAA for fiscal year 2018.⁵³ Specifically, Congress should enact a law mandating that the secretary of defense issue regulations requiring each offeror that submits a bid or proposal in response to a solicitation issued by the DOD to include in such bid or proposal a representation that all covered individuals receiving compensation from such offeror are in compliance with the requirements of that section. The Government Accountability Office recommended in 2021 that the DOD issue regulations containing this requirement, and the DOD agreed with the recommendation and committed to do so.⁵⁴ There is no reason Congress should not make this certification a statutory requirement.

Finally, Congress should increase transparency regarding government ethics compliance by current and former defense officials. Congress has mandated that the DOD issue written guidance on post-government employment restrictions to departing senior and very senior employees and retain that guidance in the After Government Employment Advice Repository, but the public has little access to that guidance.⁵⁵ Congress should require the DOD to make that guidance public by posting it in a centralized data base on the website of the Office of Government Ethics.

This is data that is already collected and processed by government administrators, following a congressional mandate in 2008.⁵⁶ Furthermore, this information is not private or classified, and can be accessed by a Freedom of Information Act (FOIA) request or by some cursory searching on websites like LinkedIn. POGO has maintained a similar “proof of concept” data base to demonstrate a relatively simple and inexpensive way to strengthen Federal contractor accountability.⁵⁷ The United Kingdom also maintains a public data base for its former appointees and government officials.⁵⁸ The public has a strong interest in seeing the formal ethics opinions in DOD’s secret data base. These opinions are the first line of defense against intentional or inadvertent misconduct by covered former DOD officials, and their publication would go a long way toward assuring taxpayers that military procurement decisions are being made based on merit and not preferential treatment.

Along the same lines, we recommend releasing other ethics records pertaining to top political appointees in the DOD and other agencies on the Office of Government Ethics’ website. While the public can request these records under the Freedom of Information Act or, in some cases, under government ethics laws, practical obstacles limit public access to these records. Because the public has no way of knowing when the government has issued an ethics waiver, for example, a member of the public would not know to request a copy of the waiver or where to file the request. Obtaining other records, like ethics screening arrangements, through FOIA requests is a slow process that, in many cases, can only be employed effectively through costly litigation.

But the public’s need to know when the government is excusing officials from compliance with ethics laws and regulations or how the government is implementing recusals outweighs any interest an individual official may have in keeping such matters hidden from the public. A law mandating the creation of a centralized data base could exclude records containing classified information or records of individual ethics counseling, other than legally mandated issuances like the post-employment guidance in the After Government Employment Advice Repository.⁵⁹ Therefore, the increased transparency and public accountability would not come at any cost to government effectiveness.

⁵²The George C. Marshall Foundation, “Marshall and the Red Cross,” September 22, 2017, <https://www.marshallfoundation.org/articles-and-features/marshall-and-the-red-cross/>; American Battle Monuments Commission, “History,” <https://www.abmc.gov/about-us/history>.

⁵³10 U.S.C., Chapter 49, “Miscellaneous Prohibitions and Penalties” [see note 4].

⁵⁴Government Accountability Office, *Post-Government Employment Restrictions: DOD Could Further Enhance Its Compliance Efforts Related to Former Employees Working for Defense Contractors*, GAO-21-104311 (2021) Recommendations, <https://www.gao.gov/products/gao-21-104311>.

⁵⁵“Defense Federal Acquisition Regulation Supplement; Senior DOD Officials Seeking Employment with Defense Contractors” (DFARS Case 2008-D007), 74 Fed. Reg. 59913 (November 19, 2009), <https://www.govinfo.gov/content/pkg/FR-2009-11-19/pdf/E9-27849.pdf>.

⁵⁶74 Fed. Reg. 59913 [see note 56].

⁵⁷“Pentagon Revolving Door Data base,” Project On Government Oversight, last modified January 31, 2023, https://www.pogo.org/data_base/pentagon-revolving-door.

⁵⁸Cabinet Office, “Business Appointment Rules Advice,” last updated April 5, 2023, <https://www.gov.uk/government/publications/cabinet-office-business-appointment-rules-advice>.

⁵⁹74 Fed. Reg. 59913 [see note 56].

We think that it is important to close this section by noting that U.S. military personnel have complied with more serious restrictions than what we are proposing in more demanding times than these. U.S. Navy and Marine Corps personnel were barred from being employed by Navy contractors under U.S. law from 1896 into the 1960's.⁶⁰ That broad restriction specified, "No payment shall be made from appropriations made by Congress to any officer in the Navy or Marine Corps on the Active or retired list while such officer is employed by any person or company furnishing naval supplies or war material to the Government."⁶¹ Despite this ban, the U.S. Navy and Marine Corps underwent an incredible technological and doctrinal modernization that allowed them to claim victory in the two largest wars ever fought.

The revolving door has been a growing problem for a long time. The Government Accountability Office has been issuing reports on the problems with the DOD revolving door since at least 1986.⁶² POGO has also pushed for specific reforms since the 1980's.⁶³ We know what the problems are. They have been studied, reported on, evaluated, and reevaluated. Now is the time for Congress to finish what it has started by implementing additional reforms.

End Rubberstamp Approval of Former Military Personnel Serving Foreign Powers

The second problem of outside influence we would like to bring to Congress's attention involves the influence of foreign governments. In the earliest days of the republic, the founders understood the dangers of foreign government influence. That is why they took care to enshrine a safeguard in the Constitution against foreign influence over government officials—the Emoluments Clause. The Emoluments Clause prohibits anyone holding "an office of profit or trust," which includes retired military personnel and members of the reserves, from receiving payments from foreign governments unless Congress consents.⁶⁴

Congress has granted limited consent to receive such payments for individuals who obtain waivers, first from their employing services and then from the Department of State.⁶⁵ The statutory designation of the State Department as the final approving authority comes with the duty to wield the waiver power responsibly, putting national interests before an individual's profit-seeking activities.⁶⁶ But, in practice, that is not what State Department officials appear to have done.

A POGO investigation, concurrent with an investigation by the Washington Post, revealed that the State Department all but rubberstamps these approvals. Between April 2010 and August 2020, over 500 retired and reserve U.S. military personnel received authorization to work for foreign countries.⁶⁷ The governments of some of those countries are notorious for human rights violations and their activities raise questions of potential national security issues.

This is true of the government of Saudi Arabia, one of the top employers at issue in these waivers. The State Department has expressed concern about the authoritarian government's record of abuses, citing "unlawful or arbitrary killings, including extrajudicial killings; enforced disappearances; torture and cruel, inhuman, or degrading treatment or punishment by government agents; harsh and life-threatening prison conditions; arbitrary arrest and detention; political prisoners or detain-

⁶⁰ 10 U.S.C. § 6112 was repealed by Pub. L. 87-649, § 14(c)(36), September 7, 1962, 76 Stat. 501, <https://uscode.house.gov/statviewer.htm?volume=76&page=501>.

⁶¹ 34 U.S.C. § 883, 1896, <https://tile.loc.gov/storage-services/service/ll/uscode/uscode1925-00103/uscode1925-001034016/uscode1925-001034016.pdf>.

⁶² Government Accountability Office, *DOD Revolving Door; Many Former Personnel Not Reporting Defense-Related Employment*, GAO/NSIAD-86-71 (March 1986), <https://www.gao.gov/assets/nsiad/86-71.pdf>.

⁶³ Danielle Brian-Bland and Dina Rasor, "Lies, Half-Truths, and Misrepresentations: How the Military Gets Its Money," *Yale Law & Policy Review*, Vol. 5, No. 1 (1986): 102-119, <https://www.jstor.org/stable/40239235>.

⁶⁴ Congressional Research Service, "Foreign Government Employment by Armed Services Retirees," IF12276, January 5, 2023, <https://crsreports.congress.gov/product/pdf/IF/IF12276/7>; Department of Defense, Standards of Conduct Office, "Application of the Emoluments Clause to DOD Civilian Employees and military personnel," White Paper, accessed April 19, 2023, https://dod.soco.osd.mil/Portals/102/emoluments_clause_applications.pdf.

⁶⁵ 37 U.S.C. § 908, <https://www.law.cornell.edu/uscode/text/37/908>.

⁶⁶ 22 C.F.R. §§ 3a.2 and 3a.3 (2023), <https://www.law.cornell.edu/cfr/text/22/part-3a>.

⁶⁷ Julianne McClure, "State Dept. Is Quietly Approving Former Servicemembers' Work for Foreign Interests. That's a Problem," Project On Government Oversight, October 18, 2022, <https://www.pogo.org/investigation/2022/10/state-dept-is-quietly-approving-former-servicemembers-work-for-foreign-interests-thats-a-problem>; Craig Whitlock and Nate Jones, "Retired U.S. Generals, Admirals Take Top Jobs with Saudi Crown Prince," *Washington Post*, October 18, 2022, <https://www.washingtonpost.com/investigations/interactive/2022/veterans-us-foreign-jobs-saudi-arabia/>.

ees; [and] transnational repression against individuals in another country.”⁶⁸ In 2018, Saudi leaders ordered the brutal murder of Jamal Khashoggi, a United States resident employed by the Washington Post.⁶⁹

There are also concerns about Saudi Arabia’s ties to our international rivals. The White House has accused the Saudi Government of taking measures to help Russia fund its murderous campaign in Ukraine.⁷⁰ The monarchy has also reportedly relied on Russian and Chinese negotiators to work toward reestablishing diplomatic ties with Syria and Iran.⁷¹

Yet former National Security Advisor James Jones and former head of the National Security Agency Keith Alexander, both of whom are retired military officers, have served the Saudi monarchy with the State Department’s blessing.⁷² There is not much higher in the ranks of former U.S. Government insiders a foreign power could hope to reach than these two individuals.

Mr. Jones increased his involvement with the Saudi Government after the murder of Mr. Khashoggi.⁷³ The killing did not discourage Jones’s company from applying to do more work for the regime. According to the Washington Post, former four-star Air Force General Charles Wald, who worked for Mr. Jones, said, “We asked ourselves, are we basically turning a blind eye toward immorality?”⁷⁴ The answer to that question is yes. And the State Department joined them in ignoring that immorality.

Topping even Saudi Arabia as an employer of former U.S. military personnel is the United Arab Emirates (UAE). The State Department approved nearly 280 waivers permitting former military personnel to work for the regime in the UAE.⁷⁵ Over three-quarters of those waivers authorized work for EDGE Group or one of its subsidiaries, a defense conglomerate owned by the Emirati State. This year, EDGE’s CEO, Mansour AlMulla, boasted that his company has “excellent relationships with a lot of partners in China, Russia, and with the different countries.”⁷⁶

The State Department has identified a litany of “significant” human rights violations by the UAE’s rulers, including reports of arbitrary arrests, torture, and disappearances, as well as harassment of human rights organizations.⁷⁷ Despite such concerns, the State Department essentially rubberstamped waiver requests from former military personnel to work on behalf of the UAE.

Former Defense Secretary James Mattis received one of these waivers. That was during a brief gap in Federal employment, between his service as a Marine Corps four-star general and his appointment as secretary of defense. He did not disclose his work for the Emirati Government in the financial disclosure report he filed upon

⁶⁸ State Department Bureau of Democracy, Human Rights, and Labor, 2022 Country Reports on Human Rights Practices: *Saudi Arabia*, (2022), <https://www.State.gov/reports/2022-country-reports-on-human-rights-practices/saudi-arabia/>.

⁶⁹ Shane Harris, Souad Mekhennet, John Hudson, and Anne Gearan, “Turks tell U.S. officials they have audio and video recordings that support conclusion Khashoggi was killed,” Washington Post, October 11, 2018, https://www.washingtonpost.com/world/national-security/turks-tell-us-officials-they-have-audio-and-video-recordings-that-support-conclusion-khashoggi-was-killed/2018/10/11/119a119e-cd88-11e8-920f-dd52e1ae4570_story.html.

⁷⁰ Jackie Northam, “The White House accuses Saudi Arabia of aiding Russia and coercing OPEC oil producers,” NPR, October 13, 2022, <https://www.npr.org/2022/10/13/1128523146/saudi-arabia-russia-opec-oil-cut-biden-congress-washington>.

⁷¹ Summer Said, Benoit Faucon, and Michael Amon, “Saudi Arabia, Syria Close to Resuming Ties in Russia Brokered Talks,” Wall Street Journal, March 23, 2023, <https://www.wsj.com/articles/saudi-arabia-syria-close-to-resuming-ties-in-russia-brokered-talks-a340b817>; Abby Sewell, “Saudi Arabia, Syria may restore ties as Mideast Reshuffles,” Associate Press, March 24, 2023, <https://apnews.com/article/saudi-arabia-syria-restore-relations-192c4b2086b34288bdd530e06fc4a32a>.

⁷² Whitlock and Jones, “Retired U.S. Generals, Admirals Take Top Jobs with Saudi Crown Prince” [see note 68].

⁷³ Whitlock and Jones, “Retired U.S. Generals, Admirals Take Top Jobs with Saudi Crown Prince” [see note 68].

⁷⁴ Whitlock and Jones, “Retired U.S. Generals, Admirals Take Top Jobs with Saudi Crown Prince” [see note 68].

⁷⁵ McClure, “State Dept. Is Quietly Approving Former Servicemembers’ Work for Foreign Interests. That’s a Problem” [see note 68].

⁷⁶ Agnes Helou, “EDGE Group CEO Talks Acquisitions, Chinese and Russian Cooperation and Autonomous Systems,” *Breaking Defense*, February 21, 2023, <https://breakingdefense.com/2023/02/edge-group-ceo-talks-acquisitions-chinese-and-russian-cooperation-and-autonomous-systems/>.

⁷⁷ State Department Bureau of Democracy, Human Rights, and Labor, 2022 Country Reports on Human Rights Practices: *United Arab Emirates*, (2022), <https://www.State.gov/reports/2022-country-reports-on-human-rights-practices/united-arab-emirates/>.

being nominated for defense secretary, though a departmental spokesperson claims he told the Senate Armed Services Committee about it.⁷⁸

As secretary, General Mattis was leading the Department of Defense when former President Trump decided to support a blockade of Qatar by the UAE.⁷⁹ Whatever position then-Secretary Mattis may have taken regarding the blockade behind closed doors, having a former UAE military advisor leading our military at that time risked an erosion of public confidence in the government's decisions and jeopardized relations with America's allies.

Another example involves Charles Bolden, retired United States Marine Corps major general and former administrator of the National Aeronautics and Space Administration (NASA). While leading NASA in 2016, then-Administrator Bolden negotiated a cooperation agreement with the UAE.⁸⁰ Following his departure from government, the State Department authorized him to work as a member of the Emirati Space Advisory Committee in 2018. He had expressed his interest in fostering collaboration between the U.S. and UAE as early as 2010, so his work on the 2016 agreement may have been an earnest effort to pursue legitimate policy objectives.⁸¹ But without greater public awareness of the relationships involved or the negotiations, his work for the UAE so soon after leaving government creates an appearance problem that threatens public trust.

These episodes illustrate the potential for conflicts of interest. The State Department's permissive approach to dispensing foreign government emolument waivers creates a perverse

incentive for officials to consider currying favor with foreign governments before they leave the military. This temptation could lead to misusing their positions in the hopes of reaping rewards after they leave their posts. The Washington Post reported that some former top officials received six-and seven-figure payments working for foreign governments, "far more than what most American service members earn while on Active Duty."⁸²

The effects of these waivers even touches on one of the most hotly debated issues in Congress today: the strategic challenge to the United States from China. Between April 2010 and August 2020, at least four emoluments waivers were approved for former U.S. military personnel to work for organizations with ties to China.⁸³ This is despite the fact that the DOD and Secretary of Defense Lloyd Austin have described China as "America's pacing threat," with other DOD officials clarifying that "China is the only country that can pose a systemic challenge to the United States in the sense of challenging us, economically, technologically, politically and militarily."⁸⁴

Beyond the problem of the State Department's permissiveness with waivers, there is also the issue of transparency. In theory, the public should have access to these waivers to monitor the risks the State Department is choosing to create. But it took protracted FOIA litigation by both POGO and the Washington Post to secure the release of these waivers, with the State Department and the Department of Justice fighting against it. If those agencies had put as much effort into considering these waivers as they put into keeping them from the public, there might be fewer waivers.

After we prevailed in the FOIA case, the documents still left questions unanswered. Many of them were heavily redacted. The government redacted names of officials receiving the waivers in 80 percent of the waivers generally and 98 percent

⁷⁸ Mandy Smithberger, "Generally Concerning," Project On Government Oversight, August 2, 2017, <https://www.pogo.org/investigation/2017/08/generally-concerning>.

⁷⁹ Julian Borger, "Qatar Blockade Exposes Rifts in Trump Administration's 'Peculiar' Foreign Policy," *Guardian*, June 24, 2017, <https://www.theguardian.com/us-news/2017/jun/24/qatar-blockade-trump-administration-foreign-policy>.

⁸⁰ National Aeronautics and Space Administration, "NASA, UAE Sign Significant Outer Space, Aeronautics Cooperation Agreement," Press Release 16-058, June 12, 2016, <https://www.nasa.gov/press-release/nasa-uae-sign-significant-outer-space-aeronautics-cooperation-agreement>.

⁸¹ McClure, "State Dept. Is Quietly Approving Former Servicemembers' Work for Foreign Interests. That's a Problem" [see note 68].

⁸² Whitlock and Jones, "Retired U.S. Generals, Admirals Take Top Jobs with Saudi Crown Prince" [see note 68].

⁸³ McClure, "State Dept. Is Quietly Approving Former Servicemembers' Work for Foreign Interests. That's a Problem" [see note 68].

⁸⁴ Jim Garamone, "Official Talks DOD Policy Role in Chinese Pacing Threat, Integrated Deterrence," Department of Defense, June 2, 2021, <https://www.defense.gov/News/News-Stories/Article/Article/2641068/official-talks-DOD-policy-role-in-chinese-pacing-threat-integrated-deterrence/>.

of the waivers for work on behalf of the UAE.⁸⁵ Even without redactions, the waivers were short on details. In some cases, they identified the employing entity but not the foreign country for which the work was to be performed. And in cases of firms with numerous clients, identifying the client nation from the waiver was often impossible.

When highly visible former members of U.S. military leadership appear on television, give quotes to reporters, or publish opinion pieces, they enjoy the trust of a public that assumes their proven loyalty is solely to the interests of our own country. But if they are working for a foreign government, or hope to work for one in the future, that trust may be misplaced. The public should know of their divided interests. Unfortunately, the State Department has left the public without tools to identify these conflicts of interest if the former officials in question fail to share that information.

This lack of transparency thwarts public oversight. Without knowing the name of a former official being granted a waiver, the public does not know what expertise and insider knowledge is being put to use abroad. Without knowing which country is buying that former official's services, the public cannot gauge the risks created. And without knowing what services a former official will provide, the public has no way to scrutinize whether divided loyalties could have influenced an official's prior work for our own government. These are not risks Americans should bear in ignorance.

But there are things Congress can do to improve the situation. This year, POGO published a list of recommendations on how to deter foreign influence.⁸⁶ We recommend that Congress:

- Enact substantive prohibitions on former government officials (including but not limited to the military) seeking and obtaining employment with certain problematic foreign countries or entities controlled by those countries. The list of prohibited employers should include adversaries, serial human rights abusers, regimes that do not respect religious freedom, and other authoritarian and malign governments and the entities controlled by those governments.
- Enact a 5-year ban or a ban that lasts for the duration of a president's administration, whichever is longer, on former senior and very senior DOD employees covering both representational activity and behind-the-scenes assistance to foreign governments, foreign political parties, and foreign business entities.
- Require expanded waiver applications to include more substantive details and information about potential foreign employers, including the precise nature of the role, any preexisting relationships or communications between the applicant and the prospective employer, compensation, and additional relevant information.
- Require submission of comprehensive waiver application data to Congress on a regular basis and make those reports available to the public within a reasonable timeframe. This reporting should come from the Department of Defense and Department of State, and should include complete articulation of the methodology and procedures for assessing and rendering decisions on waiver applications.
- Require a retrospective analysis and subsequent report on previously approved waivers and any conflict of interest or national security concerns that were either flagged at the time and not resolved or that were flagged and adjudicated. This report should also specifically address any waivers in which the Department of State flagged International Traffic in Arms Regulations (ITAR) concerns, what the exact nature of those concerns were, and how they were resolved.
- Impose robust financial penalties for those retired and reserved officials who violate the law by not obtaining a waiver prior to working on behalf of a foreign interest or who have otherwise violated the rules in place around seeking employment with foreign interests.
- Require the Government Accountability Office to periodically audit the emoluments waiver system and its efficacy as well as any ongoing concerns around the potential corrupting impact of former U.S. Government officials working on behalf of foreign interests.

⁸⁵ McClure, "State Dept. Is Quietly Approving Former Servicemembers' Work for Foreign Interests. That's a Problem" [see note 68].

⁸⁶ Dylan Hedtler-Gaudette, "How to Deter Foreign Influence and Protect Government Integrity," Project On Government Oversight, February 22, 2023, <https://www.pogo.org/resource/2023/02/how-to-deter-foreign-influence-and-protect-government-integrity>.

POGO urges the committee to undertake the work of implementing our recommendations by advancing legislation. The American people deserve nothing less than the protection these solutions would provide.

Reduce Risk and Appearance of Financial Conflicts of Interest for Senior Pentagon Officials

The final corrupting phenomenon we recommend Congress address is the possibility and the appearance of ongoing financial conflicts of interest that exist because of an inadequate ban on stock ownership by certain defense officials.

The law currently prohibits specified defense officials from owning or purchasing stocks in the top 10 companies doing business with the Pentagon during the previous five fiscal years.⁸⁷ Those 10 companies claim a disproportionate chunk of contract awards—over 38 percent. But in fiscal year 2022, the top 100 contractors accounted for 61 percent of obligated contract dollars.⁸⁸ Most of those companies rely on the Pentagon as their largest or, in some cases, only customer.⁸⁹ Expanding the ban to cover these 100 companies would significantly reduce the risk as well as the perception of conflicts of interest.

Furthermore, the current prohibition only applies to senior acquisition officials. As we mentioned earlier, other senior officials who are not designated as acquisition officials can significantly impact the fortunes of companies. Their ability to hold stock in companies that do business with the DOD damages public faith in the Department. Applying the prohibition to more senior officials would help restore the public's trust.

With so much money and the security of the Nation at stake, the public deserves to know that legal safeguards are sufficient to prevent the temptation of lucrative investment returns from compromising our national defense.

Contractor interactions with defense personnel create risks of conflicts of interest, as well as the potential for insider trading based on information gleaned from these interactions. There is no way for Congress or the public to know how often these risks materialize under the current circumstances. This creates an appearance problem for the DOD because the public cannot rule out the possibility of conflicts of interest and insider trading. Banning more senior officials from owning stocks in a wider array of defense contractors can significantly reduce both the risks of insider trading and the appearance of these possible conflicts.

This simple measure would bolster public confidence in defense programs. Congress should apply the stock ownership prohibition to all senior and very senior employees covered by subsections (c) and (d) of 18 U.S.C. § 207, and expand the current prohibition to the top 100 defense contractors. Broadening the scope of this stock ownership ban to cover more senior officials and more of the top companies working with the Pentagon would strengthen the public's faith in the DOD while reducing the risks of financial conflicts of interest.

Senior leaders in the government have ample alternatives for investing without jeopardizing national security or public trust, including diversified mutual funds, diversified exchange-traded funds, and the Thrift Savings Plan's portfolio investments. Demonstrating the viability of this approach, this committee used to require nominees for Senate-confirmed positions to commit to divesting all defense contractor stock in their ethics agreements, and there is no reason to believe that this practice affected the quality of Pentagon leadership.⁹⁰

⁸⁷ 10 U.S.C. § 988 (2023), <https://www.law.cornell.edu/uscode/text/10/988>.

⁸⁸ Defense and Security Monitor, "Top 100 Defense Contractors 2022," Forecast International, February 22, 2023, <https://dsm.forecastinternational.com/wordpress/2023/02/22/top-100-defense-contractors->.

⁸⁹ "Top 100 for 2022," Defense News, <https://people.defensenews.com/top-100/>.

⁹⁰ Ethics agreements of Department of Defense nominees used to be explicit as to the requirement to divest contractor stocks, a requirement we believe came from the policy of the Senate Armed Services Committee at the time. See Letter from Robert Work (nominee for the position of Deputy Secretary) to Stephen Preston, General Counsel and Designated Agency Ethics Official, Department of Defense, February 7, 2014, 1 ("During my term of office, neither my spouse nor I will invest in any company identified as a Department of Defense contractor or any other entity that would create a conflict of interest with my Government duties. I understand that if any company in which my spouse or I invest enters into a contract with the Department of Defense, my spouse or I will be required to divest that interest."), <https://www.documentcloud.org/documents/23784690-dod-robert-o-work-2015ea>; Letter from Dr. Jonathan Woodson (nominee for the position of Assistant Secretary of Defense for Health Affairs) to Jeh Johnson, General Counsel and Designated Agency Ethics Official, Department of Defense, April 23, 2010 (similar language), <https://www.documentcloud.org/documents/23784697-dod-025442-jonathan-woodson-ea>.

CONCLUSION

Major General Smedley Butler, who twice won the congressional Medal of Honor while serving 33 years in the United States Marine Corps, wrote after World War I, “War is a racket. It always has been. It is possibly the oldest, easily the most profitable, surely the most vicious. . . . It is the only one in which the profits are reckoned in dollars and the losses in lives. A racket is best described, I believe, as something that is not what it seems to the majority of people. Only a small ‘inside’ group knows what it is about. It is conducted for the benefit of the very few, at the expense of the very many. Out of war a few people make huge fortunes.”⁹¹

Echoing these comments, President Dwight D. Eisenhower warned in his 1961 farewell address that “we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist. We must never let the weight of this combination endanger our liberties or democratic processes. We should take nothing for granted. Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense with our peaceful methods and goals, so that security and liberty may prosper together.”⁹²

There is too much at stake now to do nothing. This Congress is in a position to make a real impact. We urge Congress to pass legislation that more effectively slows the revolving door between the Pentagon and defense contractors while simplifying the rules; deters the possibility of foreign influence by ending the rubberstamp approval of former military personnel working for foreign governments; and expands the stock ownership prohibition to reduce the risk and perception of financial conflicts of interest for senior Pentagon officials.

Our aspirational American values of government ethics and taxpayer accountability are all touched by these reforms. And in a very real sense, the strength of our military and our readiness are also directly undermined when policymakers make decisions based not on actual need, but on what is best for the bottom line of defense contractors. Congress should move to ensure that the United States military, the servicemembers who wear its uniforms, and the citizens who depend on their service are all provided for by a system that prioritizes our national security and results over private gains.

⁹¹ Smedley D. Butler, *War is a Racket*, (New York: Round Table Press, INC., 1935), 1–2.

⁹² Dwight D. Eisenhower, “President Dwight D. Eisenhower’s Farewell Address,” (speech, the Oval Office, Washington, DC, January 17, 1961), <https://www.archives.gov/milestone-documents/president-dwight-d-eisenhowers-farewell-address>.

Stephen Preston
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FEB 7 2014

Dear Mr. Preston:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Deputy Secretary of Defense.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

During my term of office, neither my spouse nor I will invest in any company identified as a Department of Defense contractor or any other entity that would create a conflict of interest with my Government duties. I understand that if any company in which my spouse or I invest enters into a contract with the Department of Defense, my spouse or I will be required to divest that interest. I further understand that I may request a Certificate of Divestiture from the U.S. Office of Government Ethics for these assets and that a Certificate of Divestiture is effective only if obtained prior to divestiture. I also understand, however, that my spouse or I must divest such assets whether or not I receive a Certificate of Divestiture.

Upon appointment, I will resign from my position at the Center for a New American Security (CNAS). When I assumed the CNAS position pursuant to my contract with CNAS, I was entitled to a signing bonus from CNAS in the amount of \$6,555.00, which has not yet been paid. Until I have received this payment, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of CNAS to make this payment to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. 208(b)(1). In addition, for a period of two years after my appointment, I will not participate personally and substantially in any particular matter involving specific parties in which CNAS is a party

or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d) and section 3 of Executive Order 13490.

Finally, I understand that as an appointee I am required to sign the Ethics Pledge (Exec. Order No. 13490) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this and any other ethics agreement.

Within 90 days of appointment, I will implement the recusals in this ethics agreement by designating in writing an individual to screen me out of conflicting matters and to reassign those matters, providing the individual with a list of assets and parties giving rise to such conflicts, and notifying you when I have completed these implementing actions.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with other ethics agreements of Presidential nominees who file public financial disclosure reports.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Work", with a stylized flourish at the end.

Robert Work

APR 23 2010

Honorable Jeh Johnson
General Counsel and
Designated Agency Ethics Official
Office of the General Counsel
Department of Defense
1600 Defense Pentagon
Washington DC 20301

Dear Mr. Johnson:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Assistant Secretary of Defense for Health Affairs.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as an officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

During my term of office, my spouse, my dependent children, and I will not invest in any organization identified as a Department of Defense contractor or any other entity that would create a conflict of interest with my Government duties. I understand that if any company in which we invest enters into a contract with the Department of Defense, we will be required to divest that interest. Where applicable, we will request a Certificate of Divestiture from the U.S. Office of Government Ethics. I understand that we must divest whether or not we receive a Certificate of Divestiture.

Upon my appointment, I will take an unpaid leave of absence from my position as an Associate Professor of Surgery and Medicine at Boston University, and I will resign from all other positions I hold at Boston University. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of Boston University, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for either the exemption at 5 C.F.R. § 2640.203(b) or another regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

Under Boston University's Employee Tuition Assistance Plan, my child will continue to attend the university at a reduced tuition rate. Therefore, I also will not

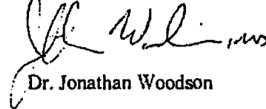
participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of Boston University to provide this employee benefit to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1).

Upon appointment, I will resign my position as adjunct assistant professor of surgery at the Uniformed Services University of the Health Sciences.

Finally, I understand that as an appointee I am required to sign the Ethics Pledge (Exec. Order No. 13490) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this and any other ethics agreement.

Within 90 days of appointment, I will implement the recusals in this ethics agreement by designating in writing an individual to screen me out of conflicting matters and to reassign those matters, providing the individual with a list of assets and parties giving rise to such conflicts, and notifying you when I have completed these implementing actions.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Woodson", is written over the printed name.

Dr. Jonathan Woodson

Senator WARREN. Thank you very much, and it is good to be back with you. I am going to recognize myself here for first round of questions. Decisions made at the Department of Defense and other Federal agencies should be based on one thing and one thing only, what is in the best interests of the American public.

But big defense contractors have a different set of incentives. They are responsible to their shareholders, and that means their job is to make as much as they can in profits. Mr. Wilkerson, you have decades of experience in Republican and Democratic Administrations, both in uniform at DOD, ultimately, as Special Assistant for the Chairman of the Joint Chiefs, Colin Powell, and as a civilian in the State Department.

You have seen the relationship between the Federal Government and private industry up close and personal. Now, there are a lot of different ways that industry seeks to influence decisionmaking at the Pentagon, and a key one is by use of the revolving door.

So, Mr. Wilkerson, let me just ask you, were you lobbied by former colleagues who were hoping to influence your decision-making when you worked either at the Pentagon or at the State Department?

Mr. WILKERSON. I was at both places. I was asked legally, in view of the administrative instructions I received when I became Director and Deputy Director of the Marine Corps War College in Quantico, Virginia.

In other words, they came to me after I retired. In State, it was quite the opposite. I had to tell them midsentence, as it were, stop. Motion my staff assistant come in. "Escort this gentleman out, please, because he is getting ready to make an offer of employment to me, and I can't, you know, listen to it."

That was my administrative instructions when I did my financial disclosure form and went through the White House background investigation and everything else. I knew that I could not entertain an offer for civilian employment post my position until I was out of it.

Senator WARREN. I am just making sure I am following you as we go through this. You are saying while you were still working for the Government, that there were defense contractors who were pretty clearly willing to step over the line to try to make you an offer of employment while you were still a Government employee?

Mr. WILKERSON. Yes, ma'am.

Senator WARREN. How about on the other side? Were they lobbying you about contracts, other things?

Mr. WILKERSON. Not directly. It is a little bit more pernicious than that. For example, when I would sit down at lunch with Turki al-Faisal, who at that time was head of Saudi intelligence, with David Ignatius from the Washington Post on the other side of me, and listen to the conversation at the table, I knew there was influence being peddled.

Was there an exchange of money? I don't know. I myself was offered a couple of thousand dollars from the Saudi official in order to do this, that, and the other thing, and I told him simply, I can't take it. If there is a really, truly pernicious relationship with flag officers, and I am sad to say, colonels too, I am sad to say it seems to be dominating the Air Force.

It is everywhere, but in the Air Force, it is really bad. It is Saudis, going to work for the Saudis in whatever it is they do for the Saudis. I spent a lot of time in this building lobbying to get the Senate to pass and then in the House to get the House to pass the legislation under the War Powers Resolution that would get us out of the war in Yemen.

We got it passed in both houses. Unfortunately, President Trump vetoed it. I encountered people all the time who were being influenced by Saudi money that was exercised, if you will, in order to keep that vote from being successful.

Senator WARREN. Let me just back it up a little bit. I very much appreciate your firsthand account here. To ask you that based on your experience in Government, I just want to focus on the part about why defense contractors, not just foreign governments, but defense contractors like Boeing or Raytheon, why is it they want to hire former Pentagon employees to work for them as lobbyists?

What do they see is the benefit? Why is it better to have someone who, for instance, they could hire people whose profession is lobbying, someone who is lobbying in another field, say, for the last 10 years? They don't want that. They will take somebody who has never lobbied before, but who has been employed at the Pentagon. Why is that?

Mr. WILKERSON. Well, there are a number of reasons for that. I think the No. 1 reason is because they know people who are their contemporaries who are in the building, as it were, or wherever it happens to be.

They also know that that individual usually 06, 07, 08, or up, has contacts elsewhere in the defense contracting business. Now really just about roller decks [contact lists], and they know that that person knows how to work those contacts.

If it is a specific program like the F-35, for example, with which I am somewhat familiar, then you get people who are very familiar with that on the inside, know all about the lies that you have been telling the Federal Government with regard to the program, and we will come out and reinforce those lies, deceit, if you will, from their position with your business. It is a very insidious, pernicious thing.

Senator WARREN. I take it that this is really why Federal law has long recognized the importance of trying to insulate the work of the Federal Government from the influence of private industry. We have been driving in this direction for a long time, just not very successfully.

Federal law requires that Government officials, depending on where you are, wait 1 year or 2 years based on their seniority before lobbying their former agency. I think this is called a cooling off period.

Ms. BRIAN, let me ask you about this. You run an organization called POGO that works as a nonpartisan Government watchdog. Is a 2-year cooling off period sufficient to address concerns about conflicts of interest?

Ms. BRIAN. It is a step in the right direction, Chairwoman, but it is not enough. It has been clear to us that you really need to, especially when you are talking about political appointees, look to the end of an Administration, the length of the time of an Adminis-

tration, which is often four or even longer, depending on if the person is reelected.

This is something that we have done an analysis of the past Presidential ethics orders all the way back to President Clinton. Each President has had some form of ethics order, often applying as much as a 5-year cooling off period.

But we do think a 4-year or at least to the end of the Administration when it comes to those appointees is important. I would love to include for the record, sort of our evaluation of those various considerations and how they could be applied through legislation.

Senator WARREN. Without objection.

Ms. BRIAN. Thank you.

	President Biden	President Trump	President Obama	President Bush	President Clinton	POGO Proposed Ethics Reforms
Executive Action	EO 13989	EO 13770 (revoked by EO 13983)	EO 13490 (revoked by EO 13770)	Restatement of existing ethics laws	EO 12834 (revoked by EO 13184)	To add consistency and continuity to the Executive Branch ethics program, POGO urges Congress to codify the best practices from previous presidential ethics Executive Orders.
Post-Government Employment Ban on Lobbying as a Registered Lobbyist (or, in the case of POGO's proposal, ban on assisting a registered lobbyist)	Applies to all "appointees," for 2 years after leaving office or for the duration of administration, whichever is longer—a period that is longer in some cases than the Obama ethics pledge restriction. Applies to lobbying contacts with any "covered Executive Branch official" and any non-career SES. The EO does not supply a definition, but it appears to be tracking the definition in 2 U.S.C. § 1602.	Applied to all "appointees," for 5 years. Applied to "lobbying activities" with respect to a former appointee's own agency. But this restriction was limited by a definition that created new loopholes beyond those in the LDA, including a loophole for lobbying on regulations, which largely gutted this restriction. President Trump rescinded this EO at the end of his administration, so it was less than 5 years for all covered appointees.	Applied to all "appointees," for the duration of administration. Applied to lobbying contacts with any "covered Executive Branch official" and any non-career SES.	None	Applied to former senior "appointees," for 5 years. Applies to lobbying any officer or appointee of the former appointee's own agency. For former senior appointees who served in the Executive Office of the President, the 5-year ban also applied to any officer or employee of any agency for which the appointee had "personal and substantial responsibility." President Clinton rescinded this EO at the end of his administration, so it was less than 5 years for some appointees.	Applies to all former senior and very senior employees. For "appointees" who are former senior or very senior employees, for 4 years or for the duration of the administration, whichever is longer. For a former senior employee who is a registered lobbyist, applies to the former senior employee's own agency. For a former very senior employee who is a registered lobbyist, applies to the former very senior employee's own agency and to the other officials identified in 18 U.S.C. § 207(d). For both former senior employees and former very senior employees, whether or not registered as lobbyists, also applies to behind-the-scenes assistance to any registered lobbyist who is making or preparing to make a contact the former employee would be prohibited from making. Includes an exception for public interest lobbyists who are not lobbying on behalf of for-profit organizations.

	President Biden	President Trump	President Obama	President Bush	President Clinton	POGO Proposed Ethics Reforms
Executive Action	EO 13989	EO 13770 (revoked by EO 13983)	EO 13490 (revoked by EO 13770)	Restatement of existing ethics laws	EO 12834 (revoked by EO 13184)	To add consistency and continuity to the Executive Branch ethics program, POGO urges Congress to codify the best practices from previous presidential ethics Executive Orders.
Ban on Communicat- ing with the Appoin- tee's Former Agency on Behalf of Others with Intent to Influence	Extends the 1-year post-employment restriction applicable to senior appointees under 18.U.S.C. § 207(c), which applies only to the former employee's own agency, from 1 year to 2 years. Expands the restriction to prohibit communications with senior White House staff.	Merely restated the existing restriction under 18 U.S.C. § 207(c).	Extended the 1-year post-employment restriction applicable to former senior appointees under 18 U.S.C. § 207(c), which applied only to the former employee's own agency, from 1 year to 2 years.	None	None	2 years for all former senior and very senior appointees. During this period, no contact with any part of appointee's former department or agency, regardless of OGE separate "component" designations.
Ban on Behind-the- Scenes Assistance to Lobbyists	For former appointees who are former senior or very senior employees, a 1-year ban on assisting others, behind-the-scenes, in undertaking contacts or lobbying activities that they, themselves, would be prohibited from undertaking.	None	None	None	None	2-year ban on behind-the-scenes assistance by all former senior and very senior employees to others who are undertaking contacts or lobbying activities that they, themselves, would be prohibited from undertaking. Congress has done this for DOD officials, and it should be expanded government wide. Public Law 115-91, § 1045.
Ban on Former Appointee Working for any Foreign Gov- ernment or Foreign Political Party to In- fluence U.S. Policy	Applies to all "appointees," for 2 years after leaving government or for the duration of the administration, whichever is longer.	Applies to all "appointees," a permanent ban applicable to any conduct that would require registration under the Foreign Agents Registration Act of 1938. But did not cover activities requiring registration under the LDA. President Trump rescinded this restriction at the end of his term, so it was effectively only a prohibition until the end of the administration and not a lifetime ban.	None	None	Applies to all "appointees," a permanent ban applicable to any conduct that would require registration under the Foreign Agents Registration Act of 1938. For senior appointees who were engaged in trade negotiations, an additional, ban on behind-the-scenes assistance to foreign governments, foreign political parties, or foreign business entities, for 5 years. President Clinton rescinded this restriction at the end of his term, so it was effectively only a prohibition until the end of the administration and not a lifetime ban.	For all former senior and very senior employees, for 5 years or the duration of the administration, whichever is longer, covering both representational activity and behind-the-scenes assistance to foreign governments, foreign political parties, and foreign business entities. This reform should include prohibitions on working with certain foreign countries, expanded emolument waiver applications, and public reporting requirements.

	President Biden	President Trump	President Obama	President Bush	President Clinton	POGO Proposed Ethics Reforms
Executive Action	EO 13989	EO 13770 (revoked by EO 13983)	EO 13490 (revoked by EO 13770)	Restatement of existing ethics laws	EO 12834 (revoked by EO 13184)	To add consistency and continuity to the Executive Branch ethics program, POGO urges Congress to codify the best practices from previous presidential ethics Executive Orders.
Ban on Appointee Accepting Gifts from Lobbyists or Lobbying Organizations	Applies to all "appointees," ban on gifts from registered lobbyists or lobbying organizations for duration of appointment.	Applies to all "appointees," ban on gifts from registered lobbyists or lobbying organizations.	Applies to all "appointees," ban on gifts from registered lobbyists or lobbying organizations.	None	None	For all senior and very senior employees, a ban on gifts from lobbyists or lobbying organizations. The rules should be expanded to apply to registered lobbyists and to any for-profit corporation that is a client of a registered lobbyist to avoid arbitrary distinctions between companies that do their own lobbying and companies that outsource lobbying. A \$20 de minimis gift exception should be applied to ease enforcement.
Ban on Appointee Handling Matters Involving Former Employers or Clients	For all "appointees" a ban on participating in a particular matter involving particular parties in which the former employer or client is a party or represents a party, for 2 years from the date of appointment and reaching back to employers and clients of the appointee during the 2-year period prior to appointment.	For all "appointees" a ban on participating in a particular matter involving particular parties in which the former employer or client is a party or represents a party, for 2 years from the date of appointment and reaching back to employers and clients of the appointee during the 2-year period prior to appointment.	For all "appointees" a ban on participating in a particular matter involving particular parties in which the former employer or client is a party or represents a party, for 2 years from the date of appointment and reaching back to employers and clients of the appointee during the 2-year period prior to appointment.	None	None	For all officials, for 2 years. Require recusal from any "particular matter" (not merely "particular matter" involving specific parties) affecting any organization, including a trade organization, for which the officer or employee has served as an employee, officer, director, trustee, or general partner in the past 2 years.
Ban on Handling Matters on Which the Appointee had Lobbied	Applies to all "appointees." Absent a waiver, the appointee is prohibited from working for any agency that the appointee lobbied. 2 years for participating in particular matters on which they lobbied. 2 years for participating in the specific issue area in which the matter falls, but appears to have accepted the Trump administration's interpretation of "specific issue area," which is effectively a "particular matter of general applicability."	No employment ban. The following applied to all "appointees": 2 years for participating in particular matter on which they lobbied. 2 years for participating in the specific issue area in which the particular matter falls, but rendered this expansion nearly meaningless by interpreting "specific issue area" effectively as a "particular matter of general applicability."	Applies to all "appointees." Absent a waiver, the appointee was prohibited from working for any agency that the appointee lobbied. 2 years for participating in particular matters on which they lobbied. 2 years for participating in the specific issue area in which the matter falls, but failed to define "specific issue area" (partly because the employment ban largely prevented the issue from arising).	None	None	N/A to public interest lobbyists entering government. For corporate lobbyists and certain corporate representatives, 2 years for participating in particular matter on which they lobbied; 2 years for participating in the specific issue area in which the matter falls; 2 years for seeking or accepting employment with an agency that the appointee lobbied; and the definition of specific issue area should be established as being significantly broader than a "particular matter of general applicability."

	President Biden	President Trump	President Obama	President Bush	President Clinton	POGO Proposed Ethics Reforms
Executive Action	EO 13989	EO 13770 (revoked by EO 13983)	EO 13490 (revoked by EO 13770)	Restatement of existing ethics laws	EO 12834 (revoked by EO 13184)	To add consistency and continuity to the Executive Branch ethics program, POGO urges Congress to codify the best practices from previous presidential ethics Executive Orders.
Golden Parachute Ban	Prohibits "golden parachute payments" in cash or in kind (if offered as a direct substitute for a cash payment), whether given before or after entering government, unless the appointees can show they would have received it if they had not entered the United States Government. But it does not prohibit the accelerated vesting of unvested stock options or unvested restricted stock (or similar unvested assets) prior to entering government. It also does not apply if the former employer offers the item to individuals entering government, as long as the item would also be available to someone going into state government.	None	None	None	None	Either: (a) a complete ban on anything of value given by a former employer, unless the appointees can demonstrate they would have received it if they had not gone into government. or (b) a 4-year recusal from any "particular matter" (including particular matters of general applicability) affecting the financial interests of the former employer (which would mean essentially treating the appointees as if they continued to hold stock in their former employer, which would disqualify them under the conflict of interest law from participating in any work focused on the industry in which the former employer operates).
Hiring Based on Qualifications, Competence, and Experience	Included	Included	Included	None	None	Include hiring requirements. Also require training on merit systems principles and whistle blower protection. In addition, prohibit participation in personnel actions against career federal employees outside the appointee's immediate chain of command, absent written documentation of the reason for the appointee's involvement, which must be provided to the employee.

	President Biden	President Trump	President Obama	President Bush	President Clinton	POGO Proposed Ethics Reforms
Executive Action	EO 13989	EO 13770 (revoked by EO 13983)	EO 13490 (revoked by EO 13770)	Restatement of existing ethics laws	EO 12834 (revoked by EO 13184)	To add consistency and continuity to the Executive Branch ethics program, POGO urges Congress to codify the best practices from previous presidential ethics Executive Orders.
Public Disclosure	All ethics pledges and waiver certifications required or authorized by the executive order shall be filed with the head of the appointee's agency. Waivers must be made public within 10 days. This transparency requirement does not apply to conflict-of-interest waivers or to standards of conduct waivers.	None. Pledges and waivers filed with appointee's agency.	OGE required to file a public report on the administration of the pledge. Pledges and waivers filed with appointee's agency.	None	Pledges and waivers filed with appointee's agency.	For all appointees, make publicly and promptly available in a centralized database on OGE's web site all ethics pledges, ethics agreements, waivers (including conflict-of-interest waivers and standards of conduct waivers, extensions, approvals, authorizations, certifications, and all other legally operative ethics records to ensure strict compliance with ethics commitments. An exception would exempt records containing classified information, information pertaining to ongoing law enforcement activities, and individual guidance that is not required by law to be issued. In addition, OPM should make publicly available a real-time listing of all political appointees (by name, title, agency, agency component, date of appointment, and date of termination) on its official web site.
Report to the President	Requires reporting on ethics executive order administration and necessary recommendations on procurement lobbying and presidential pardons. It also requires a report on the material assistance ban extending to employees "involved in the procurement process" for any contract under their responsibility in the last 2 years of their government service.	None	Required OGE to report to the President on ethics executive order administration, which was released publicly on OGE's web site.	None	None	Require OGE to report to the President on the administration of any ethics executive order and a variety of laws and regulations pertaining to ethics and require OGE to make that report public.

	President Biden	President Trump	President Obama	President Bush	President Clinton	POGO Proposed Ethics Reforms
Executive Action	EO 13989	EO 13770 (revoked by EO 13983)	EO 13490 (revoked by EO 13770)	Restatement of existing ethics laws	EO 12834 (revoked by EO 13184)	To add consistency and continuity to the Executive Branch ethics program, POGO urges Congress to codify the best practices from previous presidential ethics Executive Orders.
Lobbying Defined	The act of a registered lobbyist.	LDA definition except "lobbying activities" did "not include communicating or appearing with regard to: a judicial proceeding; a criminal or civil law enforcement inquiry, investigation, or proceeding; or any agency process for rulemaking, adjudication, or licensing, as defined in and governed by the Administrative Procedure Act, as amended, 5 U.S.C. 551 et seq."	"to act . . . as a registered lobbyist" under the LDA.	None	Meant knowingly communicating or appearing before any officer or employee of any executive agency on behalf of another (except the United States) with intent to influence. Exceptions included: 1. Lobbying for state or local government 2. Certain judicial, criminal, civil, or administrative proceedings 3. Work for a college, hospital, research institution or not-for-profit organization 4. Lobbying for international organizations, if the Secretary of State approves 5. Furnishing scientific or technological information 6. Testimony under oath pursuant to 18 U.S.C. § 207(j)(6).	Expand the definition to go beyond the current limitations on registered lobbyists to cover anyone with a financial conflict of interest, closing loopholes and adopting a single standard that will apply to lobbyists for moneyed interests, those who secretly advise them and the people they work for—all those who might affect public policy for private gain. Include an exception for public interest lobbyists.
Executive Agency Defined	As defined by 5 U.S.C. § 105, and including the EOP, USPS, USPRC, but not GAO. Covered the entire agency.	As defined by 5 U.S.C. § 105, and including the EOP, USPS, USPRC, but not GAO. Excluded separate agency components as designated by OGE.	As defined by 5 U.S.C. § 105, and including the EOP, USPS, USPRC, but not GAO. Covered the entire agency.	None	As defined by 5 U.S.C. § 105, and including the EOP, USPS, USPRC, but not GAO. Excluded separate agency components as designated by OGE.	As defined by 5 U.S.C. § 105, and including the EOP, USPS, USPRC, but not GAO. Covers the entire agency.
Administration	Agency heads, in consultation with OGE, are required to establish rules to ensure pledges are signed, ensure compliance with waivers in written ethics agreements, and ensure that spousal employment issues and other conflicts are addressed in written ethics agreements. OGE will assist agencies in adopting rules related to the EO and other ethics requirements, and report to the President.	Agency heads are required to establish rules to ensure pledges are signed and ensure compliance with the order within the agency.	Agency heads, in consultation with OGE, are required to establish rules to ensure pledges are signed, ensure compliance with waivers in written ethics agreements, and ensure that spousal employment issues and other conflicts are addressed in written ethics agreements. OGE will assist agencies in adopting rules related to the EO and other ethics requirements, and report to the President.	None	Agency heads are required to establish rules to ensure pledges are signed by appointees and trade negotiators and ensure compliance with the order within the agency.	Agency heads, in consultation with OGE, are required to establish and publish rules to ensure pledges are signed, ensure compliance with waivers in written ethics agreements, and ensure that spousal employment issues and other conflicts are addressed in written ethics agreements. Agencies are also required to provide OGE with copies of ethics-related documents for public posting in a centralized public database.

	President Biden	President Trump	President Obama	President Bush	President Clinton	POGO Proposed Ethics Reforms
Executive Action	EO 13989	EO 13770 (revoked by EO 13983)	EO 13490 (revoked by EO 13770)	Restatement of existing ethics laws	EO 12834 (revoked by EO 13184)	To add consistency and continuity to the Executive Branch ethics program, POGO urges Congress to codify the best practices from previous presidential ethics Executive Orders.
Waiver Authority	Granted to the OMB Director, if certified in writing that the restriction is inconsistent with the purpose of the restriction or it is in the public interest (national security or economic exigent circumstances). Goes beyond the Obama pledge in identifying circumstances in which a waiver may be granted. Also requires that the waiver must be made public within 10 days.	Granted to the President or their designee and took effect when a certification is signed by the President. A copy was provided to the agency. But no legal standard was established for issuing the waiver, which meant it could be issued for any reason or no reason at all. No requirement to release the waiver publicly. (In practice, the Trump administration released unsigned, undated, retroactive waivers.)	Granted to the OMB Director or their designee, if certified in writing that the restriction is inconsistent with the purpose of the restriction or it is in the public interest (national security or economic exigent circumstances). No requirement to release waivers publicly. (In practice, the Obama administration released them.)	None	Granted to the President and had to be certified by the President in writing that the waiver was in the public interest. The waiver would be published in the Federal Register and given to the appointee and agency.	Bar retroactive waivers, require written justifications for why the waiver is in the national interest, and place them on OGC's web site within 10 days.
Receiving post-government compensation from a contractor who re-ceive Federal contracts in excess of \$10 million 41 U.S.C. § 2104 (Procurement Integrity Act)	None	None	None	None	None	A restriction on the post-government employment receipt of compensation from a contractor currently applies only if the former official served in one of several specified procurement-related capacities with respect to a particular contract. This restriction should be expanded to apply to all former employees in the chain of command of any covered official, not just those who were directly involved in procurements. The prohibition as to employers should apply to all divisions, affiliates, and subcontractors of a contractor, and language in the law making it applicable to work as a "consultant" should be amended to explicitly refer to attorneys, lobbyists, and other representatives or advisors to contractors.

	President Biden	President Trump	President Obama	President Bush	President Clinton	P060 Proposed Ethics Reforms
Executive Action	EO 13989	EO 13770 (revoked by EO 13983)	EO 13490 (revoked by EO 13770)	Restatement of existing ethics laws	EO 12834 (revoked by EO 13184)	To add consistency and continuity to the Executive Branch ethics program, P060 urges Congress to codify the best practices from previous presidential ethics Executive Orders.
Financial Holdings Restriction	None	None	None	None	None	For all senior and very senior employees, restrict financial holdings (including their spouses and minor children's holdings) to Treasuries, diversified mutual funds and similar non-conflicting assets, with exceptions for financial interests in a spouse's employer, personal residences and other non-commercial individual residences (whether occupied personally or rented out), as well as limited exceptions for pre-existing family trusts.
Outside Employment and Work Commitment Ban	None	None	None	None	None	For all senior and very senior employees, bar them from engaging in compensated outside employment for the duration of their appointment, with limited exceptions for family trusts (e.g., a trust for the appointee's immediate family, trusts for family members who cannot care for themselves, etc.).

	President Biden	President Trump	President Obama	President Bush	President Clinton	POGO Proposed Ethics Reforms
Executive Action	EO 13989	EO 13770 (revoked by EO 13983)	EO 13490 (revoked by EO 13770)	Restatement of existing ethics laws	EO 12834 (revoked by EO 13184)	To add consistency and continuity to the Executive Branch ethics program, POGO urges Congress to codify the best practices from previous presidential ethics Executive Orders.
Special Government Employee Rules and Procedures	None	None	None	None	None	Develop rules and procedures to require formal written designation of special government employee status at the time of appointment, which must be filed with OPM and in the absence of which an employee will not be deemed a special government employee. Also provide that any special government employee who serves more than 130 days in a 365-day period will be converted automatically to a regular employee status or terminated. Require OPM to create a public database of all special government employees (identified by name, title, agency component, appointment date, and termination date). The database would exclude FACA committee members and certain other classes of SGEs who are determined by OGE to have no significant policy making or implementing authority (e.g., seasonal workers in a gift shop, summer inters, lifeguards, etc.). Close the loophole in 5 U.S.C. § 13103(f)(8) that exempts SGE's in the EOP from public financial disclosure.
Discretionary Trusts	None	None	None	None	None	Provide that all senior and very senior employees must disclose the holdings of discretionary trusts to the same extent that they would disclose the holdings of trusts for which they are vested beneficiaries.

	President Biden	President Trump	President Obama	President Bush	President Clinton	POGO Proposed Ethics Reforms
Executive Action	EO 13989	EO 13770 (revoked by EO 13983)	EO 13490 (revoked by EO 13770)	Restatement of existing ethics laws	EO 12834 (revoked by EO 13184)	To add consistency and continuity to the Executive Branch ethics program, POGO urges Congress to codify the best practices from previous presidential ethics Executive Orders.
Agency Heads	None	None	None	None	None	Provide that OGE must review and certify the financial disclosure reports and ethics agreements of any agency heads whose positions do not require Senate confirmation (e.g., CDC Director, Postmaster General, etc.) before they begin serving in the position.

Senator WARREN. You know, one of the common arguments that some of my colleagues make about cooling off periods is that if we lengthen them, it will make it tougher to recruit talented people to work at DOD.

Now, I always want to pause when I hear that argument and say, think about that for a minute. The claim is if somebody knew that Federal law would prevent them from becoming a lobbyist after they left their Federal job, that they would choose not to come to work at the DOD in the first place.

Mr. Wilkerson, based on your experience, if we told people who were in line for top Pentagon jobs that they would need to wait 4 years instead of 3 years or 2 years before they could become lobbyists after they left that job, do you think this would make it harder for DOD to attract the talent that they need?

Mr. WILKERSON. I don't, and I go back to Admiral Spruance, Admiral Nimitz, Admiral Halsey, General Eisenhower, and a host of other characters whom we all know from World War II who weren't so motivated. They didn't have that incentive to do what it was they did, which was quite phenomenal, if you think about it.

Senator WARREN. Is it your experience or your sense that extending our cooling off period would strengthen or weaken our National Security?

Mr. WILKERSON. I don't know what the exact time would be that would be most effective, but I think it is a measure. It is a measure. Frankly, I would rather see the military reinstitute what I got at the Naval War College from Admiral Stockdale and a guy by the name of Joe Brennan, which was ethics and military service, and be a subject of a seminar, for example, that had standing room only crowds in it, because that is not something we teach as a country anymore.

Senator WARREN. Fair point. Fair point. I am going to do one last question, because I am way over time. I was filling in while everybody was voting here. But my last question is to you, Ms. Brian.

POGO has been around for over 40 years, that you have been looking at this issue, you have been investigating these problems

for nearly that long. Do you think we need more studies before we take steps to strengthen Pentagon ethics requirements?

Ms. BRIAN. My plea is not for us to do any more studying. As you mentioned, POGO ourselves have been doing this work since the 1980's with analysis, the GAO has at least 40 years of reports, more than 40 years of reports studying this, the Inspectors General have as well.

We don't really need to be studying this anymore. We really do know the problem here, and we just need to fix the problem. If I could add to the point, you raised before about those who might not want to come into Government or into the Defense Department, if they know they can't become lobbyists afterwards, I would argue I don't want them in the Defense Department then, and I am glad that they are reluctant to go in.

Senator WARREN. Right. Thank you. You know, I just want to close this by saying I have a bill that would combat giant defense contractors capturing the Pentagon by making some ethics reforms.

We should close influence peddling loopholes so the definitions of lobbying capture all of the work that corporations do to try to tilt the system in their favor. We should extend recusal periods for people who come to DOD from giant Pentagon contractors, and we should require more public reporting on these companies about their hiring a former Department of Defense official.

A good place to start this is by extending those cooling off periods for at least 4 years, and with that, I apologize to my colleagues for going so long and turn this over to Mr. Scott.

Senator SCOTT. Thanks, Senator Warren. Thank you all for being here. I am sorry I had to leave when you were in your presentation, but do you have specific recommendations that you would make?

So here is an example. Do you think we ought to prevent a former DOD personnel that—working for a defense contractor, if they had nothing—if they are going to do work in an area or even lobby an area that had nothing to do with their job in the military ahead of time?

Ms. BRIAN. No, no I don't.

Senator SCOTT. Okay.

Ms. BRIAN. Actually, I am glad you came back, Senator, because I did want to respond to something you had in your opening statement about the fact the DOD does have more—which is true, there are more ethical or conflict of interest restrictions for a DOD. But I think that is a good thing. DOD has such an important mission. Yes, so I think that is okay.

Senator SCOTT. Yes, it is a pretty big budget. There was a GAO study in, I guess, 2021 that said there is something like 1.1 million people get out of the service in between 2014 and 2019, but only about 1,700 were former DOD senior acquisition officials ended up working for defense contractors. Does that sound right?

Ms. BRIAN. It sounds correct. But I don't think it is right. I mean, I think it is terrible.

[Laughter.]

Senator SCOTT. That is not exactly why I asked the question—
[Laughter.]

Senator SCOTT. Do you think that is about the right number? What we should be looking at is what happens, what the impact of those 1,700, right?

Ms. BRIAN. Well, that GAO report only looked at the top 14 contractors and there are about 100,000 DOD contractors. I really would have preferred if DOD—

Senator SCOTT. Do you think the number is quite a bit bigger?

Ms. BRIAN. But I think that it is important to know those were the 14 biggest ones, and I think that as the Chairwoman reflected, that is a lot of people for 14 companies.

Senator SCOTT. Let's say you have somebody that has a successful military career or worked at DOD and things like that, whatever they did. What do you think they should do when they finish? Because they clearly have gained a lot of knowledge. Do you think they should be completely eliminated from being able to work in defense or for a defense contractor? What should they do with their time?

Ms. BRIAN. I think it really depends on the circumstance of what their position was when they were at DOD. But for the vast majority of cases, they have a world of opportunities without having to trade on their influence peddling.

I think it is important to remember that in the private sector, almost every company now has non-compete clauses where you can't go to the competitor, which those clauses that are being upheld in the courts are quite narrow in their scope.

I think that is the same thing in this case where if a person had been involved, for example, in deciding that the F-22 program should go forward, they should not be allowed to go to Lockheed. That doesn't mean there aren't a world of other companies they could go to work for.

Senator SCOTT. Yes. Colonel, Israel is a big and very important to a lot of citizens of Florida, as you would expect. You have stated that Israel will be gone in 20 years. You said that, I think last year, a year before, so why would you believe that, and why do you think that?

Mr. WILKERSON. Because Bibi Netanyahu is the leader. If he weren't the leader, I wouldn't say that.

Senator SCOTT. It is only because—well, he probably wasn't the leader for a while there.

Mr. WILKERSON. Oh, he has been the leader for a long time. He worked with Marc Rich to get discounted oil and break our sanctions in Iraq for Israel as the finance officer, if you will.

Senator SCOTT. You have said the recognition of Israel was a mistake. Do you think when you look at the Abraham Accords and the success, we have had with those, do you think—and there is a lot of countries now benefiting from Israel. Do you think that our recognition of Israel is, or continues to be, a mistake?

Mr. WILKERSON. What worries me the most right now, Senator, is a change in the unified command plan, because I know how the military fought that change for over half a century. I know how Colin Powell would have fallen on his sword over that change.

That puts Israel for the first time in its history and Central Command's history in the area of responsibility (AOR), the area of responsibility with all the Arab countries. Had we done that when we

put together the 600,000 man coalition that included the French, the Syrians, and others in the first Gulf War, it would have collapsed right away.

The Abraham Accords is not sufficient enough, nor the rapprochement between Tehran and Riyadh to convince me that that change should have been made unless we are planning on war with either Israel leading and us following, or us leading and Israel holding our coat, or together.

That is the only reason, as a military professional of 31 years and a student of the Unified Command Plan (UCP) in particular, a document signed by the President would be changed to that effect.

Senator SCOTT. Thank you, Chair.

Senator WARREN. Thank you. Senator Kaine.

Senator Kaine. Thanks for doing this hearing. I really appreciate it. It is an interesting day to be having discussion about Israel because it is the 75th independence anniversary today.

I think Israel and the United States have been great allies. You talked about President Truman. That was one of his proudest accomplishments was the recognition of Israel, and that—

Mr. WILKERSON. Over George Marshall's objections—

Senator Kaine. He did. He said, the person he most admired in the world, George Marshall, told him not to do it, but he had the strength as a guy with a high school degree from—

Mr. WILKERSON. I am a fan of Israel, Senator—

Senator Kaine.—to stare down—well, just let me finish. He had the strength to stare down a guy who had won the Nobel Peace Prize and say, yes, but I think this is the right thing to do. That doesn't mean you can't criticize Israel. It doesn't mean we shouldn't also recognize the huge protests that are going on in Israel—

Mr. WILKERSON. Yes.

Senator Kaine.—right now are the sign of a functioning democracy. Peaceful—

Mr. WILKERSON. Gives me hope.

Senator Kaine. I wish we could get as many Americans to peacefully protest about some things that I wish would change. There is some very hopeful signs, challenging signs. No country is perfect. I have a lot of questions I want to ask.

I am troubled by The Washington Post reporting that says 95 percent of the time when somebody who is a retired military officer asks for a waiver to work for a foreign government, the answer is yes.

That is just—without even knowing the details of the individual cases, that percentage strikes me as very troubling. It reminds me of the challenge we got into with military housing a few years ago.

In the military housing contracts, the base commanders had the authority to decide at the end of the year whether the housing, the private housing companies got a bonus or not, and they were giving the bonus like 98 percent of the time.

All you needed to know is to look at that and then know there is going to be a huge problem. Of course, there was. That problem was actually facilitated by actions that this Committee sadly took a few years before when we shrunk the size of headquarters staff in an arbitrary across-the-board way.

What that meant was a lot of people, like folks running housing programs, got shrunk. You have to be careful when you do something like that. But I am really troubled by this 95 percent number, and it just seems to me like that is a symptom of something that is wrong. What is the fix for that?

Ms. BRIAN. Well, Senator, this is only happening because the Congress has actually given the authority to the State Department to authorize these waivers. So, this is a perfect place for congressional oversight to look into.

What are the standards that the State Department is applying? In our written comments, we have a lot of additional recommendations that include more transparency.

We had to litigate, and so did The Washington Post, in order to even get the very, very redacted waivers that we were able to accomplish. Not only is this happening with alarming frequency, it is happening under a veil of secrecy as well.

Senator KAINE. I know Ms. Brian you said we don't need more studies. I hate just study after study. I like action. But there are nuances here and I wonder what you would think.

In terms of more restrictions for people leaving the Pentagon and going to work for businesses in the defense space, does it matter what level they are?

Would you set it and have a higher level of restriction for higher level officials, lower level restriction for people junior in their career?

Ms. BRIAN. Oh, absolutely. One of the things that is ironic about the current restrictions is many of them apply to more junior people than they do to the more senior people.

I think if the Senate were to focus really just on those more senior people, I think you would have really a lot of important loopholes being closed.

Senator KAINE. Then to a point that was raised by the chairwoman in her opening. You know, if it is about sharing expertise, but the overwhelming majority of people who go are going into lobbying or adjacent influencing rather than providing expertise in the design of a program, you could also have limitations that might not stop you from joining but might stop you from joining in a kind of a lobbying or influencing capacity.

Ms. BRIAN. Absolutely.

Senator KAINE. I was supervising the maintainers of a particular air platform, okay, doing things that would enable that platform to require less maintenance. Okay, that would be a good thing. That would be a sharing in expertise. But going into influence and Government relations, you might draw some distinctions there.

Ms. BRIAN. Absolutely. You will see in our breakdown of the kinds of loopholes to be closed. It really is about closing the access of influence peddling, is really the central problem.

Senator KAINE. Right, and to your point, Madam Chair, I think the way we define lobbying—we define it pretty narrowly now and pretty—and smart lawyers and others can figure out how to lobby without it being lobbying, and that probably requires us to be a little more diligent as well. I yield back.

Senator WARREN. Senator Budd.

Senator BUDD. Thank you, Madam Chair. Again, thank the witnesses for being here today. I think we all can agree that maintaining the trust of the American people is a fundamental aspect of public service, and the trust is earned, not given.

But I am deeply concerned with the message that the American people are being sent today about the men and the women in uniform, as well as senior leadership across the Department of Defense.

I think this message is a wrong one, in my opinion. I am deeply concerned about the message that is being sent to those considering raising their right hand in defense of this Nation. There is a certain undertone to some of the testimony we have already heard. Frankly, the fact that we are having this hearing, I think that makes a statement.

We are told to beware the Beltway bandits, the likes of specifically to name a few, Lockheed, Grumman, Raytheon, and Boeing. The American companies that, yes, they make a profit, but they also create jobs, they innovate, they help deter our adversaries, and they maintain American peace and prosperity. We are told of a, "deterioration of ethics in the military officer corps," the lure of filthy lucre, the lifestyle preferences, the elixir of continued power and influence.

That, again, "the Army does not usually produce many giants of integrity." I couldn't disagree more. The military has produced giants like Washington, Eisenhower, Nimitz, and Stockdale, Colonel, some that you mentioned earlier.

For the last 20 years, All-Volunteer Force has transformed into a generation of combat leaders, some of whom are now general and flag officers or senior civilian leaders in the Pentagon.

The American people have invested heavily in these leaders with years of training and professional military education. Particularly at a time we are already facing a recruiting shortage, we should be wary of telling prospective recruits that their would-be leaders are corrupt or that they should give the Nation decades of service—or should they give the Nation decades of service, that their future career options would or should be limited.

Now, I am not arguing that there are no bad apples, but it seems to me that any insinuation that senior military leaders are inherently corrupt or easily influenced by defense contractors or foreign powers, I think that is just wrong.

Colonel Wilkerson, how is accepting a job that uses your well-earned knowledge, experience, and judgment pernicious and I am quoting here, "pernicious, corrupting, and damaging to the interests of the country?" Briefly, please.

Mr. WILKERSON. A specific example, Senator, would be those people who work against, for example, the idea that the A-10 Warthog is a better close air support aircraft for my fellow infantrymen than the F-35, which any infantryman knows will never come down to provide close air support for them. Should it do it from altitude, it will be ineffective, and yet we are getting rid of the very best platform for that that we have ever created, the A-10, principally because we have people who are pushing the F-35 so hard.

I really have a hard time blaming them because it is costing astronomically and they have got to have something to prove that

that aircraft is worth it. But I don't want the GIs on the battlefield and the marines on the battlefield to have to suffer for that.

Senator BUDD. Thank you, Colonel. Again, you want to evaluate those on a case-by-case basis.

Mr. WILKERSON. Yes.

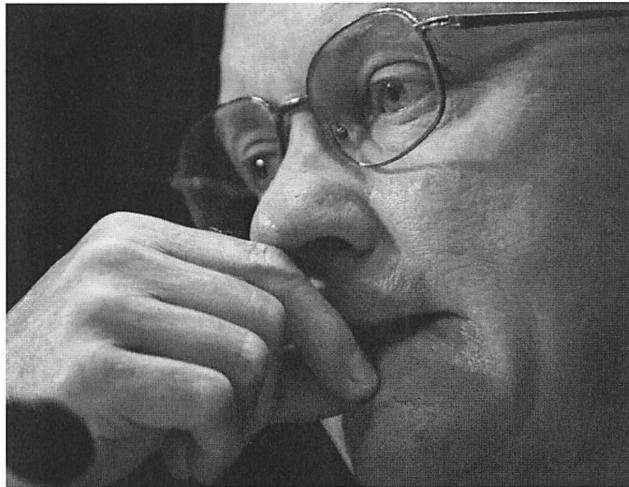
Senator BUDD. I would agree with that. Madam Chair, I have a series of articles regarding past comments made by Colonel Wilkerson. I would like to submit it for the record.

Senator WARREN. Without objection.
[The information referred to follows:]

Colin Powell Should Disavow His Hateful Aide

Michael Rubin

On 3/18/16 at 11:12 AM EDT



Lawrence Wilkerson, chief of staff to former Secretary of State Colin Powell from 2001 to 2005. Michael Rubin argues that Powell should speak out against Wilkerson's anti-Semitic conspiracy theories. JIM YOUNG/REUTERS

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The 2016 election campaign will go down in the history books.

The Ku Klux Klan has managed to insert itself into both the Republican and Democratic debate. The press has criticized Donald Trump especially for being too slow to denounce the hateful rhetoric of some of his supporters.

It should be a no-brainer for any mainstream politician to reject racial and religious hatred and the wild conspiracy theories that breed them. But, unfortunately, wavering and silence in the face of hate isn't new.

Former Secretary of State Colin Powell has decades of honorable service to the United States, first as a military officer, then as national security adviser, as chairman of the Joint Chiefs of Staff and finally as secretary of state.

Like many senior statesmen, he doesn't seek constant attention but interjects himself at critical moments, for example, with his endorsement of Barack Obama and his subsequent defense of Chuck Hagel's nomination to be secretary of defense against accusations of Hagel's anti-Semitism and basic questions about his competence.

Powell has remained silent, however, as Lawrence Wilkerson, his former chief of staff and longtime aide, has increasingly descended into a fevered swamp of conspiracy and hate.

According to Wilkerson, Syrian leader Bashar al-Assad's chemical weapons use was actually an Israeli false flag operation because, well, in Wilkerson's world, it should be obvious to everyone that Assad is really a Zionist plant controlled by the Jews.

That Iran's and Hezbollah's television stations fell all over themselves to rebroadcast Wilkerson's statement should have been a wake-up call. That Wilkerson has become a regular on Vladimir Putin's propaganda channel should also have raised eyebrows.

Wilkerson has been a sounding board for Bob Dreyfuss, the former Middle East editor of Lyndon LaRouche's magazine. While he has not endorsed them, he has flirted on the margins with 9/11 conspiracy theories.

Related Stories

He is not so subtle, however, when it comes to accusations that many Jews hold dual loyalty. He has embraced the Stephen Walt/John Mearsheimer "Israel Lobby" calumny, and those who push Jewish conspiracies often cite Wilkerson's "insight" to support their views.

He is currently working on a book about foreign policy in the George W. Bush administration, which, if he continues his descent into

conspiracy, might as well be a sequel to *The Protocols of the Elders of Zion*.

The KKK is noxious, but it is not the only purveyors of hate.

Wilkerson is entitled to his opinions, however feverish they may be. But he derives his legitimacy from his proximity to Powell. A simple statement from Powell disassociating himself from Wilkerson's views, conspiracies and assistance to the propaganda arms of Hezbollah, Iran and Russia might undercut the legitimacy of those views.

Instead, with his silence, Powell effectively enables them. That is as wrong as equivocation on the KKK. Powell should know better and should act.

Michael Rubin is a resident scholar at the *American Enterprise Institute*.

The American Enterprise Institute for Public Policy Research is a nonpartisan, nonprofit 501(c)(3) educational organization. The views expressed here are those of the author.

Israel's policy toward Palestinians is 'eradication' — Wilkerson

Lawrence Wilkerson says Israel has adopted a policy of terrorizing the Palestinian population so that it will accept apartheid.



FILE: Colonel Lawrence Wilkerson (Ret.) speaking in the Dirksen Senate Office Building in September 2019. (Photo: April Brady/Project on Middle East Democracy)

Israel's policy toward Palestinians now is "eradication," the regular slaughter of Palestinians so as to deter them from seeking rights, says retired Col. Lawrence Wilkerson, the former chief of staff to the late Secretary of State Colin Powell.

Asked on August 11 by [Zain Raza of AcTVism Munich](#), a grassroots media network, what Israel's goals are in Gaza and the West Bank, Wilkerson said:

I had a student at George Washington University who was in the IDF. He participated in Operation Cast Lead, you may remember,

one of the first [attacks on Gaza, 2008-2009]. At a briefing of his battalion he was told that the object of that operation was to kill every Palestinian in sight, it didn't matter who they were or what they were. They needed to teach the Palestinians in Gaza a lesson.

That was the standard operating procedure— that's what they've been doing ever since. Every time you shoot a rocket at us, we will kill 1300 of you, men, women and children it doesn't matter. And you will kill two or three of us. OK? We will live with those odds.

And we will eventually eradicate you. I'm convinced that's their ultimate goal, eradication and/or apartheid. Now they're very, very close to apartheid in the entire region. They're already at apartheid in the West Bank. To a certain extent in Jerusalem.

In Gaza it's a special kind of apartheid. You own it all, we will just keep you there, and we won't let you do anything and we will come in periodically and kill you. Especially if you let the more active agents in Hamas do something to us, or the Islamic Jihad or whatever.

That's Israeli's policy, and eradication is not too strong word.

It should be noted that the Goldstone report in 2009 said that Israel had adopted an official plan of terrorizing the civilian population in Gaza, and that Israel had done the same to parts of Beirut, Lebanon, in 2006, a policy called the Dahiya doctrine.

Wilkerson said the U.S. gave the green light to that policy when the peace process was abandoned under the administration in which he served, Bush 2.

When George W. Bush met with... Ariel Sharon who was then prime minister in the Oval Office [in 2001 or 2002]... he essentially told him that the policy that had been in effect for 40 years had been a total failure, so what did he recommend replacing it. Sharon was kind of taken aback because he realized he'd just been given carte blanche. But he didn't remain taken aback for very long. [Laughing] He quickly flowed into that gap and essentially said This is what we would like to do and George W. Bush said, Well the past has not worked, So do it.

I'm really condensing that conversation, but that's really what happened. Colin Powell as secretary of state didn't like that at all and got the president to at least agree that he could keep working on the Road Map and go to Ramallah and meet with Arafat, but every time Powell would try anything [V.P] Dick Cheney would cut the limb that Powell had crawled out on off right at the root.

Wilkerson also said Israel has behaved as a predatory state toward neighbors, including Lebanon.

Lebanon, they are a basket case, and no fault of their own and in reality the people having orchestrated this situation live in Jerusalem and elsewhere. They don't want an economic competitor. Why did they bomb the targets they bombed in the last conflict with Lebanon? They bombed economic targets. Because they saw Lebanon coming back to a certain extent, and they don't want any competition and they want the oil and gas that might belong to the Palestinians, might belong to the Lebanese. This is Israel's current predatory state, militarily, economically and otherwise.

Wilkerson has long independent standing on this issue, as a realist writer and former policymaker. He recently [gave the Intercept an important interview](#) about the how's and why's of the abandonment of Rachel Corrie and her family by the Bush administration.

Israel will be 'gone' in 20 years– says Wilkerson, former State Dept aide

Israel is a "strategic liability of the first order" for the United States and is "the most likely state in the world to take the United States to Armageddon," says Lawrence Wilkerson, former chief of staff to Sec'y of State Colin Powell.



Lawrence Wilkerson speaking to Mass Peace Action in June 2021. Screenshot from Youtube.

Retired Army Col. Lawrence Wilkerson is the former chief of staff to Secretary of State [Colin Powell](#) who emerged as a leading critic of the neoconservatives. In remarks to [Mass Peace Action last June](#), he made some bracing assertions about Israel that I just saw the other day:

- Israel won't exist as a state in 20 years because it is delegitimizing itself as an apartheid state.
- Israel is a "strategic liability of the first order" for the United States and is "the most likely state in the world to take the United States to Armageddon."
- The U.S. ought to tell Israel now to "change swiftly" or it will cease to fund and protect Israel, but the U.S. will not do so.

- The neoconservative agenda in the Middle East was “to set the Levant on fire, to keep Israel’s enemies so at one another’s throats” that they could not give Israel trouble.

Wilkerson is a [fellow at the Quincy Institute](#) and teaches at the College of William and Mary.

On Israel being a strategic liability and disappearing within 20 years:

Israel is probably a strategic liability of the first order for the United States. I’m hoping that getting rid of Netanyahu and at the same time getting rid of Kushner and Pompeo and Trump will alleviate the situation to the extent that we will get a government in Israel maybe that will see how dangerous its future is—

I said the other day Israel would not be a state in 20 years, it would be gone. It certainly will not be a democracy. It will be an apartheid state and the world will just reject it as they did South Africa. I’m now saying it won’t be a state, it will be gone.

Go back and read the [report of the Joint Chiefs of Staff](#) when Truman was trying to decide whether to recognize Israel in 1947-48 and what to do about U.S. policy. Completely No came from the Joints of Chiefs of Staff, based on the fact that there were 400 some odd million Arabs and about that time 3 million Israelis and other things too.

God, how prescient that report was. Well, it has come true. They are a strategic liability now. The only strategic positive with regard to Israel is our relationship. That is to say, there are a lot of American Jews and there are a lot of connections with Israel.

That's the only positive aspect to our relationship, everything else is negative.

Taking the U.S. to Armageddon:

And if you want to go the full Monty, you could say Israel is the most likely state in the world to take the United States to Armageddon. I could paint you all sorts of ways we can dod that and the ways we could get there.

One would be the fact that For 40 plus years the military said don't ever tell use to put a base in Israel. Don't ever tell us that, we will not comply. Well we just put a bae in Israel. There is a base in Israel flying the Stars and Stripes now. In for a penny, in for a pound. Hezbollah shoots a rocket and hits that base— guess what, the United States is with Israel when it goes to war with all those Arabs and maybe half the world combined. Not a good deal. Not a good deal!

We need to rein Israel in, but we won't.

Yes, Israel needs to be reined in and it needs to be told in no uncertain terms that you will change and you will change swiftly and effectively or you can count your sugar daddy gone. Its' not going to happen. Not going to happen.

Here's the bit about the plans of the neoconservatives. Brian Garvey of Mass Peace Action asked Wilkerson about Joshua Landis's statement that U.S. policy in Syria was "to create a quagmire for Russia and Iran." Wilkerson responded:

I think it's worse even than what you intimated he said. I think the plan of the neoconservatives in this country joined by people like Richard Cheney and Donald Rumsfeld and others was to set the Levant on fire, to keep Israel's enemies so at one anothers' throats whether it were Arab-Persian or Arab-Arab or whatever, that that would insure that they could not coalesce, and come together, combine, and give Israel trouble militarily or otherwise. I think that

was their whole plan. I'm not saying that everyone was motivated by that purpose. There were other purposes, for example, that motivated the invasion of Iraq.

I saw plans in the Pentagon for continuing beyond Iraq. They thought Iraq would be over in 55 days or less. Syria was next. And then whoever happened to be the propitious target of opportunity was next. It could be Iran, it could be Lebanon, it could be Egypt. It could be anybody in the Levant. As long as it kept the place afire and therefore protected Israel.

Some of that agenda was laid out in three neocons' policy recommendations to Netanyahu in 1996.

Senator BUDD. Thank you. Colonel Wilkerson, on the issue of foreign influence, you have been quoted as saying, "the Jewish lobby, and American Israel Public Affairs Committees (AIPAC) in particular, played an outsized influence in the run up to the Iraq war."

You have called Israel, one of our closest allies, an apartheid State. It just concerns me that with comments like those, are we supposed to take your testimony here today seriously, particularly when you talk about foreign influence? But again, I appreciate you being here. And Madam Chair, I yield back.

Senator WARREN. Thank you. I want to do a second round of questions for anybody who wants to do it. As I mentioned in my opening statement, and Senator Kaine referred to it, there is a recent investigation by The Washington Post and POGO that found that hundreds of retired military officers have gone to work for foreign governments.

Senator Grassley and I launched our own bipartisan investigation, and it was not intended to be partisan. We wrote to the Department of Defense. We asked for detailed information about DOD's processes for how they approved of this work and how much these retired officers expected to receive in payment from foreign governments.

What we discovered is that the approval rate from DOD is in excess of 95 percent, as you underscored, Senator Kaine, and that the officers themselves made a lot of money. An Air Force general working for Saudi Arabia was getting paid \$24,000 a month, which just about doubled what he was already receiving from his military pension.

What troubles me in particular about this is how hard it is to get the information. Senator Grassley and I were successful because we were able to bear down on it with some Senate elbow grease on this.

But the information is not made public. The Washington Post and POGO had to dig this out in other ways. So now that we have got this information, I just want to do a little bit more on the summary. High approval rates by DOD. Mr. Brian, can you just say a word about the kinds of countries that are employing our former generals, colonels, admirals?

Ms. BRIAN. Well, the thing that was most shocking to me was when we are talking about countries not only that are serial violators of human rights, the United Arab Emirates, for example, with 280 of these people on their payroll.

But the fact that we were able to find four people who were approved to work for entities owned by China, which is obviously a rival to our country, that to me, was—what standard are they using to approve these?

Senator WARREN. Right. A little troubling about the particular countries that are being approved here. The number of retired officers working for foreign governments was made public by your outside investigation.

Can you just say a word about what it would mean if we required from the get-go that any employment by a former high-level Department of Defense official by a foreign government had to be made public and available for anyone in the public to see? What would be the consequence of that, in your view?

Ms. BRIAN. I think it would be extremely valuable, in part because remember, these people are not just on the payroll, but as you noted, some of them are very high level, including former National Security Advisor or the head of the NSA [National Security Agency].

Then they are also commenting in the media, but it is not also identified in their comments that they are on the payroll of a foreign country. They are just acknowledged as a former National Security official, and so, the public needs to know and the Congress needs to know who is paying you for these comments.

Senator WARREN. Just to make clear, so everybody is kind of following what happens here. Does the U.S. Government place restrictions on our ability as a Government to help countries, for example, that are identified as having terrible human rights records or to help the Chinese Government, for example?

Ms. BRIAN. I mean, there is certainly all kinds of considerations that the State Department and DOD go into before they are evaluating whether those agreements are agreed to. But in this case, clearly, that is not what is happening.

Senator WARREN. Well, I am particularly concerned that what has happened is there has been—this has become a way to bypass those restrictions and to be able to communicate with and influence government and evade the sanctions or the restrictions that are otherwise in place. So, thank you again very much.

Thank you for initiating this study and bringing this to light so that Senator Grassley and I could followup and we could do more to highlight what is happening here. Senator Scott, do you have anything more? Senator Kaine?

All right. With that, thank you very much, both of you, for being here, and I call up the second panel.

[Pause.]

Senator WARREN. Our second panel will consist of counsels from the Department and from the military services. Caroline Krass is General Counsel for the Department of Defense. Carrie Ricci is General Counsel of the Army. Shaun Coffey, or John P., sorry, Coffey is General Counsel of the Department of the Navy, and

Peter Justice Beshar is General Counsel of the Department of the Air Force.

Thank you all for being here today. I understand you have one joint statement that will be delivered by Ms. Krass.

STATEMENT OF THE HONORABLE CAROLINE D. KRASS, GENERAL COUNSEL, DEPARTMENT OF DEFENSE; THE HONORABLE CARRIE F. RICCI, GENERAL COUNSEL, DEPARTMENT OF THE ARMY; THE HONORABLE JOHN P. COFFEY, GENERAL COUNSEL, DEPARTMENT OF THE NAVY; THE HONORABLE PETER J. BESHAR, GENERAL COUNSEL, DEPARTMENT OF THE AIR FORCE

Ms. KRASS. Thank you very much. Chairman Warren, Ranking Member Scott, and distinguished Members of the Senate Armed Services Committee, Personnel Subcommittee, I want to thank you for the opportunity to testify today.

I would also like to thank the General Counsels of the military departments who are testifying alongside me. As you just introduced them, Carrie Ricci, Army General Counsel, John Coffey, Navy General Counsel, and Peter Beshar, Air Force General Counsel.

I value their strong partnership in reaffirming DOD's commitment to ensuring that all personnel carry out their duties and responsibilities ethically. In these remarks, I would like to highlight two principles in particular.

First, DOD's strong commitment to ethical conduct. And second, the comprehensive set of existing ethics laws and regulations across the Executive Branch that create a clear, consistent, and balanced framework appropriately tailored to promote integrity and to prevent conflicts of interest. I have submitted a longer written statement for the record. Let me begin with DOD's commitment to ethical conduct.

As the largest Government agency, DOD has approximately 3 million personnel, filling nearly 675 distinct occupations worldwide. Across this vast and varied enterprise, DOD remains deeply committed to ensuring that our personnel carry out their duties ethically and free from any actual or perceived conflicts of interest.

The DOD ethics program embraces a tone from the top model, with participation from the highest levels of DOD leadership, including the Secretary of Defense, who consistently communicates his expectations to all of us regarding ethical conduct.

As one of my many duties, I serve as the Department's primary designated agency ethics official. We have 16 additional designated agency ethics officials and more than 3,000 ethics officials at every level, each of whom is required to be an attorney.

Together, we administer strong ethics programs designed to facilitate compliance through extensive training and enhanced financial disclosure reviews, as well as to identify and address potential violations.

DOD's financial disclosure programs help detect and prevent potential conflicts of interest, with a focus on individuals whose position or duties creates a potential for conflicts of interest. Our ethics attorneys provide extensive guidance, including assisting individuals in comprehending the often intricate and overlapping patch-

work of post-Government employment laws that apply to DOD employees in particular.

In fact, GAO released a 2021 report recognizing the effectiveness of DOD's programs in preventing violations of those post-Government employment laws. The report also noted that both DOD and defense contractors benefit from the contractors' employment of former Government officials by leveraging the general knowledge and skills that these officials developed during their Federal service and improving communications between industry and the Government.

I would now like to touch upon the existing framework of comprehensive ethics laws and regulations that we work to uphold every day. Executive Branch-wide criminal ethics laws and implementing regulations create a clear, consistent, and balanced framework that is appropriately tailored to promote integrity and to prevent conflicts of interest.

They are also supported by years of interpretive guidance from the Office of Government Ethics, the Department of Justice, and the Federal Courts. Generally, these laws and regulations prohibit an employee from participating in particular matters that would affect the employee's financial interests, to include the financial interests of their family members or certain other entities with which they have or have had an outside relationship.

Importantly, these laws and regulations require a nexus between an employee's duties and the financial interest or relationship in order for a conflict of interest to arise.

In addition, under the Executive Branch-wide ethics regulations, incoming Government employees have a 1-year cooling off period from interacting with their former employer, and a criminal statute restricts former Government employees from communicating back to the Government on matters in which they were personally and substantially involved.

This time-tested standard protects against undue influence without unreasonably interfering with the ability of veterans and other public servants to use their education, skills, and expertise to earn a living and support their families following service to our country.

I believe there is always room for improvement, and DOD supports well-coordinated and integrated efforts to enhance Executive Branch-wide laws. But imposing additional ethics restrictions that apply only to DOD can be counterproductive, if they diverge from longstanding and well-known Executive Branch-wide ethics laws.

They can create unnecessary complexity and confusion and may also put us at a disadvantage from our recruitment and retention perspective. Recognizing these concerns in the Fiscal Year 2023 NDAA, Congress directed an independent review of the impact that DOD specific ethics laws may have on recruiting and retention.

This review is underway and the Department looks forward to sharing the results with you when it is complete. Finally, my colleagues will be happy to discuss with the Committee the processes for evaluating requests from retired servicemembers regarding foreign government employment or compensation.

To help ensure a consistent approach across DOD, the Undersecretary of Defense for Personnel and Readiness recently directed the military services to conduct a 90-day assessment of those processes

and to provide any recommendations for improvement. The Department looks forward to briefing the Committee on the results.

In closing, I would like to thank you for holding this important hearing today, and to reiterate DOD's commitment to maintain the public's trust as we defend the Nation. My colleagues and I look forward to answering your questions.

[The prepared joint statement of The Honorable Caroline Krass follows:]

PREPARED STATEMENT BY THE HONORABLE CAROLINE KRASS

Chair Warren, Ranking Member Scott, distinguished Members of the Senate Armed Services Committee Personnel Subcommittee: Thank you for the opportunity to testify today.

I would also like to thank my colleagues the General Counsels of the Military Departments who are testifying alongside me—Carrie Ricci, Army General Counsel; Sean Coffey, Navy General Counsel; and Peter Beshar, Air Force General Counsel.

The Department of Defense is deeply committed—from the very top of the Department down—to ensuring that all personnel carry out their duties and responsibilities ethically. Existing Executive Branch-wide ethics laws establish clear, consistent, and balanced standards for our personnel to follow from the time they are hired and continuing after they depart. DOD works extraordinarily hard to promote compliance with both the letter and spirit of these laws, and we have earned a strong reputation for administering effective training and compliance programs across the Department.

Today, I look forward to showcasing DOD's strong ethics program and explaining the comprehensive ethics rules that apply to current and former DOD personnel. My colleagues will also be happy to discuss the screening processes implemented by the Military Services when approving requests from military retirees to engage in foreign government employment—approval processes that culminate in final review and approval by the Secretary of State.

DOD'S COMMITMENT TO ETHICAL CONDUCT

As the largest Government agency, with approximately three million military and civilian personnel who fill nearly 675 distinct occupations across the globe, DOD does business with close to 30,000 organizations that range from traditional defense contractors and universities to non-profit organizations.¹ DOD personnel work in offices and laboratories, shipyards and airfields, medical facilities, and schools. They serve in the Army, Marine Corps, Navy, Air Force, Space Force, and Defense Agencies while supporting a common mission: "to deter war and ensure our Nation's security."²

Across this vast and varied enterprise, DOD remains deeply committed to ensuring that all of our personnel carry out their duties and responsibilities ethically and free from actual and perceived conflicts of interest. It is imperative to uphold the highest ethical standards and maintain public trust as we execute our vital mission.

DOD's highly regarded ethics program helps ensure that we live up to these high standards. Alongside my many other duties, I serve as the primary Designated Agency Ethics Official (DAEO) for the Department of Defense. DOD has 16 additional DAEOs throughout the Department. The DAEOs are the most senior attorneys in their respective DOD departments and agencies. My Standards of Conduct (SOCO) team has deep expertise and provides additional connective tissue for the DAEOs and ethics officials throughout DOD. I am very proud of their commitment to excellence. Together, we oversee an ethics program comprised of more than 3,000 ethics attorneys embedded at every level across DOD, around the globe and at sea.

To assist DOD employees in following existing ethics laws and regulations, we implement extensive training programs across the Department. We also administer strong compliance programs. When there is reason to believe that there has been a failure to comply with applicable ethics laws and regulations, DOD policies establish clear guidelines for transmitting such cases to the Inspectors General or crimi-

¹See, e.g., "DOD Vendors with Contracts Over \$25,000," January 2023, available at https://dod.soco.osd.mil/Portals/102/Documents/Conflicts/2023_percent2025K_percent20coveringpercent20FY2022.pdf?ver=f7CHvUlbGeU_percent3d.

²See U.S. Dep't of Defense, "About," available at <https://www.defense.gov/About/>.

nal investigative services, who investigate and, where appropriate, refer the matter to the Department of Justice for prosecution.

The DOD ethics program embraces a “tone from the top” model, with participation from the highest levels of DOD leadership. The Secretary of Defense consistently communicates his expectations regarding ethical conduct and values-based decision-making. Shortly after his confirmation, the Secretary issued an ethics message to the DOD workforce on the importance of practicing and exercising ethical decision-making in the same manner and with the same alacrity that we practice and exercise other professional skills.³ The Secretary followed this with a video ethics message, a series of training sessions for senior leaders which he personally led, and regular meetings with ethics officials.

Our extensive ethics training program helps realize the Secretary’s vision. Office of Government Ethics (OGE) regulations require ethics officials to provide every new Executive Branch employee, including military officers, with initial ethics training within 3 months of joining the Executive Branch.⁴ DOD has extended this training requirement to all enlisted personnel, who must complete initial ethics training within 180 days of entering Active Duty. In 2021, DOD ethics officials provided initial ethics training to more than 160,000 new DOD personnel.⁵

OGE regulations also require that personnel who file a financial disclosure report receive annual ethics training on conflict of interest and other ethics laws.⁶ DOD further requires all Defense Acquisition Workforce personnel to receive annual ethics training, regardless of whether they are required to file a financial disclosure report.⁷ In 2021, DOD ethics officials delivered annual ethics training to more than 140,000 financial disclosure filers.

DOD’s extensive financial disclosure program helps employees, supervisors, and ethics officials detect and prevent potential conflicts of interest. The program focuses on individuals whose position or duties create a potential for conflicts of interest, such as senior personnel or those involved in the acquisition process. These personnel are required to file a report within 30 days of assuming their position and on an annual basis thereafter. In 2021, these DOD personnel filed approximately 150,000 financial disclosure reports (OGE Forms 278e and 450). All senior personnel are required to report certain transactions no later than 45 days after the transaction occurs,⁸ and last year they filed more than 3,600 of these periodic transaction reports (OGE Form 278T).

OGE regulations require ethics officials to review and certify all financial disclosure reports within 60 days of receipt.⁹ DOD goes further by requiring that a supervisor, who is most familiar with the employee’s duties, first review each report.¹⁰ Ethics officials followup with employees when potential conflicts of interest are identified, taking steps to ensure that any such conflicts are avoided or resolved. If a supervisor or other official receives credible information indicating that an employee violated the conflict of interest rules, the matter is referred to the appropriate authorities.

All senior DOD personnel who file public financial disclosure reports must certify annually that they are both aware of post-Government employment disqualification requirements and that they have not violated them.¹¹ And the Defense Federal Acquisition Regulation Supplement (DFARS) requires contractors to certify that

³Secretary of Defense Memorandum, “Reaffirming Our Values and Ethical Conduct,” March 1, 2021, available at <https://media.defense.gov/2021/Mar/02/2002591989/-1/-1/1/SEC-RETARY-OF-DEFENSE-REAFFIRMING-DOD-VALUES-AND-ETHICAL-CONDUCT.PDF>.

⁴See 5 C.F.R. § 2638.304; see also DOD 5500.07-R, “Joint Ethics Regulation,” § 1–209 (2011) [hereinafter JER]. OGE’s regulation requires Senate confirmed Presidential appointees (“PAS” officials) to receive in-person initial ethics training within 15 days of appointment. See 5 C.F.R. § 2638.305. Ethics Agreements for DOD PAS officials require this training within seven days.

⁵OGE publishes DAEO agency responses to the OGE Annual Agency Ethics Program Questionnaire on its website. These Questionnaires are submitted to OGE on February 1 of each year and cover data for the preceding calendar year. Data for the 2023 Questionnaires (covering calendar year (CY) 2022) has not yet been published, as OGE reviews and processes the information prior to publication. Some data used in this statement therefore derives from Questionnaires submitted by DOD DAEOs in February 2022 (covering CY 2021). These numbers do not include personnel assigned to certain intelligence agencies, as information concerning the number and composition of such personnel is classified.

⁶See 5 C.F.R. §§ 2638.307, 308.

⁷See Under Secretary of Defense (Acquisition, Technology & Logistics) Memorandum, “Mandatory Annual Ethics Training for the Defense Acquisition Workforce,” January 15, 2014.

⁸See 5 U.S.C. § 13105(l).

⁹See 5 C.F.R. § 2634.605.

¹⁰See JER, *supra* note 4 § § 7–206, 7–306.

¹¹See *id.* § 8–400.

former employees working on a DOD contract are complying with applicable post-Government employment ethics laws.¹²

To assist current and former DOD employees with comprehending the often intricate and overlapping patchwork of post-Government employment laws, DOD ethics counsel devote considerable resources to providing written guides, meeting individually with current and former personnel, and issuing formal opinions when current employees arrange for new employment. When DOD personnel leave the Department, DOD ethics officials help ensure that they are aware of the relevant post-Government employment ethics laws, including by providing tailored exit briefings and written advice. Former DOD personnel continue to reach back to DOD ethics officials for advice on the application of post-Government employment laws after their departure.

In 2021, GAO released a report on DOD's post-Government employment restrictions.¹³ The report recognized the effectiveness of DOD's compliance measures for preventing violations of laws and regulations relating to post-Government employment. The report did not suggest that additional DOD-specific restrictions are either necessary or in the Government or public interest. Instead, GAO noted that "both DOD and defense contractors benefit from the contractors' employment of former Government officials. For example, contractors benefit from the knowledge and skills that former DOD officials developed at DOD. DOD benefits from improved communication."¹⁴ Moreover, GAO found that fewer than 2 percent of former DOD senior and acquisition officials work for the 14 biggest defense contractors. Between 2014 and 2019, approximately 1.5 million people left employment with DOD, and only about 1,700 (0.1 percent) of those were former senior or acquisition officials who worked at one of the 14 biggest defense contractors.

EXISTING COMPREHENSIVE ETHICS LAWS AND REGULATIONS

Executive Branch-wide ethics laws and regulations create a clear, consistent, and balanced framework that is appropriately tailored to promote integrity and prevent conflicts of interest when Executive Branch personnel enter and exit government employment.

All Executive Branch employees are subject to a number of ethics statutes and regulations intended to prevent conflicts of interest. For example, the governing Federal criminal statute, 18 U.S.C. § 208 (Section 208), prohibits Executive Branch employees from participating in any particular matter that could affect their financial interests. OGE regulations, 5 C.F.R. §§ 2635.501-03, prohibit Executive Branch employees from participating in matters that could cause the public to question their impartiality. Both the criminal statute and the impartiality regulation require a nexus between an employee's duties and the financial interest for a conflict of interest to arise.

Section 208 broadly prohibits any Executive Branch employee from participating personally and substantially in any particular matter in which the employee knows that they have a financial interest that would be directly and predictably affected by the matter, or in which the employee knows that a person whose interests are imputed to the employee has a financial interest directly and predictably affected by that matter. An imputed financial interest can arise from a spouse, minor child, general partner, or any organization in which the Executive Branch employee serves as an officer, director, trustee, general partner, or current/prospective employee.

Any waiver of Section 208's requirements requires approval by a supervisor, in consultation with an ethics official and OGE.¹⁵ OGE requires agencies to report, as part of an annual ethics program questionnaire, the number of statutory conflict of interest waivers granted in the previous calendar year. In DOD, such waivers are generally available only when no other reasonable alternative exists and are granted infrequently. For example, between 2017 and 2022, only one very limited waiver was granted.¹⁶

In addition, the longstanding cornerstone of Executive Branch-wide restrictions related to post-Government employment, 18 U.S.C. § 207, permanently prohibits all

¹² See DFARS § 252.203-7005.

¹³ U.S. GOVT ACCOUNTABILITY OFF., GAO-21-104311, Post-Government Employment Restrictions: DOD Could Further Enhance Its Compliance Efforts Related to Former Employees Working for Defense Contractors (2021).

¹⁴ *Id.* at 6.

¹⁵ See 5 C.F.R. § 2640.301 (providing the requirements for issuing an individual waiver under 18 U.S.C. § 208(b)(1)).

¹⁶ This waiver was granted for approximately 1 month to bridge the period between when the employee initiated divestiture of an investment fund with potentially conflicting holdings and the final redemption date.

former Executive Branch personnel from representing a non-Federal entity (NFE) to any officer or employee of any agency within the executive, legislative, or judicial branches, as well as to any Federal court or court martial on a particular matter involving specific parties in which the former employee personally and substantially participated during Government service.¹⁷ And for 2 years after leaving Government service, all former Executive Branch personnel are prohibited from representing an NFE to any officer or employee of any agency within the executive, legislative, or judicial branches, as well as to any Federal court or court martial on a particular matter involving specific parties that was pending under the former employee's official responsibility during the last year of Government service.¹⁸

My SOCO team has prepared Attachment A, which contains a more detailed overview of the ethics compliance regime that applies to DOD personnel in relation to four topics: (1) incoming employee restrictions; (2) stock ownership; (3) seeking future employment in the course of Government service; and (4) post-Government employment.

IMPORTANCE OF CLEAR, CONSISTENT, AND BALANCED ETHICS LAWS

Clear, consistent, and balanced ethics laws are essential to ensuring compliance and maintaining the public's trust. Clear laws are easy for personnel to understand and follow. Consistent laws fit within the overall statutory framework for regulating ethical conduct within the Executive Branch using common terminology and definitions to prevent confusion. Balanced laws are carefully tailored to avoid conflicts and preserve public trust, respect an individual's ability to use their professional education and experience after leaving Government service, and acknowledge the Government's interest in recruiting and retaining personnel with requisite experience and skills.

The existing Executive Branch-wide ethics laws generally satisfy these criteria. On top of this longstanding body of law, we also benefit from years of detailed interpretive guidance provided by OGE, the Department of Justice, and the Federal courts. These time-tested standards protect against undue influence without unreasonably interfering with the ability of veterans and other public servants to use their education, skills, and experience to earn a living and support their families following service to the country. Other laws, such as the Procurement Integrity Act, are aligned with the intent and language used in these criminal conflict of interest laws and provide additional protections. Together, these laws take a clear, consistent, and balanced approach to preventing conflicts of interest while preserving DOD's ability to leverage the expertise of current and former personnel.

There is always room for improvement, of course, and DOD supports well-coordinated and integrated efforts to enhance Executive Branch-wide ethics laws. We have concerns, however, that additional DOD-specific ethics laws¹⁹ can be counterproductive. DOD-specific statutes can introduce unnecessary complexity and confusion, particularly where they introduce terms and definitions that are incongruent with the existing Executive Branch ethics framework, and as a result they may ultimately undermine rather than promote our shared commitment to ethical conduct. DOD-specific laws may also put the Department at a disadvantage in recruiting and retaining expertise and can deter the top talent we need from participating in public-private talent exchanges.

Recognizing that DOD-specific ethics laws could adversely affect DOD's participation in talent and knowledge exchange, recruitment, and retention, Congress has directed an independent review of the application and impact that DOD-specific ethics laws may have on these capabilities. As required by the fiscal year 2023 NDAA, we have entered into an agreement with an independent federally Funded Research and Development Center to conduct this study. The study will consider whether the enactment of DOD-specific ethics laws harms DOD's ability to share knowledge between Government and industry; is consistent with existing laws that apply to all Executive Branch employees; creates confusion; and could impact recruiting and retention.

Once this comprehensive review is complete, I look forward to sharing the results with the Committee.

FOREIGN GOVERNMENT EMPLOYMENT

The U.S. Constitution places restrictions on the acceptance of foreign government employment by retired military personnel. The Emoluments Clause of the Constitu-

¹⁷ See 18 U.S.C. § 207(a)(1).

¹⁸ See *id.* § 207(a)(2).

¹⁹ See Attachment A (describing the DOD-specific statutes in more detail).

tion prohibits any person holding an “office of profit or trust”—which includes Service members even after they retire from the Service—from accepting compensation from a foreign government, or an entity controlled by a foreign government, without congressional consent.²⁰

Congress has consented to the receipt of foreign government compensation by military retirees in some circumstances. Federal law allows the Military Department Secretaries to approve requests from military retirees to accept foreign government employment, subject to final review and approval by the Secretary of State.²¹ Congress requires DOD to report annually the number of retired Flag and General Officers who have received approval to accept foreign government employment. Since 2015, the Military Services have approved an average of 10 requests from retired Flag and General Officers each year.²²

Military Service Procedures

Each Military Service has implemented its own process for reviewing requests from military retirees for approval to accept foreign government employment. At a minimum, each Service requires review by a legal counsel and a senior human resources officer or other senior official prior to forwarding to the Secretary of State for final approval. The Secretary of State is the ultimate approval authority for foreign government employment. Applications not approved by the Services are not forwarded to the Secretary of State for review.

To help ensure a consistent approach throughout the Department, the Undersecretary of Defense for Personnel and Readiness recently directed the Military Services to assess their processes for reviewing requests for approval of foreign government employment by military retirees. The Military Services were directed to report the results of this assessment within 90 days, including any recommendations for improvement. The Department looks forward to briefing the Committee on the results of this assessment.

Compliance with the Emoluments Clause is an individual responsibility and penalties for non-compliance are a personal financial liability. If the Department becomes aware of a potential violation of the Emoluments Clause, that potential violation is investigated by the Military Service. If a determination is subsequently made that the individual failed to obtain required advance approval for foreign government employment, that individual will owe a debt to the United States equal to the amount of compensation the individual received from the foreign government. Collection action, which may include offset of retiree pay, can be taken to satisfy the debt.

Other Foreign Government Employment Laws

The primary criminal statute that governs post-Government employment, 18 U.S.C. § 207, prohibits former senior and very senior Executive Branch personnel from representing or aiding a foreign entity with the intent to influence any employee of the Government or Member of Congress, and prohibits behind-the-scenes assistance, for 1 year after leaving the relevant position, office, or employment.²³ Any U.S. citizen who provides defense services to a foreign government may also be required to comply with State Department’s International Traffic in Arms Regulations (ITAR).²⁴ And Congress has required the Intelligence Community (IC) to restrict certain Executive Branch personnel and contractors assigned to IC elements from accepting employment with foreign governments, with oversight provided by the Director of National Intelligence and regular reporting to Congress.²⁵

²⁰ U.S. CONST. art. I, § 9, cl. 8.

²¹ See 37 U.S.C. § 908. In most cases, the Secretaries of the Military Departments have delegated their approval authority to another senior official.

²² 37 U.S.C. § 908, as amended in 2019, requires the Secretaries of the Military Departments, in consultation with the Secretary of State, to report the number of General and Flag Officers who receive approval to accept foreign government employment, including the name of the foreign government, the duties to be performed, and the total amount of compensation. The Military Departments reported 68 approvals for General and Flag Officers from CY 2015 through CY 2019; 5 in CY 2020; 5 in CY 2021; and 3 in CY 2022.

²³ See 18 U.S.C. § 207(f); see also 5 C.F.R. § 2641.206(a) (implementing the basic prohibition in 18 U.S.C. § 207(f)).

²⁴ See 22 U.S.C. § 2278; see also 22 C.F.R. Parts 120-130. For an overview of ITAR and the underlying authorities published by the State Department, see https://deccs.pmdtc.State.gov/deccs?id=ddtc_public_portal_itar_landing.

²⁵ See, e.g., 50 U.S.C. § 3073a.

CONCLUSION

DOD shares this Committee's commitment to maintaining the public's trust as we defend the Nation. My colleagues and I look forward to answering your questions.

ATTACHMENT A

This Attachment details the ethics compliance regime that applies to DOD personnel in four areas: (1) incoming employee restrictions; (2) stock ownership; (3) seeking future employment in the course of Government service; and (4) post-Government employment.

Incoming Employee Restrictions

Restrictions related to former employment seek to balance the need to maintain public trust with the Government's need to benefit from the knowledge and expertise that employees bring from prior employment with industry, academia, and other non-Federal entities (NFEs).

A criminal statute, 18 U.S.C. § 208 (Section 208) provides that a conflict of interest can arise from former employment if an Executive Branch employee retains a financial interest in their former employer, such as owning company stock.²⁶

Even absent a criminal conflict of interest, OGE regulations recognize that certain circumstances involving a member of an employee's household, or other "covered relationships," could cause the public to question the employee's impartiality. All Executive Branch employees are prohibited from participating in a particular matter involving specific parties that they know is likely to affect the financial interests of a member of their household, or in which they know a person with whom they have a "covered relationship" is or represents a party to the matter if the employee or an agency designee determines that a reasonable person would question their participation.²⁷ The regulatory definition of a "covered relationship" is broad and includes, inter alia, former and prospective employers of certain family members.²⁸ If an Executive Branch employee raises an impartiality concern, an agency designee, generally a supervisor, can authorize that employee to participate in the matter only when the Government interest in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.²⁹

Without prior authorization, Executive Branch employees may not work on matters where their former employer is, or represents, a party for 1 year—the "cooling off" period.³⁰ For civilian political employees, the current Administration's Ethics Pledge imposes a further 2-year restriction on participating in particular matters involving a former employer or client for whom the employee performed services in the 2-years prior to appointment.³¹

In the National Defense Authorization Act (NDAA) for fiscal year 2022, Congress enacted an additional 2-year statutory prohibition specific to DOD personnel.³² That statute bars DOD personnel from participating in a matter in which their former employer is a party for 2 years and appears to combine standards from Section 208 and the OGE impartiality regulations.³³ Combining language from the criminal statute and the impartiality regulation creates a new and distinct standard substantively different from the standards that apply to all Executive Branch employees. While DOD has provided interpretive guidance and training to help personnel understand how the overlapping recusal standards apply, multiple standards create confusion and make it difficult even for well-intentioned employees to implement and understand applicable recusal requirements.³⁴

As required by OGE regulations, financial conflicts of interest and impartiality responsibilities are addressed in the ethics training that new employees receive upon joining DOD.³⁵ In accordance with OGE policy guidance, very senior personnel of the Executive Branch who have broad responsibilities inform their staffs in writing

²⁶ See 18 U.S.C. § 208(a).

²⁷ See 5 C.F.R. § 2635.502.

²⁸ See *id.* § 2635.502(b)(1).

²⁹ See *id.* § 2635.502(d).

³⁰ See *id.* § 2635.502(b)(1)(iv).

³¹ Exec. Order No. 13989, 86 Fed. Reg. 7029 (Jan. 25, 2021).

³² See National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117–81, § 1117, 135 Stat. 1541, 1955–1956 (2021) [hereinafter fiscal year 2022 NDAA].

³³ See *id.*

³⁴ See SOCO Advisory 22–01, "Guidance Regarding Section 1117 of the National Defense Authorization Act for Fiscal Year 2022," (Jan. 11, 2022), available at <https://dodsoco.ogc.osd.mil/Ethics-Program-Resources/DOD-Ethics-Guidance/SOCO-Advisories/2022-SOCO-Advisories/>.

³⁵ 5 C.F.R. § 2635.304(e).

of their recusal from matters involving a former employer and implement rigorous screening processes to ensure that such matters are assigned to another appropriate employee.³⁶

Stock Ownership

Existing conflict of interest laws, together with DOD's robust training and screening processes, maintain an appropriate balance between individual property ownership rights and the public interest in avoiding conflicts.

Section 208 provides that a criminal conflict of interest can arise when an Executive Branch employee, or their spouse or minor child, owns more than a *de minimis* amount³⁷ of stock in a company and the employee is asked to take an official action that could affect the financial interest of that company. All Executive Branch employees have a duty to monitor their financial interests for any potential conflicts of interest that may arise between their financial holdings and their official duties. When a potential conflict of interest is identified, Executive Branch employees must either recuse themselves from taking any action that could affect the financial interest of the company in which they hold stock or divest the stock holding.

DOD civilian officials appointed by the President, by and with the advice and consent of the Senate and DOD personnel in key acquisition positions face additional restrictions. These personnel are prohibited from owning more than a *de minimis* amount of stock in the largest ten defense contractors based on contract awards.³⁸ Linking this restriction to a publicly available list of contracts awarded by DOD provides transparency and consistency, while allowing these personnel and their financial advisors to effectively ensure compliance with the requirement.

Merely owning stock in a defense company is not enough to create a potential conflict of interest for DOD personnel—there must be some nexus between an employee's financial interests and their official duties. For example, a senior official at the Defense Commissary Agency may have conflicts with a major dairy supplier but has no conflict of interest with an aircraft manufacturer. Imposing broader divestiture requirements in addition to existing conflicts laws can create confusion without advancing important Government or public interests. Such requirements can also potentially prevent DOD from recruiting and retaining top talent and expertise.

Seeking Employment

Several statutes and regulations that apply across the Executive Branch seek to prevent even the appearance of partiality once Executive Branch personnel have had contact with an NFE regarding post-Government employment.

Section 208 provides that a criminal conflict of interest can arise when Executive Branch personnel begin negotiating for future employment with an NFE.³⁹ "Negotiation" means "discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person."⁴⁰ Once negotiations have commenced, and during any time in which an employee has an arrangement for future employment with an outside organization, they are prohibited from participating in any particular matter that could affect the financial interests of that organization.

In addition to the statutory prohibition, ethics regulations require Executive Branch employees to recuse from matters that could affect the financial interests

³⁶ OGE Memorandum DO-04-012 (June 1, 2004).

³⁷ Federal regulations allow Executive Branch employees to participate in particular matters when the disqualifying financial interest arises from stock ownership with an aggregate market value that is less than an established regulatory *de minimis* amount, to include the holdings of the employee, the employee's spouse, and minor child(ren). See 5 C.F.R. § 2640.202.

³⁸ In 2019, Congress enacted 10 U.S.C. § 988, which memorialized some of the Senate Armed Services Committee (SASC) policies requiring these personnel to divest of certain stock holdings. These personnel may not own or purchase, above OGE's regulatory "*de minimis*" amount, the "stock of a company that is one of the 10 entities awarded the most amount of contract funds by the Department of Defense in a fiscal year during the five preceding fiscal years." Referencing contracts awarded rather than revenue received allows the Department and its employees to consult a list of companies that the General Services Administration compiles annually and is publicly available. The list of companies who are among the top ten defense contractors captures all entities holding more than 1.5 percent of the total contracting dollars awarded by DOD. It generally includes some combination of the same 11 contractors, though unanticipated events—like the COVID-19 pandemic—may occasionally result in changes.

³⁹ See 18 U.S.C. § 208(a).

⁴⁰ 5 C.F.R. § 2625.603(b)(i) (noting that the same definition also applies for 18 U.S.C. § 208(a)).

of any NFE with whom they are seeking employment.⁴¹ “Seeking” is a lower threshold than “negotiating” and includes, *inter alia*, “unsolicited communication to any person, or such person’s agent or intermediary, regarding possible employment with that person.”⁴²

Two additional statutes cover certain Executive Branch personnel seeking employment with an NFE. First, senior Executive Branch personnel must file a statement notifying their ethics counselor of any negotiation or agreement for future employment or compensation within three business days after commencement of the negotiation or execution of the agreement.⁴³ Second, the Procurement Integrity Act imposes restrictions on Executive Branch personnel who personally and substantially participate in procurement for a contract in excess of the simplified acquisition threshold (currently \$250,000) and are contacted by a bidder regarding non-Federal employment, or are seeking employment with a bidder. Such personnel must report the contact in writing and either reject the offer or disqualify themselves from further personal and substantial participation in that procurement.⁴⁴

When seeking employment, as in other contexts, DOD personnel face additional restrictions specific to the Department. Section 1117 of the fiscal year 2022 NDAA (Pub. Law No. 117—81) prohibits DOD personnel from participating in a matter in which a prospective employer is or represents a party to the matter.⁴⁵ The Executive Branch-wide restrictions discussed above already prohibit DOD personnel from participating in any matter that could affect the financial interest of a prospective employer.

Post-Government Employment

All former Executive Branch personnel are subject to ethics restrictions that aim to prevent improper influence⁴⁶ and use of non-public information⁴⁷ following Government service. These laws seek to both preserve public trust and allow former Government personnel to appropriately use their professional experience after leaving Government service.

Executive Branch-wide restrictions related to post-Government employment are extensive. As discussed above, 18 U.S.C. § 207 prohibits all former Executive Branch personnel from representing an NFE on a particular matter involving specific parties to any officer or employee of any agency within the executive, legislative, or judicial branches on which the former employee personally and substantially participated during Government service. And for 2 years after leaving Government service, all former Executive Branch personnel are prohibited from representing an NFE to any officer or employee of any agency within the executive, legislative, or judicial branches, as well as to any Federal court or court martial on a particular matter involving specific parties that was pending under the former employee’s official responsibility during the last year of Government service.⁴⁸

For 1 year after leaving the Government, former senior Executive Branch officials may not represent an NFE to any personnel at their former agency, regardless of the matter.⁴⁹ This one-year period extends for an additional year (to 2 years total) for any former Secretary of Defense, as well as other very senior personnel of the Executive Branch.⁵⁰ During the covered periods, the law broadly restricts any communication or appearance by former Executive Branch personnel with the intent to influence official action. For 1 year after leaving Government, former senior and very senior Executive Branch officials may also not knowingly aid, advise, or represent a foreign government or foreign political party, with the intent to influence any officer or employee of the United States or any Member of Congress.⁵¹

Outside of 18 U.S.C. § 207, procurement integrity laws provide additional restrictions for former Government personnel. Former Government personnel are

⁴¹ See 5 C.F.R. § 2635.604(a)(1).

⁴² 5 C.F.R. § 2635.603(b) (excluding unsolicited communication “for the sole purpose of requesting a job application” from this example).

⁴³ See Stop Trading on Congressional Knowledge (STOCK) Act of 2012, Pub. L. No. 112–105, § 17, 126 Stat. 291, 293–94 (2012) (5 U.S.C. § 13103, note).

⁴⁴ See 41 U.S.C. § 2103 (explaining that the agency could authorize the official to resume participation in the procurement, in accordance with 18 U.S.C. § 208, on the grounds that: (1) the person is no longer a bidder or offeror in that procurement; or (2) all discussions regarding possible employment with the bidder or offeror have been terminated without an agreement or arrangement for employment).

⁴⁵ See fiscal year 2022 NDAA, Pub. L. No. 117–81, 135 Stat. 1541, 1955–56 (2021).

⁴⁶ See 18 U.S.C. §§ 203, 207; *see also* 41 U.S.C. § 2104; 5 C.F.R. § 2641.

⁴⁷ See 18 U.S.C. § 1905; *see also* 18 U.S.C. §§ 641, 793, 794; 50 U.S.C. § 783.

⁴⁸ See 18 U.S.C. §§ 207(a)(1), (a)(2).

⁴⁹ See *id.* § 207(c).

⁵⁰ See *id.* § 207(d).

⁵¹ See *id.* § 207(f).

prohibited from accepting compensation from a contractor for 1 year if they served in certain positions or made certain decisions relative to an acquisition valued greater than \$10 million.⁵² The current Administration's Ethics Pledge imposes further post-Government employment restrictions on all civilian political appointees.⁵³

While extensive, these Executive Branch-wide laws are appropriately and narrowly targeted to prevent conflicts of interest between a former employee's position and duties and their subsequent non-Federal employment. Especially for a Department with nearly 675 distinct occupations across the globe, a targeted approach is critical. A former senior Air Force acquisition official in post-Government employment with an aircraft manufacturer presents vastly different potential conflict of interest concerns than a former senior official from the Defense Human Resources Agency seeking post-Government employment with the same company.

Former DOD personnel are also subject to additional DOD-specific statutory requirements.

For example, former DOD personnel who served in certain positions or took certain actions on an acquisition valued over \$10 million during their last 2 years of service are required to obtain a written ethics opinion before accepting compensation from any defense contractor regardless of whether there was a nexus between the former employee's duties and their prospective employer.⁵⁴ There are currently nearly 30,000 defense contractors. The written opinions are maintained for 5 years in a central DOD data base called the After Government Employment Advice Repository. Maintaining these opinions in a secure Government system ensures their ready availability to ethics officials and Inspectors General, while protecting the privacy and security interests of current and former DOD personnel.

Former senior DOD personnel are also subject to additional restrictions on certain communications back to the Government. Section 1045 of the fiscal year 2018 NDAA created a confusing patchwork of DOD-specific restrictions for "covered individuals" who are former DOD officers in the grade of O-7 and above, or an equivalent civilian level.⁵⁵ The applicability of the restrictions depends upon the subject and nature of the proposed contact; the appointment status of the person to whom the contact is directed; and the agency within which the intended recipient works. By contrast, 18 U.S.C. § 207 bars communication with all Federal personnel in the former senior official's prior agency without regard to the appointment status of the person to whom the contact is directed.

Senator WARREN. Thank you very much. So, I am going to start with the first round of questions, and I just want to say how glad I am to have all four of you here today, that we have four general counsels for the Department of Defense, the Army, the Navy and the Air Force.

The four of you are the top lawyers at the Pentagon, and it is your job to oversee compliance with our ethics laws. I am deeply grateful for your work. I obviously believe it is very important, and I appreciate your being here to explain to us and to say publicly how these laws work.

What I want to do is I just want to kind of run through some examples and make sure I understand exactly how some of these pieces go. One of the key guardrails in our conflict of interest laws says that if an official is, "personally and substantially involved" in a Pentagon program and then leaves to go to work for a defense contractor, they are permanently barred from coming back and lobbying the Pentagon on behalf of the company on issues related to the program that they used to work on.

Boy, do I get what we were trying to accomplish with that and I think that is terrific. I just want to look at maybe some loopholes in that.

⁵² See 41 U.S.C. § 2104.

⁵³ See Exec. Order No. 13,989, 86 Fed. Reg. 7029 (Jan. 25, 2021).

⁵⁴ See National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 847, 122 Stat. 3, 243-44 (2008).

⁵⁵ See National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 1045, 131 Stat. 1283, 1555-56 (2017).

Ms. Krass, let's say that a Pentagon official helped write the contracts between the Pentagon and Lockheed Martin for a multibillion-dollar weapons program. Under current law, as written, would that person be prohibited from leaving the Pentagon and joining Lockheed Martin's board?

Ms. KRASS. Thank you, Senator. I absolutely share your commitment to maintaining the public's trust and to avoiding any appearance of conflicts. Applying these laws is very context dependent and fact specific, but in general, the procurement integrity laws would prevent an acquisition official from accepting any compensation from a defense contractor for—

Senator WARREN. So, anybody who helped write these contracts. When Jim Mattis was told that he couldn't represent Theranos on a particular matter, but that he was free to go join their board of directors, that was okay.

Ms. KRASS. I can't opine on that particular situation but—

Senator WARREN. That is what happened.

Ms. KRASS. But if, generally speaking, somebody has left, if they have worked on a particular matter involving specific parties, they may not come back to the Government on that particular matter.

Senator WARREN. But they can join the board of directors of the company that is talking to the Government.

Ms. KRASS. As I mentioned, if they are a former acquisition official, then they would not be able to, if they were involved in a contract of \$10 million or more.

Senator WARREN. So, you don't think Jim Mattis was involved in any contracts worth \$10 million or more? This is just public record.

I am just going by what's public here. It looks like to me there is a big loophole for people who go off and just join the board of directors, which, by the way, is a pretty good job. Because it turns out, according to their SEC [Securities Exchange Commission] filings, Lockheed paid its board members more than \$300,000 a year.

It is a nice gig, so let me ask you another one. Ms. Krass, under our current ethics laws, would this person be allowed to be a consultant paid by Lockheed Martin, to advise Lockheed Martin on how to respond to DOD in order to win future contracts from the Pentagon, so long as they personally didn't come in and lobby. Would that be okay?

Ms. KRASS. They would not be able to—and again, these are all context dependent.

Senator WARREN. I understand that and we will keep that as a running objection.

Ms. KRASS. Okay. But they would not be allowed to use any proprietary information or any other non—

Senator WARREN. The point is—the question I am asking is, can they come in? Can they consultant and tell you how to do it as long as they are not the ones who show up in the office?

Ms. KRASS. I think under existing laws, they have to be careful not to use any proprietary or other nonpublic information.

Senator WARREN. Right, but otherwise, they get to do that. Let me try one more. Under current ethics laws, could this former Pentagon official's consulting work include helping Lockheed Martin develop a public campaign to win new contracts, including tar-

getting former colleagues, again, so long as they don't do any direct lobbying themselves? Would that be okay?

Ms. KRASS. I think that, again, the same laws would apply in terms of not being able to use any proprietary—

Senator WARREN. I understand that. But the question I am asking is, can they come and do this under the current rules? You sound like you are reluctant to say yes, but we know it is happening. It is in the public domain. We have already read these stories. People have testified to it directly.

Ms. KRASS. What I can say is that on the DOD side of the equation, we are committed to—and our officials are committed to upholding the ethics laws and making sure that they are not—

Senator WARREN. I understand that you are committed to upholding them as written. I am not trying to give you a hard time here. I am just trying to see how effective what is written and what you have got to deal with.

I get it that you can't enforce laws that don't exist. What I am trying to do is figure out from the point of view of the Congress whether or not we need to do a little more with those laws so that there aren't as many holes in them.

Let me try another one. Mr. Beshar let's say that Raytheon hires this colonel 1 week after—oh, I have got one. I am sorry, I set it up wrong. Let's say we have an Army colonel who worked at the Defense Security Cooperation Agency, DSCA, which is responsible for overseeing arms sales to foreign countries.

Mr. Beshar, let's say that Raytheon hires this colonel 1 week after he retires from the military to help them lobby to speed up approval of a Patriot weapons system that will make them a lot of money. He reaches out to the Air Force, you get where I am going with this, for a meeting. Is there any reason an Air Force official can't take that meeting?

Mr. BESHAR. Senator Warren, Ranking Member Scott, Senator Kaine, I appreciate the opportunity to be here today. I am joined this morning by a number of my colleagues from the Ethics Department within the Air Force, and they provide a vital service to the Department and they do it well. To your specific example, provided that the hypothetical colonel is not subject to a lifetime bar or a 2-year—

Senator WARREN. That is my question. Is he subject to a lifetime bar if he goes over and lobbies the Army instead of DSCA?

Mr. BESHAR. Yes, and assuming that he is not subject to such a bar or a supervisory bar, then he could have such a meeting, because at that O6 level he is not subject to the cooling off period.

Senator WARREN. Okay. I am just trying to get how skinny this thing is. The last question I want to ask is about the one we were talking earlier about going to work for Saudi Arabia and other foreign countries.

I just have a question around that, and maybe, Ms. Krass, you are the one to ask this. When this more than 95 percent approval rating that is coming through on the DOD approval of our high-ranking military officials going to work for foreign governments, I just want to ask, is there any requirement under current law for the Pentagon to consider whether this work would enhance the National Security of the United States of America?

Ms. KRASS. Yes, Senator Warren. The way that the system, as you, I am sure you well know, is set up is that the Emoluments Clause precludes accepting compensation or from working for a foreign government in Congress has consented—I mean, unless Congress consents, and Congress has consented to that in certain circumstances when the Secretary of the military department has approved and the Secretary of State has approved.

Senator WARREN. I understand that and I appreciate it, and I am way over time and my colleagues are being very generous with me.

The question I am trying to ask you is, is there anything that requires the Pentagon to look at whether or not it is in our national interest to permit this general or admiral to go work for a foreign country?

Ms. KRASS. What I would like to do is to defer to any one of my colleagues, perhaps—

Senator WARREN. Mr. Coffey?

Mr. COFFEY.—because in fairness to Ms. Krass, Congress delegated the approval authority to the military—the Secretaries and really don't include the Secretary of Defense. Although always happy to get—

Senator WARREN. Fair enough. Fair enough.

Mr. COFFEY.—guidance from her friends on the third deck.

Senator WARREN. Glad to have the help.

Mr. COFFEY. Which we get a lot. The answer is, yes. In the Department of the Navy, there are—the standard is, would approving the employment be inimical to the National Security interests of the United States? That is sort of the headline.

Senator WARREN. Okay. That is inimical though.

Mr. COFFEY. Yes, it is. There are four sub-standards, which I am happy to share with you of the Department.

Senator WARREN. Okay.

Mr. COFFEY. But remember, we are talking about whether somebody who has served their country and has retired, what restrictions, if any, we are going to put on their employment.

Senator WARREN. Right.

Mr. COFFEY. Obviously, we have the Emoluments Clause and then we have permission from Congress if two Federal entities, two Executive Branch entities approve it.

Senator WARREN. Right.

Mr. COFFEY. The Department of the Navy and Secretary of State. So, the questions that are posed, and there is a very rigorous process, which I am happy to share with you either today during questions, or questions for the record afterwards. But among the questions that in the Navy and the Marine Corps—are the following, whether the foreign civil employment will adversely affect—

Senator WARREN. Okay, I get adversely—you heard my question. You can just answer my one question. Do you, as part of your routine questions, ask, does having this admiral or general go work for a company that works for the People's Republic of China or for Saudi Arabia or for the UAE, enhance the National Security for the United States of America? Is that one of your questions?

Mr. COFFEY. Among the only files that I have reviewed, I have seen that discussion. For example—

Senator WARREN. Okay. Is that one of the questions you are internally required to ask? This shouldn't be that hard.

Mr. COFFEY. It is certainly in all of the various files that I have looked at, it is there. Ultimately the State Department decides whether it is in the interest of the United States and whether it should be approved. But it is——

Senator WARREN. That is what I am trying to get at. If anybody is actually looking at that. You are telling me it is a question that you answer each time, and the 95 plus percent that you approved, you believed that it would enhance the national interests of the United States of America for that general or that admiral to go work for the UAE or Saudi Arabia. Is that right? That is what you are telling me?

Mr. COFFEY. Madam Chair, what I am saying is that the standard is a negative standard. It is the opposite of what I said before. However, in the files that I reviewed——

Senator WARREN. That was the question I asked.

Mr. COFFEY. That is where, and I will just say that Under Secretary Cisneros has directed each of the Mil-Dep Secretaries to take 90 days to look at this and come up with whether we can do this a better way. I can tell you we are all jumping in on that. I have had a chance to look at how Army does it, how Air Force does it. We think we can improve it. We are looking at that.

Senator WARREN. Please understand, I am not your enemy here and I am not the enemy of the people who are sitting behind you.

I am grateful for the work you do. I just want you to have the tools so that you are getting backed up by the

U.S. Congress and that you are not in a position where the standard is so flimsy or where there are so many exceptions that there are other ways to accomplish what it is that we clearly didn't want to have happen.

I am just really concerned. I see a 95 percent plus approval rating to go work for countries like Saudi Arabia and the UAE, and countries that have terrible human rights abuses, and I think, "how could that be good for the United States of America?" That, to me, has to be our standard. I just want to get us in the right place. Senator Scott.

Senator SCOTT. Thank you, Chairwoman. First of, thanks to each of you for being here. I appreciate the fact you guys were willing to go through the horrible confirmation process that each of you went through, I wouldn't want to do that. I don't know if it is worse than an election.

Senator WARREN. It is not——

[Laughter.]

Senator SCOTT. Have any of you approved anybody, since you have been there, do you know of anybody that has been approved to work for China? To go to work for or either the government of China, an entity controlled by the government of China, or a company majority owned by Chinese officials? Do you know of any?

Ms. RICCI. The Army does not.

Senator SCOTT. You don't have any?

Mr. COFFEY. Nor does the Navy, Senator.

Mr. BESHAR. I believe we are in the same position, Senator.

Senator SCOTT. Okay. I don't want you to breach of confidence, but without naming a name, could you give me an example of where somebody got turned down.

Because you heard what we were told, that 95 percent of the people are getting approved, right. I don't know if that is good or bad. You could argue—I mean, I think Senator Kaine would say that it seems a little high, right.

Maybe just everybody is doing a really good job of compliance, right. So, give me an example of people who have gotten turned down.

Mr. COFFEY. I will start. Again, I am going to be very generic. An applicant was denied in part because of the counterintelligence diligence that had been done and it felt it would be adverse to the National Security, if it were approved.

Mr. BESHAR. Senator Scott, I thought it might be helpful to briefly describe the way we have changed our process at the Department of the Air Force.

In 2020, we overhauled the protocols and the policy for approving or reviewing foreign government employment. There are three changes in particular that were made. First was to create a board, a three-person board for the first time that would review these applications.

Second was to articulate a clear standard. Some of the questions that Senator Warren asked, would this potential engagement be embarrassing to the United States is an example, has a proper counterintelligence assessment been performed by the Air Force Office of Special Counsel, and has the country in question taken actions that would be contrary to the interests of the United States.

The third important change was putting a 3-year temporal limit on any approvals that are granted so that the individual, after 3 years, if they wanted to continue, would have to come back into the process to the Department of the Air Force.

Senator SCOTT. Okay.

Ms. RICCI. Senator Scott, in the Army, there have been some of these approvals and we have found that we have had to—there have been denials for people with derogatory information in their files that would reflect negatively on the United States and would also make them susceptible to foreign influence.

I also want to add, I know that Senator Warren mentioned the UAE and Saudi Arabia. I have looked at the approvals in the files, and they are largely connected to our foreign military sales programs.

The vast majority of Army personnel who have been approved have not been general officers. They have been maintainers who have been hired by these countries to help maintain the equipment that through security cooperation, the Government has determined it is in our interest for these—to make these sales to these countries.

These soldiers who are now retired have been able to find employment with them, maintaining the same equipment that they maintain for the Army. That has been the majority of our approvals.

Senator SCOTT. So, have you—I assume what you guys do every day, you have the process you talked about. You have a process

and you go through the process. Have any of you come to a point where you say, "I don't think we should do this, but I don't have the authority to not allow it to happen?" Have you ever felt like that in any case where you think, "no, we shouldn't really be doing this, but you can't stop it?"

Mr. BESHAR. Senator Scott, very briefly. We have had instances where individuals have withdrawn because of some of the rigors of the process. Also, the concept broadly that the Congress has really created a two-pronged approval.

The focus of the Department of the Air Force is more on security and counterintelligence, whereas the State Department is the final approval authority, is a bit more on the foreign policy considerations.

Ms. RICCI. Yes, Senator Scott, I have not felt that way at all. In fact, the Army has undertaken a review of our regulation because we want to strengthen our requirements, and our requirements currently exceed what is required under the statute.

Mr. COFFEY. I concur. I don't feel that way. I do think taking a hard look at how we do things and see if we can tighten things up and get on the same page as our sister departments is a good exercise and we are doing that now.

Senator SCOTT. Have you felt like—just and I don't think you guys were there for any of it, but have you felt like there is a difference between administrations and how this is handled? Has it changed much, you know, when you guys came in?

Mr. COFFEY. On foreign government employment, sir?

Senator SCOTT. Yes.

Mr. COFFEY. Certainly, preparing for the hearing today, none of us were here in the prior Administration. I certainly did not detect any material difference in how things were treated. Perhaps that is consistent with the 95 percent approval rate.

Senator SCOTT. Have you seen anything different?

Ms. RICCI. I have not seen anything different in the Army. There was a dip in applications because of the COVID period. There was about a 2-year period where we had far fewer. But comparing the before and the current, I have not seen any change in how they are treated or evaluated.

Senator SCOTT. Do you guys feel any pressure from anybody to be more lax or be more strict? Is there any political pressure at all that you guys ever feel?

Ms. RICCI. Senator, not at all. In fact, I will say that in the Army we have individuals, we have individuals who come forward even when they know it is not a foreign government, but it is a company working in that foreign government, out of an abundance of caution.

We encourage that and we find that this is very helpful. We just are pleased to say that there is a high compliance rate. That probably speaks to why so many are approved, because it is a self-reporting requirement and these are responsible individuals seeking solid employment.

Senator SCOTT. You make the argument that people have been in the military probably are real followers, to a great extent.

Ms. RICCI. Exactly. Yes, yes.

Senator SCOTT. Thanks.

Senator WARREN. Senator Kaine.

Senator Kaine. Just to pick up on it, the 95 percent figure I just find very troubling. This is different than Committee on Foreign Investment in the United States (CFIUS), but there is some analog and I am sure that the CFIUS approval rate is at 95 percent based on my own experience and working with American companies, where there is going to be some investment by, you know, a Chinese food company into Smithfield Foods.

The degree to which that gets scrutiny enough from two sources but from multiple sources, is pretty intense. I bet the approval rate is at 95 percent. I credit that, (A) probably people don't apply if it is a stretch, okay. So, a lot of military folks wouldn't push the envelope; (B) they withdraw maybe in the middle of the process and that is not counted as a turn down, so that reduces the number; and (C) that—Ms. Ricci, I appreciate you pointing out this main-tainer point. If the U.S. is approving foreign military sales of a platform and there is a specific need to maintain that platform, that would seem to be an obvious case where it might be warranted.

But I just still am troubled by a 95 percent approval rating. There is just something odd about that to me. I am not surprised that it may not be different among Administrations, but I applaud the fact that the DOD is now doing a 90-day assessment of this, because that seems unusual.

I wondered if Congress were just to do one thing in this and say, and if approved, there must be some report to Congress about it and it should be public. I wonder if that might change either, (A) who applies or, (B) what gets approved, or both. But this is helpful. Let me ask you one other thing.

A number of us have filed a bill to restrict the ability of Members of Congress to trade in stocks because we get all kinds of information, sometimes classified, sometimes not, but information that the general public doesn't get that could affect our ability to trade stocks.

I have cosponsored a bill with Senator Merkley and others, and there are other bills out there that essentially attempt the same thing. From an ethics standpoint within the service branches, what is the normal protocol to analyze whether people's financial holdings pose conflicts of interest in the work that they do?

Mr. Coffey, you jump to the mic. You look like you are moving to the mic first, so I am going to ask you.

Mr. COFFEY. I think Mr. Beshar looked over me and—well, I think it starts with the Criminal Code, 18 USC 208 which states that you are not to participate in any matter that might affect you or your family's financial status.

That is a pretty, pretty stark rule. I know there has been a lot of talk about whether you make certain laws applicable down to 06s or below, etcetera, but that law applies to everybody, regardless of you are an acquisition or anything else. So, then you have more specific laws specifically directed at stocks.

All of us had to divest if we owned any defense stocks to *de minimis*, or for the well-counseled people, to zero, and ensure that we are just crystal clean on that. From my perspective, and I am very

proud of the ethics program with the Department of the Navy, we have 900 ethics counselors.

From day one, you are told about ethical behavior. We have annual reviews. We have 41,000 people who file financial disclosure forms, every one of which is reviewed by a supervisor who knows what they are working on and can detect whether there is any nexus between their financial status and what they are working on.

I think we have in place a clear, consistent, and balanced program. We can always improve it. Whatever you give us in terms of laws, we will vigorously enforce. But I think the current State of play, as the GAO found in the 2021 report, was we have a pretty effective program.

Frankly, there are some benefits when I am sitting across from somebody who served to know that they can explain to their fellow board members or others at the company why we need that tech data for that F-35. That, and I would like to think that they are in there explaining to their fellow board members this is why they are being pains in the butt, it is because they really need it.

I think like the GAO found, there are some benefits to having veterans in the Pentagon who have been in private industry. I wasn't in the defense industry, but I can see the benefits of it and vice versa for people who have retired, and in order to make a living, go work for the defense Industry.

Senator KAINE. I will just hand it back to the Chair. I can see benefits, too. I mean, I can definitely see benefits both directions, but I just want there to be appropriate guardrails so that the benefits of expertise are not overcome by abuses, even if not ill-intended. There can be kind of an unintentional slippage toward abuse, and I think we need to guard against that. But thank you all, and I will hand it back to you, Madam Chair.

Senator WARREN. Thank you, Senator Kaine. In fact, I want to followup on Senator Kaine's questions. I take this one kind of personally. A few years ago, I pushed hard for a law that we passed that barred many Department of Defense officials from owning more than \$15,000 in stock in the largest defense contractors. It is a law that you all are now out there enforcing.

That law also says that senior officials who work on contracts can't own or buy large amounts of stock in contractors that were the top ten recipients of DOD dollars in the last 5 years. And for everyone, DOD is supposed to make sure that no one is working on a project that has stock holdings that could create a conflict of interest, going into your general point about this. But I want to talk a little bit about the big gaps here.

We saw a recent Wall Street Journal report that highlighted the case of the DOD policy official who owned somewhere between \$15,000 and \$50,000 of stock in the Chinese company Alibaba, who was actively working on a policy about whether Alibaba's ties to China meant that the company should be on a list of companies that Americans could not invest in.

Two weeks after the official purchased the stock, Alibaba got what it wanted. It was omitted from the list of prohibited companies, and the company's stock increased immediately by 4 percent. A nice return in a very short period of time.

Ms. Krass, Alibaba is not a defense contractor, so current law did not prevent this DOD official from owning its stock. But ethics officers still should have spotted that his possession gave him insider information that could boost his personal finances, going to the point that Mr. Coffey made, and could influence the advice that he was giving to the Government, a possible conflict of interest here.

I understand, you were not at DOD when this happened. But why didn't DOD officials pick up that this was a conflict of interest? There clearly is a conflict here, right?

Ms. KRASS. Senator, absolutely. I agree that employee may not participate in any matter in which they have a financial——

Senator WARREN. Why didn't they pick this up?

Ms. KRASS.—and they need to either have recused themselves from those matters or they need to have divested of the financial interest so as to avoid the problem. As you mentioned, I was not at the Department at the time, and I am happy to take back any questions that you have on that.

Senator WARREN. I guess that is, I don't know?

Ms. KRASS. What I do know is that my team works extremely hard, as Mr. Coffey indicated.

Senator WARREN. I understand that. Let me ask about another loophole. Stock ownership limits apply to certain senior Department officials, but they do not apply to everyone. Would the Chief of Staff to Secretary Austin or the Chief to the Chairman of the Joint Chiefs of Staff be allowed to own \$30,000 in Lockheed Martin, DOD's top contractor?

Ms. KRASS. In the review of a financial disclosure form, any potential conflicts are identified and it is determined whether or not an employee would need to divest the stock because they can't perform their duties appropriately, if they were to continue to hold the stock and recuse themselves. There is the other option to recuse. If it would interfere with the employee's performance of their official duties in a significant way——

Senator WARREN. The person has come to you for advice. Are they covered by the current statute? This is somebody who is not confirmed by the Senate and is not an acquisitions officer. Are they covered by this rule?

Ms. KRASS. By 18 USC 208, everybody is covered by that rule.

Senator WARREN. You are saying you would tell them they have to divest the stock?

Ms. KRASS. Yes. I would either have them divest or recuse depending on what the scope of their official duties would be.

Senator WARREN. Okay. I hope that is the advice that you are giving. Let me ask one more. If the Chief of Staff to Secretary Austin helps make decisions about whether or not their boss should meet with the company. They don't give advice on acquisitions, but they decide who gets access. This is the gatekeeper. Does that change whether or not they can own \$30,000 of Lockheed Martin stock?

Ms. KRASS. They would still—that is beyond the *de minimis* amount and they would not be able to participate in a decision about whether to recommend a meeting unless they had divested of the stock.

Senator WARREN. Okay, I hope that is the case. That is not what public reporting seems to indicate, but I hope that is the case.

I want to do one more and then I will quit, and hand this over to Senator Scott. Some of the recent biggest procurement fights have been between smaller but still huge tech companies like Oracle, Microsoft, Amazon, who are all fighting over which company was going to get the \$10 billion Joint Enterprise Defense Infrastructure (JEDI) contract, which would have provided cloud computing for DOD.

One of the Pentagon officials involved in deciding which company got the contract owned Microsoft stock. Now, Microsoft had received \$400 million in DOD contracts, which is not high enough for them to be listed in the prohibited stock list.

DOD is just supposed to keep an eye out for problems if they pop up here. The official disclosed that she owned Microsoft stock to DOD, she disclosed it to DOD. Did anyone at DOD say that this was a problem given her acquisitions' role?

Ms. KRASS. Again, as we were discussing, you—

Senator WARREN. This is a matter of public record.

Ms. KRASS. Yes, but I was receiving my tenure, Senator, and I cannot speak to the specifics of that, but I would be happy to, again, take any questions.

Senator WARREN. Well, I will just tell you the answer, no. It was not raised by DOD. DOD did not have a problem with this. Ultimately, in this case, the person was referred for prosecution.

But I am concerned about the process here. I am concerned that we are keeping too narrow. I understand the overall rule is a conflicts rule, but I am concerned that we are too narrow in what we look at and how we define it and whether we get enough disclosure that these pop up and we can see them.

Then I am concerned about the fact that we don't have public reporting of this so that, quite frankly, somebody to look over your shoulder and say, I get it, I see what is happening here, and here is where I disagree, and we need to tighten up the laws. That is the part that I am worried about, and that is what this is about today. Senator Scott.

Senator SCOTT. Do you think more public disclosure would be helpful? I got to be honest, I was Governor of Florida for 8 years, everything was public. You just got used to it. Every text, every email, everything was public record. So, it is—life is actually, for me, I came to the conclusion life is easier. Everybody knows everything. So, what do you all think?

Ms. KRASS. Yes, I will start and then invite my colleagues to join me. I think that as we think about increased transparency, we of course have already published financial disclosure form reports. But I think we just need to always be mindful of any privacy interests that are at stake.

Of course, the Privacy Act does not apply between us, you know, as branches of Government, but it does apply to us as the Executive Branch in disclosing individuals' information, and so we just need to be mindful of that.

Senator SCOTT. They didn't worry about it when I was Governor. I mean, every text, every email, everything is public. So, you learn to be smart.

Ms. KRASS. I try to write my emails as if they might become public just in case.

Senator SCOTT. Yes. Do you all think more transparency would be helpful?

Mr. COFFEY. Well, as a general principle, it is hard to disagree with that, but I do think there are privacy interests involved.

I look forward to seeing what the independent commission comes up with that Congress has directed to see what they come up with on that idea. Senator Warren, to make you feel better, I certainly think that the Department of the Navy breeds ethical behavior. We had a big black eye a few years ago with Glenn Defense Marine Asia (GDMA).

We set the tone at the top and it is—from the day you get in the door and when you are leaving, it is about ethical behavior. We have bad eggs. We are big department.

You are going to have a couple of bad eggs, but I can tell you, when I hear someone wants to come to see the Secretary, the answer is, if you see that person, you are going to see everybody in that industry.

You are not going to play favorites, and we have a lot of ethical advisers at the Secretariat and all up and down the chain of command. I just want to leave you with some comfort that we are being very vigorous in our enforcement of the ethics laws.

If you decide to give us some new ones, all we ask for, at least on my part, is that they be clear so we can advise our people. That they be consistent—

Senator SCOTT. It is easier, right?

Mr. COFFEY. Yes.

Senator WARREN. We are very much in that direction. But let me just ask you, privacy interests, what is the privacy interest, and you work for the Department of Defense, and you own defense industry stock. What is the privacy interest?

Mr. COFFEY. Well, again, I think in part the trial lawyer keeps thinking about causation and the link. There needs to be a link between the financial interests of the person to the Department of Defense and what they do—

Senator WARREN. No. If you are a lawyer, you understand appearance of impropriety. We don't ask for lawyers or judges to actually prove that this person has a conflict of interest. We talk about the appearance and why the appearance matters, because our job is to build public confidence.

You build public confidence when everybody knows that every email is going to be disclosed. You build public confidence when you say if you want to invest, have at it, but don't invest in Department of Defense stocks if you work for the Department of Defense.

That one is just a no, and if that so crimps your investing style, then go work somewhere else. I just don't get why this is a privacy issue. I don't know what is there. Sorry, I interrupted, Senator Scott.

Senator SCOTT. Now, we have to disclose everything. Run for office. They expect you to disclose everything.

Senator WARREN. My taxes are online.

Senator SCOTT. Have you referred anybody—any of you refer to anybody for criminal prosecution?

Mr. COFFEY. As a department? Certainly. The answer is yes.

Senator SCOTT. You have while you have been there?

Mr. COFFEY. Yes, and I will say that as a result of The Washington Post articles, and we have checked and some of the people in the article did not apply, and we are proceeding accordingly. I will just leave it there.

Senator SCOTT. Okay. Anybody else?

Mr. BESHAR. We are in a similar position, Senator Scott, and I very much like the way you opened the hearing by saying that there is always opportunity for improvement. I think any leader should have the mindset of continuous improvement.

A number of the studies that are being done, whether it is the review by Undersecretary Cisneros, what he has directed on foreign government employment, or it is the 1073 review that will look into really the post-Government employment restrictions and where is the right balance to be struck. I think all of us are trying to have an open mind about how we can make our protocols and procedures as appropriate as we can.

Senator SCOTT. Have you have had to? Have you had to refer anybody—?

Ms. KRASS. I have not.

Ms. RICCI. I have not during my tenure.

Senator SCOTT. Okay. Just to finish, the question about Alibaba, could you just get us information, if there is—you might not be able to find any information, but if you do, can you get it to Senator Warren and me?

Ms. KRASS. Yes.

Senator SCOTT. I mean, I think it is pretty interesting, right, so technically—you shouldn't be able to do that. I mean if those are the facts. This is something that was written, so if those are the facts, those are the facts, right. Okay, thank you. Thanks for doing your job, by the way.

Senator WARREN. Yes, and I do. I appreciate the work that you all do. I just want to give you the tools so you can do it even better. I want to thank all of our witnesses for their testimony today on the first and second panel.

I also want to thank Jon Clark, and Gary Leeling, and Andy Scott, and Sofia Kamali, and Noah Sisk, and Jenny Davis, and Sean O'Keefe, and Katie Magnus, and Brendan Gavin for their work in putting together today's hearing. These hearings take a lot of work, and I appreciate all that they have done.

We just go into this with a mindset of we want to do better. We want to have complete confidence that when the Department of Defense submits a budget, it is because the Department of Defense and its top officials believe this is what is best for the United States of America, this is not something that helps out some particular individual in their personal financial circumstances.

That is all we are looking for here, is the best way to tell that to the American people. Appreciate your work, and with that, we close this hearing. We are done. Thank you.

[Whereupon, at 4:44 p.m., the Subcommittee adjourned.]

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR ELIZABETH WARREN

STOCK TRADING RESTRICTIONS

1. Senator WARREN. Ms. Krass, has the Department of Defense (DOD) reviewed Reed Werner's ownership of Alibaba stock given his reported official activities that would impact the company?

Ms. KRASS. From 2019 to 2021, Mr. Werner served as the Deputy Assistant Secretary of Defense (DASD) for South & Southeast Asia, which is comprised of the following countries:

India, Bangladesh, Bhutan, Diego Garcia, Maldives, Nepal, Sri Lanka, Brunei, Burma, Cambodia, East Timor, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, and Vietnam. (<https://policy.defense.gov/OUSDP-Offices/ASD-for-Indo-Pacific-Security-Affairs/>)

Mr. Werner's official area of responsibility and authority did not extend to China, as there is a separate DASD for China. The then-Deputy Secretary of Defense approved DOD's list of Communist Chinese military companies submitted to Congress in accordance with section 1237(b)(4)(B) of Public Law 105-261, as amended, based on the recommendation of the then-Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)). The Acting Assistant Secretary of Defense for Indo-Pacific Security Affairs at the time, David Helvey, concurred with the USD(A&S)'s recommendation, and his position was informed by the DASD for China at the time, Chad Sbragia. DASD Werner did not play a role in this recommendation. The Department has reviewed the allegations in the Wall Street Journal's October 11, 2022 article and is taking appropriate action.

2. Senator WARREN. Ms. Krass, has DOD concluded any ethics laws were violated by Reed Werner? If so, what actions has DOD taken?

Ms. KRASS. See response to question 1 above.

3. Senator WARREN. Ms. Krass, how many DOD personnel have disclosed to DOD that they own stock in defense contractors that are prohibited by 10 U.S.C. 988?

Ms. KRASS. Relevant reports filed in the Office of Government Ethics (OGE) Integrity.gov public financial disclosure system covering calendar years 2020 to 2023 indicate that 35 individuals reported holding stock valued in excess of the *de minimis* amount in an entity appearing on the Top Ten List for the relevant reporting period. None of these individuals were covered officials and therefore did not hold stock in violation of 10 U.S.C. § 988.

4. Senator WARREN. Ms. Krass, are any specific actions taken when DOD personnel disclose they own stocks prohibited by 10 U.S.C. 988?

Ms. KRASS. Officials subject to 10 U.S.C. § 988 are required to file the OGE 278e Public Financial Disclosure Report annually, as well as to submit OGE 278-T Periodic Transaction Reports promptly upon the purchase, sale, or exchange of certain securities, including stocks. In addition to requiring review by ethics officials, DOD requires supervisory review of these financial disclosure reports to identify any potential conflicts of interest with the filer's duties. If an official subject to Section 988 comes into possession of a prohibited stock (for example, through inheritance), ethics officials will advise the individual of the requirement to divest promptly and work with the individual to ensure that appropriate recusals and screening arrangements are in place until divestiture is accomplished.

5. Senator WARREN. Ms. Krass, in the past 10 years how many times has DOD requested personnel divest stock ownership to avoid a real or perceived conflict of interest?

Ms. KRASS. DOD has effective measures to safeguard against conflicts of interest. Federal statutes and implementing regulations prohibit personnel from participating personally and substantially in any particular matter that would have a direct and predictable effect on their actual or imputed financial interests. The mechanisms for preventing conflicts of interest include recusal, divestiture and re-assignment. Where a potential conflict of interest exists, ethics officials will work with the individual and his or her supervisor to determine the most appropriate mechanism under the applicable circumstances. , DOD does not maintain a comprehensive historical data base of these actions, which are specific to the individual and circumstances at the time. However, individuals who are required to divest of a security may request a certificate of divestiture from the Office of Government Ethics (OGE). OGE publicly posts certificates of divestiture obtained by senior officials on

its website at: <https://oge.gov/Web/OGE.nsf/Officials%20Individualpercent20Disclosures%20Search%20Collection>

6. Senator WARREN. Ms. Krass, in the past 10 years have there been any instances in which personnel refused to divest or take other actions for prohibited stock ownership? What action occurred if so?

Ms. KRASS. I am not aware of any instances in which personnel refused to divest or take other actions for prohibited stock ownership.

DOD has effective measures to safeguard against conflicts of interest. Federal statutes and implementing regulations prohibit personnel from participating personally and substantially in any particular matter that would have a direct and predictable effect on their actual or imputed financial interests. The mechanisms for preventing conflicts of interest include recusal, divestiture and re-assignment. Where a potential conflict of interest exists, ethics officials will work with the individual and their supervisor to determine the most appropriate mechanism under the applicable circumstances.

7. Senator WARREN. Ms. Krass, how many DOD personnel in acquisition positions have disclosed to DOD they own stock in companies that were the top 100 contractors for DOD in fiscal year 2021?

Ms. KRASS. DOD is a large organization with a diversity of missions among its 2.8 million personnel across three military departments and 33 distinct agencies and components, including an acquisition workforce of almost 190,000 personnel. This diversity means that potential for conflicts of interest, even for acquisition personnel, vary widely depending on an employee's organization and actual duties. DOD has over 3,000 ethics officials located around the world at every level of the Department to train and advise DOD acquisition and other personnel. Contracting officers and certain other acquisition personnel are required to file financial disclosure reports, which are reviewed by the employee's supervisor prior to review and certification by ethics officials. Financial disclosure systems do not track and report data concerning assets listed by individuals in a specific job series. However, DOD's financial disclosure review procedures are effective in preventing and addressing conflicts of interest, particularly when combined with DOD's extensive training programs, active mitigation through recusal, divestiture, or reassignment, and, when necessary, enforcement.

POST-GOVERNMENT EMPLOYMENT RESTRICTIONS

8. Senator WARREN. Ms. Krass, how many opinions are currently in DOD's After Government Employment Advice Repository (AGEAR)?

Ms. KRASS. As mandated by Section 847 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008, Pub. L. No. 110-181 ("Section 847") the Department of Defense is required to retain written requests and opinions in AGEAR for 5 years for certain "covered officials" who, within 2 years of leaving DOD, expect to receive compensation from any defense contractor. Since 2018, approximately 1,300 post-Government employment opinions have been retained in AGEAR.

9. Senator WARREN. Ms. Krass, how many opinions in DOD's AGEAR concluded the individual had a lifetime ban on certain post-government activities?

Ms. KRASS. Under 18 U.S.C. § 207(a)(1), all Executive Branch employees have a lifetime criminal ban on representing others on particular matters involving specific parties in which they participated personally and substantially during their Government service.

Section 847 of the NDAA for fiscal year 2008 requires certain DOD officials to request and receive a written opinion regarding the applicability of post-employment restrictions before receiving compensation from any DOD contractor. Section 847 applies to current and former DOD officials who participated personally and substantially in an acquisition with a value in excess of \$10 million ("the Acquisition") while serving in: (1) an Executive Schedule position; (2) a Senior Executive Service position; (3) a general or flag officer position; or (4) in the position of program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team.

The same type of participation that triggers the section 847 requirements also triggers a lifetime criminal ban under 18 U.S.C. § 207(a)(1). Thus, all DOD officials subject to Section 847 will also have a lifetime criminal ban from representing a prospective employer (or any Non-Federal Entity (NFE)) back to the Government with regard to the Acquisition. Furthermore, depending on the DOD official's posi-

tion and/or participation relative to the Acquisition, the DOD official may also have a ban from accepting any compensation from the prime contractor for that acquisition for 1 year under the Procurement Integrity Act, 41 U.S.C. § 2104.

10. Senator WARREN. Ms. Krass, what entities or programs do opinions in AGEAR cite as having a lifetime ban on certain post-government activities?

Ms. KRASS. The lifetime criminal ban under 18 U.S.C. § 207(a)(1) is triggered by personal and substantial participation in “particular matters involving specific parties,” and such matters include all contracts and acquisitions regardless of value. Section 847 requires written post-Government employment opinions for certain DOD officials who participated in acquisitions over \$10 million and plan to work for a DOD contractor to be stored in AGEAR. Thus, all individuals requesting and receiving an opinion that is stored in AGEAR have, at a minimum, a lifetime ban relative to the acquisition(s) triggering section 847. While the post-Government employment opinion or request stored in AGEAR is required based on participation in a \$10-million acquisition, that specific acquisition may not be relevant to the DOD official’s prospective employment with a DOD contractor. Because section 847 requires certain DOD officials to receive a written opinion before accepting compensation from any DOD contractor, there may be no actual nexus between the DOD official’s participation in the acquisition that triggered the section 847 requirement and their prospective employment with a DOD contractor.

11. Senator WARREN. Ms. Krass, how many individuals has DOD advised in AGEAR that they have a lifetime ban on certain post-government activities?

Ms. KRASS. All DOD officials who have requested and received opinions in AGEAR will have, at a minimum, a lifetime ban on participation in the acquisition in excess of \$10 million that triggered their requirement to request and receive a written post-employment opinion in AGEAR.

12. Senator WARREN. Ms. Krass, what percentage of individuals who received ethics opinions included in AGEAR were advised they have a lifetime ban on certain post-government activities?

Ms. KRASS. One hundred percent. See response to question 11 above.

13. Senator WARREN. Ms. Krass, Ms. Ricci, Mr. Coffey, and Mr. Beshar, in the past 10 years how many times has your agency received reports of possible violations of post-government ethics restrictions?

Ms. KRASS, Ms. RICCI, Mr. COFFEY, and Mr. BESHAR. Allegations of ethics violations may be reported in a variety of ways, with the Inspectors General (IGs) and criminal investigative services typically receiving reports directly through mechanisms such as the DOD Hotline:

<https://www.dodig.mil/Components/Administrative-Investigations/DOD-Hotline/Hotline-Complaint/>

Information concerning such complaints is maintained by the IGs and investigative services. In addition, ethics officials report information in their possession concerning disciplinary actions and certain referrals to DOJ as part of the Annual Agency Ethics Program Questionnaire that DOD submits to the Office of Government Ethics (OGE) each year. These Questionnaires are published on OGE’s website.

Since 2015, as part of the Annual Agency Ethics Program Questionnaire, OGE has asked ethics officials to separately report how many disciplinary actions were taken based wholly or in part on violations of post-Government employment restrictions governed by 18 U.S.C. § 207 and subpart F of 5 C.F.R. 2635. Since 2015, the respective Offices of the General Counsel of the DOD and the Military Departments reported approximately 15 instances of disciplinary actions that were based wholly or in part on violations of post-Government employment restrictions.

14. Senator WARREN. Ms. Krass, Ms. Ricci, Mr. Coffey, and Mr. Beshar, in the past 10 years how many times have reports of possible violations of post-government ethics restrictions been substantiated and what actions were taken as a consequence?

Ms. KRASS, Ms. RICCI, Mr. COFFEY, and Mr. BESHAR. Allegations of ethics violations may be reported in a variety of ways, with the Inspectors General (IGs) and criminal investigative services typically receiving reports directly through mechanisms such as the DOD Hotline:

<https://www.dodig.mil/Components/Administrative-Investigations/DOD-Hotline/Hotline-Complaint/>

Information concerning such complaints is maintained by the IGs and investigative services, to include data relating to whether the allegations are substantiated or not. In addition, ethics officials report information in their possession concerning disciplinary actions and certain referrals to DOJ to the Office of Government Ethics each year as part of the Annual Agency Ethics Program Questionnaire. These Questionnaires are published on OGE's website.

Since 2015, as part of the Annual Agency Ethics Program Questionnaire, OGE has asked ethics officials to separately report the number of referrals made to the DOJ of potential violations of criminal post-Government employment restrictions governed by 18 U.S.C. § 207, along with the number of referrals that DOJ accepted for prosecution. Since 2015, the respective Offices of the General Counsel of the DOD and the Military Departments reported fewer than 5 referrals of potential violations of criminal post-Government ethics restrictions to DOJ. Of those referrals, DOJ declined to accept any for prosecution.

15. Senator WARREN. Ms. Krass, Ms. Ricci, Mr. Coffey, and Mr. Beshar, in the past 10 years how many times has your agency received reports of possible violations of post-government lobbying and representational restrictions?

Ms. KRASS, Ms. RICCI, Mr. COFFEY, and Mr. BESHAR. Allegations of ethics violations may be reported in a variety of ways, with the Inspectors General (IGs) and criminal investigative services typically receiving reports directly through mechanisms such as the DOD Hotline:

<https://www.dodig.mil/Components/Administrative-Investigations/DOD-Hotline/Hotline-Complaint/>

The respective Offices of the General Counsel of the DOD and the Military Departments are not aware of any complaints involving an allegation of a possible violation of post-Government lobbying and representational restrictions, as set forth in section 1045 of the NDAA for fiscal year 2018.

16. Senator WARREN. Ms. Krass, Ms. Ricci, Mr. Coffey, and Mr. Beshar, in the past 10 years how many times has your agency substantiated reports of possible violations of post-government lobbying and representational restrictions and what actions were taken as a consequence?

Ms. KRASS, Ms. RICCI, Mr. COFFEY, and Mr. BESHAR. Allegations of ethics violations may be reported in a variety of ways, with the Inspectors General (IGs) and criminal investigative services typically receiving reports directly through mechanisms such as the DOD Hotline:

<https://www.dodig.mil/Components/Administrative-Investigations/DOD-Hotline/Hotline-Complaint/>

The respective Offices of the General Counsel of the DOD and the Military Departments are not aware of any complaints involving an allegation of a possible violation of post-government lobbying and representational restrictions, as set forth in section 1045 of the NDAA for fiscal year 2018.

17. Senator WARREN. Ms. Krass, Ms. Ricci, Mr. Coffey, and Mr. Beshar, in the past 10 years how many times have you referred DOD officials to the Department of Justice, Inspectors General, or U.S. attorneys for alleged violations of ethics laws?

Ms. KRASS, Ms. RICCI, Mr. COFFEY, and Mr. BESHAR. Allegations of ethics violations may be reported in a variety of ways, with the Inspectors General (IGs) and criminal investigative services typically receiving reports directly through mechanisms such as the DOD Hotline:

<https://www.dodig.mil/Components/Administrative-Investigations/DOD-Hotline/Hotline-Complaint/>

Information concerning such complaints is maintained by the IGs and investigative services. In addition, ethics officials do report information in their possession concerning disciplinary actions and certain referrals to DOJ to the Office of Government Ethics each year as part of the Annual Agency Ethics Program Questionnaire. These Questionnaires are published on OGE's website.

As part of the Annual Agency Ethics Program Questionnaire, ethics officials reported the number of referrals made to the DOJ of potential violations of the criminal conflicts of interest statutes (18 U.S.C. §§ 203, 205, 207, 208 and 209). Based on a review of available records from the past 10 years, in total, the respective Offices of the General Counsel of the DOD and the Military Departments referred approximately 62 potential violations of the criminal conflicts of interest statutes to DOJ. Of those referrals, DOJ accepted approximately 16 for prosecution. DOJ declined to accept approximately 42 for prosecution and 4 referrals were still pending as of the date of submission for the corresponding Annual Agency Ethics Program Questionnaire.

18. Senator WARREN. Ms. Ricci, Mr. Coffey, and Mr. Beshar, how many of the retired military personnel approved to work for foreign governments in the past 10 years were personally and substantially involved in decisions that would impact the country they were approved to work for?

Ms. RICCI, Mr. COFFEY, and Mr. BESHAR. In determining whether to recommend Department of State approval of a request for foreign government employment, the Military Departments evaluate a number of criteria related to national security, regardless of whether a retired service member participated personally and substantially in a matter involving the foreign government. This information can include information about the duties performed in a foreign country.

19. Senator WARREN. Ms. Ricci, Mr. Coffey, and Mr. Beshar, how many of the retired military personnel approved to work for foreign governments in the past 10 years attended meetings with embassy officials or foreign agents employed on behalf of the country they were approved to work for?

Ms. RICCI, Mr. COFFEY, and Mr. BESHAR. In determining whether to recommend Department of State approval of a request for foreign government employment, the Military Departments evaluate a number of criteria and other information related to national security. This information can include information about the duties performed in a foreign country. The Department of State is the final approval authority for foreign government employment of retired military personnel and does not require applicants to list meetings with embassy officials or foreign agents.

20. Senator WARREN. Ms. Ricci, Mr. Coffey, and Mr. Beshar, retired General Jim Mattis was the commander of Central Command and later received approval to work with the United Arab Emirates, a country that had been in his area of responsibility as commander. How many other military personnel your service approved to work for foreign governments were approved for work for foreign governments they deployed to or were in their area of responsibility during their Military Service?

Ms. RICCI, Mr. COFFEY, and Mr. BESHAR. In determining whether to recommend Department of State approval of a request for foreign government employment, the Military Departments evaluate a number of criteria and other information related to national security. This information can include information about the duties performed in a foreign country. The Department of State is the final approval authority for foreign government employment of retired military personnel and does not require applicants to list prior deployments or areas of responsibility.

21. Senator WARREN. Ms. Ricci, Mr. Coffey, and Mr. Beshar, how many military personnel sought approval for work on behalf of foreign governments before they were officially retired?

Ms. RICCI. Although Army regulations would allow a servicemember to submit a request for approval before their retirement date to begin foreign government employment after their retirement, I am not aware of any such requests.

Mr. COFFEY. None. The Department of the Navy (DON) does not process foreign government employment authorization requests until the servicemember is no longer on Active Duty.

Mr. BESHAR. None. The Air Force Personnel Center does not allow members to apply prior to retirement. They must follow the guidance in Air Force Instruction 36-2913, which states that those on Active Duty are ineligible to apply for approval or accept employment with a foreign government or entity.

22. Senator WARREN. Ms. Ricci, Mr. Coffey, and Mr. Beshar, personnel who had or continue to have access to classified information are more likely to intentionally or unintentionally share our most sensitive national security information with foreign governments if they are on their payroll. What oversight processes are in place to make sure this employment doesn't compromise classified information?

Ms. RICCI. Consistent with the requirements of DODM 5200.02, Procedures for the DOD Personnel Security Program, the Department of the Army has established procedures to ensure that, upon termination of employment with the Federal Government, servicemembers have their access to classified information terminated, receive a security debriefing, and complete a security termination statement as required. Retirees requesting approval of foreign government employment are required to complete a written questionnaire, which includes questions relating to the applicant's access to classified information during their Military Service. As part of the application to approve foreign government employment, all applicants are required to complete internet-based TARP (Threat Awareness and Reporting Program) training and submit a certificate of completion before the application can be proc-

essed. All applicants are required to sign the Classified Information Nondisclosure Agreement (Standard Form 312), certifying knowledge of their commitment to safeguard classified information and acknowledging that any unauthorized disclosure of classified information may constitute a violation, or violations, of United States criminal laws.

Mr. COFFEY. Consistent with the requirements of DODM 5200.02, Procedures for the DOD Personnel Security Program, the Department of the Navy has established procedures to ensure that, upon termination of employment with the Federal Government, servicemembers have their access to classified information terminated, receive a security debriefing, and complete a security termination statement as required. Retirees requesting approval of foreign government employment are required to complete a written questionnaire, which includes questions relating to the applicant's access to classified information during their Military Service. All applicants are required to sign the Classified Information Nondisclosure Agreement (Standard Form 312), certifying knowledge of their commitment to safeguard classified information and acknowledging that any unauthorized disclosure of classified information may constitute a violation, or violations, of United States criminal laws.

Mr. BESHAR. Consistent with the requirements of DODM 5200.02, Procedures for the DOD Personnel Security Program, the Department of the Air Force has established procedures to ensure that, upon termination of employment with the Federal Government, servicemembers have their access to classified information terminated, receive a security debriefing, and complete a security termination statement as required. Retirees requesting approval of foreign government employment are required to complete a written questionnaire, which includes questions relating to the applicant's access to classified information during their Military Service. All applicants are required to sign the Classified Information Nondisclosure Agreement (Standard Form 312), certifying knowledge of their commitment to safeguard classified information and acknowledging that any unauthorized disclosure of classified information by them may constitute a violation, or violations, of United States criminal laws.

23. Senator WARREN. Ms. Ricci, Mr. Coffey, and Mr. Beshar, how many times have the services received allegations that retired military personnel who work for foreign governments improperly shared classified information over the past 10 years?

Ms. RICCI. Records relating to reports of allegations of improper sharing of classified info have a 6-year record retention period. Since 2016, my office received one allegation about an Army officer who intended to work for a foreign government in a manner that likely would have involved classified information, however, the Army in conjunction with the FBI, prevented this individual from entering into this employment. The officer had not submitted an application for foreign government employment.

Mr. COFFEY. The DON is not aware of any allegations regarding the improper sharing of classified information by personnel employed by a foreign government.

Mr. BESHAR. The Department of the Air Force (DAF) is not aware of any allegations regarding the improper sharing of classified information by personnel employed by a foreign government.

24. Senator WARREN. Ms. Ricci, Mr. Coffey, and Mr. Beshar, how many retired military personnel the services approved to work for foreign governments had active security clearances at the time they were approved?

Ms. RICCI, Mr. COFFEY, and Mr. BESHAR. While this information is not separately tracked or readily available, each of the Military Departments requires retired servicemembers applying for approval of foreign government employment to provide information about the security clearance the applicant held while in military service. Most personnel leaving military service lose their security clearance upon retirement, although DOD 5200.02M provides a process by which retired personnel may be granted a security clearance. Retirees requesting foreign government employment authorization are required to complete Standard Form 312, certifying knowledge of their commitment to safeguard classified information and acknowledging that any unauthorized disclosure of classified information by them may constitute a violation, or violations, of United States criminal laws.

25. Senator WARREN. Ms. Ricci, Mr. Coffey, and Mr. Beshar, is there any kind of work your services would categorically deny if retired military personnel requested to perform that work on behalf of a foreign government?

Ms. RICCI, Mr. COFFEY, and Mr. BESHAR. In determining whether to recommend Department of State approval of a request for foreign government employment, the Military Departments evaluate a number of criteria and other information related

to national security. Every application is evaluated on the unique facts and circumstances presented in the application. The Under Secretary of Defense for Personnel and Readiness has asked the Military Departments to assess for sufficiency the information and criteria applied in reviewing applications for approval of foreign government employment. The Department of Defense looks forward to briefing the Committee on the results of this assessment.

26. Senator WARREN. Ms. Ricci, Mr. Coffey, and Mr. Beshar, are there any countries your services would categorically reject retired military personnel working on behalf of?

Ms. RICCI, Mr. COFFEY, and Mr. BESHAR. In determining whether to recommend Department of State approval of a request for foreign government employment, the Military Departments evaluate a number of criteria and other information related to national security. Every application is evaluated on the unique facts and circumstances presented in the application. All applications receive a security and intelligence review. The Under Secretary of Defense for Personnel and Readiness has asked the Military Departments to assess for sufficiency the information and criteria applied in reviewing applications for approval of foreign government employment. The Department of Defense looks forward to briefing the Committee on the results of this assessment.

27. Senator WARREN. Ms. Ricci, Mr. Coffey, and Mr. Beshar, what is your service's check list for reviewing, approving, and denying foreign government employment?

Ms. RICCI. See Table 2-1 in AR 600-291, "Foreign Government Employment," which describes the Army FGE application process:

https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN30208-AR8_600-291-000-WEB-1.pdf.

The Under Secretary of Defense for Personnel and Readiness has asked the Military Departments to review the information and criteria applied in reviewing applications for approval of foreign government employment. The Department of Defense looks forward to briefing the Committee on the results of this assessment.

Mr. COFFEY. The DON does not have a check list, but rather has a process for reviewing foreign government employment requests. DON military retirees seek Service approval for foreign government employment by submitting applications to the delegated approving official within each Service. Applications include detailed questions concerning the nature of the proposed employment and a refreshed acknowledgement of non-disclosure obligations. Upon receipt of an application, each Service (i.e., Navy, Marine Corps) conducts detailed reviews, to include reviewing retiree records for adverse or reportable information and/or a review conducted by Naval Criminal Investigative Service (NCIS), and a review of the proposed employment by security and counterintelligence experts. The delegated approving official then weighs: (1) whether the foreign government employment will adversely affect the foreign relations of the United States; (2) whether the foreign government employment will enable a foreign government to exert an undue influence upon the United States; (3) whether the foreign government employment will jeopardize the security of the United States; and (4) whether the foreign government employment will violate any laws of the United States. Foreign government employment that would be inimical to the national interest is not approved. Requests approved by the Service are forwarded to the Department of State for final review and approval. The Under Secretary of Defense for Personnel and Readiness has asked the Military Departments to review the information and criteria applied in reviewing applications for approval of foreign government employment. The Department of Defense looks forward to briefing the Committee on the results of this assessment.

Mr. BESHAR. The factors considered by the DAF are listed in paragraph 3.5 of Air Force Instruction 36-2913:

<https://www.retirees.af.mil/Portals/53/documents/FGE/AFIpercent2036-2913.pdf?ver=2016-08-17-112414-970>.

The Under Secretary of Defense for Personnel and Readiness has asked the Military Departments to review the information and criteria applied in reviewing applications for approval of foreign government employment. The Department of Defense looks forward to briefing the Committee on the results of this assessment.

28. Senator WARREN. Ms. Ricci, Mr. Coffey, and Mr. Beshar, when was the last time this process was updated and are there regular reviews of the process? How often do those reviews occur if so?

Ms. RICCI. AR 600-291 was last updated in September 2020. The Army is currently in the process of revising this AR. The Under Secretary of Defense for Personnel and Readiness has asked the Military Departments to review the information

and criteria applied in reviewing applications for approval of foreign government employment. The Department of Defense looks forward to briefing the Committee on the results of this assessment.

Mr. COFFEY. The Secretary of the Navy delegated FGE approval authority to the Chief of Naval Personnel and Commandant of the Marine Corps. These officers regularly review their internal processes and procedures (including questionnaires) and, as needed, update the process and procedures to account for new challenges, employment trends, and efforts to better elucidate information relevant to decision-making. The Under Secretary of Defense for Personnel and Readiness has asked the Military Departments to review the information and criteria applied in reviewing applications for approval of foreign government employment. The Department of Defense looks forward to briefing the Committee on the results of this assessment.

Mr. BESHAR. The Department of the Air Force substantially revised its AFI governing FGE in July 2020. AFI 36-2913 is currently undergoing review and update. The Under Secretary of Defense for Personnel and Readiness has asked the Military Departments to review the information and criteria applied in reviewing applications for approval of foreign government employment. The Department of Defense looks forward to briefing the Committee on the results of this assessment.

29. Senator WARREN. Ms. Ricci, Mr. Coffey, and Mr. Beshar, will you share with this Committee the results of your service's review that was directed by the Under Secretary of Defense for Personnel and Readiness within 100 days?

Ms. RICCI, Mr. COFFEY, Mr. BESHAR. The Department of Defense looks forward to briefing the Committee on the results of the assessment directed by the Under Secretary of Defense for Personnel and Readiness.

QUESTIONS SUBMITTED BY SENATOR MAZIE K. HIRONO

RED HILL ACCOUNTABILITY

30. Senator HIRONO. Mr. Coffey, critical to public integrity and anti-corruption is confidence that the appropriate action will be taken when misdeeds or inappropriate behavior are identified. Any perceptions of lack of accountability for our leaders calls into question the foundations of the entire system, and rightly so. We're seeing this play out in real time following the Red Hill water contamination crisis. To date, the Navy has not publicly held anyone accountable for a disaster that impacted almost 100,000 people. Mr. Coffey, can you please tell me why the people of Hawaii are still awaiting accountability for a crisis that occurred over 18 months ago?

Mr. COFFEY. The Navy takes accountability seriously and understands that the citizens of Hawaii deserve to know what actions the Navy takes in regard to the spills that have occurred at the Red Hill Bulk Storage Facility. A consolidated disposition authority (CDA) was assigned to review and take any required administrative or disciplinary actions against U.S. Navy servicemembers associated with the original fuel spills from May and November 2021. While those decisions were being reviewed and finalized, a subsequent Aqueous Film Forming Foam (AFFF) spill occurred in March 2023. The CDA was tasked in May 2023 to review this additional AFFF spill investigation together with the 2021 fuel spills investigations to ensure that all appropriate actions are taken. Once these reviews and actions are finalized, the Navy will ensure that the public is made aware of the accountability actions taken by the Navy.

31. Senator HIRONO. Ms. Krass, accountability is critical to the public's faith in our military. As such, how does the Department ensure individuals responsible for misdeeds are held accountable?

Ms. KRASS. The Secretary is committed to rebuilding trust with the people of Hawaii, our service members, civilians, and their families. Accountability is an important part of that rebuilding process, and the Navy is conducting accountability reviews for both Navy personnel and Navy contractors at Red Hill. The Department is confident that the Navy, upon completion of its processes, will take appropriate measures to ensure accountability for the spills at Red Hill.

CAREER DEVELOPMENT FOR ACQUISITION OFFICIALS

32. Senator HIRONO. Ms. Krass, there is a pronounced need for both the Pentagon and the defense industrial base to move faster as the country competes with its pacing threat. Though necessary to ensure ethical guard rails and avoid conflicts of interest, it is in the best interest of the country to have decisionmakers that understand both industry and the DOD. Ms. Krass, how can the Department of Defense

better support career development, which may include industry exchanges, while preserving public trust in the system?

Ms. KRASS. The Department is committed to upholding the ethics laws by avoiding circumstances that would create an appearance of preferential treatment or conflicts of interest. There is widespread recognition that both the Government and industry benefit from exchanges of personnel, as evidenced by laws such as 10 U.S.C. § 1599g that facilitate personnel exchanges with the private sector. Executive Branch ethics laws and regulations appropriately balance the need to preserve the public trust with the Government's interest in participating in such exchanges. DOD personnel participating in industry exchanges remain subject to Federal ethics laws and regulations during their detail to industry, just as industry personnel who are detailed to the DOD are subject to Federal ethics laws and regulations during their detail. Even after leaving DOD, former DOD personnel and industry personnel who have been detailed to DOD are subject to, at a minimum, a ban on representing a non-Federal entity back to DOD on a particular matter in which they participated in personally and substantially. Additionally, exchange participants are typically required to file financial disclosure reports, which are reviewed by their DOD supervisors prior to certification by ethics officials, to assist in identifying and preventing any conflicts of interest with their outside financial interests, to include continued employment and participation in employer benefits.

CONSULTANTS FOR FOREIGN GOVERNMENTS

33. Senator HIRONO. Ms. Krass, I have supported changes to the Federal Acquisition Regulations to specifically create a prohibition on people who provide consulting services to the DOD from entering contracts with entities who are simultaneously providing consulting services to the governments of our adversaries, including China, Russia, and Iran, North Korea and others. Existing conflict of interest provisions do not account for this specific type of conflict of interest. Would the Department of Defense support this change to the Federal Acquisition Regulations?

Ms. KRASS. As indicated in the question, the current Federal Acquisition Regulations (FAR) do not address potential conflicts of this sort. The Department would give serious consideration to such a proposal.

34. Senator HIRONO. Ms. Krass, Is it important for there to be a waiver process in certain instances?

Ms. KRASS. Waivers may be necessary and appropriate in certain circumstances, such as to permit continued contracting for certain national security requirements and to avoid unwelcome second and third order effects or unintended consequences. Any modification to the FAR should provide for waiver authority on a case-by-case basis that the Department may exercise at a senior level of approval.

QUESTIONS SUBMITTED BY SENATOR ROGER WICKER

CONFLICT OF INTEREST ALLEGATIONS

35. Senator WICKER. Ms. Krass, Ms. Ricci, Mr. Coffey, and Mr. Beshar, during the hearing, there were questions concerning how the Department addressed conflict of interest allegations against Ms. Stacy Cummings relative to the JEDI cloud procurement. Can you clarify DOD's processes for identifying and preventing conflicts of interest and what actions, if any, DOD took with regard to the allegations against Ms. Cummings?

Ms. KRASS, Ms. RICCI, Mr. COFFEY, and Mr. BESHAR. Ms. Cummings was an acquisition policy official (Deputy Assistant Secretary of Defense (DASD) for Acquisition Enablers from 2019 to 2021 and was the acting Principal DASD for Acquisition in September 2019) who was asked to sit in on discussions considering a potential change to the JEDI acquisition strategy. Ms. Cummings had not previously been involved in the acquisition. Acquisition counsel advising on the JEDI procurement requested to view financial disclosure reports for officials participating in these discussions and identified Ms. Cummings' potential conflict of interest. Once it was brought to her attention, Ms. Cummings promptly recused herself from any further meetings relating to the acquisition and divested the stock that created the conflict of interest. In accordance with DOD policy, the DOD Standards of Conduct Office (SOCO) made the required referral to the DOD Inspector General (IG). The DOD IG found that while a technical conflict of interest violation occurred, it was identified early and Ms. Cummings was not able to impact the outcome of the procurement. The DOD IG referred the case to the Department of Justice, which declined

to prosecute. The IG recommended that Ms. Cummings receive additional counseling and training, which was conducted.

POST-EMPLOYMENT RULES FOR SENIOR EMPLOYEES

36. Senator WICKER. Ms. Krass, Ms. Ricci, Mr. Coffey, and Mr. Beshar, testimony provided at the hearing appeared to indicate that senior government employees may be subject to less restrictive post-government employment restrictions than non-senior employees. If accurate, this concerns me. Can you explain what post-employment rules apply to senior employees and how they are different from the rules that apply to non-senior employees?

Ms. KRASS, Ms. RICCI, Mr. COFFEY, and Mr. BESHAR. All former senior Executive Branch personnel are subject to greater restrictions than former non-senior personnel. Former senior DOD personnel are also subject to greater restrictions beyond those that apply to former senior personnel who served in other Executive Branch agencies.

All former Executive Branch personnel are subject to ethics restrictions that aim to prevent improper influence after leaving Government service. These laws seek to both preserve public trust and allow former Executive Branch personnel to appropriately use their professional experience after leaving Government service.

All former Executive Branch personnel, to include former senior personnel, are subject to criminal bans under 18 U.S.C. §§ 207(a)(1) and (a)(2) that prohibit them from representing their new employer (or any non-Federal entity (NFE)) back to the Executive or Judicial branches:

- 1) Permanently on matters in which they participated while in Government; and
- 2) For 2 years on matters that were pending under their former official responsibility.

All former Executive Branch personnel are also subject to the Procurement Integrity Act, 41 U.S.C. § 2104, which prohibits personnel from accepting compensation from a prime contractor for 1 year if they served in certain acquisition roles or personally made certain decisions on acquisitions valued over \$10 million, as defined in the Act.

Additional laws apply to former senior Executive Branch officials. In addition to the post-Government restrictions that apply to all former Executive Branch personnel, several more restrictive criminal bans under 18 U.S.C. §§ 207(c)-(f) apply exclusively to all Executive Branch former senior personnel:

- 1) For 1 year after leaving a senior position, all former senior personnel are prohibited from representing a non-Federal employer to their former agency on any official matter;
- 2) For 1 year after leaving a senior position, all former senior personnel are prohibited from aiding, advising, or representing a foreign government or foreign political party, with the intent to influence any officer or employee of any Federal department, agency, or Member of Congress; and
- 3) For 2 years after leaving a very senior position, former very senior personnel are prohibited from representing a new employer to their former agency on any official matter.

Finally, former senior DOD officials are subject to the additional restrictions in Section 1045 of the NDAA for fiscal year 2018, which can apply for up to 2 years. Section 1045 prohibits such officials from participating in certain communications back to individuals holding specific positions throughout the Executive Branch. Rather than the bright line representational bans under 18 U.S.C. § 207, the applicability of Section 1045 restrictions depends upon the subject and nature of the proposed communication; the appointment status of the person to whom the contact is directed; and the agency within which the intended recipient works.

QUESTIONS SUBMITTED BY SENATOR DAN SULLIVAN

DOD ETHICS REQUIREMENT

37. Senator SULLIVAN. Ms. Krass, in your joint testimony, you reviewed the extensive number of laws and regulations that govern the conduct of current and former Department of Defense employees. You also noted the small amount of former DOD senior officials and acquisition officials who work for the 14 largest defense contractors: between 2014 and 2019, 1.5 million people left DOD employment and only 1,700 or 0.1 percent of those were former senior or acquisition officials who went to work at one of the 14 largest defense contractors. You expressed concern with DOD-specific ethics requirements that do not apply across the Executive Branch. That said, you noted that the DOD was complying with the Fiscal Year 2023

NDAA's requirement to have a federally Funded Research and Development Center conduct a study of whether DOD-specific ethics laws would harm DOD's ability to share knowledge between Government and industry, if that would be consistent with existing laws applicable to all Executive Branch employees, if it would create confusion, and if it would impact recruiting and retention. In your opinion, do the existing laws and regulations applicable to current and former Department of Defense officials adequately balance the need to access top talent while also protecting against improper influence?

Ms. KRASS. I look forward to sharing the results of the independent review required by the NDAA for fiscal year 2023 with the Committee. I believe it is important to assess the potential impact of ethics restrictions that apply only to current and former DOD personnel, and not to all Executive Branch employees. DOD supports ethics laws that are clearly written, consistent with the larger body of Federal ethics law, and correctly balance the interests of the Department and our personnel.

The longstanding, well-established, Executive Branch wide ethics laws and regulations take a balanced approach to effectively mitigate perceived conflicts of interest while allowing for circumstances that present little risk of potentially inappropriate influence. These laws strike an appropriate balance between preserving public trust and allowing former government personnel to apply their education and professional experience to earn a living after leaving government service. Clear, consistent, and balanced ethics laws are essential to ensuring compliance and maintaining the public's trust, while fostering recruitment and retention of high-quality personnel.

The Executive Branch-wide laws and regulations also create clear restrictions that are easy to understand and follow, to include:

1) A permanent ban on participating in any particular matter that would have a direct and predictable effect on the employee's actual or imputed financial interests.

2) A 1-year cooling-off period before any new Federal employee can work on any matters affecting a former employer or client.

3) A permanent ban that prohibits all former Executive Branch personnel from representing their employer (or any other Non-Federal Entity (NFE)) back to the Executive or Judicial branches in matters on which they participated while working for the Government.

4) A 2-year ban that prohibits all former Executive Branch personnel from representing their employer (or any other NFE) back to the Executive or Judicial branches in matters that were pending under their responsibility during their last year working for the Government.

5) A 1-year ban that prohibits all former senior Executive Branch personnel from representing their employer (or any other NFE) back to their former agency.

In 2021, GAO found that only a very small percentage of former senior DOD personnel (0.1 percent) actually work for the largest defense contractors after leaving Federal service.¹ Additionally, GAO determined that:

1) DOD and industry have effective programs to detect and prevent violations of post-government employment laws;

2) DOD has improved practices to help ensure compliance with post-government employment restrictions; and

3) Industry's practices promote awareness of and compliance with ethics laws.

¹U.S. GOVT ACCOUNTABILITY OFF., GAO-21-104311, Post-Government Employment Restrictions: DOD Could Further Enhance Its Compliance Efforts Related to Former Employees Working for Defense Contractors (2021).