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## House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, October 28, 1997, at 10:30 a.m.

## Senate

MONDAY, OCTOBER 27, 1997

The Senate met at 12 noon, and was called to order by the President pro tempore [Mr. THURMOND].

### PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

We conclude our character counts prayers by asking for the character trait of caring that is expressed in loyal citizenship. Dear God, You have lavished Your love in the natural resources and expressed Your providential care in the blessing of our Nation. Thank You for the privilege of being citizens of this land of liberty, justice, opportunity, and promise. You call us to be loyal in our patriotism and diligent in seeking Your very best for our land.

Sovereign of America, give us a character transplant. In a time when so many say, "I couldn't care less," help us to remember how much You care for us and respond by saying, "We dare not care less." We cast all our cares on You because You care for us. May this motivate us to confront the problems of our Nation and seek Your solutions.

Gracious Father, bless the women and men who express their citizenship by serving here in this Senate. You have told us that if we pray for them You would pour out Your power. Guide these leaders as they seek to know and do Your will. Fill this Chamber with Your shalom and make us one with shared patriotism and united vision. Through our Lord and Saviour. Amen.

### RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

Mr. HAGEL. Thank you, Mr. President.

### SCHEDULE

Mr. HAGEL. This morning, the Senate will be in a period of morning business until 1:30 p.m. Following morning business, we hope to begin consideration of the pending Federal Reserve Board nominees or the Interior appropriations conference report.

Also, later in the day, we hope to make progress on amendments to S. 1173, the highway legislation. As Members are aware, a fourth cloture motion was filed to the highway bill on Friday, so there will be a cloture vote on Tuesday at a time yet to be determined.

In addition, the Senate could be asked to consider Amtrak strike legislation during this week as well. Under the previous order, at 5 p.m. today the Senate will vote on the confirmation of the Marbley of Ohio nomination to be U.S. district judge. Members are reminded that this may not necessarily be the only vote scheduled today. Members will be notified when other votes are scheduled.

### MEASURES PLACED ON THE CALENDAR—SENATE JOINT RESOLUTION 37 AND H.R. 2646

Mr. HAGEL. Mr. President, I understand that there are two items that are

due to be read a second time. I ask that they be read consecutively at this time.

The PRESIDENT pro tempore. The clerk will read the measures by title.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 37) to provide for the extension of a temporary prohibition of strikes or lockout and to provide for binding arbitration with respect to the labor dispute between Amtrak and certain of its employees.

A bill (H.R. 2646) to amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for elementary and secondary school expenses, to increase the maximum annual amount of contributions to such accounts, and for other purposes.

Mr. HAGEL. Mr. President, I object to further consideration of these matters at this time.

The PRESIDENT pro tempore. The bill and joint resolution will be placed on the Calendar of General Orders.

Mr. HAGEL. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HAGEL). Without objection, it is so ordered.

### MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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business for not to exceed beyond the hour of 1:30 p.m., with Senators permitted to speak therein for up to 10 minutes each.

Mr. GRASSLEY addressed the Chair. The PRESIDING OFFICER. The Senator from Iowa.

# THE DEPARTMENT OF DEFENSE'S ILLEGAL PROGRESS PAYMENT POLICY

Mr. GRASSLEY. Mr. President, I would like to speak about the Department of Defense's illegal progress payment policy.

I have spoken on this policy a number of times since the beginning of the year. Well, I thought we had finally laid the issue to rest. But how wrong I was. On July 22, DOD made a commitment to bring that policy into compliance with the law.

The commitment was made by the nominee to be Deputy Secretary of Defense, Mr. John Hamre. At the time, he was the department's chief financial officer or CFO. He is now the Deputy Secretary of Defense.

Mr. Hamre made the commitment in front of the leaders of the Armed Services Committee: Senator STROM THURMOND, chairman of the Armed Services Committee; Senator CARL LEVIN, ranking minority member of the committee; and The committee's ranking Republican, my friend from Virginia, Senator WARNER; and the Senator from Iowa was also present.

Mr. Hamre promised to put the new policy into effect on October 1, 1997. But October 1 has come and gone. As of this moment, the illegal policy is still in operation. For over 6 years now, the inspector general; the IG, has been telling DOD to fix the policy. And DOD has repeatedly promised to fix it. Unfortunately, Mr. President, these were empty promises. They are broken promises.

Mr. President, John Hamre gave me his word he would fix it this time. A man's word is like gold. You should be able to take it to the bank. He proposed to bring the policy into compliance with the law. And he did it in front of the leadership of the Armed Services Committee. I expect him to keep his word. And the IG is involved, as well. The IG made a commitment to verify compliance. And DOD is not in compliance. This is a bad situation. The basic agreement is outlined in the IG's letter of July 23. I placed a copy of that letter in the RECORD on July 24. It can be found on page S8110.

The July agreement started to unravel barely 1 month after being put together. It unraveled because of complaints from industry—mainly a group called the Council of Defense and Space Industry Associations—that is CODSIA.

The group sent a letter to DOD on August 27. Mr. President, I ask unanimous consent to have a copy of this letter printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COUNCIL OF DEFENSE AND SPACE  
INDUSTRY ASSOCIATIONS,  
Washington, DC, August 27, 1997.

Hon. ALICE C. MARONI,  
Acting Under Secretary of Defense (Comptroller),  
Pentagon, Washington, DC.

Mrs. ELEANOR R. SPECTOR,  
Director of Defense Procurement,  
Pentagon, Washington, DC.

Mr. GARY W. AMLIN,  
Acting Director, Defense Finance and Accounting Service, Arlington, VA.

DEAR MRS. MARONI, MRS. SPECTOR, and MR. AMLIN: The undersigned members of the Council of Defense and Space Industry Associations (CODSIA) are very concerned with DoD's decision to implement the requirement to distribute contract financing payments starting October 1, 1997, without allowing final action on DFARS Case 97-D011 and without determining the impact of such a decision on DoD and industry. This change will increase significantly the administrative workload and cost for all parties involved in the payment process.

The cost impact of this decision on industry is extremely onerous. It will require major changes to accounting and billing systems and to electronic commerce systems to meet the new requirements. We estimate that the additional staffing and administrative effort necessary to ensure compliance with the required distribution in the billing process will cost the industry about \$1.3 billion in FY98.

The \$1.3 billion estimate does not include (1) the impact on any contracts not paid from DFAS Columbus, (2) actual cost accumulation by ACRN or CLIN/SLIN, (3) any additional subcontractor cost, (4) progress payments on basic ordering agreements, (5) the cost of breaking down contracts below the ACRN level, (6) new billing system audits, and (7) higher prices resulting from delayed payments.

The October 1 implementation date does now allow time to comply with the requirements of both the Regulatory Flexibility Act and the Paperwork Reduction Act. The statement in the proposed rule that it pertains primarily to internal Government accounting procedures ignores the impact of the rule on industry. It is our opinion that a regulatory flexibility analysis is required and that industry should have an opportunity to participate in that analysis. As to the paperwork burden, the proposed rule will result in significant new information collection requirements in order for contractors to be paid. The statement that the proposed rule will not impose any information collection requirements that OMB must approve is inaccurate.

Industry is not prepared to implement progress payments distributions on October 1, 1997, and we believe that DFAS will have great difficulty in doing so. Therefore, we urge you to delay the implementation to allow time for a thorough analysis of the impact of this decision.

Whatever decision is made on implementation, the new requirement should not apply to existing contracts. Furthermore, if this decision is implemented, the progress payment rate should be increased to eighty-five (85) percent to compensate for slower payments.

If the implementation date cannot be delayed, we urge the following steps to reduce the administrative cost and disruption of the progress payment process.

Do not make progress payment distributions retroactive. The decision to implement progress payment distributions on existing contracts with five or less progress payments as of October 1, 1997, will result in claims for equitable adjustment. This applies to con-

tracts that have been awarded as well as to prospective contracts that are currently in a solicitation or negotiation phase.

Require DoD to simplify contracts to one ACRN by not using multiple appropriations per contract and not assigning multiple ACRNs per appropriation. This is the only way DoD can comply with this requirement without creating a significant problem for industry and DFAS.

Distribute progress payments by ACRN rather than CLIN/SLIN.

Continue the current DFAS procedure of reallocating payment by ACRN when there are not enough funds in an ACRN to make the payment.

Take steps as detailed in Enclosure I to reduce administrative effort.

Further details of industry's concerns and an analysis of the cost impact are contained in Enclosures I and II to this letter.

DFAS has made significant progress in making timely payments on both progress payment and delivery invoices. The implementation of progress payment distributions would be a major setback for DFAS, and a setback for acquisition reform and payment efficiency. We would be pleased to discuss this matter with you. For further information, please contact Dave Koonce of the Lockheed Martin Corporation at (301) 897-6657.

Sincerely,

Don Fuqua, President, Aerospace Industries Association; Lorraine M. Lavet, Chief Operating Officer, American Electronics Association; Gary D. Engebretson, President, Contract Services Association; Kenneth McLennan, President, Manufacturers Alliance for Productivity and Innovation; Lawrence F. Skibbie, President, American Defense Preparedness Association/National Security Industrial Association; Cynthia L. Brown, President, American Shipbuilding Association; Dan C. Heinemeier, Vice President, Electronic Industries Association; Bert M. Concklin, President, Professional Services Council; Penny L. Eastman, President, Shipbuilders Council of America.

Mr. GRASSLEY. Industry's complaint boils down to one key point: The new policy will cost \$1.3 billion in the first year alone. This is pure, grade A Pentagon baloney. The IG says it is baloney.

No one knows what the new policy would cost—if anything.

Maybe it would save money.

DOD is paying accounting firms like Coopers & Lybrand hundreds of millions of dollars to resolve accounting errors.

These accounting errors are caused, in part, by the current policy.

If payments were made according to law, all the money paid to Coopers & Lybrand could be saved. Surely these saving would offset any new costs. Let's face it, the thought of more cost makes industry lick its chops. More cost is not the issue.

More money is the issue. What I am talking about here is the flow of funds.

The new policy threatens to interrupt the money flow.

That is what scares CODSIA.

And I am not talking about not paying legitimate bills on time. Under law, DOD must pay its bills promptly.

I am talking only about bills that cannot or should not be paid. I am

talking about overobligations and overpayments.

DOD cannot write checks and pay bills with no money in the bank.

Mr. President, this simple rule applies to most citizens in this country but not to entrenched bureaucrats in the Pentagon.

They can dip into a bottomless well that is the \$250 billion defense budget.

This bottomless well allows DOD bureaucrats to merge and comingle appropriations.

They do this to cover shortages—beyond the purview of Congress. Say a bill is submitted for payment, but the bureaucrats discover that there is insufficient money in the account to pay it.

Under the current policy—that is Mr. Hamre's policy—the bureaucrat is authorized to arbitrarily and deliberately post it to another account—the wrong account—but one fat with cash.

Mr. President, that is illegal. Yet that is exactly what CODSIA is asking DOD to keep doing. CODSIA refers to ACRN for accounting classification reference number. ACRN's identify appropriation accounts.

I quote from CODSIA's letter to DOD:

Continue the current DFAS [Defense Finance and Accounting Service] procedure of reallocating payment by ACRN when there are not enough funds in an ACRN to make the payment.

In other words, CODSIA says: Keep charging the wrong account if there isn't enough money in the right account.

Mr. President, that is a blatant violation of law.

When an ACRN contains insufficient funds to pay a bill, the account is overdrawn. It is in the red. It is time for heads to roll.

That is a violation of the Antideficiency Act—section 1341 of title 31, and that carries criminal penalties. It's a felony.

And when you arbitrarily reach into another account to get the money, as CODSIA suggests, you also violate sections 1301 and 1502 of title 31.

These laws are the sacred constitutional cornerstones of Congress' control over the purse strings.

CODSIA shows no respect for these sacred constitutional principles.

At least CODSIA is up-front about what it wants. It wants industry to get paid—even if it means breaking the law.

There is another problem—overpayments. These are bills that should not be paid.

DOD has a nasty habit of overpaying contractors and does it with great regularity.

The bad part about it is DOD doesn't know when it happens. DOD doesn't have the controls in place to detect them.

The only way DOD knows about an overpayment is when the contractor voluntarily returns the money.

Well, Mr. President, guess what is causing overpayments?

Answer: Mr. Hamre's current progress payment policy—the one he promised to terminate on October 1.

A recent GAO report—No. 97-37, page 12—says this policy is “the most frequent cause of DOD's overpayments.”

The GAO report is entitled “Fixing DOD's Payment Problem Is Imperative.”

The new policy promised—but not delivered—by Mr. Hamre should put a lid on overpayments.

Now if overpayments were stopped, who would suffer: CODSIA or the taxpayers?

Mr. President, I think CODSIA has plenty of self-serving reasons for wanting to keep the current policy.

CODSIA lost its credibility when it insisted that DOD break the law to keep the money spigot wide open.

Mr. Fuqua's letter to Acting Comptroller Alice Maroni was followed by a similar letter to Mr. Hamre.

This one was from the defense heavyweights: Boeing, Hughes, Lockheed Martin, Northrop Grumman, and Raytheon.

The message was the same.

Mr. President, I ask unanimous consent to have this letter printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE BOEING CO., HUGHES AIRCRAFT CO., LOCKHEED MARTIN CORP., RAYTHEON CO., NORTHROP GRUMMAN CORP.,

September 22, 1997.

Hon. JOHN HAMRE,

Deputy Secretary of Defense,  
Pentagon, Washington, DC.

DEAR DR. HAMRE: We are writing to convey our concern regarding the Department's plan to implement new requirements for progress payment distributions effective October 1. We are particularly concerned that there has not been time to ascertain fully the cost of compliance or the impact on timeliness of payments. A quick cost impact estimate conducted by industry indicates a minimum impact for Fiscal Year 1998 of \$1.3 billion (see enclosed CODSIA letter dated August 27). These costs, plus those to be incurred by DOD for implementing this requirement, will have to be borne by the U.S. Government.

We understand that the DOD Inspector General and the General Accounting Office indicate the need for improvements in the DFAS accounting system. However, until DOD and its contractors can fully assess the cost and related impacts of the policy change made in your two memoranda of July 23, 1997, we are not confident that this is the least expensive means of ensuring the improvements. We should also explore legislative action for the Fiscal Year 1999 authorization cycle.

In the meantime, we request that you delay the October 1, 1997, implementation date for the proposed progress payment distribution policy change and that the change, when it does become effective, be applied only prospectively and not to any existing contracts. We respectfully request the opportunity to meet with you to discuss the grave nature of this issue and obtain your guidance on appropriate actions industry can take to mitigate the associated cost impact and delay.

We appreciate your prompt attention to this matter and look forward to your re-

sponse. We remain confident that the taxpayers' interest can be protected in a cost effective manner.

Sincerely,

Scott E. Carson, Vice President, The Boeing Co.; Marcus C. Bennett, Executive Vice President and Chief Financial Officer, Lockheed Martin Corp.; Peter R. D'Angelo, Executive Vice President and Chief Financial Officer, Raytheon Co.; Charles S. Ream, Vice President and Chief Financial Officer, Hughes Aircraft Co.; Richard B. Waugh, Corporate Vice President and Chief Financial Officer, Northrop Grumman Corp.

Mr. GRASSLEY. Mr. Hamre buckled under all the pressure from industry.

He responded with what I fear may be an open ended deferral of the new policy.

In doing that, I am afraid he is breaking his word to me and the leadership of the Armed Services Committee.

At this point, the future of the new policy is very much in doubt.

Mr. President, I will have much more to say about this issue in the near future.

The PRESIDING OFFICER. The Senator from Wyoming is recognized to speak for up to 30 minutes.

Mr. THOMAS. Mr. President, I probably will not use 30 minutes.

#### THE SENATE STANDSTILL

Mr. THOMAS. I come to the floor to express some feeling of sadness, some feeling of impatience, frankly, some feeling of irritation, that we are not doing more than we have been doing.

The last 3 weeks we have come in, we have talked about things, we have set them aside, we haven't been able to proceed with the country's business. I think that is a shame. We have many things to do. We have lots of opportunities to do some things that need to be done, and here we are sort of ground to a stop. We are being held up by people who insist on having it their own way or no way, their own way or the highway. That is not really what we ought to be doing here.

We have an opportunity to deal, for instance, with Federal funding for highways, something that ought to be done, an authorization that expired in September, and we need to move forward with it. It has been passed by the committee. It is on the floor, but because of objections we are still here and not doing a thing. ISTEPA expired in September and we need to be doing it. The stalling, of course, is basically a result of campaign finance. We voted several times not to bring McCain-Feingold to the floor. That bill did not receive a majority vote.

Many in this body, including myself, are favorable to doing something in campaign finance, but not McCain-Feingold. That is where we are. We are being held up for that, I think for a couple of reasons. One is to sort of change the image of the hearings that are taking place, to switch the hearings from the potential of the allegation of breaking the law, to changing