

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, we are in morning business?

The PRESIDING OFFICER. That is correct.

DOD PAYMENT POLICY

Mr. GRASSLEY. Mr. President, I want to speak on a subject that I speak on often on the floor of the Senate, the Department of Defense's illegal progress payment policy. Since early this year, I have spoken on this subject many times. Most recently I spoke about the Department's commitment to bring the policy into compliance with law.

This commitment was made by the man who is now the Deputy Secretary of Defense, Mr. John Hamre. This commitment was made on July 22. I spoke about this 2 weeks ago, that he had a meeting with the leadership of the Armed Services Committee. At that meeting there was an agreement among all of us that certain accounting procedures would be brought into accordance with the law. Mr. Hamre gave us his word. He promised to bring the policy into compliance with the law on October 1 of this year. October 1 has come and gone and the illegal policy is still in operation. The Department of Defense is not complying with the law of the land.

Recent news reports suggest that Mr. Hamre is a man of deep spiritual beliefs. I know him to be that way. The roots of his faith go back to his Lutheran upbringing in the small South Dakota town of Willow Lake. His father was the town's church council president. His grandfather was the pastor. John himself went to Harvard Divinity School to prepare for the ministry.

So, Mr. President, it seems to me his faith runs deep, and I respect that. I remind John about some Scripture. The Bible teaches us to: always "do as you promised." I will read a passage from Joshua 23:14: "You know with all your heart and soul that not one of all the good promises the Lord your God gave you has failed. Every promise has been fulfilled; not one has failed."

The Bible teaches us that God kept His word, and He expects the same from each of us. I hope that Mr. Hamre will keep his word that was made on July 22.

Now, I know it is not always possible to keep promises because sometimes things happen in the interim that bring about a change of events that might cause some change of the original stance. Sometimes there are unforeseen events that stand in the way. But there has to be an honest effort.

Mr. President, I'm trying hard to understand why the October 1 deadline is being ignored. There are three letters that helped explain Mr. Hamre's behavior.

First, there is a letter from the Armed Services Committee, signed by

the chairman, Senator THURMOND, and the ranking minority member, Senator LEVIN. It is addressed to Secretary Cohen, and dated September 26, 1997.

Second, we have a letter from the inspector general, Ms. Eleanor Hill, to Mr. Hamre, dated September 30, 1997.

Third, there is Mr. Hamre's letter back to the Armed Services Committee, dated October 1, 1997.

I ask unanimous consent to have these letters printed in the RECORD so my colleagues have the benefit of the entire text.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, September 26, 1997.

Hon. WILLIAM S. COHEN,
Secretary of Defense, The Pentagon, Washington, DC

DEAR SECRETARY COHEN: Two months ago the Department proposed a change to the Defense Federal Acquisition Supplement (DFARS) to change its procedures for progress payments under complex contracts using money from more than one appropriation. Although there is no evidence that the existing progress payment system has ever resulted in a violation of the Antideficiency Act, we understand that the Department does not believe that current procedures are capable of meeting all applicable legal requirements.

The Council on Defense Industry Associations (CODSIA) has indicated to us that the Department is considering the possibility of implementing these new procedures effective October 1, 1997—prior to final action on proposed DFARS change. CODSIA estimates the changes to contractor accounting and billing systems required by these new procedures could cost the industry in excess of \$1.3 billion a year. Additional costs would be incurred by the taxpayers in connection with the requirement for the Department to manually process progress payment requests.

We ask that you review the proposed changes, consider all public comments, and weigh the costs and benefits to the taxpayers and the Department of Defense before these new procedures are implemented by the Department. We would also appreciate if you would let us know of any legislative changes that may be needed to assist you in addressing this issue in a rational and cost-effective manner.

Thank you for your attention to this matter.

Sincerely,

CARL LEVIN,
Ranking Minority
Member.
STROM THURMOND,
Chairman.

DEPARTMENT OF DEFENSE,
INSPECTOR GENERAL,
Arlington, VA, September 30, 1997.

Memorandum for Under Secretary of Defense
(Comptroller)

Subject: Progress Payment Distribution

We do not concur with the recommendation that the Deputy Secretary of Defense approve an open ended deferral in implementing revised progress payment distribution practices.

Recently we were advised by the Office of the Director, Defense Procurement, that an interim rule specifying the role of contracting officers in the new procedures could not be issued for at least 60 days. Likewise, we do not believe that the Defense Finance

and Accounting Service is ready to proceed with the originally planned October 1, 1997 implementation. A deferral of the implementation date is therefore necessary, which is dismaying in light of the several years that the Department has had to address this problem.

At a minimum, we believe that the Deputy Secretary should establish a revised implementation date no later than January 1, 1998. Any reviews of cost implications or other relevant factors should be executable well before that date.

ELEANOR HILL,
Inspector General.

THE DEPUTY SECRETARY OF DEFENSE,
Washington, DC, October 1, 1997.

Hon. STROM THURMOND,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter is in response to your September 26, 1997, letter to Secretary Cohen regarding changes in the manner in which the Department distributes progress payments. Consistent with your request, the Department will review the proposed changes, consider all public comments, and weigh the costs and benefits to the taxpayers and the Department of Defense before these new procedures are implemented. If the analysis indicates that legislative changes are needed to address this issue in a more rational and cost effective manner, such changes will be proposed.

Additionally, the Department has initiated a change to the Defense Federal Acquisition Regulation Supplement (DFARS) to require that contractors provide the breakout of the progress payment. The DFARS change cannot be effected until January 1998 because of the time required to complete statutory administrative actions. Additional time is needed in order to submit the proposed rule and its cost-benefit analysis to the Congress, GAO, and OMB and for the required 60-day congressional waiting period to elapse.

As a result of your request, and the need for additional time to comply with statutory and administrative requirements, I am delaying implementation of the planned policy changes regarding the distribution of progress payments. Those changes, which were scheduled to be implemented on October 1, 1997, are being delayed until January 1998, pending further review and evaluation of the proposed changes.

A copy of this letter has been provided to Senator Grassley.

Sincerely,

JOHN J. HAMRE.

Mr. GRASSLEY. The Armed Services Committee's letter was obviously written in response to complaints from the defense industry. Industry claims that the new policy would cost an extra \$1.3 billion a year to implement. The committee is concerned about that estimate. So the committee asked Mr. Hamre to weigh these factors: "We ask that you review the proposed changes, consider all public comments, and weigh the costs and benefits to the taxpayers and the Department of Defense before these new procedures are implemented. * * *"

The committee is telling Deputy Secretary Hamre to do more homework before executing the new policy. This letter gave Mr. Hamre the authority he needed to delay beyond the October 1 deadline that was agreed to after our July 22 meeting among Armed Services Committee members. Mr. Hamre parrots the committee's language in his

response: "Consistent with your request, the Department will review the proposed changes, consider all public comments, and weigh the costs and benefits to the taxpayers and the Department of Defense before these new procedures are implemented."

Mr. President, if I may paraphrase the letter, it says the committee requests a delay, and Mr. Hamre is just complying. I am happy to report that some of the delay may, in fact, be necessary.

Mr. Hamre provides an important piece of new information in the second paragraph of his letter. He says that the Defense Federal Acquisition Regulation Supplement—and we call that DFARS for short—cannot be issued until January 1998 due to "statutory administrative actions." The DFARS is a key element in the new policy. But the DFARS cannot meet the timetable prescribed under the July 22 agreement that I've referred to.

There are some new procedures under current law. These are spelled out in Public Law 106-121, the Contract With America Advancement Act of 1996.

Unfortunately, no one who put the July agreement together knew anything about the new rules. So if Mr. Hamre says that he needs more time to get the DFARS ready, I can buy that and admit that extra time is needed.

But the final paragraph of his letter gives me heartburn. It makes me nervous. I quote from the final sentence: The new policy, "which were scheduled to be implemented on October 1, 1997," is "being delayed until January 1998, pending further review and evaluation of the proposed changes."

Now, that wording bothers me for several reasons. It could be a big loophole to ask for more time so that effectively there is no implementation of the agreement because January 1998 is not as specific as January 1, 1998, and January 1998 "pending further review" opens the door for yet more delay. It suggests that January 1998 may not be, in fact, a deadline. It may be passed by, depending on the outcome of the new review. The wording to me is very ambiguous.

The inspector general's letter—remember, the inspector general is to keep all these people over at the Defense Department honest and keep them abiding by the law—the IG's letter that I referred to and have printed in the RECORD suggests that Mr. Hamre really wanted an open-ended deferral. That is where the game playing may be going on. He may have wanted an indefinite delay. Luckily, the IG put her foot down and said no, that was not possible, that would not be abiding by the agreement, that would not be abiding by the law.

This is what she said:

At a minimum, we believe that Mr. Hamre should establish a revised implementation date no later than January 1, 1998.

The inspector general wants an unconditional deadline of January 1, 1998—"with no pending further review" language.

Mr. President, I can understand why the Department of Defense needs more time to jump through new regulatory hoops. But why does the policy itself need further review? More study is the oldest bureaucratic trick in the book—always delay, delay, delay, never make a decision, never make the changes that you don't want to make.

As far as this policy is concerned, this policy has been studied to death. The inspector general and the Pentagon bureaucrats have been wrestling with it since 1991. Isn't it about time to get to the bottom line? There have been countless papers, countless meetings, countless letters, and countless agreements, including the one of July 22. I was a party to that, and I don't want to be hoodwinked by my colleagues. I don't want to be hoodwinked by Mr. Hamre, who was there at that meeting and said he would get this job done.

Every possible issue has been addressed. Every point and counterpoint has been weighed and reweighed. There is nothing else to weigh. It gets down to the bottom line, Mr. President, that the law of the land is the law of the land and the law that the current policy violates. In other words, what we are trying to get straightened around is section 1301 of title 31 of the U.S. Code, and this was enacted on March 3, 1809—this law that says that you can't spend money without the approval of the Congress of the United States, and it's a felony to do it. It has to be abided by or the power of the purse of the Congress means zilch.

So, Mr. President, that was in 1809, 200 years ago. It's a law that has withstood the test of time, and it seems that DOD needs to get on the stick and obey the law once and for all. But, most importantly, as far as this Senator is personally concerned, at that July 22 meeting there was an agreement, and I expect people who want you to believe they are honest to keep their word.

I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

MAIL ORDER HOUSES AND SALES TAX

Mr. BUMPERS. Mr. President, this morning, I was reading the New York Times and came across an article truly exhilarating to me. It dealt with a matter that the Presiding Officer is all too familiar with, too. A number of large States are in the process of negotiating an agreement with some of the biggest mail order houses in the country, under which those mail order houses will, in the future, pay sales tax on merchandise they send into States that have either a use tax or a sales tax.

It was in the 1992 Quill decision the Supreme Court ruled that Congress could authorize the States to require collection of sales and use taxes by

mail order houses shipping goods across State lines. But Congress would have to make that decision formally by legislation.

So I sponsored such legislation because I was a former small town merchant—I practiced law, I ran cattle, I had a small hardware retail and appliance store, and I even owned a cemetery one time, Mr. President. I did anything I could do to make money. Even back in those days, a lot of people ordered things from catalogs. I resented it. I was on Main Street collecting sales taxes, paying a corporate franchise tax to the city, paying all the taxes that make a decent place to live, and I was being competed against by people from other States who paid nothing.

In 1994, and again in 1995, I introduced legislation to authorize the mandated collection of interstate sales taxes. I got a vote on it and, of course, didn't get nearly enough to pass. Everybody got up and wept and wailed and said, "This is another tax, all you tax and spenders." As I say, I did it because I am a former retailer and I resented having to compete against people who did not have to collect a sales tax, which gave them a big competitive advantage on big-ticket items like refrigerators, television sets, and so on. So I admit I came into the debate because of my personal experience. But I also felt very strongly that equity was on my side.

I never will forget the distinguished junior Senator from Utah, in a Small Business Committee hearing one day, making a point, after having heard several mail order catalog executives talk about how this was going to be a terrible burden on them and some of them would go broke, and it was an impossible administrative nightmare to collect taxes for 50 different States and a lot more jurisdictions than that because cities and counties also have sales taxes. I will never forget the little lecture that the Senator from Utah delivered, describing his own personal experiences, and that it had not been a burden for his company. I will always be grateful to the Senator for having helped out so magnificently that morning.

Now, Mr. President, annual catalog sales are approximately \$210 billion. Now, there are a few good citizens like Home Shopping Network who collect sales taxes on everything they sell. But most do not collect the taxes except when their physical presence creates a nexus with the State which requires that collection activity.

Let me explain that requirement. If a mail order firm has a physical presence in a State, the State may require that firm to collect sales taxes on the goods it sells in the State. If a company has a presence, for example, in the State of Arkansas and sells something through their mail order catalog to an Arkansan, the physical presence of that shop in Arkansas requires them to collect sales tax on any mail order sales to the