

2018 NDAA Imposes Sweeping New Revolving Door Restrictions on Lobbying Activities by Former Senior DOD Officials

January 12, 2018

WHAT: In a little-noticed provision of the 2018 National Defense Authorization Act (NDAA), Congress imposed new “revolving door” restrictions on senior Department of Defense (DOD) personnel. Section 1045 applies new one and two-year cooling off periods prohibiting former high-ranking military officers and their civilian counterparts from conducting any “lobbying activities with respect to the Department of Defense.” The scope of restricted lobbying activities is broad and would include both direct lobbying contacts **and** behind-the-scenes activities in connection with direct contacts. DOD contractors who have recently hired, or will hire, former senior DOD officials must take steps to implement appropriate training and compliance programs.

WHEN: Effective December 12, 2017.

WHAT DOES IT MEAN FOR INDUSTRY: Retiring flag and general officers and their civilian equivalents will now be prohibited from engaging in lobbying activities involving DOD and certain other executive branch officials on DOD matters for a one or two-year period. While the provision appears to be fairly sweeping in scope, ambiguities remain that will require clarification to guide industry compliance.

Section 1045 imposes two tiers of post-government employment prohibitions on “lobbying activities with respect to the Department of Defense” based on the rank or seniority of the covered DOD personnel:

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- Military officers grade O-9 or higher who retire after the effective date (December 12, 2017) and their “civilian grade equivalents” now face a **two-year prohibition**; and
- Military officers grade O-7 and O-8 and their “civilian grade equivalents” now face a **one-year prohibition**.

The scope of restricted “lobbying activities” is broad and includes both “lobbying contacts” (i.e., direct communications) **and** “lobbying activities.” Lobbying activities include any activities intended to support direct lobbying contacts, **including conducting behind-the-scenes research, advice and strategy with others**. In this respect, Section 1045 goes beyond the other similar lobbying and Procurement Integrity Act restrictions for senior executive branch officials, which typically apply only to direct contacts and representations back to the agency.

The scope of the restriction is also broad because it applies to any lobbying activities “with respect to the Department of Defense,” including contact with “covered executive branch” officials within DOD **and** contact with “covered executive branch officials” **in any Department** if it concerns DOD matters. It does not appear that the lobbying restriction will be limited to lobbying efforts directly involving DOD officials, or limited to only a DOD agency, component or office in which the former official previously served.

In part due to the sweeping scope of Section 1045, many ambiguities remain to be clarified, including precisely who and what activities are covered, and what the enforcement tool will be for any violations. For example, it is not clear what “civilian grade equivalents” means under Section 1045, which does not define the term or refer to any other existing use or definition. Nor does Section 1045 contain or reference any provisions establishing penalties for violations, either for the individual or an employer. Some of these issues are likely to be clarified through forthcoming guidance that is anticipated to be issued by the DOD Standards of Conduct Office.

The bottom line is that contractors need to be aware that a significant change is in effect, and will potentially impair the type of work that senior DOD officials will be able to engage in after their retirement or separation. Contractors must take steps to develop additional compliance training, both for new hires who will be subject to the restriction, and for business leaders and public affairs teams that may want to deploy restricted new hires in lobbying activities.