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Implementation of the DOD Revolving Door Legislation

Statement of
Martin M Ferber, Director
Manpower and Logistics Issues
National Security and International Affairs
Division

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House Armed Services Committee

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our evaluation of the implementation of the revolving door legislation applicable to Department of Defense (DOD) personnel.

The legislation requires that certain former DOD personnel report their employment with major defense contractors. The intent was that public disclosure would deter conflicts of interest associated with the revolving door.

The initial legislation was passed in 1969 and remained essentially unchanged until the mid 1980s. In 1985, the reporting law (10 U.S.C. 2397) was amended to improve its effectiveness. In addition, new legislation was enacted in 1986 that prohibited certain DOD personnel from accepting compensation from specific defense contractors (10 U.S.C. 2397b) and required major defense contractors to report compensation paid to former DOD personnel (10 U.S.C. 2397c).

Our evaluations have focused on three main areas.

-- The extent of individual compliance with the legislative reporting requirements.

-- Adequacy of contractors' reports on compensation paid to former DOD personnel.

-- Accuracy of DOD opinions, provided to its personnel, on potential post-DOD employment prohibitions.

COMPLIANCE WITH REPORTING REQUIREMENTS

In March of 1986, we reported on the requirement to report defense-related employment. The law required that certain former DOD personnel report their duties with DOD and their duties with a

defense contractor. Our report addressed (1) individual compliance with the reporting requirements, (2) the adequacy of information reported, and (3) DOD's review of the reports for determining potential conflicts of interest.[1] We are in the process of completing additional analyses on these issues for the House Committee on Armed Services and Senate Committee on Governmental Affairs.

Many Former Personnel Not Reporting Defense-Related Employment

Although DOD keeps a record of people who leave the agency, it cannot tell who goes to work for defense contractors. We estimated the size of that group by computer matching records of people who left DOD to a listing of those who work for a defense contractor, as evidenced by the fact that they obtained an industrial security clearance. Our 1986 report dealt with people who left DOD during fiscal years 1980 to 1983, and showed that only about 30 percent of the people required to report were actually reporting.

DOD took some actions to improve compliance, and its Defense Manpower Data Center has recently performed a similar computer-matching process for fiscal years 1986 and 1987. The Center found a 30-percent compliance rate. Although the reporting requirements have changed and the Center's methodology and ours were a little different, we believe the Center's work represents a reasonable approach and the best current indication of reporting compliance. It demonstrates that a problem still exists.

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[1] Many Former Personnel Not Reporting Defense-Related Employment (GAO/NSIAD-86-71, Mar. 4, 1986).

Significant Number of People Not Required to Report

Former DOD personnel are only required to report employment with defense contractors if they (1) held a position as a GS-13 and above or a military O-4 and above while with DOD, (2) made more than an annual rate of pay of $25,000 from a single defense contractor, and (3) work for a contractor who has $10 million or more in contracts with DOD.

The last criteria--working for a defense contractor with $10 million or more in contracts with DOD--exempts a significant number of former DOD personnel from having to report. In our search we found that 12,000 former DOD personnel held security clearances to work for defense contractors but only 5,800 worked for a contractor with $10 million or more in defense contracts.

DOD's interpretation of the second criteria, which exempts those from reporting who earn less than $25,000 a year, may exempt some individuals from having to report. The law seems clear that the salary criteria should be interpreted as a rate of pay which if annualized would exceed $25,000. DOD Standards of Conduct Office in interpreting and providing guidance on this limit has held that the individual would have to actually receive more than $25,000 from a single source (which also met the $10 million criteria) before being required to report. For example, if a former DOD procurement official had 10 consulting jobs each paying $20,000, his or her gross earnings would be $200,000, but DOD's interpretation of the criteria would not apply to them.

Adequacy of Information Reported

We found that the adequacy of information reported for determining a possible conflict of interest has improved since our 1986 report, but more improvements are needed. In 1986, we found that many individuals who reported provided only a job title, and those who

did provide more information gave such brief descriptions of their duties that there was insufficient information for DOD to detect a possible conflict of interest. However, at that time the information reported met the legal requirement.

Subsequently, the law was amended to require that the reports contain descriptions of work performed for the contractor and any similar work for which the individual had at least partial responsibility while at DOD. In addition, DOD implementing instructions require information on contracts or actions related to duties of former DOD personnel and a list of all major systems that the person worked on while at DOD and those major systems that the person worked on for the defense contractor.

To evaluate the information now being provided to DOD, we reviewed a statistical sample of 200 reports submitted for fiscal years 1986 and 1987. Although most reports provided sufficient information to meet the statutory reporting requirement, about 34 percent did not meet the additional DOD requirement. We believe that a list of the major systems former DOD personnel worked on is important to identify potential links between the individual's past work at DOD and then at a defense contractor.

In 1987, we reported on the relationship of work people did at DOD to work they later did at a defense contractor.[2] We estimated that 26 percent of former mid- and high-level DOD personnel working for defense contractors had responsibilities at DOD for defense contractors where they subsequently worked. Further, 21 percent subsequently worked on the same project for a defense contractor that they had worked on while with DOD, and 7 percent were responsible for DOD contracts that later supported their post-DOD employment. About 32 percent of the personnel were in one or more

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[2] DOD Revolving Door: Post-DOD Employment May Raise Concerns (GAO/NSIAD-87-116, Apr. 16, 1987.)

of the these three situations. Although this does not mean that a conflict of interest exists in each of these situations, or even in a majority of them, the relationships create the potential for conflicts.

DOD's Review Process

We are finding that the ability of DOD's review process to identify potential problems has been significantly improved since our 1986 report. At that time, DOD's review was often an administrative process and the primary objective of the process was to compile the reports and send the information to the Congress. Currently, reviewers are part of the Office of the Secretary of Defense (OSD) or the services' legal staffs, who know the conflict-of-interest laws, rules, and regulations. The focus of the review is now on the content or substance of the reports. Reviewers identified 10 cases from their reviews of reports submitted for fiscal years 1986 and 1987 that were referred for further investigation. Prior to that time no cases were referred for investigation.

CONTRACTOR REPORTS

The 1986 legislation requires major defense contractors to report on the compensation they pay to former DOD personnel. These reports are to be used as another basis for helping DOD to enforce the prohibition on post-DOD employment.

The latest information shows that about 85 percent of the 645 companies required to submit a report for 1987 had complied. However, DOD does not have a standardized format for company reporting, and our analyses to date show that the data being reported by companies are not uniform. For example, in some cases the report is a listing from a computerized database and from other contractors it is merely copies of the reports filed by individuals. In addition, because the contractors report

compensation paid for the prior calendar year and individuals are reporting for the prior fiscal year, the company reports cannot be used to verify the accuracy of individual reporting.

We are still analyzing this aspect of the law and will be visiting some contractors to assess how they compile the data to respond to the requirement. We will then be in a better position to recommend any improvements needed.

DOD OPINIONS ON POTENTIAL POST-EMPLOYMENT PROHIBITIONS

Effective April 16, 1987, the revolving door legislation restricts three groups of DOD procurement personnel from accepting compensation from certain defense contractors for 2 years after they leave DOD. These three groups are the following:

-- on-site representatives who performed a procurement function at a contractor's site for a majority of their working days,

-- major systems procurement representatives who performed a major weapon system procurement function for a majority of their working days and who participated personally and substantially in a manner involving decision-making responsibilities through contact with a contractor, and

-- high-level officials who acted as a primary representative of the United States in negotiating a contract or claim in excess of $10 million.

The law provides that procurement personnel can obtain an opinion from their Designated Agency Ethics Official as to whether the prohibition applies to them working for a specific defense contractor. The opinion, if based on complete information, provides the individual with a conclusive presumption that

accepting compensation is not a violation of this law. This protects the person from the provisions of the law even if the ethics official errs in rendering an opinion.

Between April 1987, when the prohibition went into effect, and September 1988 the Designated Agency Ethics Officials of military departments and OSD wrote 2,082 opinions as follows:

Army	326 opinions
Navy	505 opinions
Air Force	1,115 opinions
OSD	136 opinions

We were told by DOD ethics officials that few high-level personnel ask for opinions because generally they do not act as primary representatives in a contract negotiation. Also, on-site personnel tend to know without asking which contractor they cannot work for. As a result, most opinions related to the second group of procurement personnel--major systems representatives.

We reviewed a sample of almost 700 opinions to evaluate how DOD was interpreting and implementing the prohibition. We found differing practices and interpretations that make it difficult to assess the prohibition's impact.

Opinions Limiting Employment

A number of opinions advise an individual that he or she cannot work for a specific defense contractor(s). For our sample period, the Air Force wrote 80 such opinions, the Army wrote 4, the Navy wrote 9, and OSD wrote 5.

However, the number of these opinions should not be used to assess the impact of the law. The Air Force generally provides these

opinions in writing, while the Army and Navy tend to provide them orally.

Interpretation of Majority of Days Worked

A specific problem we noted was differing interpretations of the majority of days worked criteria by the DOD ethics officials who wrote the opinions. This resulted in inconsistent applications of the employment prohibition, and may have resulted in more DOD procurement personnel gaining post-DOD employment with defense contractors than the law intended.

Several ethics officials assessed the number of days to apply first to procurement functions on a major defense system, and then to a single contractor. That is the majority of days spent on the major defense system would also have to be spent on contracts related to a single contractor. It is less likely that the procurement representative spent a majority of days working on contracts related to one contractor than on a major defense system. Therefore, the individual may not be prohibited from going to work for a defense contractor for whom he or she was the DOD procurement representative.

Another interpretation, which we believe is the proper one, assesses the number of days in a procurement function that are spent on a major system. The ethics official then evaluates whether the person was personally and substantially involved with a contract, had contact with a contractor, and had decision-making responsibilities.

We interviewed officials from 10 offices who wrote about half the opinions in our sample. We found differing interpretations used both among and within the military services and OSD. Further, since there are more than 50 persons who write opinions there may

be additional interpretations. We discussed our concern over the interpretations with DOD's Standards of Conduct Office and on March 6, 1989 the DOD General Counsel issued guidance providing that the majority of days criteria should deal with major defense systems and not contracts.

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In summary, the revolving door legislation contains prohibitions on post-DOD employment and reporting requirements to be used to publicly disclose post-DOD employment and assist DOD in enforcing the legislation.

Although we have found improvements in some areas, for example, the quality of information being reported and DOD's review of individuals' reports, implementation of other parts of the revolving door legislation require attention. There is still low compliance by former DOD personnel with the reporting requirements and there appear to be problems with defense contractor reports. A problem we noted with DOD ethics officials narrowly interpreting the law's prohibitions has recently been addressed by DOD's General Counsel.

Mr. Chairman, this concludes my testimony. We would be happy to answer any questions.