116TH CONGRESS    S. 1503
1ST SESSION

To promote ethics and prevent corruption in Department of Defense contracting and other activities, and for other purposes.

IN THE SENATE OF THE UNITED STATES
MAY 16, 2019
Ms. WARREN introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL
To promote ethics and prevent corruption in Department of Defense contracting and other activities, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.
(a) Short Title.—This Act may be cited as the “Department of Defense Ethics and Anti-corruption Act of 2019”.
(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—REVOLVING DOOR AND CONTRACTOR INFLUENCE
Sec. 101. Heightened revolving door requirements.
Sec. 102. Requirements for defense contractors relating to certain former Department of Defense officials and lobbying activities.
Sec. 103. Comptroller General report on post-government employment of former Department of Defense officials.
Sec. 104. Ban on hiring contracting officials enforceable on certain contracts.
Sec. 105. Ban on hiring senior officials by giant defense contractors.
Sec. 106. Modification of prohibition on lobbying activities with respect to the Department of Defense by certain officers of the Armed Forces and civilian employees of the Department of Defense following separation from military service or employment with the Department.
Sec. 107. Enhancement of recusal for conflicts of personal interest requirements for Department of Defense officers and employees.
Sec. 108. Prohibition on ownership or trading of stocks in certain companies by Department of Defense officers and employees.

TITLE II—LIMITING FOREIGN INFLUENCE

Sec. 201. Annual reports on approval of employment or compensation of retired general or flag officers by foreign governments for Emoluments Clause purposes.
Sec. 203. Ban on former military and civilian intelligence officers from foreign employment.

TITLE III—TRANSPARENCY

Sec. 301. Affirmative contractor record disclosures.
Sec. 302. Extension of FOIA to private contractors.
Sec. 303. Financial disclosure by large contractors.
Sec. 304. Availability on the Internet of certain information about officers serving in general or flag officer grades.

1 TITLE I—REVOLVING DOOR AND CONTRACTOR INFLUENCE

2 SEC. 101. HEIGHTENED REVOLVING DOOR REQUIREMENTS.

Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 1701 note) is amended—

(1) in subsection (a)(1), by striking “within two years of leaving service” and inserting “within four years of leaving service”; and

(2) in subsection (b)—
(A) in paragraph (1)—

(i) by striking “retained by the Department of Defense in a central database or repository maintained by the General Counsel of the Department for not less than five years” and inserting “retained by the Department of Defense in a central database or repository maintained by the General Counsel Standards and Conduct Office of the Department for not less than ten years”; and

(ii) by inserting “and shall be posted on a publicly available Internet website of the General Counsel Standards and Conduct Office” after “opinion was provided”; and

(B) in paragraph (2), by inserting “not less than biannually” after “conduct periodic reviews”.

SEC. 102. REQUIREMENTS FOR DEFENSE CONTRACTORS RELATING TO CERTAIN FORMER DEPARTMENT OF DEFENSE OFFICIALS AND LOBBYING ACTIVITIES.

(a) Requirements.—
(1) IN GENERAL.—Chapter 141 of title 10, United States Code is amended by adding at the end the following new section:

§2410t. Defense contractors report: requirements concerning former Department of Defense officials and lobbying activities

“(a) IN GENERAL.—Each contract for the procurement of goods or services in excess of $10,000,000, other than a contract for the procurement of commercial products or services, that is entered into by the Department of Defense shall include a provision under which the contractor agrees to submit to the Secretary of Defense, not later than April 1 of each year such contract is in effect, a written report setting forth the information required by subsection (b).

“(b) REPORT INFORMATION.—Except as provided in subsection (c), a report by a contractor under subsection (a) shall—

“(1) list the name of each person who—

“(A) is a former officer or employee of the Department of Defense or a former or retired member of the armed forces who served—

“(i) in an Executive Schedule position under subchapter II of chapter 53 of title 5;
“(ii) in a position in the Senior Executive Service under subchapter VIII of chapter 53 of title 5;

“(iii) in a position compensated at a rate of pay for grade O–6 or above under section 201 of title 37; or

“(iv) as a 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 for a contract with a value in excess of $10,000,000; and

“(B) during the preceding calendar year was provided compensation by the contractor, if such compensation was first provided by the contractor not more than four years after such officer, employee, or member left service in the Department of Defense;

“(2) in the case of each person listed under subparagraph (A)—

“(A) identify the agency in which such person was employed or served on active duty dur-
ing the last two years of such person’s service
with the Department of Defense;

“(B) state such person’s job title and iden-
tify each major defense system, if any, on which
such person performed any work with the De-
partment of Defense during the last two years
of such person’s service with the Department;
and

“(C) state such person’s current job title
with the contractor and identify each major de-
fense system on which such person has per-
formed any work on behalf of the contractor;
and

“(3) if the contractor is a client, include—

“(A) a statement that—

“(i) lists each specific issue for which
the contractor, any employee of the con-
tractor, or any lobbyist paid by the con-
tactor engaged in lobbying activities with
the Department of Defense; and

“(ii) specifies the Federal rule or reg-
ulation, Executive order, or other program,
policy, contract, or position of the Depart-
ment of Defense to which the lobbying ac-
tivities described in clause (i) related;
“(iii) lists each lobbying activity relating to the Department of Defense that the contractor, any employee of the contractor, or any lobbyist paid by the contractor has engaged in on behalf of the contractor, including—

“(I) each document prepared by the contractor, any employee of the contractor, or any lobbyist paid by the contractor that was submitted to an officer or employee of the Department of Defense by the lobbyist;

“(II) each meeting that was a lobbying contact with an officer or employee of the Department of Defense, including the subject of the meeting, the date of the meeting, and the name and position of each individual who attended the meeting;

“(III) each phone call made to an officer or employee of the Department of Defense that was a lobbying contact, including the subject of the phone call, the date of the phone call, and the name and position of each individual who attended the meeting;
dividual who was on the phone call; and

“(IV) each electronic communication sent to an officer or employee of the Department of Defense that was a lobbying contact, including the subject of the electronic communication, the date of the electronic communication, and the name and position of each individual who received the electronic communication;

“(iv) lists the name of each employee of the contractor who—

“(I) did not participate in a lobbying contact with an officer or employee of the Department of Defense; and

“(II) engaged in lobbying activities in support of a lobbying contact with an officer or employee of the Department of Defense; and

“(v) describes the lobbying activities referred to in clause (iv)(II); and

“(B) a copy of any document transmitted to an officer or employee of the Department of
Defense in the course of the lobbying activities described in subparagraph (A)(iv)(II).

“(c) Duplicate Information Not Required.—An annual report submitted by a contractor pursuant to subsection (b) need not provide information with respect to any former officer or employee of the Department of Defense or former or retired member of the armed forces if such information has already been provided in a previous annual report filed by such contractor under this section.

“(d) Definitions.—In subsection (b)(3), the terms ‘client’, ‘lobbying activities’, ‘lobbying contact’, and ‘lobbyist’ have the meanings given the terms in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603).”.

(2) Clerical Amendment.—The table of sections at the beginning of chapter 141 of such title is amended by adding at the end the following new item:

“Sec. 2410t. Defense contractors report: requirements concerning former Department of Defense officials and lobbying activities.”.

(b) Effective Date.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to contracts entered into on or after that date.
SEC. 103. COMPTROLLER GENERAL REPORT ON POST-GOVERNMENT EMPLOYMENT OF FORMER DEPARTMENT OF DEFENSE OFFICIALS.

Not later than 90 days after the date of the enactment of this Act, the Comptroller General of the United States shall initiate a review updating the information and findings contained in the May 2008 Government Accountability Office report entitled, “Defense Contracting: Post-Government Employment of Former DOD Officials Needs Greater Transparency” (GAO–08–485). The Comptroller General shall provide an interim briefing on the status of the review to the congressional defense committees not later than December 31, 2020, with a report to follow by a date agreed upon with the committees.

SEC. 104. BAN ON HIRING CONTRACTING OFFICIALS ENFORCEABLE ON CERTAIN CONTRACTS.

(a) Prohibition.—

(1) In general.—Any contract for the procurement of goods or services, other than a contract for the procurement of commercial products or services, with a value in excess of $10,000,000 shall include a contract clause prohibiting the contractor from providing compensation to a former Department of Defense official described in paragraph (2) within four years after such former official leaves service in the Department of Defense.
(2) Covered department of defense official.—An official or former official of the Department of Defense is covered by the requirements of this section if such official or former official is a former officer or employee of the Department of Defense or a former or retired member of the Armed Forces who served as a 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 for a contract with a value in excess of $10,000,000, and such person—

(A) participated in the contract or license selection;

(B) determined or signed off on the technical requirements of the contract or license; or

(C) granted the contract or license.

(b) Administrative Actions.—In the event that an official or former official of the Department of Defense described in subsection (a)(2), or a Department of Defense contractor, knowingly fails to comply with the requirements of this subsection, the Secretary of Defense may take any of the administrative actions set forth in
section 2105 of title 41, United States Code that the Secretary of Defense determines to be appropriate.

SEC. 105. BAN ON HIRING SENIOR OFFICIALS BY GIANT DEFENSE CONTRACTORS.

(a) Prohibition.—

(1) In general.—Any Department of Defense contract for the procurement of goods or services with a giant defense contractor shall include a contract clause prohibiting the contractor from hiring or paying (including as a consultant or lawyer) any covered Department of Defense official within four years after such former official leaves service in the Department of Defense.

(2) Definitions.—In this section:

(A) Covered department of defense official.—The term “covered Department of Defense official” means a former officer or employee of the Department of Defense or a former or retired member of the Armed Forces who served—

(i) in an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code;
(ii) in a position in the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code;

(iii) in a position compensated at a rate of pay for grade O–6 or above under section 201 of title 37, United States Code; or

(iv) in a supervisory position compensated at a rate of pay for grade GS–15 of the General Schedule under section 5107 of title 5, United States Code, or higher.

(B) GIANT DEFENSE CONTRACTOR.—The term “giant defense contractor” means a contractor (other than an institution of higher education) that received an average of more than $1,000,000,000 in annual revenue from the Department of Defense or the Department of Energy for contracted work related to the United States nuclear program in the previous three fiscal years.

(b) ADMINISTRATIVE ACTIONS.—In the event that an official or former official of the Department of Defense described in subsection (a)(2)(A), or a Department of Defense contractor, knowingly fails to comply with the re-
quirements of this subsection, the Secretary of Defense may take any of the administrative actions set forth in section 2105 of title 41, United States Code that the Secretary of Defense determines to be appropriate.

SEC. 106. MODIFICATION OF PROHIBITION ON LOBBYING ACTIVITIES WITH RESPECT TO THE DEPARTMENT OF DEFENSE BY CERTAIN OFFICERS OF THE ARMED FORCES AND CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE FOLLOWING SEPARATION FROM MILITARY SERVICE OR EMPLOYMENT WITH THE DEPARTMENT.

Section 1045 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1555) is amended—

(1) in subsection (a)—

(A) in the subsection heading, by striking “TWO-YEAR PROHIBITION” and inserting “FOUR-YEAR PROHIBITION”;

(B) in paragraph (1), by striking “during the two-year period” and inserting “during the four-year period”; and

(C) in paragraph (2)(A), by striking “grade O–9 or higher” and inserting “grade O–6 or higher”;
(2) by striking subsection (b);
(3) by redesignating subsection (c) as subsection (b); and
(4) in subsection (b)(1), as redesignated by paragraph (3), by inserting “, including activities in support of lobbying contact with an officer or employee of the Department of Defense” before the period at the end.

SEC. 107. ENHANCEMENT OF RECUSAL FOR CONFLICTS OF PERSONAL INTEREST REQUIREMENTS FOR DEPARTMENT OF DEFENSE OFFICERS AND EMPLOYEES.

(a) In General.—An officer or employee of the Department of Defense may not participate personally and substantially in any covered matter that the officer or employee knows, or reasonably should know, is likely to have a direct and predictable effect on the financial interests of any of the following:

(1) 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 4 years.

(2) A former direct competitor or client of any organization for which the officer or employee has
served as an employee, officer, director, trustee, or
general partner in the past 4 years.

(3) Any employer with whom the officer or em-
ployee is seeking employment.

(b) CONSTRUCTION.—Nothing in this section shall be
construed to terminate, alter, or make inapplicable any
other prohibition or limitation in law or regulation on the
participation of officers or employees of the Department
of Defense in covered matters having an effect on their
or related financial or other personal interests.

(c) COVERED MATTER DEFINED.—In this section,
the term “covered matter”—

(1) means any matter that involves deliberation,
decision, or action that is focused upon the interests
of a specific person or a discrete and identifiable
class of persons; and

(2) includes policymaking that is narrowly fo-
cused on the interests of a discrete and identifiable
class of persons.

SEC. 108. PROHIBITION ON OWNERSHIP OR TRADING OF
STOCKS IN CERTAIN COMPANIES BY DEPART-
MENT OF DEFENSE OFFICERS AND EMPLOY-
EES.

(a) Prohibition on Ownership and Trading by
CERTAIN SENIOR OFFICIALS.—
1 (1) PROHIBITION.—An official of the Depart-
2 ment of Defense described in paragraph (2) may not
3 own or trade a publicly traded stock of a company
4 if, during the preceding calendar year, the company
5 received more than $1,000,000,000 in revenue from
6 the Department of Defense, including through one
7 or more contracts with the Department.
8
9 (2) DEPARTMENT OF DEFENSE OFFICIALS.—
10 An official of the Department of Defense described
11 in this paragraph is any current Department of De-
12 fense official described by section 847(c) of the Na-
13 tional Defense Authorization Act for Fiscal Year
15
16 (3) NATURE OF OFFENSE.—Ownership or a
17 trade of a stock in violation of paragraph (1) is an
18 offense under section 208 of title 18, United States
19 Code.
20
21 (b) PROHIBITION ON OWNERSHIP AND TRADING BY
22 ALL OFFICERS AND EMPLOYEES.—An officer or employee
23 of the Department of Defense may not own or trade a
24 publicly traded stock of a company that is a contractor
25 or subcontractor of the Department if the Office of Stand-
26 ards and Compliance of the Office of the General Counsel
27 of the Department of Defense determines that the value
28 of the stock may be directly or indirectly influenced by
any official action of the officer or employee for the Department.

(c) INAPPLICABILITY TO MUTUAL FUNDS.—For purposes of this section, publicly traded stock does not include a widely held investment fund described in section 102(f)(8) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

TITLE II—LIMITING FOREIGN INFLUENCE

SEC. 201. ANNUAL REPORTS ON APPROVAL OF EMPLOYMENT OR COMPENSATION OF RETIRED GENERAL OR FLAG OFFICERS BY FOREIGN GOVERNMENTS FOR EMOLUMENTS CLAUSE PURPOSES.

(a) ANNUAL REPORTS.—Section 908 of title 37, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

“(c) ANNUAL REPORTS ON APPROVALS FOR RETIRED GENERAL AND FLAG OFFICERS.—(1) Not later than January 31 each year, the Secretaries of the military departments shall jointly submit to the appropriate committees and Members of Congress a report on each ap-
proval under subsection (b) for employment or compensa-
tion described in subsection (a) for a retired member of
the armed forces in a general or flag officer grade that
was issued during the preceding year.

“(2) In this subsection, the appropriate committees
and Members of Congress are—

“(A) the Committee on Armed Services, the
Committee on Foreign Relations, and the Committee
on Appropriations of the Senate;

“(B) the Committee on Armed Services, the
Committee on Foreign Affairs, and the Committee
on Appropriations of the House of Representatives;

“(C) the Majority Leader and the Minority
Leader of the Senate; and

“(D) the Speaker of the House of Representa-
tives and the Minority Leader of the House of Rep-
resentatives.”.

(b) SCOPE OF FIRST REPORT.—The first report sub-
mitted pursuant to subsection (c) of section 908 of title
37, United States Code (as amended by subsection (a) of
this section), after the date of the enactment of this Act
shall cover the five-year period ending with the year before
the year in which such report is submitted.
SEC. 202. ADVISING FOREIGN GOVERNMENTS.

Section 207(f) of title 18, United States Code, is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph:

“(3) PERMANENT RESTRICTION WITHOUT PRIOR APPROVAL.—

“(A) IN GENERAL.—Any person who has been employed as a senior official in the White House, the Department of State, the Department of Defense, or the Department of the Treasury who, without the explicit prior approval of the Secretary of State, performs compensated work for a foreign entity that might benefit from the knowledge obtained by the person as a result of such United States Government employment, shall be punished as provided in section 216 of this title.

“(B) LIMITATION ON APPROVAL.—The Secretary of State may not approve any work described in subparagraph (A) that conflicts with the national security interests of the United States, as determined by the Secretary
and verified by the Director of National Intel-
ligence.

“(C) ANNUAL REPORT.—The Secretary of
State shall submit an annual report listing all
of the approvals under subparagraph (A) dur-
ing the prior calendar year to the Committee on
Foreign Relations of the Senate, the Committee
on Armed Services of the Senate, the Select
Committee on Intelligence of the Senate, the
Committee on Foreign Affairs of the House of
Representatives, the Committee on Armed Serv-
ices of the House of Representatives, and the
Permanent Select Committee on Intelligence of
the House of Representatives.”.

SEC. 203. BAN ON FORMER MILITARY AND CIVILIAN INTEL-
LIGENCE OFFICERS FROM FOREIGN EMPLOY-
MENT.

(a) IN GENERAL.—Except as provided in subsection
(b), military and intelligence officers possessing a security
clearance, upon separation from service or resignation, are
prohibited from obtaining employment with a foreign gov-
ernment or a private company doing work predominantly
on behalf of a foreign government.

(b) EXEMPTION.—
(1) IN GENERAL.—Employment with the Government of Australia, of Canada, of New Zealand, or of the United Kingdom is not subject to the prohibition under subsection (a).

(2) WAIVERS.—Individuals may seek and be granted a waiver by the Secretary of State for employment by any other foreign government. Such waiver will be presumptively granted in cases that ex-officers seek employment in jobs focused on humanitarian aid, development, or infrastructure improvement. Waivers for employment in other jobs shall be determined based on whether such employment would reasonably involve the use or disclosure or appropriation of sources, methods, or skills that could pose a threat to United States interests when employed by other countries or enable the repression of the nationals of such countries.

TITLE III—TRANSPARENCY

SEC. 301. AFFIRMATIVE CONTRACTOR RECORD DISCLOSURES.

The Secretary of Defense shall publish on a publicly available Internet website the following information to the extent such information is unclassified and non-confidential:

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(1) In the case of a contract with the Department of Defense for goods or services above the simplified acquisition threshold specified in section 134 of title 41, United States Code—

(A) copies of each contract and task delivery order the contractor on such contract has entered into with the Department of Defense during the previous three fiscal years; and

(B) past performance information about the contractor to the extent it is maintained by the Department.

(2) In the case of a contract with the Department of Defense for goods or services in excess of $10,000,000, all correspondence and documents related to the contract.

(3) The contractor report required under section 2410t of title 10, United States Code, as added by section 102 of this Act.

SEC. 302. EXTENSION OF FOIA TO PRIVATE CONTRACTORS.

(a) DEFINITIONS.—In this section—

(1) the term “covered contractor” means a private contractor that entered into a contract with the Department;

(2) the term “covered record” means any record produced using Federal funds during the ful-
fillment of a Department contract by a covered con-
tractor; and

(3) the term “Department” means the Depart-
ment of Defense.

(b) APPLICATION OF FOIA.—A covered record shall
be—

(1) considered an agency record for purposes of
section 552(f)(2) of title 5, United States Code, 
whether in the possession of a covered contractor or 
the Department; and

(2) subject to section 552 of title 5, United 
States Code (commonly known as the “Freedom of 
Information Act”), to the same extent as if the 
record was maintained by the Department.

(c) INCLUSION OF FOIA PROVISIONS.—In any con-
tract entered into by a covered contractor with the Depart-
ment, the Department shall include provisions relating to 
the application of section 552 of title 5, United States 
Code (commonly known as the “Freedom of Information 
Act”) to any covered records produced during the fulfill-
ment of the contract.

SEC. 303. FINANCIAL DISCLOSURE BY LARGE CONTRAC-
TORS.

(a) DISCLOSURE REQUIREMENT.—
(1) IN GENERAL.—The Secretary of Defense shall require a covered contractor, as a condition for entering into a contract with the Department of Defense, to make publicly available the following information (excluding information determined to be classified by the Secretary):

(A) Audited financial statements.

(B) A listing of the salaries of employees performing work on the contract that receive compensation from the contractor in excess of $250,000 per year.

(C) A description of all Federal political spending by the contractor.

(2) SUSPENSION AND DEBARMENT.—The Secretary of Defense may suspend or debar any covered contractor that fails to comply with the disclosure requirements under paragraph (1).

(3) COVERED CONTRACTOR DEFINED.—The term “covered contractor” means a contractor (other than an institute of higher education) that—

(A) received more than $10,000,000 in annual revenue from Federal Government contracts or licenses in any of the previous three fiscal years; or
(B) earned more than 20 percent of its total annual revenue from Federal Government contracts or licenses in any of the previous three fiscal years.

SEC. 304. AVAILABILITY ON THE INTERNET OF CERTAIN INFORMATION ABOUT OFFICERS SERVING IN GENERAL OR FLAG OFFICER GRADES.

(a) Availability Required.—The Secretary of each military department shall make available on an Internet website of such department available to the public information specified in subsection (b) on each officer in a general or flag officer grade under the jurisdiction of such Secretary, including any such officer on the reserve active-status list.

(b) Information.—The information on an officer specified by this subsection to be made available pursuant to subsection (a) is the information as follows:

(1) The officer’s name.

(2) The officer’s current billet.

(3) A biographical summary of the officer.

(4) Any financial disclosures made by the officer to or for Department of Defense purposes.

(5) Any substantiated reports of an Inspector General in the Department of Defense involving conduct of the officer.
(6) Summaries of any command climate survey conducted with respect to a command of the officer.

(c) REDACTION.—Information made available pursuant to subsection (a) may be redacted in a manner that accords with the provisions of section 552a of title 5, United States Code (commonly referred to as the “Privacy Act”).