



September 2021

POST- GOVERNMENT EMPLOYMENT RESTRICTIONS

DOD Could Further Enhance Its Compliance Efforts Related to Former Employees Working for Defense Contractors



A Century of Non-Partisan Fact-Based Work

GAO@100 Highlights

Highlights of [GAO-21-104311](#), a report to congressional committees

Why GAO Did This Study

Each year, civilian and military personnel leave DOD and go to work for contractors that do business with DOD. These individuals are potentially covered by laws restricting their new employment activities. The laws—some of which include penalties for violations—seek in part to protect against conflicts of interest and to promote public trust in the integrity of the government’s decision-making processes, which facilitate the award of contracts worth hundreds of billions of dollars annually.

The conference report accompanying the National Defense Authorization Act for Fiscal Year 2020 included a provision for GAO to update its 2008 report on major defense contractors’ recent employment of former DOD officials. This report (1) identifies the extent to which major defense contractors employed potentially covered ex-DOD officials in 2019, and (2) examines practices DOD and contractors use related to contractors hiring former DOD officials. GAO reviewed and surveyed 14 selected defense contractors with obligations above a certain dollar threshold. GAO also reviewed DOD documentation, and interviewed agency officials and contractor representatives.

What GAO Recommends

GAO recommends that DOD assess whether to incorporate recent lobbying prohibitions into its acquisition regulations. DOD concurred with the recommendation.

View [GAO-21-104311](#). For more information, contact Timothy J. DiNapoli at (202) 512-4841 or dinapolit@gao.gov.

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DOD Could Further Enhance Its Compliance Efforts Related to Former Employees Working for Defense Contractors

What GAO Found

Situations in which senior and acquisition officials leave the Department of Defense (DOD) and go to work for defense contractors can lead to conflicts of interest and affect public confidence in the government. There are federal laws that place limitations on the employment of former DOD officials. The 14 major defense contractors GAO reviewed hired about 1,700 recent former DOD senior civilian and military officials, such as a general or admiral, or former acquisition officials (see table).

2019 Employment of Former Department of Defense (DOD) Personnel by the 14 Contractors GAO Reviewed

Category of former DOD personnel potentially subject to post-government employment restrictions	Number of personnel who left DOD service from 2014 through 2019	Number employed in 2019 by the 14 contractors GAO reviewed
Military and civilian senior or acquisition officials	100,660	1,718
All other military and civilian employees	1,397,222	35,314
Total	1,497,882	37,032

Source: GAO analysis of DOD and Internal Revenue Service data. | GAO-21-104311

GAO found that DOD has improved certain practices to help ensure compliance with post-government employment (PGE) restrictions, including:

- processes for issuing and maintaining ethics opinion letters (written opinions DOD provides to its former officials seeking private sector employment), and
- training to increase DOD employee awareness about and understanding of PGE restrictions.

In 2011, DOD modified its acquisition regulations to require that contractors—when submitting proposals in response to DOD contract solicitations—represent their employees’ compliance with several PGE restrictions. DOD has not considered incorporating a recent restriction on lobbying activities into that regulation. DOD officials noted that the restriction was not identified for potential regulatory action when it was enacted, and they have not considered doing so. Instead, DOD has issued guidance to defense personnel informing them of their responsibilities. However, without assessing whether to update the regulation to require that contractors represent their employees’ compliance with the lobbying provision, DOD may be missing an opportunity to create a shared sense of accountability between the employees and the contractors who hire them, and a means of ensuring that DOD does not do business with companies whose employees violate the lobbying restriction with their employers’ knowledge.

The 14 defense contractors GAO reviewed reported that they use various methods to comply with PGE restrictions. GAO found that the specific practices differed by type of contractor. Contractors that develop and produce weapon systems reported having more practices in place to promote compliance with PGE restrictions than did contractors that generally provide commercial products and services.

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Abbreviations

AGEAR	After Government Employment Advice Repository
C.F.R.	Code of Federal Regulations
DAEO	Designated Agency Ethics Official
DFARS	Defense Federal Acquisition Regulations Supplement
DMDC	Defense Manpower Data Center
DOD	Department of Defense
FAR	Federal Acquisition Regulation
IRS	Internal Revenue Service
PGE	post-government employment
PL	Public Law
SOCO	Standards of Conduct Office
SSN	social security number
U.S.C.	United States Code

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September 9, 2021

The Honorable Jack Reed
Chairman
The Honorable James M. Inhofe
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Adam Smith
Chairman
The Honorable Mike Rogers
Ranking Member
Committee on Armed Services
House of Representatives

Each year, military and civilian personnel leave the Department of Defense (DOD) and go to work for contractors that do business with DOD, sometimes the same contractors they were working with before leaving the department. These personnel, referred to as “potentially covered officials,” may be subject to laws restricting their new employment activities.¹ According to implementing regulations, such laws, in part, bar the types of activities that could appear to be government-based relationships being used for private ends—i.e., conflicts of interest—such as former DOD officials using their DOD contacts to benefit a contractor to the detriment of the government. Regulations further explain that the laws prohibit acts that may undermine public trust in the integrity of the government’s decision-making processes, which govern the award of contracts worth hundreds of billions of dollars each year. Violation of these laws may result in criminal or civil penalties for former DOD officials and, in some cases, the defense contractors that employ them.

Beginning in 1969, efforts were made to monitor post-government employment (PGE). For example, laws required certain former DOD officials to self-report their employment with defense contractors for up to 2 years after leaving DOD. In addition, contractors were required to report annually on the employment of these former officials to various DOD

¹E.g., 18 U.S.C. § 207 and 41 U.S.C. § 2104.

ethics offices. In our previous reports on these strategies to make post-DOD employment with defense contractors more transparent, we found problems with the implementation and enforcement of those reporting requirements. We questioned the effectiveness of DOD's monitoring.² Upon repeal of these requirements in 1996, a new statute prohibited, under certain circumstances, certain former officials from accepting compensation from one or more contractors for a year and required ethics advice and counseling concerning applicable employment restrictions on subsequent work for contractors.³

In 2008, we reported on PGE issues and the employment of former DOD senior and acquisition officials by 52 contractors.⁴ We reported that at least 422 individuals could have been working on defense contracts under the responsibility of their former agency, office, or command, which we considered an indicator of the importance of monitoring. In addition, although most contractors reported using a range of practices to ensure awareness of and compliance with PGE restrictions, we found that contractors were unable to identify all the former DOD officials who were potentially subject to PGE restrictions. The contractors could not always provide copies of ethics opinion letters. These ethics letters are opinions required for some DOD officials before receiving compensation from defense contractors.

In our 2008 report, we recommended that DOD consider relevant statutory changes and determine if additional reporting or other requirements should be imposed on contractors to guard against violations of PGE rules. In response to our recommendation, DOD modified the Defense Federal Acquisition Regulation Supplement (DFARS)—DOD's uniform acquisition policies and procedures that supplement federal acquisition regulations—to require that defense

²GAO, *DOD Revolving Door: Few Are Restricted from Post-DOD Employment and Reporting Has Some Gaps*, [GAO/NSIAD-90-103](#) (Washington, D.C.: Feb. 27, 1990) and *DOD Revolving Door: Processes Have Improved but Post-DOD Employment Reporting Still Low*, [GAO/NSIAD-89-221](#) (Washington, D.C.: Sept. 13, 1989).

³National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, Sec. 4304 (1996); 41 U.S.C. § 423(d), recodified at 41 U.S.C. §2104.

⁴GAO, *Defense Contracting: Post-Government Employment of Former DOD Officials Needs Greater Transparency*, [GAO-08-485](#) (Washington, D.C.: May 21, 2008).

contractors, in their proposals for federal contracts, attest that their employees comply with PGE restrictions.⁵

The conference report accompanying the National Defense Authorization Act for Fiscal Year 2020 included a provision for us to update our 2008 report on recent employment of former DOD officials by major defense contractors. This report (1) identifies the extent to which major defense contractors employed potentially covered former DOD officials in calendar year 2019, and (2) examines practices that DOD and selected major defense contractors use relating to contractors hiring former DOD officials.

To identify the extent to which these potentially covered former DOD officials were employed by major defense contractors in 2019, we analyzed DOD's fiscal year 2019 contract award data and identified 34 major defense contractors, which we defined as those with more than \$500 million in DOD contract obligations. We then selected the top 16 contractors, which accounted for 80 percent of all 2019 DOD obligations to major defense contractors, to include in our review. To determine how many former DOD officials worked for these 16 contractors in 2019, we obtained personnel data from DOD for all military and civilian employees who left DOD service in a 6-year period between January 1, 2014 and December 31, 2019. We matched this DOD personnel data with (1) taxpayer data from the Internal Revenue Service (IRS), and (2) personnel data from the contractors on individuals they directly compensated in 2019 as employees, independent contractors, or members of their boards of directors. Subsequent to the 2019 period we chose for our review, two mergers occurred among the 16 companies, which changed the number of contractors in our analysis from 16 to 14.⁶ For the companies that merged, we combined the data from the individual companies as of 2019 to reflect the data for the post-merger entity. We determined that data from these sources were sufficiently reliable to accurately support our analyses.

⁵DFARS 252.203-7005.

⁶Specifically, L3 Communications Corporation and Harris Corporation merged to form L3Harris Corporation and Raytheon Company merged with United Technologies Corporation to form Raytheon Technologies.

All executive branch officials are subject to legal restrictions on possible PGE activities.⁷ For the purposes of this report, we focused on certain categories of former DOD officials, which included senior military officials, such as generals and admirals (ranked O-7 and above) and civilians in the Senior Executive Service or senior executive-level appointees. The second category of former DOD officials discussed in this report is former DOD acquisition officials. Specifically, our focus included active duty military (grades O-3 to O-6: captain, major, lieutenant colonel, and colonel at the Army, Air Force, and Marine Corps, and lieutenant, lieutenant commander, commander, and captain within the Navy) and civilian (grades GS-12 through GS-15) acquisition officials who performed such jobs designated as part of DOD's acquisition workforce, including program managers, deputy program managers, and contracting officers. These two categories include the kinds of roles and activities that may be covered by restrictions on aspects of PGE such as representation and compensation.

To identify practices DOD and selected major defense contractors use to ensure awareness of and compliance with PGE restrictions, we interviewed officials from DOD's Standards of Conduct Office (SOCO) to discuss steps they take to educate DOD employees on PGE restrictions. We reviewed associated documentation and content from SOCO's web site. We also reviewed relevant DOD Inspector General reports and interviewed Inspector General officials to discuss their audits of DOD's processes for issuing and storing ethics opinion letters. We also interviewed representatives from industry associations to obtain their perspectives on PGE-related issues.

We surveyed a nongeneralizable selection of 14 major defense contractors on their practices to identify, screen, track, and train former DOD officials for the purposes of compliance with PGE restrictions. We analyzed responses from the 11 contractors that responded to the survey, but we did not corroborate or test contractors' self-reported practices for effectiveness. For the purposes of this report, we grouped the contractors into one of two categories: those that, among other products or services, are responsible for developing or producing major weapon systems or components of weapon systems for DOD, which we refer to as "weapons development contractors;" and those that provide primarily commercial

⁷18 U.S.C. § 207 also includes provisions that apply to employees of independent federal agencies and employees of the District of Columbia.

products or services for DOD, which we refer to as “nonweapons development contractors.”

We analyzed the extent to which contractors were able to identify former DOD officials who worked for them in 2019 by requesting the contractors provide names and social security numbers of former DOD senior and acquisition officials they (1) hired between 2017 and 2019, and (2) compensated in 2019. We then compared those lists with names and social security numbers we identified from our own analysis of information from the DOD personnel system and IRS information. It should be noted that among the requirements we reviewed, there is no statutory or regulatory requirement that a contractor collect or maintain this information. We also met with DOD ethics and procurement policy officials in the Office of the Secretary of Defense to discuss DOD’s practices and information challenges for monitoring former officials employed by defense contractors. We determined that data from these sources were sufficiently reliable to accurately support our analyses.

We determined that a key principle of internal control, as outlined in Standards for Internal Control in the Federal Government, was significant to these objectives: management should implement control activities through policies.⁸ We met with various DOD officials to determine the extent to which the department had established policies and procedures for monitoring PGE matters. Appendix I provides additional details on our scope and methodology.

We conducted this performance audit from May 2020 to September 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁸GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

Background

Application of PGE Laws to Former DOD Senior and Acquisition Officials

As we reported in 2008, both DOD and defense contractors benefit from the contractors' employment of former government officials. For example, contractors benefit from the knowledge and skills that former DOD officials developed at DOD. DOD benefits from improved communication with these contractor personnel. However, senior military and civilian officials and acquisition officials working for defense contractors immediately after leaving DOD could lead to conflicts of interest and affect public confidence in the government by creating the following perceptions, among others:

- DOD personnel who anticipate future employment with a defense contractor might be perceived as using their position to gain favor with the contractor, and
- former DOD personnel who work for a defense contractor might be perceived as using their contacts with former colleagues at DOD for the benefit of the contractor.

The laws and other limitations applicable to current and former government officials include criminal and civil penalties for violations by the former government employee and sometimes civil or administrative penalties for the contractors who employ them. PGE restrictions that may apply to individuals such as former military and civilian senior officials and acquisition officials generally fall within five main categories, and application is typically dependent on the specific facts and circumstances (see table 1).

Table 1: Selected Post-Government Employment Restrictions That Apply to Former Department of Defense (DOD) Military and Civilian Officials

Category	Applicable Laws, Regulations, and Policies	Description
Ethics opinion requirements	Public Law (PL) 110-181, § 847	For 2 years after leaving DOD, certain former senior officials and other officials serving in certain roles relative to an acquisition or acquisition program are required to obtain a written ethics opinion—addressing the applicability of the post-government employment laws to the duties they will be expected to perform on behalf of a contractor—before accepting compensation from a contractor. ^a Ethics counselors are required to provide the employee the opinion within 30 days of receiving the request. Additionally, DOD contractors may not knowingly provide compensation to covered officials without first determining that the employee has received such an ethics opinion. DOD is required to retain the opinions for at least 5 years.
Compensation	41 United States Code (U.S.C.) § 2104; Federal Acquisition Regulation (FAR) Parts 3.104-2 and 3.104-3	Former government officials, including former DOD officials, who served in certain acquisition roles in relation to a contractor, or made certain decisions affecting payments or potential payments to the contractor valued over \$10 million, are prohibited from accepting compensation from that contractor as an employee, officer, director, or consultant for 1 year after serving in the covered role or participating in the covered decision. ^b An exception to this restriction allows covered former officials to accept compensation within the 1-year period if it is from a division or affiliate of the contractor that does not produce the same or similar product or service. Compensation is defined in the regulations to include indirect payment through a third party if it is paid specifically in exchange for services provided by the former official. Former officials can include civilians and members of the uniformed services.
Representation	18 U.S.C. § 207; 5 Code of Federal Regulations (C.F.R.) 2641	This includes several restrictions that apply to former executive branch officials' representation of others to the government. ^c Representation restrictions vary on the level of involvement in a particular matter a DOD employee experienced, from a 2-year ban for qualifying matters pending under the employee's official responsibility to a permanent ban for qualifying matters in which the former employee participated personally and substantially. There is also a 1-year "cooling off" period that applies to former senior officials, restricting them from representing their employer back to their former agency or component with intent to influence official action, regardless of their prior area of official responsibility or level of participation. ^d
Lobbying	PL 115-91, § 1045; 2 U.S.C. § 1602	Certain former senior DOD officials are prohibited for up to 2 years from engaging in lobbying contacts with covered executive branch officials regarding DOD matters. The provisions also prohibit the former DOD officials from participating in behind-the-scenes "lobbying activities" in support of lobbying contacts regarding DOD matters. ^e
Ethics pledges	Executive Orders 13490, 13770, 13989	Since 2009, each administration issued executive orders establishing an "Ethics Pledge" required to be signed by all political appointees and containing provisions addressing, among other things, post-government employment restrictions. The period of the restrictions for an appointee vary by the order. Executive Order 13490 was issued under the Obama administration, Executive Order 13770 under the Trump administration, and Executive Order 13989 under the Biden administration. Each of the prior orders have been revoked, the latest being when, in January 2021, Executive Order 13983 revoked Executive Order 13770.

Source: GAO analysis of U.S. laws and regulations. | GAO-21-104311

^aNational Defense Authorization Act for Fiscal Year 2008, Sec. 847, Pub. L. No. 110-181, 122 Stat. at 243 (Jan. 28, 2008); 10 U.S.C. § 1701 note.

^b41 U.S.C. § 2104. Conduct that complies with 41 U.S.C. § 2104 may be prohibited by other criminal statutes such as the prohibition on acceptance of a bribe or gratuity. FAR 3.104-2(b); FAR 3.104-3(c)(4).

^c18 U.S.C. § 207. Interpretive definitions and examples can be found in 5 C.F.R. 2641.

^dAccording to DOD ethics officials, “particular matters” are those that involve deliberation, decision, or action that is focused on the interests of specific persons or a discrete and identifiable class of persons. These matters may include a contract, claim, application, judicial, or other proceeding, request for a ruling or other determination, controversy, investigation, or charge. A particular matter could even include legislation or policy making that is narrowly focused on the interests of a discrete and identifiable group of parties or organizations, e.g., DOD policy affecting only military aircraft manufacturers.

^eNational Defense Authorization Act for Fiscal Year 2018, Sec. 1045, Pub. L. No. 115-91, 131 Stat. at 1555 (Dec. 12, 2017); 10 U.S.C. § 971 note prec.

Under the criminal restrictions, former officials are not prohibited from working behind-the-scenes as long as they do not share non-public information gained during their government service.⁹ Additionally, PGE restrictions can apply to former DOD officials in different ways, depending on their role or position, and these restrictions vary in how long they apply. Figure 1 shows how former military and civilian senior officials and acquisition officials’ employment after leaving the department may be restricted based on their role or position and how long the restrictions remain in place.

⁹As implemented under 5 C.F.R. § 2641, 18 U.S.C. § 207 permits former DOD and other government personnel to take a job providing behind-the-scenes assistance in connection with their contractor employers’ contact with their former agencies. For example, the law allows a former DOD official who administered a particular contract during government service to assist a defense contractor with a matter involving the contract as long as the employee does not have direct contact with the agency and does not share any non-public information acquired during their government service. 5 C.F.R. § 2635.703; FAR 3.104-2 and 3.104-4.

Figure 1: Potential Restrictions on Post-Government Employment for Certain Former DOD Officials

If post-government employee is:

DOD senior official, to include senior acquisition officials (civilian or military)^a

DOD acquisition official (civilian or military)^b

Then officials who served in specific roles in relation to a contract over \$10 million must obtain an ethics opinion letter prior to receiving DOD contractor compensation for 2 years.	
1-year bans on:	Accepting compensation from a contractor that has been awarded a contract in excess of \$10 million, if the former official served or acted in a covered position or took a covered action. ^c
	Representing another with the intent to influence an official action of the employee's former agency.
	Certain lobbying activities by former generals/admirals who left DOD in grade O-7 or O-8 or a civilian grade equivalent. ^d
2-year bans on:	Certain lobbying activities by former generals/admirals who left DOD in grade O-9 or higher or a civilian grade equivalent. ^e
	Representing another with the intent to influence official action on a particular matter that was under the former employee's responsibility (e.g. contracts) during their last year of service. Also applies to all former government employees.
Lifetime ban on:	Representing another with the intent to influence official action on particular matters (e.g. contracts) in which the former employee participated personally and substantially. Also applies to all former federal employees.

Source: GAO analysis of U.S. Code and Department of Defense (DOD) documentation. | GAO-21-104311

^aSenior civilians (executive schedule or senior executive service) or senior military officers ranked O-7 and above (i.e., general and flag officers).

^bFor the purpose of this report, civilian officials (generally equivalent to positions 12 to 15 in the General Schedule, the main U.S. civil service pay scale) or military officer grades O-3 to O-6 serving in acquisition positions or roles, as defined in 41 U.S.C. § 2104.

^cThe covered positions may be filled by individuals who are not "acquisition officials." An exception to this restriction allows covered former officials to accept compensation from the contractor within the 1-year period if it is from a division or affiliate that does not produce the same or similar product or service. Regulations define compensation to include indirect payment through a third party if it is paid specifically in exchange for services provided by the former official.

^dMilitary officer grades O-7 and O-8 refer to brigadier and major generals in the Army, Air Force, and Marine Corps and lower-half and upper-half rear admirals in the Navy and Coast Guard. Lobbying activities are defined in 2 U.S.C. § 1602.

^eMilitary officer grades O-9 and O-10 refer to lieutenant general and general in the Army, Air Force, and Marine Corps and vice admiral and admiral in the Navy and Coast Guard. Any officer grade above O-10 is reserved for wartime only.

PGE-Related Roles and Responsibilities of DOD Offices

There are three primary DOD offices with involvement in PGE-related matters:

- The General Counsel of the DOD is the Designated Agency Ethics Official (DAEO) and the Director, Standards of Conduct Office (SOCO), is the Alternate DAEO.¹⁰ SOCO is an element of the Defense Legal Services Agency under the Deputy General Counsel for Personnel and Health Policy and is responsible for establishing DOD-wide ethics policies and regulations. SOCO also manages the Office of the Secretary of Defense's DAEO ethics program and provides ethics advice and counsel to Office of the Secretary of Defense personnel and affiliated organizations. Through the Committee on Standards of Conduct and a monthly Coordinating Group, SOCO's role is to facilitate the consistent application of ethics policy by 17 DAEOs and approximately 3,000 ethics counselors throughout DOD.
- The DOD Inspector General, which reports to the Secretary of Defense, exists to detect and deter fraud, waste, and abuse in DOD programs and operations and to help ensure ethical conduct throughout the department. The Inspector General maintains a hotline to provide a confidential, reliable means to report violations of law, rule, or regulation, which would include PGE violations. Officials told us, however, they do not track the number of alleged or confirmed violations of PGE restrictions, nor does the department investigate all allegations it receives. They stated it would be difficult to parse out reported potential PGE violations from other reported potential violations, such as fraud. The Inspector General can investigate these allegations and may refer them for prosecution.

The Inspector General also engages in periodic audits of ethics counselors' efforts to provide ethics opinion letters to former DOD officials in the After-Government Employment Advice Repository (AGEAR) system. AGEAR serves as a repository for ethics opinion letters issued by DOD ethics officials.

- The Office of Defense Pricing and Contracting, which reports to the Under Secretary of Defense for Acquisition and Sustainment, is responsible for all pricing, contracting, and procurement policy matters

¹⁰The DAEO is the officer or employee who is designated by the head of an agency to administer the provisions of Title I of the Ethics in Government Act of 1978, as amended, and 5 C.F.R. part 2634 within an agency. Section 104 of 5 C.F.R. part 2638 provides additional information regarding the appointment and responsibilities of the DAEO.

in the DOD. Defense Pricing and Contracting maintains the DFARS and its associated procedures, guidance, and information.

Examples of Recent PGE Violations Identified by SOCO

SOCO officials told us that, based on their observations, most major defense contractors take their compliance seriously. However, SOCO acknowledged that violations occur, usually as a result of individual “bad actors” who intentionally disregard the law. Further, officials from SOCO said they monitor Department of Justice prosecution statements and use these as an educational tool by including them in a regularly updated publication entitled *Encyclopedia of Ethical Failure*, which identifies, among other ethics violations, dozens of reported PGE violations and examples that span multiple federal agencies.¹¹ There are only a handful of reported PGE violations by former DOD personnel over the last decade. For example:

- In 2015, a former Air Force captain was sentenced to two consecutive 3-year terms of probation after being convicted of violating PGE laws and one other violation. Specifically, upon retirement, he negotiated employment with a contractor and subsequently attempted to obtain government business on the company’s behalf. This occurred despite the official receiving an ethics opinion letter explicitly noting that such activity would violate PGE rules.
- In 2017, a former product manager for DOD’s Defense Digital Services was seeking employment with Amazon and others while working on the Joint Enterprise Defense Infrastructure cloud contract. The DOD Inspector General determined the official’s failure to disclose, and his false statements about, his employment negotiations and job acceptance with Amazon violated the Federal Acquisition Regulation and ethics rules, and recommended his personnel file be annotated with the violation and that appropriate officials be notified with regard to any security clearance he may seek. The Inspector General also referred the matter to the Department of Justice for prosecution; however, Justice declined to prosecute the case.

¹¹DOD Standards of Conduct Office, *Encyclopedia of Ethical Failure* (Washington, D.C.: October 2020).

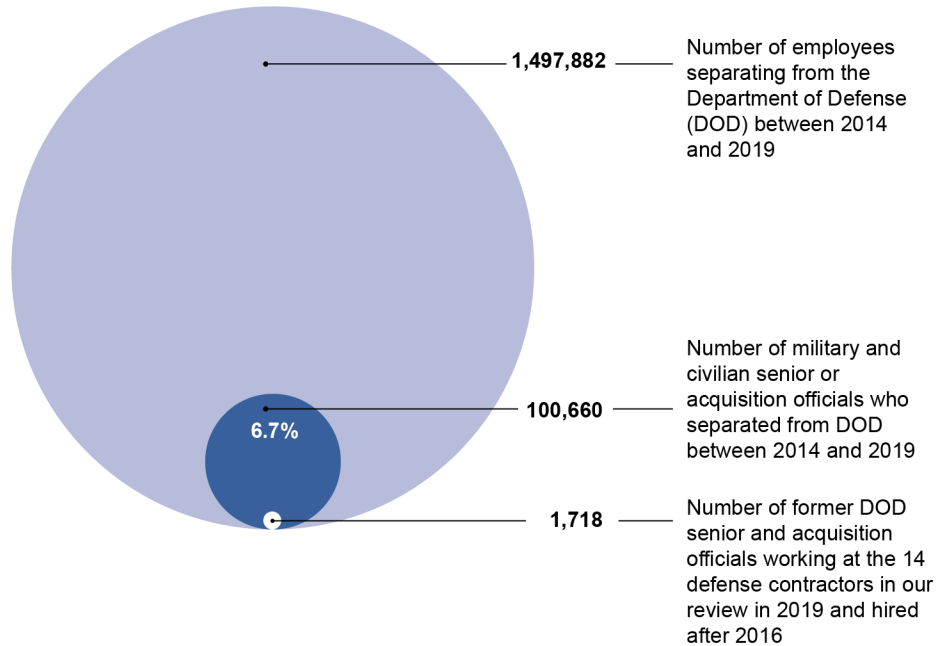
Contractors GAO Reviewed Hired About 1,700 Former DOD Senior and Acquisition Personnel Who Had Recently Left the Department

Overall, the 14 DOD contractors in our review employed more than 1,700 former DOD senior and acquisition officials who had left DOD over the 6-year period between 2014 and 2019. These employees were potentially subject to PGE restrictions. Weapons development contractors in our review were far more likely to hire former DOD senior and acquisition officials than were nonweapons development contractors. The contractors identified various challenges to identifying former DOD senior and acquisition officials who worked within their organizations during the same time period.

About 100,000 Senior and Acquisition Officials Left DOD between 2014 and 2019

Almost 1.5 million military and civilian personnel left DOD service from 2014 to 2019, including more than 100,000 individuals—or about 7 percent—who served in positions as a senior official or an acquisition official. PGE laws do not require DOD to track whether these individuals retired or sought further employment. Our analysis found that in 2019, the 14 contractors in our review employed 1,718 former senior or acquisition officials who left DOD service during this time period (see fig. 2).

Figure 2: Comparison of the Number of DOD Employees Separating from the Department between 2014 and 2019 and Employed in 2019 at Defense Contractors that GAO Reviewed



Source: GAO analysis of DOD and Internal Revenue Service data. | GAO-21-104311

Of the 1,718 former DOD officials employed with the 14 defense contractors in our review, we found that 1,616—or about 94 percent—were former acquisition officials (see table 2).

Table 2: Post-Government Employment of Former DOD Officials by the 14 Contractors GAO Reviewed

Former DOD position	Number employed by contractors as of 2019
Acquisition officials	
Civilian officials (equivalent to GS-12 to GS-15 positions)	970
Military officers (officer grades O-3 to O-6) ^a	646
Subtotal	1,616
Senior officials	
Senior civilians (Senior Executive Service, including consultants and advisors)	27
Senior military officers ^a	75
Subtotal	102
Total	1,718

Source: GAO analysis of Department of Defense (DOD) and Internal Revenue Service data. | GAO-21-104311

^aMilitary officer ranks in the grades of O-3 to O-6 are as follows: captain, major, lieutenant colonel, and colonel (Army, Air Force, and Marine Corps); lieutenant, lieutenant commander, commander, and captain (Navy). Senior military officers are the various general and flag officer ranks of generals and admirals ranked O-7 and above.

Weapons Development Contractors Hired Far More Former DOD Officials than Nonweapons Development Contractors

DOD contractors we reviewed employed a higher number of former DOD senior or acquisition officials if that company was a weapons development contractor, rather than a nonweapons development contractor that provides off-the-shelf goods or services. For example, our analysis found that Raytheon employed 315 of the former DOD officials covered by our review, while the five nonweapons development contractors collectively employed 88 or fewer such officials.¹² Overall, these companies' employment of the former DOD officials in our sample was about 0.11 percent of their total workforces. Table 3 highlights these details for each contractor and presents the value of DOD obligations for each contractor in fiscal year 2019.

¹²Four of the five nonweapons development contractors employed fewer than ten former senior and acquisition officials. To protect taxpayer information, GAO cannot report the exact number of employees for contractors reporting 10 or fewer employees. We have therefore reported that 40 employees would be the maximum for these four contractors.

Table 3: Selected Contractors' Employment of Former DOD Senior and Acquisition Officials with Potential Post-Government Employment Restrictions as of 2019

Contractor	Is contractor a weapons developer? ^c	Number of former senior and acquisition officials employed as of 2019 and hired after 2016	Value of DOD contract obligations in fiscal year 2019 (dollars in millions)
Raytheon Technologies ^a	Yes	315	7,536
Northrop Grumman Corporation	Yes	289	4,792
General Dynamics Corporation	Yes	287	4,396
Lockheed Martin Corporation	Yes	253	13,422
L3 Harris Corporation ^b	Yes	168	4,032
The Boeing Company	Yes	160	6,523
BAE Systems, Inc.	Yes	108	3,125
Federal Express Corporation	No	48	1,225
General Atomics	Yes	38	1,512
General Electric Company	Yes	31	2,032
Atlantic Diving Supply, Inc.	No	10 or fewer	3,084
McKesson Corporation	No	10 or fewer	2,721
AmerisourceBergen Corporation	No	10 or fewer	2,361
Bechtel Corporation	No	10 or fewer	1,342
Total	—	1,718	58,103

Source: GAO analysis of Department of Defense (DOD) and Internal Revenue Service data. | GAO-21-104311

Note: "10 or fewer" employees is presented to protect taxpayer information.

^aRaytheon Corporation and United Technologies Corporation merged in 2020; the data presented represent the combined data from the individual companies as of 2019.

^bL3 Technologies and Harris Corporation merged in 2019; the data presented represent the combined data from the individual companies as of 2019.

^cFor the purposes of this report, we refer to contractors that, among other products or services, are responsible for developing or producing major weapon systems or components of weapon systems for DOD, as "weapons development contractors" and those that provide primarily commercial products or services for DOD as "nonweapons development contractors."

Contractors Identified Fewer Former DOD Senior and Acquisition Officials than We Found in Our Analysis

Similar to what we found in 2008, DOD contractors identified fewer former DOD senior and acquisition officials in their employ than we identified using DOD personnel data and IRS tax data. Specifically, the 10 contractors that provided personnel data reported they employed 816 potentially covered former DOD officials in 2019, while our analysis of DOD and IRS data for those contractors identified 1,149 individuals. We were unable to reconcile the differences, however, due to restrictions on the use of taxpayer information.

Contractor officials cited a number of challenges in identifying individuals formerly employed by DOD who were potentially covered by PGE restrictions. Representatives from several contractors stated that a parent company often controls several separate business units, which may track and store employee data using different methods—making it difficult to accurately identify all former DOD employees and their job assignments at the enterprise level, which is the highest level in the company. For example, representatives from one contractor stated that they were unable to provide the data because it would require a manual file review, which was not feasible for the company at the time. Additionally, several other contractor representatives told us their human resource information systems are not tailored to allow for easy identification of former DOD employees. For example, representatives from one contractor told us that, although they track within their human resources system which employees were former U.S. government employees, they do not break down this information by specific U.S. government agency.

DOD and Its Contractors Have Various Compliance Practices, but DOD Has Not Considered Incorporating Recent Prohibitions into Its Regulations

DOD and its contractors use various practices to help improve the likelihood that current and former DOD senior and acquisition officials who are potentially subject to PGE restrictions are aware of and comply with those restrictions. Since our 2008 report, DOD has improved its processes associated with PGE training and issuing ethics opinion letters. DOD has not considered incorporating recent statutory prohibitions on lobbying into the DFARS. Weapons development contractors in our review reported using a number of common practices, such as collecting employee information during the hiring process and providing PGE-related training. Conversely, the nonweapons development contractors reported that they generally used fewer practices.

DOD Improved Processes for Issuing and Maintaining Ethics Opinion Letters

According to reports issued by the DOD Inspector General, DOD has improved its processes for issuing and maintaining ethics opinion letters. For example, in March 2014, the Inspector General determined that DOD was not retaining all required ethics opinion letters pertaining to section 847 rules in AGEAR, and concluded therefore that AGEAR was of marginal value as a management control system.¹³ In its latest report,

¹³U.S. Department of Defense Inspector General, *Section 847 Ethics Requirements for Senior Defense Officials Seeking Employment with Defense Contractors*, DODIG-2014-050 (Alexandria, Va.: Mar. 31, 2014). Section 847 of the National Defense Authorization Act for Fiscal Year 2008 requires ethics opinions and requests to be retained by DOD in a central database or repository for not less than 5 years.

however, issued in December 2019, the Inspector General reported that SOCO and other DOD ethics officials had taken steps to issue ethics opinion letters in a timely fashion and store those letters in AGEAR.¹⁴ Specifically, the Inspector General noted that SOCO and the Army Office of General Counsel issued periodic reminders and best practices to ethics officials, developed training materials, and provided training to ethics counselors and covered officials related to Section 847 requirements, including centralized recordkeeping. In addition, the Inspector General found that DOD ethics counselors generally issued opinions regarding covered official PGE within 30 days of receiving completed requests. Based on a sample of cases over a 3-year period, the Inspector General found that:

- 100 percent of requests were issued in AGEAR,
- 97 percent of the ethics opinions were issued within 30 days of verifying the requesting employee was subject to restrictions, and
- 96 percent of the letters contained post-employment restrictions.

Several defense contractor representatives told us that DOD ethics officials are generally responsive to requests for additional information about candidate employees. The form used to request PGE opinion letters requires information concerning prospective duties. SOCO officials told us, however, that ethics officials sometimes do not receive sufficient detail in the initial request from the candidate employee. Contractor representatives told us that, in some cases, candidate employees provided generic ethics opinion letters that did not address the specific job to which they were applying. In those cases, contractors required the candidate employee to go back for a letter that specifically addressed the job for which they were applying. Some contractor representatives indicated they were able to contact the agency ethics official directly to provide additional clarification regarding the planned job duties and to seek a more refined ethics opinion letter.

¹⁴U.S. Department of Defense Inspector General, *Evaluation of DOD Processes and Procedures for Issuing Post-Government Employment Opinions in Compliance with Section 847 Requirements*, DODIG-2020-044 (Alexandria, Va.: Dec. 20, 2019).

DOD Provides Publicly Available Resources and Training to Improve Awareness of PGE Restrictions

DOD has taken steps designed to increase employee awareness of PGE restrictions. SOCO maintains a publicly-accessible website that contains resources available to current and former DOD senior and acquisition officials, prospective employers, and DOD ethics officials.¹⁵ We found that users can navigate to resources that are arranged by multiple ethics topics, including conflicts of interest, financial disclosures, and PGE, among others. Each ethics topic includes links to additional topic-specific resources, including an ethics counselor toolbox with materials dedicated specifically to that topic. Further, the PGE toolbox contains links to presentation and training materials that offer educational information about PGE matters.

For ethics advisors, the SOCO website has links to the relevant language from the Ethics Counselor's Deskbook, which serves as a reference primer for ethics officials. The website also contains links to training materials that clarify terms and concepts that appear in PGE statutes and regulations, such as *particular matters* and *personal and substantial participation* in those matters. SOCO also makes templates available for recusal letters that ethics officials can share with current DOD employees seeking employment with a defense contractor, as well as a template for ethics opinion letters that the ethics official can use to deliver their opinion to the potentially covered official seeking PGE.¹⁶

SOCO also published documentation applicable to all current DOD personnel who may be seeking employment with a defense contractor. This documentation includes references to applicable statutes and regulations, definitions of key terms, the legal language, simplified language that attempts to explain the laws to the nonspecialist, and what the employees can do to comply. To help DOD officials further understand how the restrictions apply, SOCO's literature presents notional scenarios that involve restrictions for current employees seeking private employment. SOCO encourages DOD personnel to contact their ethics officials for assistance because restrictions are dependent on specific facts that vary case by case.

¹⁵See <https://dodsoco.ogc.osd.mil/>.

¹⁶According to the SOCO website, while job seeking, and after accepting a job outside the government, the employee must refrain from working on any official matters that could have a direct and predictable effect on the financial interests of a potential non-federal employer. When appropriate, the employee may be required or asked by an agency ethics official to submit a written recusal through the employee's supervisor to the appropriate DOD ethics office.

SOCO also published separate documents, one each for senior officials and acquisition officials, which summarize the government ethics rules that may impose restrictions on PGE. For example, the documents present the language directly from the statute or regulation, along with simplified language. The documents also define key terms used in the various rules and also provide clarification on terms, such as *specific parties and official responsibility*.

According to SOCO officials, DOD ethics counselors routinely provide individual PGE advice and briefings before and after senior and acquisition officials leave the department. SOCO officials provided us the same training they provide to departing DOD senior and acquisition officials. The training contained two scenarios: one was tailored to a senior DOD official while the other was tailored to a non-senior acquisition official. In each scenario, the employees completed a form providing information about their responsibilities while at DOD, and their likely responsibilities with the prospective employer. The nature of a current or former official's DOD position and duties, and their proposed duties with the contractor, will determine the applicability of the various laws and restrictions.

DFARS Representation Does Not Include Recent Statutory Lobbying Restrictions on Certain Former Senior Officials

DOD modified the DFARS in 2011 to require that an offeror represent that it complies with several PGE restrictions when submitting proposals in response to DOD contract solicitations.¹⁷ It has not taken action, however, to incorporate into regulation recent prohibitions on lobbying activities by senior former DOD military and civilian officials contained in section 1045 of the National Defense Authorization Act for Fiscal Year 2018.¹⁸ To implement the provision, in March 2020, DOD issued DOD Instruction 1000.32, *Prohibition of Lobbying Activity by Former DOD Senior Officials*, establishing policy and assigning responsibilities for implementing section 1045 to a number of DOD offices, including the General Counsel, the Inspector General, and component heads. The instruction outlines

¹⁷DFARS 252.203-7005. This DFARS provision requires offerors to represent the following: "By submission of this offer, the offeror represents, to the best of its knowledge and belief, that all covered DoD officials employed by or otherwise receiving compensation from the offeror, and who are expected to undertake activities on behalf of the offeror for any resulting contract, are presently in compliance with all postemployment restrictions covered by 18 U.S.C. 207, 41 U.S.C. 2101–2107, and 5 CFR parts 2637 and 2641, including Federal Acquisition Regulation 3.104–2."

¹⁸National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 1045 (2017).

examples of prohibited lobbying activities, distinctions in terms, and exceptions to prohibited communications.

DOD officials told us that, because the provision was included in a National Defense Authorization Act section that is not acquisition specific, it was not initially identified for review for potential incorporation into the DFARS. Further, these officials told us they have not considered amending the DFARS to reflect the new restrictions as they had done previously with earlier PGE restrictions. The officials noted that section 1045 does not focus exclusively on acquisition personnel or activities and is based upon a statute, the Lobbying Disclosure Act, which was not enacted to address PGE restrictions by former Executive Branch personnel; as such, they told us it was not appropriate to include 1045 restrictions as part of the DFARS clauses requiring contractors to represent that their employees were in compliance with other listed PGE restrictions in order to contract with DOD. DOD officials stated that, in their opinion, the guidance in DOD Instruction 1000.32, in combination with the training and advice provided by DOD's ethics counselors, is sufficient to ensure that DOD's former employees understand their responsibilities with regard to complying with Section 1045 once they leave DOD. We found, however, that the existing DFARS representation includes PGE restrictions that are not focused exclusively on former DOD acquisition officials.

DOD contractors in our review reported having varying forms of compliance practices in place to address lobbying. Nine of the 11 major defense contractors that responded to our survey reported having a compliance program that addresses the provisions in Section 1045. Six contractors reported that their normal job application process includes questionnaires that gather information on whether the applicants have any lobbying restrictions. In survey responses, contractor representatives stated that legal teams further reviewed ethics opinion letters, job history, or other details provided in the job application process when necessary to ensure that incoming employees with lobbying restrictions do not work in lobbying positions until their cooling off periods have ended. Weapons development contractors generally reported that they require candidate employees to complete paperwork, including questionnaires, forms, or other documentation requiring them to identify conflicts of interest pertaining to the lobbying restrictions. In cases where responses indicate conflicts, these forms trigger additional reviews by legal compliance departments. These subsequent reviews would determine the activities the candidate employee could undertake in light of their prior DOD service.

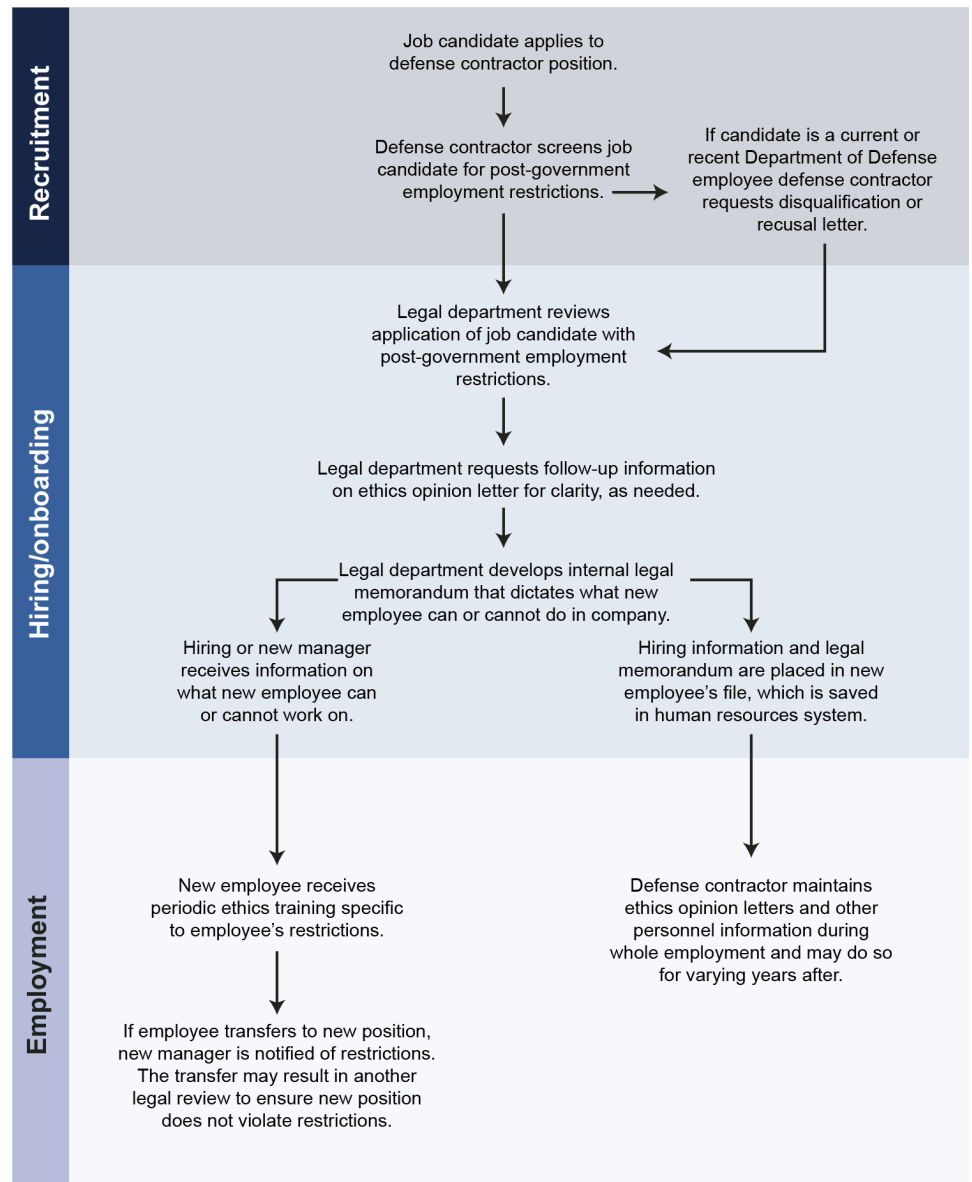
According to federal internal control standards, management should hold individuals accountable for their internal control responsibilities.¹⁹ While the DOD instruction, along with the other resources DOD provides, informs DOD personnel of their responsibilities for complying with Section 1045, the instruction does not apply to contractors and requires no affirmative action on their part to represent that their employees are in compliance, to the best of their knowledge, with the provision, as contractors do with other PGE restrictions. As noted above, DOD has not considered amending the DFARS to reflect the new restriction on lobbying activities. Without assessing whether to update the DFARS representation to reflect section 1045, DOD may be missing an opportunity to create a sense of shared accountability between the employees and the contractors who hire them and a means of ensuring that the government does not do business with companies whose employees violate the lobbying restriction with their employers' knowledge.

Contractors Reported Various Practices Related to Hiring Former DOD Employees

While PGE laws do not require contractors to identify, monitor, or provide reports on their processes for complying with PGE restrictions, the contractors we reviewed reported that they generally had practices in place to help promote awareness and compliance. Figure 3 illustrates the process steps described to us by the defense contractors.

¹⁹[GAO-14-704G](#).

Figure 3: Practices That the Contractors GAO Reviewed Reported Using to Promote Compliance with Post-Government Employment Restrictions



Source: GAO analysis of defense contractor data. | GAO-21-104311

We found that the specific practices related to PGE compliance differed by type of contractor. The eight weapons development contractors, which hired a larger number of former DOD senior or acquisition officials, generally reported to us that they had more practices in place to promote

awareness of and compliance with PGE restrictions than did nonweapons contractors. For example, one weapons development contractor stated that employees with DOD experience tend to be concentrated in certain departments within the company, such as contracting or accounting, so most PGE restriction related efforts are targeted to those departments.

A different weapons development contractor stated that the level of training and scrutiny a person gets depends on the person's level of exposure to activities that could result in PGE violations. For example, representatives from this contractor noted that, if there is no risk a person's position (e.g., accountant) places them at risk of a violation, then the individual might not receive training. Additionally, half of the weapons development contractors reported that internal or external auditors have assessed the adequacy of their compliance processes. Table 4 summarizes the PGE practices reported by the eight weapons developers we reviewed.

Table 4: Selected Practices Regarding Post-Government Employment Restrictions Reported By 8 Weapons System Development Contractors GAO Reviewed

Practice	Weapons development contractor								Number of contractors using practice
	A	B	C	D	E	F	G	H	
Collects information on restrictions during application process	●	●	●	●	●	●	●	●	8
Requires a recusal letter in order to consider applicants currently employed by the Department of Defense (DOD)	●	●	○	●	●	●	●	●	7
Asks directly hired permanent employees if they have DOD experience	●	●	●	●	●	●	●	●	8
Asks directly hired permanent employees if they have restrictions on their employment	●	●	●	●	●	●	●	●	8
Requires directly hired permanent employees with restrictions on employment to provide DOD ethics opinion letter	●	●	●	●	●	●	●	●	8
Will go back to agency ethics official if more information is needed regarding an ethics opinion letter	●	●	●	●	●	●	●	●	8
Company has internal control processes to ensure compliance with post-government employment laws	●	●	●	●	●	●	●	●	8
Internal or external auditors have assessed the adequacy of compliance processes	a	●	○	●	●	○	●	a	4
Compliance regime includes lobbying provisions	●	●	●	●	●	●	●	●	8
Uses applicant tracking system to ensure that information on individuals' prior DOD employment restrictions is accurately maintained	●	●	●	●	○	●	●	●	7

Weapons development contractor									Number of contractors using practice
Practice	A	B	C	D	E	F	G	H	
At least some employees receive post-government employment-related training	●	●	●	●	●	●	●	●	8
Company tracks who has received training	●	●	●	●	●	○	●	○	6
Number of practices used by contractor	11	12	10	12	11	10	12	10	—

Legend: ● = contractor uses practice; ○ = contractor does not use practice.

Source: GAO analysis of contractor survey responses. | GAO-21-104311

Note: One of the contractors, which was the product of a recent merger, provided two survey responses, one for each of the two former companies. For the purposes of this report, we refer to contractors that, among other products or services, are responsible for developing or producing major weapon systems or components of weapon systems for DOD, as “weapons development contractors.”

^aOfficials completing the survey for these contractors were unsure whether their companies had implemented this practice.

In their survey responses, the four nonweapons development contractors in our review generally reported using fewer practices than weapons development contractors. In follow-up interviews with these four companies, representatives stated, however, that the lack of practices should not indicate that they are not complying with PGE rules. Rather, they noted that their companies’ business models differ from those of weapons developers. The four nonweapons developers who responded to our survey are engaged in either pharmaceutical distribution, construction and facility operations, or off-the-shelf product wholesaling. Those representatives told us they did not necessarily seek the expertise of former DOD senior or acquisition officials.

The four nonweapons development contractors that responded to our survey collectively employ 40 or fewer former DOD acquisition and senior officials who retired since 2016, were hired between 2017 and 2019, were employed in 2019, and may be subject to PGE restrictions. In our discussions with these companies, they stated they have a risk-based approach and that their current compliance structures are sufficient to comply with relevant PGE rules. In a follow-up interview, representatives from one company reported to us that only four to five people work on its sole contract with DOD, while a majority of employees work in warehouses. They stated that, while they do not have practices in place regarding the lobbying provisions in section 1045, the company has no individuals engaged in lobbying with the federal government. The contractor assessed a low risk of violating DOD-specific PGE restrictions, so it does not invest in PGE related compliance efforts.

Representatives from a different nonweapons development company reported that most practices the company undertakes with regard to covered former DOD employees happen on a case-by-case basis. For example, they told us that, when they are recruiting a specific candidate with DOD experience, they would check into that person’s work history more closely and make sure to get a copy of the person’s ethics letter. They might also have the person provide a more up-to-date ethics letter based on the specific job description to ensure that the company and the potential employee are fully compliant. Those employees with PGE restrictions on their employment would also receive specific training on the topic. None of the nonweapons development contractors reported that internal or external auditors had assessed the adequacy of their compliance processes. See table 5 for a more detailed breakdown of practices used by the four nonweapons developers in our survey.

Table 5: Selected Practices Utilized by the Four Nonweapons Development Contractors Reviewed by GAO to Comply with Post-Government Employment Restrictions

Practice	Nonweapons development contractors				Number of contractors using practice
	A	B	C	D	
Collects information on restrictions during application process	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	2
Requires a recusal letter in order to consider applicants currently employed by the Department of Defense (DOD)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	0
Asks directly hired permanent employees if they have DOD experience	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	3
Asks directly hired permanent employees if they have restrictions on their employment	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	3
Requires directly hired permanent employees with restrictions on employment to provide DOD ethics opinion letter	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	3
Will go back to agency ethics official if more information is needed regarding an ethics opinion letter	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	2
Company has internal control processes to ensure compliance with post-government employment laws	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	3
Internal or external auditors have assessed the adequacy of compliance processes	<input type="radio"/>	^a	<input type="radio"/>	<input type="radio"/>	0
Compliance regime includes lobbying provisions	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	2
Uses applicant tracking system to ensure that information on individuals’ prior DOD employment restrictions is accurately maintained	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	1

Nonweapons development contractors

Practice	A	B	C	D	Number of contractors using practice
At least some employees receive post-government employment-related training	●	●	○	●	3
Company tracks who has received training	○	●	○	●	2
Number of practices used by contractor	6	8	0	10	—

Legend: ● = contractor uses practice; ○ = contractor does not use practice.

Source: GAO analysis of contractor survey responses. | GAO-21-104311

Note: “nonweapons developer” refers to contractors in our review who either distribute pharmaceutical products, sell commercial off-the-shelf products, or are in the construction industry.

^aOfficials completing the survey for this contractor were unsure whether their company had implemented this practice.

Conclusions

PGE restrictions exist to mitigate conflicts of interest and to promote public trust in the integrity of the government’s contract award process, which, in DOD’s case, totals hundreds of billions of dollars annually. Over the years, DOD has taken steps to strengthen its efforts relating to those restrictions, including refining the department’s guidance and training, working to improve employees’ awareness of their PGE restrictions, and involving contractors by having them represent in their proposals for federal contracts that their employees, to the best of their knowledge, have complied with those restrictions. DOD may be able to strengthen its PGE-related efforts by amending the DFARS to require contractors to represent that their employees are in compliance with the lobbying restrictions contained in section 1045 of the National Defense Authorization Act for Fiscal Year 2018. Including such a requirement could create a sense of shared accountability between the employees and the contractors who hire them and a means of ensuring that the government does not do business with companies whose employees violate the lobbying restriction with their employers’ knowledge.

Recommendation for Executive Action

The Under Secretary of Defense for Acquisition and Sustainment should ensure that the Principal Director, Defense Pricing and Contracting, assesses whether to amend the Defense Federal Acquisition Regulation Supplement to require contractors to represent their employees’ compliance with the PGE lobbying restrictions established by Section 1045 in the National Defense Authorization Act for Fiscal Year 2018 as part of a contractor’s proposal for DOD contracts. (Recommendation 1)

Agency Comments

We provided a draft of this report to DOD for review and comment. In written comments (reproduced in appendix II), DOD concurred with our recommendation. DOD also provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, the Under Secretary of Defense for Acquisition and Sustainment, the Principal Director of Defense Pricing and Contracting, the Acting Director of the Office of Management and Budget, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4841 or dinapolit@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.



Timothy J. DiNapoli
Director, Contracting and National Security Acquisitions

Appendix I: Objectives, Scope, and Methodology

Congress included a provision in the conference report accompanying the National Defense Authorization Act for Fiscal Year 2020 for us to update the information and findings in a 2008 report.¹ This report (1) identifies the extent to which major defense contractors employed potentially covered former Department of Defense (DOD) officials in calendar year 2019, and (2) examines practices DOD and contractors use related to contractors hiring former DOD officials. In December 2020, we provided an interim briefing to the Senate and House Armed Services Committee staff.

In carrying out this work, consistent with the 2008 report, we defined major defense contractors as any company that received at least \$500 million in obligations from DOD in fiscal year 2019. To identify those contractors, we queried the Federal Procurement Data System—Next Generation and identified 34 contractors that met the criteria to be considered major defense contractors. Those 34 contractors accounted for \$72.2 billion in DOD obligations in 2019. We focused our review on the largest 16 of those 34 contractors. These 16 contractors accounted for more than \$58.1 billion, or more than 80 percent, of the obligations for all major defense contractors. Subsequent to the 2019 period we chose for review, there were two mergers among the major defense contractors that we included in our analyses, which reduced the number of contractors in our analyses from 16 to 14. Specifically, L3 Communications Corporation and Harris Corporation merged to form L3Harris Corporation and Raytheon Company merged with United Technologies Corporation to form Raytheon Technologies. Consequently, throughout the report, we combined information on the merged companies and reported on the 14 contractors. For the companies that merged, we combined the data from the individual heritage companies as of 2019 to reflect the data for the post-merger entities.

To develop information on how many former DOD military and civilian personnel worked for these contractors, we obtained personnel data from the Defense Manpower Data Center (DMDC) to determine how many military and civilian personnel left DOD service for any reason other than being deceased in a 6-year period between January 1, 2014, and December 31, 2019 (N=1,497,882). The information we collected from DMDC included personally-identifiable characteristics for each former employee such as name, social security number (SSN), end date of

¹H.R. Rep. No. 116-133, at 1356 (2019) (Conf. Rep.); GAO, *Defense Contracting: Post-Government Employment of Former DOD Officials Needs Greater Transparency*, [GAO-08-485](#) (Washington, D.C.: May 21, 2008).

employment, reason for separation, branch of service, military rank, civilian grade, and if the employee's job specialty was coded as any of the several defense acquisition workforce positions.² To assess the reliability of DMDC's data, we reviewed documentation, such as data submission requirements and access request forms; interviewed DMDC officials and had them complete reliability-related questionnaires; and conducted electronic testing of the data for missing data, outliers, or obvious errors. We determined that data from the data center were sufficiently reliable to accurately support our analysis.

To analyze defense contractors' post-government employment (PGE) of former DOD senior and acquisition officials, we used DOD's personnel data to identify:

- Former senior officials such as military officers ranked O-7 and above (e.g., generals, admirals) and members of the Senior Executive Service regardless of whether they also were coded as serving in a defense acquisition workforce position (N=1,689).
- Acquisition officials, including military officials from grades O-3 to O-6 (captain, major, lieutenant colonel, and colonel in the Army, Air Force, and Marine Corps; lieutenant, lieutenant commander, commander, and captain in the Navy) and civilian officials from grades GS-12 through GS-15 for which DOD coded their status as members of its acquisition workforce, including program managers, deputy program managers, and contracting officers (N=98,971).

To determine how many of the 100,660 former DOD senior and acquisition officials worked for the 14 major defense contractors in 2019, we matched DOD's personnel data with (1) income tax data from the Internal Revenue Service (IRS), and (2) personnel data from the contractors on former DOD senior or acquisition officials they directly compensated (either via W-2 or 1099-MISC) in 2019 as employees or independent contractors. We used data from the returns identifying the contractor who submitted the income tax data and the SSN and name for all individual taxpayers for whom the 14 major defense contractors reported taxable income for the 4-year period between 2016 and 2019. To focus on individuals hired after 2016, we compared SSNs from 2016 income tax data to the 2019 income tax data and eliminated SSNs for individuals that matched because this showed the contractors hired those individuals prior to 2017.

²10 U.S.C. § 1721 (2019).

We also obtained data from 10 of the 14 contractors on individuals who matched our criteria as former DOD senior and acquisition officials they compensated in 2019 and hired between 2017 and 2019. Although we undertook multiple attempts to encourage full participation, three contractors chose not to participate in our review. Contractors were requested to provide the SSNs for either (1) all individuals compensated in 2019 and hired in the 3-year period between 2017 and 2019, or (2) the individuals they identified as matching our criteria for being a former DOD senior or acquisition official and hired between 2017 and 2019. We analyzed the contractors' SSN data to match against the SSNs in DOD's personnel data. We did not determine whether the work these individuals were performing for their new employer was related to their former duties or position in the DOD. Based on the IRS and DOD data, we determined that 1,718 individuals matched our criteria as former DOD senior and acquisition officials. For each of the 10 contractors who provided us this SSN data, we assessed the accuracy and completeness of their information by analyzing how many former DOD senior and acquisition officials their information showed were employed in 2019 compared with our analysis of IRS data for the same purpose.

To identify the practices DOD and major defense contractors report using to ensure awareness of and compliance with PGE restrictions for employing former DOD senior and acquisition officials, we interviewed, and reviewed information provided by, ethics officials from DOD's Standards of Conduct Office (SOCO). We discussed steps they take to educate DOD employees on PGE restrictions and DOD's practice of providing written ethics advice concerning prospective employment and restrictions to former DOD senior and acquisition officials who request it. We reviewed the content from SOCO's web site, including forms, training materials, and DOD policy documents. We also met with Defense Pricing and Contracting officials to discuss DOD regulations associated with PGE restrictions. We met with representatives from the Aerospace Industries Association and the National Defense Industrial Association to obtain their perspectives on PGE-related issues.

We reviewed relevant DOD Inspector General reports and interviewed DOD Inspector General officials to discuss their audits of DOD's processes for issuing and storing ethics opinion letters via the After-Government Employment Advisory Repository (AGEAR). We discussed the sufficiency of this information with DOD officials to assess whether DOD has insight into PGE to reduce the risk for conflicts of interest or apparent conflicts of interest that could undermine public trust in the integrity of defense contracting.

We surveyed major defense contractors on their practices to identify, screen, track, and train former DOD officials for the purposes of compliance with selected PGE restrictions. We based our survey on the instrument we used in conducting our 2008 report and updated it to include questions about more recent PGE restrictions, such as the restriction on lobbying activities from section 1045 of the National Defense Authorization Act for Fiscal Year 2018. We pretested the survey with five contractors before emailing a questionnaire to all 14 contractors to collect information on their reported practices. During these pretests, we asked ethics and personnel officials questions to gain an initial understanding of the variety and scope of information reasonably available to ensure awareness and compliance in such areas as (1) how contractors identified new hires with potential PGE restrictions, (2) how they tracked post-DOD assignments of former DOD officials, (3) whether they collected and maintained copies of DOD ethics opinion letters for former DOD officials, and (4) whether they provided training in PGE restrictions to various employee categories in their workforce.

We received and analyzed complete survey responses from 11 of the 14 contractors. This is a survey response rate of 79 percent, which is sufficient for the purposes of this report. For the purposes of this report, we grouped the contractors into one of two categories: those that, among other products or services, are responsible for developing or producing major weapon systems or components of weapon systems for DOD, which we refer to as “weapons development contractors;” and those that provide primarily commercial products or services for DOD, which we refer to as “nonweapons development contractors.” We conducted multiple interviews with representatives from each of the contractors that responded to our survey. Our survey results cannot be generalized for the purpose of describing nonrespondent contractors’ practices or contractor practices industry-wide.

We conducted this performance audit from May 2020 to September 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of Defense



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

13 AUG 2021

Mr. Timothy J. DiNapoli
Director, Contracting and National Security Acquisitions
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. DiNapoli:

Please find attached the Department of Defense (DoD) response to the GAO Draft Report, GAO-21-104311, "Post-Government Employment Restrictions: DoD Could Further Enhance Its Compliance Efforts Related to Former Employees Working for Defense Contractors," dated July 21, 2021 (GAO Code 104311). DoD appreciates GAO's recognition of the Department's strong ethics and compliance program. In addition, GAO's finding that major defense contractors have also implemented compliance measures is significant, and an important indicator that DoD's outreach has enhanced compliance with post-government employment restrictions throughout the defense industry.

The enactment of laws created outside of the existing statutory framework established by the Ethics in Government Act (5 U.S.C. app. § 101 et seq.) and the criminal conflicts of interest statute (18 U.S.C. § 207) and that apply only to former DoD personnel has increased complexity in DoD's implementation of post-government employment restrictions. Clear and consistent laws are essential in ensuring compliance and maintaining the public's trust. DoD will continue to support well-coordinated and integrated efforts to strengthen and improve the implementation of ethics laws and regulations.

DoD concurs with GAO's recommendation. A comment on the report's recommendation is enclosed.

Sincerely,

Caroline Krass
General Counsel

Enclosure:
As stated



**GAO DRAFT REPORT DATED JULY 21, 2021
GAO-21-104311 (GAO CODE 104311)**

**“POST-GOVERNMENT EMPLOYMENT RESTRICTIONS: DOD COULD FURTHER
ENHANCE ITS COMPLIANCE EFFORTS RELATED TO FORMER EMPLOYEES
WORKING FOR DEFENSE CONTRACTORS”**

**DEPARTMENT OF DEFENSE COMMENTS
TO THE GAO RECOMMENDATION**

RECOMMENDATION 1: The GAO recommends that the Under Secretary of Defense for Acquisition and Sustainment should ensure that the Principal Director, Defense Pricing and Contracting, assesses whether to amend the Defense Federal Acquisition Regulation Supplement to require contractors to represent their employees’ compliance with the [post-government employment] lobbying restrictions established by Section 1045 in the National Defense Authorization Act for Fiscal Year 2018 as part of a contractor’s proposal for DoD contracts.

DoD RESPONSE: Concur. The recommendation will be referred to the Under Secretary of Defense for Acquisition and Sustainment for consideration.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Timothy J. DiNapoli at (202) 512-4841 or dinapolit@gao.gov.

Staff Acknowledgments

In addition to the contact named above, Bruce H. Thomas (Assistant Director), Marcus C. Ferguson (Analyst in Charge), Rose Brister, Steven Flint, Serena C. Lo, Ying Long, Matthew L. McKnight, Amanda K. Miller, Kya M. Palomaki, Anne Louise Taylor, Jacqueline W. Wade, and Robin Wilson made key contributions to this report.

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