

What all defense contractors should know about new DOD-specific lobbying restrictions

March 7, 2018

Two months into 2018, defense contractors are no doubt tracking the economic and policy implications of the National Defense Authorization Act (NDAA) for Fiscal Year 2018—Congress' more than US\$700 billion annual defense policy bill. However, contractors may not be fully aware of the significant impact a small provision in the NDAA might have on their hiring (or current employment) of recently retired Department of Defense (DOD) personnel. This provision, tucked away in Section 1045 of the NDAA, imposes broad lobbying restrictions on certain former DOD officials and employees working on behalf of private sector clients that retired from federal service on or after December 12, 2017 (the date on which the Fiscal Year 2018 NDAA became law).

The new restrictions impose a **two-year bar** on lobbying activities by military general and flag officers in grade O-9 (lieutenant general or vice admiral) or higher from their time of retirement or separation from service. The two-year bar also applies to civilian employees of DOD with civilian grades equivalent to O-9—SES Level III—or higher. Additionally, the prohibition imposes a **one-year restriction** on the lobbying activities of military general and flag officers in grades O-7 (brigadier general or rear admiral (lower half)) and O-8 (major general or rear admiral (upper half)) from their time of retirement or separation from service. An analogous one-year bar also applies to civilian employees with civilian grades equivalent to those same military grades—SES Levels V and IV.

The significance of this new lobbying restriction lies in its expansion of the activities former DOD personnel may no longer engage in during the applicable period. Under the current criminal statute that subjects former senior executive branch officials to a lobbying cooling-off period following public service (18 U.S.C. 207(c)), officials are barred from contacting their former government office with an intent to influence policy or other decisions for a period of one year from their leaving government service. However, these officials are permitted to provide background support to lobbyist colleagues who perform outreach to covered government offices. Under the NDAA's new bar, the restriction is much more substantial.

Specifically, Section 1045's bar prevents covered officials from engaging in any "lobbying activities," as defined by the Lobbying Disclosure Act, which encapsulates both direct lobbying contacts and any efforts in support of such contacts, including preparation or planning activities, research and other background activities. In another departure from current law, the NDAA's new bar prohibits *both* lobbying activities with any covered executive branch officials regarding DOD-related matters *and* lobbying contacts with any covered executive branch officials in the DOD. This language, albeit ambiguously worded, appears to indicate a prohibition that restricts a covered former DOD official from engaging in any sort of lobbying activities with *all DOD components and all covered executive branch officials regarding DOD issues*, not just his or her former office within the DOD. The language also seems to indicate that a covered former DOD official is prohibited from engaging in any lobbying activities related to any matter arising within the DOD.

The DOD Standards of Conduct Office will issue further guidance to resolve some of the questions left unanswered by the NDAA's bar language in the coming months. However, until that occurs, contractors should be very cautious in

how they utilize employees that may be subject to the new lobbying restrictions.

Dentons' Political Law, Ethics and Disclosure team is available to provide further advice and counsel on this and related contracting compliance matters. For guidance on general government contracts law and related matters, please contact Dentons' Government Contracts team. For strategic counsel on policy and other matters related to the NDAA and other federal legislation, please contact Dentons' Public Policy team.

Your Key Contacts



Benjamin P. Keane
Partner, Washington, DC
D +1 202 496 7672
ben.keane@dentons.com



Christopher W.K. Fetzer
Partner, Washington, DC
D +1 202 408 9192
chris.fetzer@dentons.com



Joseph G. Martinez
Office Managing Partner,
Denver
D +1 303 634 4371
joe.martinez@dentons.com



Michael Pfeifer
Managing Associate,
Washington, DC
D +1 202 496 7426
michael.pfeifer@dentons.com