United States General Accounting Office

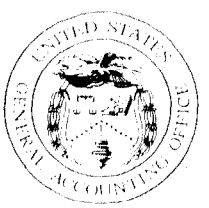
GAO

Report to Congressional Requesters

September 1989

DOD REVOLVING DOOR

Processes Have Improved but Post-DOD Employment Reporting Still Low



GAO/NSIAD-89-221

GAO
United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-218976

September 13, 1989

The Honorable Charles E. Bennett
Chairman, Subcommittee on Seapower
and Strategic and Critical Materials
Committee on Armed Services
House of Representatives

The Honorable Barbara Boxer
House of Representatives

The Honorable Carl Levin
Chairman, Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
United States Senate

The Honorable David H. Pryor
Chairman, Subcommittee on Federal Services,
Post Office, and Civil Service
Committee on Governmental Affairs
United States Senate

This report responds to your requests that we review the Department of Defense's (DOD) revolving door disclosure system required under 10 U.S.C. 2397. This report addresses those portions of the legislation pertaining to an individual's reporting responsibilities and DOD's review and enforcement functions. We will issue a separate report on DOD employment prohibitions under section 2397b and defense contractor reporting on former DOD employees hired by them as required by section 2397c.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 5 days from its issue date. At that time, we will send copies to the Secretaries of Defense, the Army, Navy, and Air Force; the Director, Office of Management and Budget; the Director, Office of Government Ethics; and other interested parties.

This report was prepared under the direction of Harold J. Johnson, Director, Manpower Issues. Other major contributors are listed in appendix III.

for Bill W. Thurman

Frank C. Conahan
Assistant Comptroller General

Executive Summary

Purpose

The Congress has had a long-standing concern about people moving in and out of government under circumstances that create real or apparent conflicts of interest—the so-called "revolving door." Legislation now prohibits certain activities and, in some cases, former Department of Defense (DOD) personnel from working for certain defense contractors. In cases where subsequent employment with defense contractors is not prohibited, former DOD personnel are required to report it. Legislation was enacted to improve the disclosure and enforcement procedures, and GAO was asked to follow up on its earlier reports. Specifically, GAO determined whether

- former DOD employees are reporting subsequent employment,
- changing current reporting criteria would increase required reporting,
- information being reported complies with the law,
- DOD's report review process has improved, and
- DOD has acted to enforce the reporting requirement.

Background

The Congress has been concerned that military officers and high-level DOD civilian employees taking jobs with defense contractors could create perceptions among the public that (1) former DOD personnel may be using their DOD contacts to the benefit of the contractor and to the detriment of the government, (2) current DOD employees may be seen as using their positions to gain favor with contractors, in anticipation of future employment, and (3) DOD employees who view defense contractors as potential employers may be seen as not exercising vigorous oversight of contractors' activities.

Legislation requiring former DOD personnel to disclose employment with defense contractors was initially enacted in 1969 and amended in 1985. Currently, the legislation requires former DOD employees to report subsequent employment if

- they were military officers at the grade O-4 (major or Navy lieutenant commander) and above with 10 years of active service, or civilian employees paid at or above a GS-13 rate, and
- they were paid any time during the year at an annual pay rate of $25,000 or more from a major defense contractor (one with at least $10 million in DOD contracts).

Results in Brief

Disclosure laws still exempt about 20 percent of former mid- and high-level DOD personnel from reporting their defense-related employment

because they do not work for major defense contractors, but only about 30 percent of those probably required to report actually did so in fiscal years 1986 and 1987. DOD has begun to follow up with those who failed to report, but enforcement of the reporting requirement has been lax.

Although reporting compliance was low, DOD has improved its review process. Further, reports that were submitted generally complied with the law, providing substantially more information than before. However, some reports did not provide information on which major systems the individual worked on while at DOD or at the defense contractor. This information is not required by law, but it is required by DOD regulations. DOD generally did not follow up to obtain this information.

Principal Findings

Reporting Exemptions

About 6,600 military officers and civilian employees at grades O-4 or paid at a rate of GS-13 and above left DOD and held a security clearance to work for a defense contractor in fiscal years 1986 and 1987. Of this number, about 20 percent were exempt from reporting because they were not employed by a major defense contractor. A few may have been exempt because they had less than 10 years of military service or because they did not meet the $25,000 earning threshold.

DOD interpreted the earning threshold to mean that a former DOD employee was required to report if he or she is paid $25,000 or more annually by a single contractor. GAO interprets the legislative language to mean that individuals must report if at any time during the year they receive a rate of pay that would equal $25,000 annually. DOD said it adopted GAO's interpretation effective August 3, 1989.

Compliance

About 4,900 former DOD employees held an industrial security clearance and probably should have reported subsequent employment with a defense contractor, but only 1,450 people with clearances did so, a compliance rate of about 30 percent. Neither DOD nor GAO can know the compliance rate for former DOD employees who work for a defense contractor but do not have a security clearance.

Defense Review of Reports

DOD reviews and certifies disclosure reports it receives, but it could not certify about 5 percent because people submitted insufficient information. Certification indicates that the report was reviewed and no potential conflicts of interest were found. For these 5 percent, DOD requested additional information for a proper certification, but the requests were not always honored.

In addition to information required by law, DOD asks people to report if they worked on major defense systems while at DOD and at the defense contractor, and if so, to list the systems. The reporting form, however, does not provide a space for this information. About 34 percent of the reports submitted did not list any systems. DOD presumed that the individual did not work on any major systems, although it cannot be certain whether the individual simply failed to list the systems.

Enforcement

DOD has significantly improved its review process. However, the 1985 amendments to the revolving door legislation specifically required it to enforce the reporting requirements. In March 1989, DOD began to follow up with individuals who did not report, but it has not yet taken other administrative enforcement action as the legislation requires.

Recommendations

GAO recommends that the Secretary of Defense take action to increase compliance with the reporting requirement. This should include continued follow up, to the extent deemed necessary, with those who fail to report. To demonstrate the importance of this requirement, serious consideration should be given to imposing fines as provided for by law on those who, after being directly informed of their obligation to report, do not do so.

GAO also recommends that the Secretary of Defense modify the reporting form to provide space for individuals to report positively or negatively whether they worked on a major defense system while at DOD or at the defense contractor and begin enforcing the requirement that former employees provide this information.

Agency Comments

DOD agreed with GAO's principal findings regarding former employees currently exempt from reporting, the low compliance rate of those who are probably required to report, and the review of reports. DOD only partially agreed that enforcement of the reporting requirement had been lax. It agreed that no penalties have yet been imposed but stated that a lack of action on specific cases does not indicate lack of commitment.

GAO supports DOD's current enforcement efforts. However, GAO notes that the requirement to enforce the statute was included in 1985 legislation, but DOD took no enforcement actions until 1988. DOD did not notify those potentially required to report until March 1989 when it sent letters to 3,500 former employees identified by its computer-matching as probably required to report.

DOD disagreed that 34 percent of the post-employment disclosure reports were deficient because they did not list major systems on which the individual worked while at DOD and at their current place of employment. DOD said that it added the requirement for listing major systems, which is not a statutory requirement, and that the reporting form does not require a negative response if no major defense systems were worked on. DOD said it presumes that if no major systems were listed, then the individual did not work on any systems.

GAO recognizes that the requested information on major systems was not required by law. GAO initially believed, however, that it was required by DOD and that a lack of information on major systems constituted deficient reporting. GAO initially proposed that DOD more aggressively enforce this requirement. GAO agrees with DOD that neither the form nor the instructions explicitly call for a negative comment if no major systems were worked on. However, DOD added this reporting requirement to obtain enough information to evaluate whether possible violations had occurred, and GAO agrees with this reasoning. GAO does not agree that DOD can assume that individuals who did not list any major defense systems did not work on any. Accordingly, GAO now recommends that the reporting form be modified to specifically request this information.

Contents

Abbreviations

DOD Department of Defense

Introduction

The Congress has had a long-standing concern about the movement of people from government to private employment, and vice versa, under circumstances that may create real or apparent conflicts of interest—the so-called "revolving door." The Congress has been especially concerned about Department of Defense (DOD) military officers and high-level civilian employees who may have been involved in procurement functions taking jobs with defense contractors, fearing that this situation could lead to conflicts of interest or loss of public confidence in government. For example:

- Former DOD personnel who go to work for a defense contractor may appear to use their contacts with former colleagues at DOD to the benefit of the defense contractor and to the detriment of the government.
- DOD personnel who anticipate future employment with a defense contractor may be perceived as using their position to gain favor with the contractor at the expense of the government.
- DOD procurement personnel who view defense contractors as potential employers may be perceived as not exercising vigorous oversight of contractor activities.

These perceptions of potential impropriety and the possibility of real conflicts of interest led to legislation in 1969 (10 U.S.C. 2397) requiring certain former DOD personnel to publicly disclose subsequent defense-related employment (see ch. 2).

DOD Directive 5500.7, "Department of Defense Standards of Conduct," implements this law by requiring former employees to file a disclosure form (DD Form 1787); see app. I . Amendments to 10 U.S.C. 2397 enacted in 1985 now require the following:

- DOD must ensure compliance with the law, whereas DOD previously only collected the disclosure reports and provided copies to the Congress.
- DOD must review the reports for potential conflicts of interest, whereas DOD previously did not have to review the reports.
- Individuals must describe their current duties or work performed on behalf of the defense contractor, as well as those performed while at DOD, noting any similarities in areas where the person had at least partial responsibility, whereas they previously could simply provide a job title.

Objectives, Scope, and Methodology

The Chairmen, Subcommittee on Seapower and Strategic and Critical Materials, House Committee on Armed Services; the Subcommittees on Federal Services, Post Office, and Civil Service and on Oversight of Government Management, Senate Committee on Governmental Affairs; and Representative Barbara Boxer requested us to review DOD's implementation of the revolving door laws. Specifically, our objectives were to determine the following:

- the extent to which individuals have reported defense-related employment as required by 10 U.S.C. 2397,
- the extent to which required reporting would increase if current reporting requirement exemptions were removed,
- whether the information being provided in the reports complies with the law,
- whether DOD's report review process has improved since our 1986 report,[1] and
- what actions DOD has taken to enforce the reporting requirement.

To determine compliance with the reporting requirement for our 1986 report, we matched computer listings of persons who had left DOD with a Defense Investigative Service computer listing of persons holding industrial security clearances with private companies. Although the exact employment status of former DOD employees was unknown, we believed that holding a security clearance with a defense contractor was a good indicator of employment because the process for obtaining a security clearance is initiated by a company after an individual is hired. This methodology does not include the entire universe of former DOD personnel who are required to report their employment because it does not include those individuals in positions that do not require security clearances.

DOD still does not have information on the employment status of former employees. However, the Defense Manpower Data Center has performed a similar, though not identical, computer-matching for fiscal years 1986 and 1987. For this report, we used the results of the Center's computer-matching to estimate compliance and to determine the number of persons not covered by the reporting requirement because they do not work for a major defense contractor.

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

There are differences between the computer-matching done for our 1986 report and the computer-matching performed by the Center. For example, the Center in performing its analysis eliminated terminated clearances, whereas we had included all clearances on the basis that the individuals had been hired for some period of time. In addition, former employees are now only required to file once unless their duties significantly change or they begin employment or a consulting relationship with another defense contractor, whereas they were previously required to report annually for up to 4 years. Also, the definition of a major defense contractor has changed. These factors do not permit a comparison of the earlier compliance rate with the compliance rates contained in this report. We did not evaluate the reliability of the Center's computer records.

To review DOD's implementation of the legislative changes aimed at improving the process for compiling and reviewing submitted reports, we examined DOD's methods for collecting, reviewing, and reporting information on the disclosure form, and DOD and service implementing regulations on the review process. We also discussed the process and the use of the information with officials from the Army, Navy, Air Force, Marine Corps, and the Standards of Conduct Office of the Office of the Secretary of Defense who are responsible for implementing changes to the post-employment reporting. We also reviewed a statistical sample of 200 forms submitted for the fiscal year 1986 and 1987 filing years to determine whether the information submitted complied with the law and DOD implementing regulations.

We conducted our work from July 1988 to May 1989 in accordance with generally accepted government auditing standards.

Many Former DOD Personnel Still Do Not Report Defense-Related Employment

Two conditions must be met if the reporting by former DOD personnel of subsequent defense-related employment is to be an effective disclosure mechanism. First, the requirement must cover all personnel whose movement to private sector jobs could create a possible conflict of interest. Second, DOD must ensure compliance with the reporting requirement.

We reported in March 1986 that the reporting requirement was not an effective disclosure mechanism because (1) many people who leave DOD and become employed by defense contractors were exempt from reporting that employment and (2) large numbers of former DOD personnel who were required to report did not do so. Since then, the law has been amended to exempt fewer people from the reporting requirement, but still the majority of those who are probably required to report do not do so. Consequently, the reporting system is still not an effective disclosure mechanism. DOD has recently begun follow-up actions to improve compliance, but has not taken the administrative actions provided for in the law to ensure compliance.

Many Are Still Exempt From Reporting

We found that many military and civilian personnel who leave DOD and go to work for defense contractors are exempt from reporting because (1) they do not meet the grade level criteria which limits reporting to civilian GS-13s and above and military O-4s and above and (2) they are employed by contractors with less than $10 million in contracts with DOD. The criteria that an individual be paid at an annual rate of $25,000 or more and that military officers have more than 10 years of service did not appear to have a significant effect on the number of people exempt from the requirement to report defense-related employment.

Reporting Criteria

The amendments to the reporting requirement enacted as part of the fiscal year 1986 Defense Authorization Act now require individuals who leave DOD and accept employment with a defense contractor to publicly disclose that employment if

- they are an employee or consultant for a major defense contractor with at least $10 million in contracts (previously a major defense contractor was defined as one having $10 million or more in negotiated contracts);
- they were military officers at grade O-4 (major or Navy lieutenant commander) and above with 10 or more years of active service, or former civilian employees paid at the basic rate for a GS-13 or above (no change from earlier legislation); and

- they are being paid by the contractor at an annual rate of $25,000 or more (previously an annual rate of $15,000 or more).

Exemption Based on Grade

The number of people below the civilian grade of GS-13 and the officer grade of O-4 who leave DOD and go to work for defense contractors is significant. Table 2.1 shows that over 8,700 personnel at these levels left DOD and obtained an industrial security clearance during fiscal year 1987. We do not know, however, the extent to which their responsibilities may have related to the acquisition process.

Table 2.1: Former Military and Civilian Employees in Fiscal Year 1987 Who Obtained a Security Clearance To Work for a Defense Contractor

Military	
Enlisted personnel	5,690
Warrant officers	219
Officer (O-1 to O-3)	1,275
Civilian through GS-12	1,549
Total	**8,733**

Exemption Based on Years of Service

Based on our 1986 work we believe the provision stating that only those individuals with 10 years or more of active military service must report post-DOD employment with defense contractors exempts few officers that meet the pay grade criteria from reporting. It is possible to achieve the grade of O-4 in less than 10 years, but we found that very few people who leave the services at this grade do so with less than 10 years of service. In any case, 97 percent of former military officers who held industrial security clearances were retirees. This means that they most likely served 20 years or more in the military.

Exemption Based on Rate of Pay

The legislation sets a pay threshold of $25,000 annually for former DOD employees required to report. Specifically, the law (10 U.S.C. 2397(b)(2)(A)) states:

"If a person to whom this subsection applies (i) was employed by, or served as a consultant or otherwise to, a defense contractor at any time during a year at an annual pay rate of at least $25,000 . . . the person shall file a report with the Secretary of Defense . . . ."

Our analysis suggests that the salary rate threshold of $25,000, by itself, would exclude few individuals who otherwise would be required

to report their employment. However, DOD has interpreted this legislative language to exclude even more individuals than we believe was intended. We interpret the legislative language to mean that an individual otherwise covered by this statute must report if he or she is compensated at an amount of at least $12 per hour for the work performed (the equivalent of $25,000 per year) from a single major defense contractor. The language "at any time during a year" clearly supports such an interpretation. DOD has stated that only those earning more than $25,000 annually from a single defense contractor must report. We believe this is an incorrect interpretation. Although DOD's interpretation probably does not have a major impact on individual employees of contractors, it could affect reporting by consultants who are former DOD employees. For example, consultants may earn large amounts annually in the aggregate, but may not earn the threshold amount ($25,000) from any single defense contractor.

Consultants do not constitute a large percentage of those we identified through the computer-matching process as probably being required to report their employment, and DOD's interpretation would only affect those earning less than $25,000 from a single defense contractor. (In our April 1987 report,[1] we estimated that about 6 percent of former DOD personnel who obtained industrial security clearances after leaving DOD worked only as consultants to defense contractors.) However, DOD should ensure that the guidance on reporting required by this earnings criteria corresponds to a correct interpretation of the law.

Exemption Based on the Definition of a Major Contractor

In March 1986, we reported that the definition of a major contractor then in effect—a contractor with more than $10 million in negotiated contracts—exempted a significant number of former DOD employees otherwise required to report. At that time, we found that about 12,000 former DOD employees held security clearances to work for defense contractors, but only about 5,800 worked for a contractor with $10 million or more in negotiated defense contracts.

The Defense Authorization Act for fiscal year 1986 redefined a major contractor as one having any type of contracts totaling $10 million or more. Based on the computer-matching of former DOD employees with a list of people holding an industrial security clearance, we found that this revised definition still exempts about 20 percent of former mid- and

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

high-level personnel working for defense contractors. That is, for fiscal years 1986 and 1987, 1,355 of 6,643 people who held security clearances (about 20 percent) were exempt from the reporting requirement because the company was not a major defense contractor.

Many Former DOD Personnel Required to Report Did Not Do So

The Defense Manpower Data Center estimated that only about 30 percent of former DOD personnel who left DOD to work for defense contractors reported defense-related employment as required by 10 U.S.C. 2397 for fiscal years 1986 and 1987. This estimate was based on a computer-matching of individuals who left DOD with individuals who held industrial security clearances. The security clearance is a strong indicator that the person is an employee of or consultant for a defense contractor. This matching methodology may miss a large number of former DOD employees who should also report. The methodology identifies only those whose current position requires a security clearance, and does not identify a potentially large number of former DOD employees working for defense contractors in positions that do not require a clearance. The results of the Center's computer-matching are shown in table 2.2.

Table 2.2: Defense Manpower Data Center Computer-Matching Results
(Fiscal Years 1986 and 1987)

	Number
Left DOD[a]	**43,436**
Potentially required to file:	
Obtained a security clearance	**6,643**
Less: Not working for a major defense contractor	**−1,355**
Terminated clearances[b]	**−329**
Total who left DOD and probably required to report	**4,959**
Compliance	
Number with clearances who filed reports[c]	**1,450**
Estimate of former DOD employees who should have, but did not, file a report	**3,509**
Left DOD and probably required to report	**4,959**

[a]This number includes persons who left DOD from July 1985 to December 1987.

[b]The Center excluded terminated clearances from their analysis. Those with terminated clearances are also potentially required to report, and we believe they should have been included in the Center's analysis.

[c]Another 536 people without clearances also filed post-DOD employment reports, but they were excluded from our analysis of reporting compliance because neither DOD nor we had any information on the number of former DOD employees working for defense contractors in positions that do not require a clearance.

DOD Has Not Enforced the Reporting Requirement

Before November 1985, the law governing the reporting of defense-related employment did not require DOD to enforce the law. DOD was only required to compile the reports, keep them available for public review, and transmit them to the Congress. DOD was not required to monitor compliance or follow up with individuals who failed to file. As a result, DOD did not determine the extent to which former personnel complied with the law and recommended no penalties for failure to report, although the law authorized a fine of not more than $1,000 or imprisonment for not more than 6 months, or both, for the failure to report.

The Defense Authorization Act for fiscal year 1986 changed the penalty provision to an administrative fine of up to $10,000 for individuals who fail to comply with the filing requirement. In addition, the law established for the first time a requirement for the Secretary of Defense to enforce the law by determining whether a person has failed to file a report. The law authorizes the Secretary to assess a fine against those who fail to file. After providing an opportunity for a hearing, the Secretary's determinations are subject to judicial review.

DOD has taken little action to enforce the reporting requirement. However, in 1988, as a first step, DOD used the Defense Manpower Data Center's computer-matching of a list of former DOD employees with a list of individuals holding industrial security clearances to identify individuals who are probably required to file a report and had failed to do so. In March 1989, DOD sent letters to those individuals requesting they report. This process, however, would not identify those former DOD employees who should have reported but were not on the list of individuals holding a security clearance. The Senior Attorney of DOD's Standards of Conduct Office has indicated that his office may consider using fines to enforce the reporting requirement when necessary.

Conclusions

The system for monitoring the defense-related employment of former mid- and high-level DOD personnel has not been effective, and DOD has no positive way of knowing which former employees are required by law to report. However, the majority of those who are probably required to report based on the computer-matching of former DOD employees with a list of individuals holding an industrial security clearance have not done so. Although DOD has been required to enforce the reporting requirement since November 1985, it essentially took no enforcement action until March 1989 when it sent letters to some individuals who should have

reported. The lack of enforcement action by DOD may have been interpreted by former DOD employees to mean that DOD was not serious about the law.

The revised definition of what constitutes a major contractor significantly reduced the number of persons exempted from reporting; however, many are still exempt. Also, DOD's interpretation of the reporting threshold amount of $25,000 annually from any one contractor rather than a rate of pay of $25,000 any time during the year was, in our opinion, not consistent with the law.

Recommendations

We recommend that the Secretary of Defense direct the Standards of Conduct Office to take more aggressive enforcement action to increase compliance with the reporting requirement. This should include (1) developing a methodology for determining who is required to report, such as individuals who meet the reporting criteria but do not hold a security clearance, (2) following up to the extent deemed necessary for those who fail to report, and (3) as a means of demonstrating DOD commitment to enforcing the law, giving serious consideration to imposing fines against those who after being directly informed of their obligation to report still fail to do so.

Agency Comments and Our Evaluation

In a draft of this report, we recommended that DOD begin requiring individuals to report defense-related employment if their annualized rate of pay was equivalent to $25,000 and other reporting criteria were met. DOD stated that it originally interpreted the $25,000 per year reporting threshold to mean that the Congress was mainly interested in people who left the government and went to work for a contractor for an amount of compensation high enough to possibly sway the ethics of the former employee. However, DOD stated that because of our opinion, and guidance it received from various members of the Congress, it had changed its directive effective August 3, 1989. It now interprets the statute to mean that a former employee being paid by a major defense contractor at an annual rate of pay of $25,000 or more—equivalent to $12 per hour for work performed—must report. In view of this action by DOD, we have deleted our recommendation on this matter.

DOD agreed that we are probably correct that there are former DOD employees who should have reported subsequent employment but failed to do so. DOD said, however, that it has no way of conclusively determining which former employees are required by law to report. It said that

this will continue to be a problem unless the Congress adopts the technical changes to 10 U.S.C. 2397 and 10 U.S.C. 2397c that DOD informally proposed. (10 U.S.C. 2397c requires defense contractors with $10 million in contracts to report information on certain people who formerly worked for DOD.) According to DOD, these technical changes would make these two statutory provisions mirror images of one another so that it could better determine which former employees are required to report. Even though we have not seen the specific wording of DOD's informal proposal, our ongoing work in this area indicates that it would improve DOD's ability to enforce the reporting requirement.

DOD agreed that its reporting enforcement efforts had not included imposing any penalties on those who fail to report, but it disagreed with the implication that enforcement efforts had been lax. DOD said that the problem was that the statute did not provide a mechanism to conclusively determine when a person had violated the reporting requirement. DOD pointed to its other enforcement efforts, such as the recent computer-matching described in our report and the 3,500 letters it mailed to non-reporters, as evidence of its commitment to enforce the reporting requirement.

We support DOD's current efforts to enforce the reporting requirements of 10 U.S.C. 2397. However, the requirement to enforce the statute was included in 1985 legislation, and essentially DOD took no enforcement action until 1988 when the Defense Manpower Data Center provided the Standards of Conduct Office with a computer-matching as a means to identify individuals potentially required to report but who failed to do so. DOD did not send the 3,500 follow-up letters until March 1989, more than 3 years after the enforcement requirement was levied. As of August 21, 1989, 1,663 individuals had not responded to the March letter, and DOD was planning to send a follow-up letter. In our opinion, these actions do not demonstrate aggressive enforcement.

The Reported Information and DOD's Review Process Have Both Improved

In March 1986, we reported that to achieve the anticipated results from the law, the information reported by former DOD personnel must be sufficiently detailed to enable a reviewer to identify whether a possible conflict of interest exists. At that time, even though the reports filed may have met the letter of the law, the information provided was insufficient to enable a reviewer to identify possible conflicts of interest. Also, the review process was primarily administrative, focusing on compiling the reports for submission to the Congress.

The Defense Authorization Act of fiscal year 1986 deleted the requirement for a "brief" job description, which was usually satisfied by listing a job title, and instead required a description of work performed for a defense contractor and any similar work performed while at DOD. As a result, DOD revised both its implementing directives to require more detailed information and the reporting form to emphasize the need to provide detailed information. In addition, the military services revised their review process and assigned the review responsibility to legal staff who would be familiar with conflict-of-interest laws.

DOD's Actions Implementing Legislative Changes on Reporting Procedures

As a result of the legislative changes, on May 6, 1987, DOD issued a revised DOD Directive 5500.7, "Standards of Conduct." This directive summarizes the statute; provides an example of the form that former and current DOD personnel are required to use to report on their employment activities, along with detailed instructions; establishes time frames for submitting the forms; and establishes responsibility for collecting and reviewing them. The directive also requires the services and defense agencies to review the forms submitted for any real or apparent conflicts of interest and provides for administrative penalties for failure to comply with the reporting requirements.

In response to the legislative revisions, DOD also improved the disclosure forms. (See app. I for an example of DD Form 1787.) In addition to requiring an individual to report their former position and title with DOD and their current position and title with the defense contractor, the new instruction requires an individual to provide a detailed description of specific duties while employed with DOD as well as the defense contractor. The instructions also require that the individual identify all contracts he or she worked on and the details of all duties performed on behalf of DOD and/or the defense contractor. In addition to the legislative requirements, DOD's revised instructions require individuals to identify each major system on which the individual worked while employed by either DOD or the defense contractor. However, the revised Form 1787

does not provide a space for reporting this information. Instead, the instructions attached to the form direct individuals to report this information on a separate sheet.

In comparing the fiscal year 1983 reports with reports submitted for fiscal years 1986 and 1987, we found the level of detail had significantly improved. We reviewed a statistical sample of about 200 reports submitted for fiscal years 1986 and 1987 and found that about 89 percent were certified as having sufficient information to meet the statutory reporting requirement. However, about 34 percent of these did not list major systems on which the individual worked while employed by DOD or the defense contractor.[1] We found that those forms generally were certified by the reviewers, despite the lack of the additional information.

DOD's Review Process Has Improved

In March 1986, we reported that the services and the defense agencies conducted an administrative review of the disclosure forms, and although the forms were reviewed for a possible conflict of interest, the reviewers were generally administrative staff unfamiliar with conflict-of-interest laws. Also, the reviewers had little guidance to help them detect potential violations.

We discussed the review process with officials of the reviewing offices for each service and the Office of the Secretary of Defense. We spoke with 12 reviewing officials and found they were all legal staff, working in the ethics area who were knowledgeable of conflict-of-interest laws, rules, and regulations.

The current review is performed on two levels. Generally, administrative staff perform a clerical review to determine whether the individual is required to file under the provisions of the statute. Legal staff attorneys then perform a review for ethics and conflict-of-interest issues.

According to reviewing officials, when additional information is needed to support certifying the form they request the information from appropriate sources, usually the reporting individual. In our sample, about 5.5 percent of the forms had not been certified because the reporting individual had failed to provide requested information. About 89 percent of the forms we reviewed had been certified. We could not determine the

[1]We are 95 percent confident that between 27.3 percent and 40.4 percent of the 2,006 persons who filed a report did not provide this information. Our universe differs from that used by the Defense Manpower Data Center because it covers a slightly different time period.

certification status of the remaining 5.5 percent because the forms were missing from the file or the certification page was not attached.

Conclusions

Since our 1986 report, there have been improvements in both the amount of information provided by individuals reporting defense-related employment and DOD's review of this information. However, although most reports provided sufficient information to meet the statutory reporting requirement, about 34 percent did not report whether major defense systems were worked on by the individuals. We believe that a list of the major systems former DOD personnel worked on is important so that potential links between the individual's past work at DOD and work for a defense contractor can be identified. Despite this omission, DOD reviewers generally accepted and certified these forms. In some cases, reports were not certified because the information provided was inadequate, and DOD has requested but not obtained the additional information in all cases.

Recommendations

We recommend that the Secretary of Defense direct the Standards of Conduct Office to modify the reporting form to provide space for individuals to report positively or negatively whether they worked on major defense systems while at DOD or at the defense contractor, clarify the reporting instructions to specify that negative reporting is also required, and begin enforcing the requirement that former employees provide this information on their reporting form.

Agency Comments and Our Evaluation

Our draft report stated that 34 percent of the disclosure reports received by DOD were deficient because they did not contain information on whether the individual had worked on a major defense system. Accordingly, the draft report contained a proposed recommendation that DOD more aggressively enforce this requirement.

In commenting on the draft, DOD stated that simply because a list of major systems was missing from an individual's report does not mean that the report was deficient. DOD stated that the instructions for Form 1787 require individuals to specify any major defense systems that they worked on, but the form does not require a negative comment if no major systems were worked on. DOD stated that it presumes that if no major defense systems were listed, then none were worked on by the individual.

We agree with DOD that the instructions for Form 1787 do not explicitly require negative reporting by individuals. However, based on our review of the information reported by the 34 percent of individuals who did not list major defense systems, we do not share DOD's belief that none were worked on. Descriptions of duties strongly indicated that some of these individuals worked on major defense systems on behalf of DOD or the defense contractor. DOD's rationale for adding this requirement was to obtain enough information to evaluate whether the filers violated 10 U.S.C. 2397b. We agree with this rationale because a description of a person's duties may not disclose a link between the individual's work at DOD and at the defense contractor, whereas a listing of the same major systems would disclose such a link. Accordingly, we have revised our recommendation. It now calls for the reporting forms and instructions to be modified to make clear that either a positive comment (i.e., a listing of major systems, or a negative comment is required).

DOD's Form for Reporting Defense-Related Employment

REPORT OF DOD AND DEFENSE RELATED EMPLOYMENT
AS REQUIRED BY 10 U.S.C. §2397
(If additional space is required, use blank sheets of paper referencing item numbers below.)

Form Approved
OMB No. 0704-0047
Expires Oct 31, 1989

Privacy Act Statement

AUTHORITY: 10 U.S.C. §2397; 10 U.S.C. §2397b; Executive Order 9397 (Social Security Number (SSN)).

PRINCIPAL PURPOSES: Each report will be reviewed by Department of Defense officials to determine compliance with the intent of the Act. The purpose of requesting the SSN is for positive identification and retrieving the record.

ROUTINE USE: Information derived from the reports, including names of reporting individuals and their current and former employers, shall be provided annually to the Congress. The reports themselves shall be available for review by members of the public and may otherwise be made available as authorized by law.

DISCLOSURE: Mandatory. Knowing or willful failure to file or report information required to be reported by this law, or falsification of information, may subject you to administrative penalty of up to $10,000 pursuant to regulations promulgated by the Secretary of Defense. Knowing or willful falsification of information required to be filed may also subject you to criminal prosecution under 18 U.S.C. §1001, leading to a fine of not more than $10,000 or imprisonment for not more than five years or both.

(Please read Instructions before completing this form.)

1. NAME *(Last, First, Middle Initial)*	2. SOCIAL SECURITY NO.	3. HOME TELEPHONE NO.
	___-___-___	___-___-___

4. HOME ADDRESS

a. STREET	b. CITY	c. STATE	d. ZIP CODE
			___-___

5. IS THIS AN INITIAL REPORT? *(X a. or b.)*
- ☐ a. YES *(If "Yes," go to Item 6.)*
- ☐ b. NO *(If "No," go to Item 5.c.)*
- c. If this is NOT an initial report, reason for subsequent report is: *(X one)*
  - ☐ (1) change in employer
  - ☐ (2) change in duties

6.a. STATUS *(X as many as applicable)*

	6.b. Rank/ Grade	6.c. Most Recently Acquired Status *(X one)*
☐ (1) RETIRED MILITARY - O4 OR ABOVE	(1)	(1)
☐ (2) FORMER MILITARY - O4 OR ABOVE	(2)	(2)
☐ (3) RETIRED CIVILIAN - PAID EQUAL TO GS-13 OR ABOVE	(3)	(3)
☐ (4) FORMER CIVILIAN - PAID EQUAL TO GS-13 OR ABOVE	(4)	(4)
☐ (5) PRESENT DOD EMPLOYEE	(5)	(5)

PART I
To be completed only by former officers or employees of DoD who are now employed by contractor. (Category I)

7.a. DATE OF TERMINATION OF MOST RECENT DOD SERVICE OR EMPLOYMENT *(YYMMDD)*	7.b. NAME OF MOST RECENT MILITARY DEPARTMENT OR DOD AGENCY

8. DATE OF EMPLOYMENT WITH DEFENSE CONTRACTOR *(YYMMDD)*	9. IS YOUR ANNUAL COMPENSATION FROM OR SALARY RATE WITH THE DEFENSE CONTRACTOR $25,000 OR MORE?
	☐ a. YES ☐ b. NO

10. NAME OF DEFENSE CONTRACTOR EMPLOYER	11. WORK TELEPHONE NO.
	___-___-___

12. WORK ADDRESS

a. STREET	b. CITY	c. STATE	d. ZIP CODE
			___-___

13. YOUR POSITION WITH CONTRACTOR

a. *(X one that best describes position.)*
- ☐ (1) Administrator
- ☐ (2) Researcher
- ☐ (3) Contract Officer
- ☐ (4) Manager
- ☐ (5) Consultant
- ☐ (6) Other

b. SPECIFIC TITLE(S)

c. YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Include specifics on contracts or actions related to duties held in ALL former DoD positions that are reported in Item 14 below. See Instructions.

14. YOUR FORMER DOD POSITION

a. *(X one that best describes position.)*
- ☐ (1) Administrator
- ☐ (2) Researcher
- ☐ (3) Contract Officer
- ☐ (4) Manager
- ☐ (5) Consultant
- ☐ (6) Other

b. SPECIFIC TITLE AND SPECIFIC DOD ORGANIZATION

c. YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Report information requested in 14.a., b., and c. for each former DoD position held within 2 years prior to contractor position. See Instructions.

15. DOD DISQUALIFICATION ACTIONS (IF ANY) *(Within two years prior to contractor employment.)*
- ☐ a. YES *(If "Yes," go to Item 15.c.)*
- ☐ b. NO *(If "No," go to Item 16.)*

c. DESCRIBE DISQUALIFICATION ACTIONS

DD Form 1787, MAR 87 *Previous editions are obsolete* 2615/075

PART II
To be completed only by former employees of contractors who are now DoD officers or employees. (Category II)

16.a. DATE OF TERMINATION WITH DEFENSE CONTRACTOR (YYMMDD)	16.b. NAME OF FORMER DEFENSE CONTRACTOR EMPLOYER (Most recent)		
17. DATE OF EMPLOYMENT OR SERVICE WITH DOD (YYMMDD)	18. IS YOUR ANNUAL SALARY WITH DOD AT A RATE EQUAL TO OR ABOVE GS-13?	☐ a. YES ☐ b. NO	c. SPECIFY AMOUNT $.
19. NAME OF SPECIFIC DOD ORGANIZATION(S) BY WHICH EMPLOYED (Within the last 2 years)			20. WORK TELEPHONE NO. - -
21. WORK ADDRESS			
a. STREET	b. CITY	c. STATE	d. ZIP CODE -

22. CURRENT DOD POSITION

a. (X one that best describes position.)
☐ (1) Administrator ☐ (4) Manager
☐ (2) Researcher ☐ (5) Consultant
☐ (3) Contract Officer ☐ (6) Other

b. SPECIFIC TITLE(S)

c. YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Include specifics on contracts or actions related to duties held in ALL contractor positions that are reported in item 23 below. See Instructions.

23. CONTRACTOR POSITION

a. (X one that best describes position.)
☐ (1) Administrator ☐ (4) Manager
☐ (2) Researcher ☐ (5) Consultant
☐ (3) Contract Officer ☐ (6) Other

b. SPECIFIC TITLE AND SPECIFIC DEFENSE CONTRACTOR NAME AND BRANCH

c. YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Report information requested in 23.a., b., and c. for each contractor position held within two years prior to current position. See Instructions.

CERTIFICATION
To be completed by all filers.

24. I certify that the above information is true, complete, and correct to the best of my knowledge. I understand that I must file a new report of DoD and defense related employment within 30 days if, within the two years immediately following the termination of my most recent DoD service or employment, the information in this report ceases to be accurate. I understand subsequent reports are not required after such two year period.

a. SIGNATURE	b. DATE SIGNED

REVIEW
To be completed by reviewing official.

25. I certify that I have reviewed this Report of DoD and Defense Related Employment (DD Form 1787) in accordance with the guidance set out in DoD Directive 5500.7, enclosure 8.

a. SIGNATURE	b. OFFICE	c. DATE SIGNED

DD Form 1787, MAR 87

Comments From the Department of Defense

DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301-1600

21 AUG 1989

Mr. Frank C. Conahan
Assistant Comptroller General
United States General Accounting Office
National Security and International Affairs Division
Washington, D.C. 20548

Dear Mr. Conahan:

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) Draft Report, "DOD REVOLVING DOOR: Processes Have Improved But Post-DoD Employment Reporting Still Low," dated June 30, 1989 (GAO Code 391100), OSD Case 7935-A.

Although not agreeing fully with all of the findings and recommendations included in the GAO report, the Department found it to be very useful. In addition, it is obvious that substantial time and effort were invested by the GAO staff in collecting the data for this report. The ethics personnel in the DoD Standards of Conduct Office, who worked with the representatives of your office, found them to be highly competent and willing to discuss matters and offer helpful suggestions. This cooperative approach to our common goal of developing an efficient reporting system is appreciated.

The detailed DoD Comments on the GAO draft report findings and recommendations are provided in the enclosure. The Department appreciates the opportunity to comment on the draft report.

Sincerely,

L. Niederlehner
Deputy General Counsel

Enclosure

ENCLOSURE

**DoD Response to GAO Draft Report Dated June 30, 1989
(GAO Code 391100)
"DOD REVOLVING DOOR: Processes Have Improved
But Post-DoD Employment Reporting Still Low"
OSD Case 7935-A**

DEPARTMENT OF DEFENSE COMMENTS
* * * * *

FINDINGS

FINDING A: Many Former DoD Employees Are Still Exempt From Reporting. The GAO found that, despite recent amendments to strengthen the requirement for former DoD employees to report subsequent defense-related employment with defense contractors, many military and civilian personnel are exempt from reporting, because of the following reasons:

- *they do not meet grade level criteria (civilian grade GS-13 and above and military O-4 and above); and*

- *they are employed by contractors with less than $10 million in contracts with the DoD.*

The GAO noted that other criteria, including requirements for reporting by (1) any individual having an annual salary of $25,000 or more and/or (2) any officer having more than 10 years of service, did not appear to have had a significant effect on the number of people exempt from reporting defense-related employment. The GAO observed, however, that the number of people below civilian grade GS-13 and officer grade O-4, who leave DoD and go to work for defense contractors, is significant. In addition, the GAO disagreed with the DoD interpretation that only those earning more than $25,000 annually from a single defense contractor must report. The GAO interpreted the legislative language to include any person compensated at a rate of $12 per hour "at any time during the year," (a rate equal to $25,000 per year) by a single defense contractor, regardless of the total amount earned. The GAO concluded that the DoD should assure that the reporting requirements reflect a correct interpretation of the law.

The GAO also found that, even after the Defense Authorization Act for FY 1986 redefined a major contractor as one having "any type of contract" totaling $10 million or more, the law still exempts about 20 percent of former mid and high level personnel working for defense contractors. (pp. 23-25/GAO Draft Report)

Now on pp. 11-14.

- DoD RESPONSE: Concur. The reason that not all former DoD personnel are subject to the reporting requirement is not a DoD interpretation -- rather, it is the decision of the Congress to target certain categories. The Congress wrote the relevant statute, 10 U.S.C. 2397, limiting coverage to former officers and employees who were GS-13 or O-4 level and higher. The Congress determined that only those higher level former employees were to report their subsequent employment with defense contractors. Undoubtedly, the Congress recognized that there is little to be gained from gathering data on former employees who served at lower levels. Lower level former employees are less likely to have engaged in work that could put their new employment in conflict with their Government employment. Limiting the level of former employees that DoD is required to keep track of has the practical consequence of keeping the work load of the DoD ethics personnel manageable.

Also, the Congress limited coverage to former employees who work for contractors that have $10 million or more in defense contracts. In this law, the Congress required that only the employees of the largest defense contractors report their employment. There are presently over 1,100 contractors with $10 million in defense contracts.

The Congress also specified that only military officers who served for 10 years or more should be covered by the statute. Few officers who are O-4 and above have served less than 10 years. The reason the Congress decided to set this standard does not appear in the legislative history. The DoD would prefer that this criterion be eliminated from the statute because it adds an unnecessary complexity. The Department will propose such a legislative change if it is still necessary after the Congress has acted on the President's ethics proposal.

The statute is specific in that only individuals who receive compensation at the rate of $25,000 per year from a defense contractor are covered. The DoD originally interpreted this to mean that the Congress was mainly interested in people who left the Government and went to work for a contractor for an amount of compensation high enough to possibly sway the ethics of the former employee. It seemed unlikely that the public would be interested in information on former employees, who make only a few hundred dollars from any single defense contractor, even though they may make a large total income from many different contractors. Therefore, the DoD interpretation was that an individual had to have a reasonable expectation of making $25,000 or more from a single defense contractor in order to be required to file. However, the GAO concluded that this interpretation is in error, though the GAO report does not spell out the basis for its interpretation.

2 ENCLOSURE

In light of this GAO opinion and the guidance received bit by bit from various members of Congress, through informal means, the Department will change its policy by sending a memorandum explaining the new interpretation to the DoD personnel who administer the program. A copy of the August 3, 1989 memorandum is attached. Henceforth, the statute will be deemed to cover individuals who make as little as $12 per hour from a $10 million defense contractor, which the GAO has determined is the hourly wage that amounts to an annual rate of $25,000. This amount is so low that the DoD prefers to have this criterion eliminated from the statute because it adds an unnecessary complexity. It would be easier to require everyone who meets the other criteria to file a report regardless of the amount of compensation received. The DoD will propose such a change if it is still necessary after the Congress has acted on the President's ethics proposal. The DoD expects that Congress will consider changes to 10 U.S.C. 2397 at that time as part of its comprehensive review, even though the President's ethics proposal does not address the problems with the statute and program.

FINDING B: Many Former DoD Personnel Required to Report Did Not Do So. The GAO found that the Defense Manpower Data Center estimated that, for FY 1986 and FY 1987, only about 29 percent of former DoD personnel, who left DoD to work for defense contractors, reported defense-related employment as required by 10 U.S. Code 2397. The GAO reported that, based on its sample of about 4,900 former Defense employees holding industrial security clearances and who probably should have reported subsequent employment with a defense contractor, only 1,450, or 30 percent actually did so. The GAO noted that the system for monitoring the defense-related employment of former mid and high level DoD personnel has not been effective and the DoD has no way of knowing which former employees are required by law to report. (pp. 23-25/GAO Draft Report)

Now on pp. 11-14.

- DoD RESPONSE: Concur. The GAO is probably correct that there are former DoD employees who should have reported subsequent employment and who did not. The GAO is correct in noting that DoD has no way of conclusively determining which former employees are required by law to report under the statute, 10 U.S.C. 2397. The Department is committed to initiating actions to improve compliance with the statute. For example, the Standards of Conduct Office mailed letters to the nearly 3,500 former employees who held industrial security clearances, but who had not filed the DD Form 1787, Report of DoD and Defense Related Employment. Responses are presently being evaluated and as soon as evaluation is completed, by the end of August, 1989, follow-up letters will be sent. If responses are not received or are inadequate, investigations possibly leading to disciplinary actions will be pursued.

3 ENCLOSURE

Mailing letters to former employees has had limited success. Of the 3,500 letters sent, 270 letters were returned by the post office as undeliverable because the address of the former employee on file with the DoD is no longer accurate; 154 responses were received indicating that former employees were never required to file because they did not meet the statutory criteria; 280 responses were received that conclusively indicated that the former employee had already filed a report; 304 responses were received from individuals who must be contacted for proof of their claim that they are not required to file; and 620 forms were received that are being processed to be included in the 1990 consolidated report to Congress, most of which would have been filed on time without the letters DoD mailed.

The remaining number of individuals, approximately 1663 possible violators, have not yet been heard from. The Standards of Conduct Office is planning to send each person who has not responded one more letter. The names and information of those not providing adequate responses within a reasonable period of time following the second notice will then be turned over to the appropriate body for investigation, in preparation for imposition of disciplinary action. The Department is evaluating ways to improve the computer matching program to eliminate the significant waste of effort presently being experienced. The DoD is open to any reasonable suggestion on how to do this.

It is the DoD view, however, that no improvements to the computer matching program will improve the compliance rate to the same degree that improvements to the statutes would. The DoD informally proposed technical changes to 10 U.S.C. 2397 and 10 U.S.C. 2397c so that the two statutes would become mirror images of one another. Title 10 U.S.C. 2397c is the statute that requires $10 million defense contractors to report information on certain people they have hired who formerly worked for the DoD. If the two statutes matched, then DoD would better be able to determine which former employees are required to file. These changes have not been included in any proposed ethics legislation. The DoD will draft legislation, if there is still a need for it after Congress considers the President's ethics proposal. The DoD expects that the Congress will consider issues related to 10 U.S.C. 2397 and 10 U.S.C. 2397c at that time. The President's ethics proposal does not address the problems related to 10 U.S.C. 2397, but it does resolve many other problems in the ethics area and the DoD supports it.

An even more efficient legislative solution would be the elimination of the individual reporting statute, 10 U.S.C. 2397, and improvement to the contractor reporting statute, 10 U.S.C. 2397c, so that all DoD efforts may be focused on a single reporting program that

works well rather than splitting time and resources to manage two systems, one of which works poorly at best. Although the President's ethics proposal includes improvement to 10 U.S.C. 2397c, those improvements will not be effective unless 10 U.S.C. 2397 is repealed.

FINDING C: DoD Has Not Enforced the Reporting Requirement. The GAO reported that the FY 1986 Defense Authorization Act established for the first time a requirement for the Secretary of Defense to enforce the law by determining whether a person has failed to file a report. (The GAO noted that, prior to FY 1986, the DoD was not required to monitor compliance or follow-up with individuals who failed to file). The GAO found, however, that the DoD has taken little action to enforce the reporting requirement. The GAO did acknowledge that, in 1988, a Defense Manpower Data Center computer matching list was used to identify those individuals, who are probably required to file, and in March 1989, the DoD sent letters to those individuals requesting that they report. The GAO also noted that the Senior Attorney of the DoD Standards of Conduct Office indicated that his office may consider using fines to enforce the reporting requirement when necessary. The GAO concluded that, although the DoD has been required to enforce the reporting requirement since October 1985, it essentially took no enforcement action until March 1989. The GAO further concluded that the lack of enforcement by the DoD may have been interpreted by former DoD employees to mean that the DoD was not serious about the law. (pp. 25-28/GAO Draft Report)

Now on p. 15.

- DoD RESPONSE: Partially concur. Regarding enforcement, although it is correct that no penalties have been imposed as yet, the DoD has implemented every proposal for enforcing the reporting requirement -- but has had limited success because of the nature of the statute itself. No one has yet envisioned a way to conclusively determine when a person has violated the filing requirement of the statute as the law presently reads, because the DoD cannot know who goes to work for a defense contractor after Government service, and when. If the statute were changed to be a mirror image of 10 U.S.C. 2397c, there might be a realistic expectation of identifying who should have filed by comparing the names the contractors reported with the names of the individuals who reported. Without that direct comparison of names, efforts toward enforcement are largely ineffective.

One effort toward enforcement that has had some slight success is the program, described above, that compares the names of former DoD employees with the names of people who have received industrial security clearances. Through the computer matching program, the DoD is in the process of determining the names of people who may be in violation of the reporting requirement of 10 U.S.C. 2397. This is a labor intensive task, in that hundreds of phone calls were received regarding the 3,500 letters the DoD mailed out and each written response had to be evaluated individually. The results of this major effort were not very helpful and showed the computer matching

program to have timing problems that limit its usefulness, as discussed above. The DoD will nonetheless send follow-up letters to individuals once it determines who may be in violation of the reporting requirement.

It is the DoD view that most failures to report, or the lack of detail on the individual reports, are due to a misunderstanding of the statute and that nearly everyone the DoD contacts will eventually report, once informed. If this succeeds, then it will not be necessary to conduct investigations or impose penalties for violation of the statute. If there remain individuals who fail to respond to the letters and inquiries or who fail to respond with proper detail or candor, however, then the DoD would ask the appropriate office to conduct an investigation into the matter, in preparation for assessment of monetary penalties.

The DoD does not agree with the implication that it has not attempted to enforce the reporting requirement of 10 U.S.C. 2397. The lack of action on specific cases to date does not indicate lack of commitment on the part of the DoD. Instead, it is an inevitable result of the complexity and relative newness of the statute involved and the lack of mechanisms (until recently) to determine which former DoD servants might be required to file. Also, the DoD is attempting to accomplish the purpose of the reporting requirement by informing people of the need to report, so that eventually everyone who should file will file (and will file with sufficient detail). Consideration of disciplinary actions under section 2397 should be the last resort.

It should also be recognized that there may be investigations or prosecutions of people under other ethics statutes, the violations of which might be uncovered directly by reviewing the individual reports filed in accordance with section 2397. These adverse actions, however, would not be enforcement actions under section 2397, but might be actions for violations of 18 U.S.C. 207, for example. The DoD reports cases of possible violations of 18 U.S.C. 207 and other criminal statutes to the Department of Justice for prosecution, as it identifies them within the various DoD Components.

FINDING D: The DoD Has Taken Action To Implement Legislative Changes and Improve Reporting Procedures. The GAO reported that, in response to legislative changes included in the FY 1986 Defense Authorization Act, the DoD revised both its implementing directives to require more detailed information, and the reporting form to emphasize the need to provide detailed information. The GAO further reported that the revised DoD Directive 5500.7, Standards of Conduct, requires the Services and the Defense Agencies to review the forms submitted for any real or apparent conflict of interest and provides for administrative penalties for failure to conform with the reporting

6 ENCLOSURE

requirements.

The GAO also noted that the DoD significantly improved the disclosure forms, requiring a detailed description of specific duties while employed by the DoD and the defense contractor. In comparing the FY 1983 reports with the FY 1986 and FY 1987 reports, the GAO found that the level of detail had significantly improved. Notwithstanding the improved increased detail, the GAO found that 34 percent of the FY 1986 and FY 1987 reports in the sample it reviewed did not meet the added DoD requirement to list the major systems the individual worked on while employed by the DoD or the defense contractor. The GAO also found that those reports were generally certified despite the lack of additional information. (pp. 29-31/GAO Draft Report)

Now on pp. 19-20.

- DoD RESPONSE: Partially concur. The DoD concurs that legislative changes have been implemented and that the reporting form and procedure have been improved. The DoD does not concur with the GAO finding that 34 percent of the reports in the sample were deficient because they did not meet the added DoD requirement to list the major systems the individual worked on while employed by the DoD or the defense contractor.

The instructions for the form, DD Form 1787, which individuals use to comply with the requirement of 10 U.S.C. 2397, require individuals to specify any major defense systems that they work on for the defense contractor. However, the form does not require the reporting individual to make a negative comment if no major defense systems were worked on. The DoD presumes that, if no major defense systems were listed, then none were worked on by the individual. Thus, the GAO comment that 34 percent of responses did not meet the added requirement is inappropriate.

Section 2397 of Title 10 does not require that information on major defense systems be collected. The reason the instruction on major defense systems was added in the first place was to attempt to glean enough information from the forms to evaluate the filers for possible violations of 10 U.S.C. 2397b. Such an evaluation is necessary if the filer formerly performed procurement functions for the DoD. Section 2397b was a very new statute when the form was designed and the DoD was uncertain as to the best way to capture the appropriate information on the form. Now the DoD view is that additional information on major defense systems should be requested of a filer only when there is an indication on the form that the statute might apply. The statute applies to only a small number of filers.

FINDING E: The DoD Review Process Has Improved. The GAO reported that the Office of the Secretary of Defense and the Military Services revised their review process and assigned the review responsibility to legal staff, who

7 ENCLOSURE

Now on pp. 19-20.

would be familiar with conflict-of-interest laws. The GAO found that, in the sample, (1) 89 percent of the forms had been certified, (2) 5.5 percent had not been certified because the requested information had not been provided, and (3) the certification status of the remaining 5.5 percent could not be determined because the forms were missing or the certification page was not attached. (pp. 32-33/GAO Draft Report)

- DoD RESPONSE: Concur. The DoD has provided detailed written guidance for reviewers. Also, members of the Standards of Conduct Office are in frequent contact with reviewers regarding the review and processing of the DD Forms 1787. The small number of forms that have not been certified are forms from filers with whom the reviewers are presently in contact in an effort to have the clearest detail on which to base an evaluation or they are forms of filers who have failed to provide sufficient detail and who are being investigated in preparation for possible disciplinary actions. Each DoD Component is responsible for processing such actions within the Component. Some forms are extremely difficult to evaluate because filers have performed and are still performing very complicated technical functions. The certification of a high percentage of forms indicates that reviewers have completed legal reviews and collected sufficient information to convince them that there is no apparent violation of ethics rules.

* * * * *

RECOMMENDATIONS

Now on p. 16.

RECOMMENDATION 1: The GAO recommended that the Secretary of Defense direct the Standards of Conduct Office to take more aggressive enforcement action to increase compliance with the reporting requirement--such action to include (1) developing a methodology for determining who is required to report, such as individuals who meet the reporting criteria but do not hold a security clearance, (2) following up to the extent deemed necessary with those who fail to report, and (3) as a means of demonstrating DoD commitment to enforcing the law, giving serious consideration to imposing fines against those who, after being directly informed of their obligation to report, still fail to do so. (p. 28/GAO Draft Report)

- DoD RESPONSE: Partially Concur. With regard to taking more aggressive enforcement action to increase compliance:

(1) Partially Concur. The DoD is committed to developing a methodology for determining who is required to report, such as a plan for determining those individuals who meet the reporting criteria but do not hold security clearances. The DoD has studied the matter, asked GAO to make suggestions toward this end, and has requested input from all the DoD Components and interested members of

8 ENCLOSURE

Congress. So far, no methodology has been suggested, other than the computer matching program already implemented by the DoD.

(2) Concur. The DoD Standards of Conduct Office is already following up on people who may be required to report, but have failed to do so. As noted above, the DoD sent out 3,500 letters to such individuals and is pursuing each case. Such a program takes time, however. The DoD expects to have the program running smoothly very soon, but nothing the Department can do will make it a strong program unless the statutes are changed so that section 2397 and section 2397c match each other.

(3) Concur. The DoD will, of course, impose disciplinary action upon those who fail to report after being informed of their obligation to do so. The process of determining who those individuals might be is still ongoing, as is the development of the necessary administrative machinery. (See DoD response to Finding B)

Now on p. 16.

RECOMMENDATION 2: The GAO recommended that the Secretary of Defense begin requiring reporting of defense-related employment if the person's annualized rate of pay is equivalent to $25,000 (an amount equal to about $12 an hour) and the other reporting criteria are met. (p. 28/GAO Draft Report)

- DoD RESPONSE: Concur. Although it should be recognized that this is an extremely conservative interpretation of the intent of the Congress, to be absolutely prudent, the DoD will henceforth demand a report from any former Government employee who has made even as little as $12 for an hour of work from a $10 million defense contractor, if the other criteria are met. This change was announced on August 3, 1989.

Now on pp. 20-21.

RECOMMENDATION 3: The GAO recommended that the Secretary of Defense direct the Standards of Conduct Office to take appropriate action, as provided for in the law, to assure that those persons, who are requested to provide additional information on major systems as required by DoD Directive 5500.7 do so. (p.34/GAO Draft Report)

- DoD RESPONSE: Nonconcur. The recommendation is essentially moot. The DoD already takes appropriate action to assure that additional information is provided when necessary to properly evaluate each report. The statute does not provide that any information on major defense systems be collected. Information on major defense systems is, however, being collected so that reviewers will have enough information to consider 10 U.S.C. 2397b when evaluating the forms. At this point, individuals, who make no mention of major defense systems on their forms, are presumed to have worked on none. The DoD

9 ENCLOSURE

already ensures that those who are requested to provide additional information on major defense systems do so. If individuals do not, the names of such individuals, along with the available information, will be forwarded to the appropriate agency for investigation, in preparation for the possible imposition of penalties.

ATTACHMENT: August 3, 1989, Letter to 1787 Action Officers Changing 1787 Policy

10 ENCLOSURE

Major Contributors to This Report

National Security and International Affairs Division, Washington, D.C.

Harold J. Johnson, Director, Manpower Issues, (202) 275-3990
Thomas J. Denomme, Assistant Director
Jack G. Perrigo, Jr., Evaluator-in-Charge
Olivia L. Parker, Evaluator
Mario Zavala, Evaluator
Arthur James, Statistician

Requests for copies of GAO reports should be sent to:

U.S. General Accounting Office
Post Office Box 6015
Gaithersburg, Maryland 20877

Telephone 202-275-6241

The first five copies of each report are free. Additional copies are $2.00 each.

There is a 25% discount on orders for 100 or more copies mailed to a single address.

Orders must be prepaid by cash or by check or money order made out to the Superintendent of Documents.

United States
General Accounting Office
Washington, D.C. 20548

Official Business
Penalty for Private Use $300

First-Class Mail
Postage & Fees Paid
GAO
Permit No. G100