



RESEARCH SUMMARY

Effects of Ethics Regulations for Post-Government Employment

In response to congressional tasking in the National Defense Authorization Act (NDAA) for Fiscal Year 2023, the Secretary of Defense asked the Institute for Defense Analyses (IDA) to assess the effect of certain ethics requirements on the Defense Department's recruitment and retention and its ability to detect, deter, prevent and redress ethical misconduct. This summary describes the findings of IDA's review.

In accordance with congressional requirements for this work, IDA assessed four ethics provisions for the federal executive branch that primarily address restrictions on senior civilian and military Department of Defense (DOD) officials following their government employment. IDA conducted legal, quantitative and qualitative analyses.

- **Legal analysis.** IDA examined the language, history, scope and underlying purposes of the four DOD-specific ethics provisions in the context of longstanding statutes and regulations addressing comparable issues throughout the executive branch. IDA found the restriction on behind-the-scenes support for lobbying to be particularly problematic for reasons explained in the [full report](#).
- **Quantitative analysis.** IDA's review of DOD data and publicly available information did not find measurable impacts of post-government employment restrictions on DOD recruitment and retention. As explained in the [full report](#), however, the absence of conclusive data does not necessarily mean that the provisions had no impact on recruiting or retention.
- **Qualitative analysis.** IDA found that former DOD officials are frustrated by uncertainty and confusion over the language of recently enacted restrictions that are unique to the DOD.

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DOD ethics officials spend considerable effort trying to help them understand what they can and cannot do under the provision.

IDA identified the following areas of concern with the examined ethics provisions:

- **Inconsistency and overlap.** The DOD-unique ethics provisions substantially overlap with ethics provisions that address the same issues across the executive-branch, but differ in several significant ways.
- **Risk of confusion.** The proliferation of ethics provisions that address the same or similar issues, impose somewhat different restrictions, and use slightly different language creates a patchwork of requirements and risks confusion that could undermine compliance and enforcement.
- **Impact on detection, deterrence and redress.** More stringent constraints on post-government employment, such as an extended cooling-off period (time that must pass before the former employee can work in a related field), are likely to reduce opportunities for improper influence. However, confusing and poorly understood post-government employment restrictions appear to drive former officials not only from engaging in potentially improper communications, but also from engaging in beneficial forms of conduct.
- **Impact on arms-length transactions.** For reasons explained in the [full report](#), IDA found that the removal or alteration of the provisions under review is unlikely to have a perceptible impact on the ability of the DOD to negotiate and execute contracts at arm's length.
- **Impact on recruitment and retention.** Individual decisions to accept or leave senior DOD positions appear to be driven

primarily by factors other than the rules themselves. On the other hand, relatively strong anecdotal evidence suggests that post-government employment legislation has been an impediment to the DOD's effort to recruit and hire for positions that require special training or expertise.

- **Impact on access to expertise.** Former DOD officials help the DOD connect to the private sector by helping industry understand the DOD's needs and, conversely, by helping the DOD understand how industry technologies and capabilities can address those needs. Overbroad restrictions on the post-employment conduct of such officials could reduce government access to knowledge and expertise needed in support of national security matters.
- **Application to non-DOD officials.** Officials in nondefense agencies often make regulatory decisions with a financial impact on private-sector entities comparable to those made by senior DOD acquisition personnel. Despite the magnitude of these officials' decisions, they are not subject to the same restrictions that former DOD officials face.

IDA considered a range of potential modifications to the provisions reviewed to address some of these issues. For details, see the full report, [IDA 3001788](#).



Senior Fellow Peter K. Levine (plevine@ida.org) serves as the director of the [Defense Management Institute](#), a

collaborative research organization operated by IDA. Jared M. Huff (jhuff@ida.org) is a member of the research staff in the Systems and Analyses Center, an IDA-managed federally funded research and development center.