118TH CONGRESS
1ST SESSION

S.

To amend title 37, United States Code, to strengthen and expand restrictions on retired members and members of reserve components of the uniformed services accepting employment and compensation from foreign governments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. WARREN (for herself and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend title 37, United States Code, to strengthen and expand restrictions on retired members and members of reserve components of the uniformed services accepting employment and compensation from foreign governments, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Retired Officers Conflict of Interest Act of 2023”.

(b) Table of Contents.—The table of contents for this Act is as follows:
Sec. 1. Short title; table of contents.
Sec. 2. Approval process for employment and compensation.
Sec. 3. Prohibition on members of the Armed Forces negotiating employment with foreign governments while on active duty.
Sec. 4. 30-month prohibition on retired members of the Armed Forces eligible for access to classified information seeking approval for employment by foreign governments.
Sec. 5. Notification of obligations.
Sec. 6. Post-retirement employment reporting.
Sec. 7. Penalties.
Sec. 8. Guidance.
Sec. 9. Public reporting.
Sec. 10. Database of employment approvals.
Sec. 11. Definitions.
Sec. 12. Comptroller General of the United States review.
Sec. 13. Effective date; applicability.

SEC. 2. APPROVAL PROCESS FOR EMPLOYMENT AND COMPENSATION.

Section 908 of title 37, United States Code, is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively, and by moving such subparagraphs, as so redesignated, 2 ems to the right;

(B) by striking “Subject to” and inserting the following:

“(1) IN GENERAL.—Subject to”;

(C) in subparagraph (C), as redesignated, by striking “Commissioned Reserve Corps” and inserting “Ready Reserve Corps”; and

(D) by adding at the end the following new paragraph:
“(2) APPLICATION TO PRIVATE ENTITIES.—The acceptance by a person described in paragraph (1) of employment (and compensation related to that employment) or payments or awards indirectly from a foreign government through a private entity shall be subject to the provisions of this section to the same extent and in the same manner as such provisions apply to employment (and compensation related to that employment) and payments and awards described in paragraph (1).”;

(2) in subsection (b)—

(A) by inserting “(1)” before “A person”;

and

(B) by adding at the end the following new paragraph:

“(2) Before approving under paragraph (1) the employment of a person described in subsection (a), the Secretary concerned and the Secretary of State shall—

(A) review the offer of employment, including the full text of the contract or other agreement and any annexes or statements of work; and

(B) determine that the employment will not harm the national security of the United States, including with respect to complying with requirements under the International Traffic in Arms Regulations...
under subchapter M of chapter I of title 22, Code of Federal Regulations.”;

(3) by redesignating subsections (d) and (e) as subsections (k) and (m), respectively; and

(4) by inserting after subsection (c) the following new subsection (d):

“(d) TERMS OF APPROVAL.—An approval provided to a person described in subsection (a) for employment or compensation under subsection (b) or for a payment or award under subsection (c) shall cease to be effective if the person—

“(1) fails to notify the Secretary concerned in writing of any material change in the nature of the employment or payment or award not later than 30 days after the change is made; or

“(2) provides inaccurate or incomplete information in a written notification submitted under paragraph (1).”.

SEC. 3. PROHIBITION ON MEMBERS OF THE ARMED FORCES NEGOTIATING EMPLOYMENT WITH FOREIGN GOVERNMENTS WHILE ON ACTIVE DUTY.

Section 908 of title 37, United States Code, as amended by section 2, is further amended by inserting after subsection (d) the following new subsection:
“(e) Prohibition on Negotiation of Employment by Foreign Governments while on Active Duty.—A member of the armed forces is prohibited from negotiating or having in effect an agreement for future employment or compensation, or payment or award, described in subsection (a) while serving on active duty.”.

SEC. 4. 30-Month Prohibition on Retired Members of the Armed Forces Eligible for Access to Classified Information Seeking Approval for Employment by Foreign Governments.

Section 908 of title 37, United States Code, as amended by section 3, is further amended by inserting after subsection (e) the following new subsection:

“(f) Prohibition for Retired Members of Armed Forces Eligible for Access to Classified Information.—

“(1) In General.—Except as provided by paragraph (2), a retired member of the armed forces who is eligible for access to classified information is prohibited from seeking approval under subsection (b) for employment or compensation described in subsection (a) during the 30-month period beginning on the date on which the person retires from the armed forces.
“(2) Exception for Allied Governments.—A person described in paragraph (1) may accept employment or compensation from the government of the United Kingdom, Canada, Australia, or New Zealand if the Secretary concerned and Secretary of State approve the employment as provided by subsection (b).”.

SEC. 5. NOTIFICATION OF OBLIGATIONS.

Section 908 of title 37, United States Code, as amended by section 4, is further amended by inserting after subsection (f) the following new subsection:

“(g) Notification of Obligations.—The Secretary concerned shall ensure that each person described in subsection (a)—

“(1) is notified of the obligations of the person under this section; and

“(2) certifies to the Secretary that the person understands such obligations.”.

SEC. 6. POST-RETIREMENT EMPLOYMENT REPORTING.

Section 908 of title 37, United States Code, as amended by section 5, is further amended by inserting after subsection (g) the following new subsection:

“(h) Post-retirement Employment Reporting.—
“(1) IN GENERAL.—During the 5-year period beginning on the date on which a member of the armed forces retires, that member shall—

“(A) report employment described in subsection (a) to the Secretary concerned upon accepting such employment; and

“(B) annually (or more frequently if the Secretary concerned considers it appropriate) report such employment to the Secretary concerned.

“(2) REGULATIONS.—The Under Secretary of Defense for Personnel and Readiness, in consultation with the Department of Defense Standards of Conduct Office and the Secretaries of the military departments, shall issue regulations requiring, as a condition of service, each member of the armed forces to sign a written agreement requiring the regular reporting of employment described in subsection (a) to the Secretary concerned under paragraph (1).”.

SEC. 7. PENALTIES.

Section 908 of title 37, United States Code, as amended by section 6, is further amended by inserting after subsection (h) the following new subsection:

“(i) CIVIL PENALTIES.—
“(1) IN GENERAL.—A person who violates subsection (b), (c), (e), (f), or (h) shall be liable to the United States for a civil penalty in an amount that is not more than the greater of—

“(A) $100,000; or

“(B) the amount of compensation that the person received or was offered for the conduct in violation of subsection (b), (c), (e), or (f), or the employment described in subsection (h), as the case may be.

“(2) ADDITIONAL PENALTIES.—In addition to the penalty provided for under paragraph (1), a person who violates subsection (b), (c), (e), or (f) shall, for a period of not longer than five years—

“(A) be prohibited from accepting employment or compensation or a payment or award from any foreign government;

“(B) be prohibited from—

“(i) accepting employment with the Federal Government;

“(ii) providing services under a contract awarded by the Federal Government;

or
“(iii) serving on a Federal advisory committee or in any other advisory capacity to the Federal Government; and
“(C) not be eligible for access to classified information.
“(3) Appeal.—
“(A) In general.—A person assessed a penalty under paragraph (1) for a violation of subsection (b), (c), (e), (f), or (h) may appeal the penalty to the President.
“(B) Determinations on appeal.—A determination by the President to rescind or waive part or all of a penalty for a violation of subsection (b), (c), (e), (f), or (h) shall be made in writing, submitted to Congress, and made publicly available by the President through publication in the Federal Register.
“(4) Savings provision.—The imposition of a penalty under this subsection does not preclude the application of any other criminal or civil statutory, common law, or administrative remedy that is available by law to the United States or any other person.”.
SEC. 8. GUIDANCE.

Section 908 of title 37, United States Code, as amended by section 7, is further amended by inserting after subsection (i) the following new subsection:

“(j) GUIDANCE.—Not later than 120 days after the enactment of the Retired Officers Conflict of Interest Act of 2023, the Secretary of Defense and the Secretary of State shall issue and make available to the public guidance with respect to complying with this section.”.

SEC. 9. PUBLIC REPORTING.

Subsection (k) of section 908 of title 37, United States Code, as redesignated by section 2(2), is further amended—

(1) in paragraph (2), by adding at the end the following new subparagraph:

“(D) The value of any travel, meals, lodging, or registration fees provided by the foreign government in connection with the employment or compensation or payment or award.”; and

(2) by adding at the end the following new paragraph:

“(3) Each report required by paragraph (1), and all of the contents of the report, without redaction, shall be made available by the Secretary of Defense on a publicly accessible internet website not later than 60 days after the report is submitted under paragraph (1).”.
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SEC. 10. DATABASE OF EMPLOYMENT APPROVALS.

Section 908 of title 37, United States Code, is amended by inserting after subsection (k), as redesignated by section 2(2), the following new subsection:

“(l) DATABASE OF EMPLOYMENT APPROVALS.—

“(1) ESTABLISHMENT.—Not later than 1 year after the date of the enactment of the Retired Officers Conflict of Interest Act of 2023, the Secretary of Defense shall establish and maintain an online portal accessible by the public that allows a member of the public, at no cost to the member, to search, sort, and download information on approvals of employment provided under subsection (b).

“(2) ELEMENTS.—The portal required by paragraph (1) shall be designed to provide a member of the public with the ability to retrieve information on an approval of employment provided under subsection (b) to a person described in subsection (a) through searches based on each, and any combination, of the following:

“(A) The name of the person.

“(B) The armed force of the person.

“(C) The position the person held or holds in the armed forces, including rank, and in any other former employing Federal office.

“(D) The foreign government involved.
“(E) The amount of compensation expected or provided for the employment.

“(F) The details of the person’s application for approval of the employment.

“(G) In the case of a retired member of the armed forces, the nature of the activities of the member since retirement.

“(H) Other information relating to the employment.

“(I) Except as provided by paragraph (3), any other information the Director considers relevant.

“(3) INFORMATION PROHIBITED FROM DISCLOSURE.—The portal required by paragraph (1) may not include an individual’s date of birth, social security number, home address, phone number, or any other personal identifier other than those specifically required to be included under paragraph (2).

“(4) AVAILABILITY OF INFORMATION.—The Director shall design the portal required by paragraph (1) so that the contents of the portal may be downloaded in bulk and retrieved by an application programming interface.

“(5) DURATION OF RETENTION OF INFORMATION.—The portal required by paragraph (1) shall
retain information with respect to an approval of employment provided under subsection (b) for not less than 10 years after the expiration or other termination of the approval.

“(6) **UPDATES REQUIRED.**—The portal required by paragraph (1) and the application programming interface referred to in paragraph (4) shall be enhanced and updated as necessary to carry out the purposes of this section.”.

**SEC. 11. DEFINITIONS.**

Section 908 of title 37, United States Code, is amended by inserting after subsection (m), as redesignated by section 2(2), the following new subsection:

“(n) **DEFINITIONS.**—In this section:

“(1) **CLASSIFIED INFORMATION.**—The term ‘classified information’ means any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security.

“(2) **ELIGIBLE FOR ACCESS TO CLASSIFIED INFORMATION.**—The term ‘eligible for access to classified information’ has the meaning given that term in the procedures established pursuant to section
801(a) of the National Security Act of 1947 (50 U.S.C. 3161).

“(3) FOREIGN GOVERNMENT.—The term ‘foreign government’ has the meaning given that term in section 7342(a)(2) of title 5.”.

SEC. 12. COMPTROLLER GENERAL OF THE UNITED STATES REVIEW.

(a) REPORT REQUIRED.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the employment by foreign governments of former officers of the Armed Forces covered by section 908 of title 37, United States Code.

(b) ELEMENTS.—The report required by subsection (a) shall include an assessment of—

(1) the processes in place at the Department of State and the Department of Defense—

(A) to identify—

(i) the extent to which former officers described in subsection (a) were provided compensation directly or indirectly by foreign governments during the 5-year period preceding submission of the report; and
(ii) the extent to which such former officers who receive compensation from foreign governments work on contracts or programs of the Department of Defense, the Department of State, or the Department of Health and Human Services—

(I) for which such former officials personally had program oversight responsibility or decision-making authority when they served in the Armed Forces; or

(II) that are the responsibility of the agency, office, or command in which such former officers served; and

(B) to review and approve employment by foreign governments of such former officers in accordance with section 908 of title 37, United States Code, as amended by this Act; and

(2) what is known about the effectiveness of existing statutes and regulations governing the employment of former officers of the Armed Forces, including—

(A) section 207 of title 18, United States Code;
(B) section 908 of title 37, United States Code, as in effect on the day before the date of the enactment of this Act; and

(C) the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611 et seq.).

(c) ACCESS TO INFORMATION.—In accordance with the contract clause required pursuant to section 3841(d) of title 10, United States Code, and section 4706(d) of title 41, United States Code, contractors shall provide the Comptroller General with access to information requested by the Comptroller General for the purpose of preparing the report required by subsection (a).

SEC. 13. EFFECTIVE DATE; APPLICABILITY.

The amendments made by this Act—

(1) take effect on the date of the enactment of this Act; and

(2) apply with respect to—

(A) offers of employment or compensation described in subsection (a) of section 908 of title 37, United States Code, as amended by this Act, made on or after the date that is 120 days after such date of enactment;

(B) the provision of any payment, item, or award described in that subsection on or after that date;
(C) negotiations for employment described in subsection (e) of that section on or after that date; and

(D) agreements described in that subsection in effect on or after that date.