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S. 2056

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

JUNE 20, 2023

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

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.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Retired Officers Conflict of Interest Act of 2023”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 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.

1 **SEC. 2. APPROVAL PROCESS FOR EMPLOYMENT AND COM-**
 2 **PENSATION.**

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

5 (1) in subsection (a)—

6 (A) by redesignating paragraphs (1), (2),
 7 and (3) as subparagraphs (A), (B), and (C), re-
 8 spectively, and by moving such subparagraphs,
 9 as so redesignated, 2 ems to the right;

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

12 “(1) IN GENERAL.—Subject to”;

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

16 (D) by adding at the end the following new
 17 paragraph:

1 “(2) APPLICATION TO PRIVATE ENTITIES.—The
2 acceptance by a person described in paragraph (1)
3 of employment (and compensation related to that
4 employment) or payments or awards indirectly from
5 a foreign government through a private entity shall
6 be subject to the provisions of this section to the
7 same extent and in the same manner as such provi-
8 sions apply to employment (and compensation re-
9 lated to that employment) and payments and awards
10 described in paragraph (1).”;

11 (2) in subsection (b)—

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

13 and

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

16 “(2) Before approving under paragraph (1) the em-
17 ployment of a person described in subsection (a), the Sec-
18 retary concerned and the Secretary of State shall—

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

22 “(B) determine that the employment will not
23 harm the national security of the United States, in-
24 cluding with respect to complying with requirements
25 under the International Traffic in Arms Regulations

1 under subchapter M of chapter I of title 22, Code
2 of Federal Regulations.”;

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

5 (4) by inserting after subsection (c) the fol-
6 lowing new subsection (d):

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

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

16 “(2) provides inaccurate or incomplete informa-
17 tion in a written notification submitted under para-
18 graph (1).”.

19 **SEC. 3. PROHIBITION ON MEMBERS OF THE ARMED**
20 **FORCES NEGOTIATING EMPLOYMENT WITH**
21 **FOREIGN GOVERNMENTS WHILE ON ACTIVE**
22 **DUTY.**

23 Section 908 of title 37, United States Code, as
24 amended by section 2, is further amended by inserting
25 after subsection (d) the following new subsection:

1 “(e) PROHIBITION ON NEGOTIATION OF EMPLOY-
2 MENT BY FOREIGN GOVERNMENTS WHILE ON ACTIVE
3 DUTY.—A member of the armed forces is prohibited from
4 negotiating or having in effect an agreement for future
5 employment or compensation, or payment or award, de-
6 scribed in subsection (a) while serving on active duty.”.

7 **SEC. 4. 30-MONTH PROHIBITION ON RETIRED MEMBERS OF**
8 **THE ARMED FORCES ELIGIBLE FOR ACCESS**
9 **TO CLASSIFIED INFORMATION SEEKING AP-**
10 **PROVAL FOR EMPLOYMENT BY FOREIGN**
11 **GOVERNMENTS.**

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

15 “(f) PROHIBITION FOR RETIRED MEMBERS OF
16 ARMED FORCES ELIGIBLE FOR ACCESS TO CLASSIFIED
17 INFORMATION.—

18 “(1) IN GENERAL.—Except as provided by
19 paragraph (2), a retired member of the armed forces
20 who is eligible for access to classified information is
21 prohibited from seeking approval under subsection
22 (b) for employment or compensation described in
23 subsection (a) during the 30-month period beginning
24 on the date on which the person retires from the
25 armed forces.

1 “(2) EXCEPTION FOR ALLIED GOVERN-
2 MENTS.—A person described in paragraph (1) may
3 accept employment or compensation from the Gov-
4 ernment of the United Kingdom, Canada, Australia,
5 or New Zealand if the Secretary concerned and Sec-
6 retary of State approve the employment as provided
7 by subsection (b).”.

8 **SEC. 5. NOTIFICATION OF OBLIGATIONS.**

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

12 “(g) NOTIFICATION OF OBLIGATIONS.—The Sec-
13 retary concerned shall ensure that each person described
14 in subsection (a)—

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

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

19 **SEC. 6. POST-RETIREMENT EMPLOYMENT REPORTING.**

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

23 “(h) POST-RETIREMENT EMPLOYMENT REPORT-
24 ING.—

1 “(1) IN GENERAL.—During the 5-year period
2 beginning on the date on which a member of the
3 armed forces retires, that member shall—

4 “(A) report employment described in sub-
5 section (a) to the Secretary concerned upon ac-
6 cepting such employment; and

7 “(B) annually (or more frequently if the
8 Secretary concerned considers it appropriate)
9 report such employment to the Secretary con-
10 cerned.

11 “(2) REGULATIONS.—The Under Secretary of
12 Defense for Personnel and Readiness, in consulta-
13 tion with the Department of Defense Standards of
14 Conduct Office and the Secretaries of the military
15 departments, shall issue regulations requiring, as a
16 condition of service, each member of the armed
17 forces to sign a written agreement requiring the reg-
18 ular reporting of employment described in subsection
19 (a) to the Secretary concerned under paragraph
20 (1).”.

21 **SEC. 7. PENALTIES.**

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

25 “(i) CIVIL PENALTIES.—

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

5 “(A) \$100,000; or

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

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

15 “(A) be prohibited from accepting employ-
16 ment or compensation or a payment or award
17 from any foreign government;

18 “(B) be prohibited from—

19 “(i) accepting employment with the
20 Federal Government;

21 “(ii) providing services under a con-
22 tract awarded by the Federal Government;

23 or

1 “(iii) serving on a Federal advisory
2 committee or in any other advisory capac-
3 ity to the Federal Government; and

4 “(C) not be eligible for access to classified
5 information.

6 “(3) APPEAL.—

7 “(A) IN GENERAL.—A person assessed a
8 penalty under paragraph (1) for a violation of
9 subsection (b), (c), (e), (f), or (h) may appeal
10 the penalty to the President.

11 “(B) DETERMINATIONS ON APPEAL.—A
12 determination by the President to rescind or
13 waive part or all of a penalty for a violation of
14 subsection (b), (c), (e), (f), or (h) shall be made
15 in writing, submitted to Congress, and made
16 publicly available by the President through pub-
17 lication in the Federal Register.

18 “(4) SAVINGS PROVISION.—The imposition of a
19 penalty under this subsection does not preclude the
20 application of any other criminal or civil statutory,
21 common law, or administrative remedy that is avail-
22 able by law to the United States or any other per-
23 son.”.

1 **SEC. 8. GUIDANCE.**

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

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

10 **SEC. 9. PUBLIC REPORTING.**

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

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

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

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

22 “(3) Each report required by paragraph (1), and all
23 of the contents of the report, without redaction, shall be
24 made available by the Secretary of Defense on a publicly
25 accessible internet website not later than 60 days after
26 the report is submitted under paragraph (1).”.

1 **SEC. 10. DATABASE OF EMPLOYMENT APPROVALS.**

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

5 “(l) DATABASE OF EMPLOYMENT APPROVALS.—

6 “(1) ESTABLISHMENT.—Not later than 1 year
7 after the date of the enactment of the Retired Offi-
8 cers Conflict of Interest Act of 2023, the Secretary
9 of Defense shall establish and maintain an online
10 portal accessible by the public that allows a member
11 of the public, at no cost to the member, to search,
12 sort, and download information on approvals of em-
13 ployment provided under subsection (b).

14 “(2) ELEMENTS.—The portal required by para-
15 graph (1) shall be designed to provide a member of
16 the public with the ability to retrieve information on
17 an approval of employment provided under sub-
18 section (b) to a person described in subsection (a)
19 through searches based on each, and any combina-
20 tion, of the following:

21 “(A) The name of the person.

22 “(B) The armed force of the person.

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

26 “(D) The foreign government involved.

1 “(E) The amount of compensation ex-
2 pected or provided for the employment.

3 “(F) The details of the person’s applica-
4 tion for approval of the employment.

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

8 “(H) Other information relating to the em-
9 ployment.

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

13 “(3) INFORMATION PROHIBITED FROM DISCLO-
14 SURE.—The portal required by paragraph (1) may
15 not include an individual’s date of birth, social secu-
16 rity number, home address, phone number, or any
17 other personal identifier other than those specifically
18 required to be included under paragraph (2).

19 “(4) AVAILABILITY OF INFORMATION.—The Di-
20 rector shall design the portal required by paragraph
21 (1) so that the contents of the portal may be
22 downloaded in bulk and retrieved by an application
23 programming interface.

24 “(5) DURATION OF RETENTION OF INFORMA-
25 TION.—The portal required by paragraph (1) shall

1 retain information with respect to an approval of
2 employment provided under subsection (b) for not
3 less than 10 years after the expiration or other ter-
4 mination of the approval.

5 “(6) UPDATES REQUIRED.—The portal required
6 by paragraph (1) and the application programming
7 interface referred to in paragraph (4) shall be en-
8 hanced and updated as necessary to carry out the
9 purposes of this section.”.

10 **SEC. 11. DEFINITIONS.**

11 Section 908 of title 37, United States Code, is
12 amended by inserting after subsection (m), as redesign-
13 nated by section 2(2), the following new subsection:

14 “(n) DEFINITIONS.—In this section:

15 “(1) CLASSIFIED INFORMATION.—The term
16 ‘classified information’ means any information or
17 material that has been determined by the United
18 States Government pursuant to an Executive order,
19 statute, or regulation, to require protection against
20 unauthorized disclosure for reasons of national secu-
21 rity.

22 “(2) ELIGIBLE FOR ACCESS TO CLASSIFIED IN-
23 FORMATION.—The term ‘eligible for access to classi-
24 fied information’ has the meaning given that term in
25 the procedures established pursuant to section

1 801(a) of the National Security Act of 1947 (50
2 U.S.C. 3161).

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

6 **SEC. 12. COMPTROLLER GENERAL OF THE UNITED STATES**

7 **REVIEW.**

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

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

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

20 (A) to identify—

21 (i) the extent to which former officers
22 described in subsection (a) were provided
23 compensation directly or indirectly by for-
24 eign governments during the 5-year period
25 preceding submission of the report; and

1 (ii) the extent to which such former
2 officers who receive compensation from for-
3 eign governments work on contracts or
4 programs of the Department of Defense,
5 the Department of State, or the Depart-
6 ment of Health and Human Services—

7 (I) for which such former offi-
8 cials personally had program oversight
9 responsibility or decision-making au-
10 thority when they served in the Armed
11 Forces; or

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

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

19 (2) what is known about the effectiveness of ex-
20 isting statutes and regulations governing the em-
21 ployment of former officers of the Armed Forces, in-
22 cluding—

23 (A) section 207 of title 18, United States
24 Code;

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

4 (C) the Foreign Agents Registration Act of
5 1938, as amended (22 U.S.C. 611 et seq.).

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

13 **SEC. 13. EFFECTIVE DATE; APPLICABILITY.**

14 The amendments made by this Act—

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

17 (2) apply with respect to—

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

23 (B) the provision of any payment, item, or
24 award described in that subsection on or after
25 that date;

1 (C) negotiations for employment described
2 in subsection (e) of that section on or after that
3 date; and

4 (D) agreements described in that sub-
5 section in effect on or after that date.

○