

April 14, 2020

The Honorable James Inhofe
Chairman
Senate Armed Services Committee
228 Russell Senate Office Building
Washington, DC 20510

The Honorable Adam Smith
Chairman
House Armed Services Committee
2216 Rayburn House Office Building
Washington, DC 20515

The Honorable Jack Reed
Ranking Member
Senate Armed Services Committee
228 Russell Senate Office Building
Washington, DC 20510

The Honorable Mac Thornberry
Ranking Member
House Armed Services Committee
2216 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen and Ranking Members:

The undersigned organizations from across the ideological spectrum urge you to oppose the Pentagon's request to weaken post-government lobbying restrictions on former senior officials.¹ The department's proposal would undermine the effectiveness of ethics laws to prevent undue influence, and therefore must be rejected. Moreover, given the number of former industry officials and lobbyists in leadership, the proposal appears to be self-serving for their own future employment prospects.²

Instead, the National Defense Authorization Act for fiscal year 2021 should strengthen these laws by expanding the activities prohibited to include the other tools used by the lobbying industry such as strategic consulting and business development. Without reform, influence peddling by former senior officials on behalf of contractors undermines competition and performance, leads to higher prices for the military and taxpayers, and risks diminishing military effectiveness.

A 2016 *Politico* investigation found that loopholes in lobbying laws "created an entire class of professional influencers who operate in the shadows" as "policy advisors, strategic consultants, trade association chiefs, corporate government relations executives, [and] affiliates of agenda-driven research institutes."³ As Public Citizen and other government watchdog organizations focused on ethics issues have shown, one of the biggest shortcomings in most federal revolving door restrictions is that lobbying and representational bans focus on contacts, not on the full scope of influence activities used by the lobbying industry. As a consequence, a former senior official or Member of Congress can immediately join a lobbying firm or design or manage a

¹ Department of Defense Office of General Counsel, "Clarification of Activities with Respect to the Department of Defense by Certain Officers of the Armed Forces and Civilian Employees of the Department," 2020.

<https://www.documentcloud.org/documents/6821220-DoD-Lobbying-Activities-Legislative-Proposal.html>

² Mandy Smithberger, "Raytheon Lobbyist Turned Defense Secretary Offers Proposal to Preserve the Swamp," Project On Government Oversight, April 1, 2020. <https://www.pogo.org/analysis/2020/04/raytheon-lobbyist-turned-defense-secretary-offers-proposal-to-preserve-the-swamp/>

³ Isaac Arnsdorf, "The lobbying reform that enriched Congress," *Politico*, July 3, 2016.

<https://www.politico.com/story/2016/06/the-lobbying-reform-that-enriched-congress-224849>

lobbying campaign on behalf of paying clients—as long as they are not the one making the phone calls or actually appearing before their former colleagues.

Public Citizen’s study on the revolving door class of 2019 found that “about two-thirds of members of Congress have gotten around the restrictions on influencing federal policy by taking private-sector jobs at lobbying firms, consulting firms, and business or trade groups to manage their lobby campaigns.”⁴ A Project On Government Oversight (POGO) investigation that focused on senior Pentagon officials going through the revolving door to work for defense contractors also found a number of officials were skirting these restrictions by designating themselves as “business development” executives.⁵ In a number of cases, this means a Defense Department official can easily and legally retire on a Friday and be organizing the lobbying activities of a defense contractor or industry group the following Monday. These loopholes were acknowledged by President Donald Trump on the campaign trail, when he promised to “close all the loopholes that former government officials use by labeling themselves consultants and advisors when we all know they are lobbyists.”⁶

To correct for these problems, the National Defense Authorization Act for fiscal year 2018 that your committees passed included overdue reforms to expand the definitions of lobbying activities to include this behind-the-scenes work.⁷ Specifically, the NDAA adopted the definition of “lobbying activities” as used in the Lobbying Disclosure Act, which covers “lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.”⁸ The reform also set a two-year lobbying ban for Defense Department personnel O-9 or higher, or the civilian grade equivalent; and a one-year lobbying ban for grades O-7 or O-8, or the civilian grade equivalent. It also expanded the ban to include the entire department, not just the component where the official previously served. After its passage, POGO called it a ban that “might drain the Pentagon swamp” and urged Congress to expand the prohibitions governmentwide.⁹

⁴ Craig Holman and Caralyn Esser, *Slowing the Federal Revolving Door: Reforms to Stop Lobbying Activity by Former Public Officials and States that Lead the Way*, Public Citizen, July 22, 2019.

<https://www.citizen.org/article/slowng-the-federal-revolving-door/>

⁵ Mandy Smithberger, *Brass Parachutes: Defense Contractors’ Capture of Pentagon Officials through the Revolving Door*, Project On Government Oversight, November 5, 2018, 31.

https://s3.amazonaws.com/docs.pogo.org/report/2018/POGO_Brass_Parachutes_DoD_Revolving_Door_Report_2018-11-05.pdf

⁶ Ryan Lovelace, “Trump proposes ethics plan to ‘drain the swamp in Washington,’” *Washington Examiner*, October 17, 2016. <https://www.washingtonexaminer.com/trump-proposes-ethics-plan-to-drain-the-swamp-in-washington>

⁷ Section 1045 of National Defense Authorization Act for Fiscal Year 2018, Pub. Law 115-91, 151 Stat. 1555 (2017) (Codified at 10 U.S.C. § 49 front matter note). <https://www.congress.gov/115/plaws/publ91/PLAW-115publ91.pdf> This provision was a significant step forward, but one contracting law firm estimated it still left 24 loopholes for other lobbying-related activities. David B. Robbins and Peter J. Eyre, “NDAA Lobbying Restrictions – Not As Onerous As Many Seem to Fear,” Crowell & Moring LLP, February 20, 2018.

<https://www.governmentcontractslegalforum.com/2018/02/articles/ethics-compliance/ndaa-lobbying-restrictions-not-as-onerous-as-many-seem-to-fear/>

⁸ 2 U.S.C. 1602(7). https://www.senate.gov/legislative/Lobbying/Lobby_Disclosure_Act/3_Definitions.htm

⁹ Scott Amey, “Defense Lobbying Ban Might Drain the Pentagon Swamp,” Project On Government Oversight, March 12, 2018. <https://www.pogo.org/analysis/2018/03/defense-lobbying-ban-might-drain-pentagon-swamp/>; *H.R. 1 and Executive Branch Conflicts of Interest: Hearing before the House Committee on Oversight and Reform*, 116th

Polling has shown the American people link their distrust in government to the outside influence of lobbyists and special interests on government.¹⁰ Simply stated, the public doesn't like cozy backroom deals between friends. It is particularly important that the actions and policies of the Department of Defense, which receives the most discretionary funds of any government agency, not be unduly influenced by self-serving financial interests. Decisions about where and how to wage war, which weapon systems to buy, and who should win contracts should be based on what's in the best interest of our national security and protecting our citizens. The proposal put forward by the department, unfortunately, would only increase the opportunities to put private gain ahead of the public interest.

Congress has taken a number of steps to try to expand, rather than weaken, ethics laws. The For the People Act passed by the House expanded the definition of lobbying activities to include strategic consulting, or counseling, services.¹¹ While many provisions of this bill were controversial, the ethics provisions did not draw criticism, and the Republican companion to that bill also included a similar provision to expand the definition of covered lobbying activities.¹²

The American people deserve to have a Department of Defense worthy of their trust. Last year a broad coalition of civil society organizations urged Congress to adopt amendments to the National Defense Authorization Act to implement additional commonsense ethics reforms for the Pentagon.¹³ We urge you to reject the department's proposal to weaken lobbying reforms and instead expand restrictions on influence-peddling.

Sincerely,

Center for International Policy
Citizens for Responsibility and Ethics in Washington (CREW)
Defending Rights & Dissent
Demand Progress
Essential Information

Cong. 6 (February 6, 2019) (testimony of Scott Amey, General Counsel, Project On Government Oversight).
<https://www.congress.gov/116/meeting/house/108837/witnesses/HHRG-116-GO00-Wstate-AmeyS-20190206.pdf>

¹⁰ Lee Rainie, Scott Keeter, and Andrew Perrin, "Trust and Distrust in America," Pew Research Center, July 22, 2019. <https://www.people-press.org/2019/07/22/trust-and-distrust-in-america/>

¹¹ For the People Act, H.R. 1, 116th Cong., § 7201. <https://www.congress.gov/116/bills/hr1/BILLS-116hr1pcs.pdf>

¹² Nonpartisan Bill for the People Act of 2019, H.R. 1612, 116th Cong., § 6201.

<https://www.congress.gov/116/bills/hr1612/BILLS-116hr1612ih.pdf>

¹³ The amendments were supported by Alaska Public Interest Research Group (AKPIRG), Center for International Policy, Citizens for Responsibility and Ethics in Washington, Common Cause, CREDO, Demand Progress, Essential Information, Friends Committee on National Legislation, Global Witness, Government Accountability Project, Government Information Watch, Liberty Coalition, London Center for Public Policy, National Priorities Project at the Institute for Policy Studies, New Mexicans for Money Out of Politics, Open the Government, Peace Action, Physicians for Social Responsibility, Project On Government Oversight (POGO), Public Citizen, Senior Executives Association (SEA), Taxpayers for Common Sense, Taxpayers Protection Alliance, Win Without War, and Women's Action for New Directions (WAND). Open letter from the Project On Government Oversight et al. about supporting ethics amendments to the fiscal year 2020 National Defense Authorization Act, July 8, 2019. <https://www.pogo.org/letter/2019/07/broad-coalition-supports-ethics-amendments-to-the-defense-policy-bill/>

Friends Committee on National Legislation
Liberty Coalition
Open The Government
Project On Government Oversight
Public Citizen
Quincy Institute for Responsible Statecraft
Revolving Door Project
The United Methodist Church - General Board of Church and Society
Win Without War
Women's Action for New Directions (WAND)

cc: Senator Ron Johnson, Chairman, Senate Homeland Security and Governmental Affairs
Committee

Senator Gary Peters, Ranking Member, Senate Homeland Security and Governmental
Affairs Committee

Representative Carolyn Maloney, Chairwoman, House Oversight and Reform Committee

Representative Jim Jordan, Ranking Member, House Oversight and Reform Committee