

1 **SEC. \_\_\_\_, CLARIFICATION OF ACTIVITIES WITH RESPECT TO THE**  
2 **DEPARTMENT OF DEFENSE BY CERTAIN OFFICERS OF THE**  
3 **ARMED FORCES AND CIVILIAN EMPLOYEES OF THE**  
4 **DEPARTMENT.**

5 (a) CLARIFICATION.—Section 1045 of the National Defense Authorization Act for Fiscal  
6 Year 2018 (10 U.S.C. 971 note prec.) is amended—

7 (1) in subsection (a)(1)—

8 (A) by striking “activities” and inserting “contacts”; and

9 (B) by striking “the Department of Defense” and inserting “a Department  
10 of Defense component in which such individual served within one year of  
11 retirement or separation”;

12 (2) in subsection (b)(1)—

13 (A) by striking “activities” and inserting “contacts”; and

14 (B) by striking “the Department of Defense” and inserting “a Department  
15 of Defense component in which such individual served within one year of  
16 retirement or separation”;

17 (3) by redesignating subsection (c) as subsection (d);

18 (4) by inserting after subsection (b) the following new subsection:

19 “(c) SPECIAL RULE FOR CERTAIN APPOINTEES.—Notwithstanding any other provision of  
20 this section, for purposes of applying the prohibitions in subsections (a)(1) and (b)(1) with  
21 respect to an individual who is employed at a rate of pay specified in or fixed according to  
22 subchapter II of chapter 53 of title 5, United States Code, the Department of Defense shall be  
23 treated as a single component.”; and

1 (5) in subsection (d) (as redesignated by paragraph (3) of this subsection)—

2 (A) in paragraph (1)—

3 (i) by redesignating subparagraphs (A) and (B) as clauses (i) and  
4 (ii), respectively;

5 (ii) in the matter preceding clause (i) (as so redesignated), by  
6 striking “The term ‘lobbying activities with respect to the Department of  
7 Defense’ means the following” and inserting the following: “(A) The term  
8 ‘lobbying contacts with respect to a Department of Defense component in  
9 which such individual served within one year of retirement or separation’  
10 means, subject to subparagraph (B), the following:”;

11 (iii) in clause (i) (as so redesignated)—

12 (I) by striking “and other lobbying activities”; and

13 (II) by striking “the Department of Defense” and inserting  
14 “a Department of Defense component in which such individual  
15 served within one year of retirement or separation”;

16 (iv) in clause (ii) (as so redesignated), by striking “the Department  
17 of Defense” and inserting “a Department of Defense component in which  
18 such individual served within one year of retirement or separation”; and

19 (v) by adding at the end the following new subparagraph:

20 “(B) Such term does not include communications and appearances described in  
21 section 207(j) of title 18, United States Code.”;

1 (B) in paragraph (2), by striking “The terms ‘lobbying activities’ and  
2 ‘lobbying contacts’ have the meaning given such terms” and inserting “The term  
3 ‘lobbying contacts’ has the meaning given such term”; and

4 (C) by adding at the end the following new paragraph:

5 “(4) The term ‘Department of Defense component’ means—

6 “(A) an agency or bureau of the Department of Defense designated by the  
7 Director of the Office of Government Ethics as a separate department or agency  
8 under subsection (h) of section 207 of title 18, United States Code, for purposes of  
9 subsection (c) of such section; and

10 “(B) an element of the Department of Defense that has not been so  
11 designated, except that all such elements shall be collectively treated as a single  
12 Department of Defense component.”.

13 (b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if  
14 enacted on December 12, 2017, immediately following the enactment of the National Defense  
15 Authorization Act for Fiscal Year 2018 (Public Law 115–91).

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how  
the legislative text would amend existing law.]**

### **Section-by-Section Analysis**

This proposal would modify section 1045 of the National Defense Authorization Act for Fiscal Year 2018, which adds additional post-employment restrictions to certain senior Department of Defense (DoD) personnel, to be consistent with the post-government employment criminal statute in section 207 of title 18, United States Code. The following modifications are proposed:

The term “component” is added to subsection (a)(1), and defined in new paragraph (4) of subsection (d) (originally subsection (c) and redesignated as subsection (d)). Under the authority in 18 U.S.C. 207(h), the Director of the Office of Government Ethics has designated separate components within the Department of Defense (See Appendix B to 5 C.F.R. Part 2641). This change aligns section 1045 with the criminal statute, which reasonably permits former

senior personnel serving in DoD positions below the Presidentially appointed, Senate-confirmed level to communicate with employees of a designated separate and distinct component of the Department from that in which the former official served.

Using “lobbying contacts” rather than “lobbying activities” throughout makes section 1045 more consistent with the criminal restrictions in 18 U.S.C. 207(c) that bar direct communication with or appearance before a departed official’s former agency, but permit former personnel to work behind-the-scenes. This change alleviates the confusion introduced by the original section 1045’s definitions suggesting activities “in support of lobbying contacts” are prohibited.

To further harmonize section 1045 with the criminal statute, paragraph (1) of subsection (d) (as redesignated) is amended to include the exceptions provided under the post-government employment law at 18 U.S.C. 207(j). This continues the ability of former senior officials to communicate on behalf of recognized institutions of higher education and hospitals and similar excepted entities and circumstances.

Paragraph (4) of subsection (d) (as redesignated) is added to set forth the existing definition of DoD components.

**Budget Implications:** No budget impact.

**Changes to Existing Law:** This proposal would make the following changes to section 1045 of the National Defense Authorization Act for Fiscal Year 2018 (10 U.S.C. 971 note prec.):

**SEC. 1045. PROHIBITION ON LOBBYING ACTIVITIES WITH RESPECT TO THE DEPARTMENT OF DEFENSE BY CERTAIN OFFICERS OF THE ARMED FORCES AND CIVILIAN EMPLOYEES OF THE DEPARTMENT FOLLOWING SEPARATION FROM MILITARY SERVICE OR EMPLOYMENT WITH THE DEPARTMENT.**

(a) TWO-YEAR PROHIBITION.—

(1) PROHIBITION.—An individual described in paragraph (2) may not engage in lobbying ~~activities~~ contacts with respect to ~~the~~ a Department of Defense component in which such individual served within one year of retirement or separation during the two-year period beginning on the date of retirement or separation from service in the Armed Forces or the date of retirement or separation from service with the Department, as applicable.

(2) COVERED INDIVIDUALS.—An individual described in this paragraph is the following:

(A) An officer of the Armed Forces in grade 0-9 or higher at the time of retirement or separation from the Armed Forces.

(B) A civilian employee of the Department of Defense who had a civilian grade equivalent to a military grade specified in subparagraph (A) at the time of the employee's retirement or separation from service with the Department.

(b) ONE-YEAR PROHIBITION.—

(1) PROHIBITION.—An individual described in paragraph (2) may not engage in lobbying activities contacts with respect to the a Department of Defense component in which such individual served within one year of retirement or separation during the one-year period beginning on the date of retirement or separation from service in the Armed Forces or the date of retirement or separation from service with the Department, as applicable

(2) COVERED INDIVIDUALS.—An individual described in this paragraph is the following:

(A) An officer of the Armed Forces in grade 0-7 or 0-8 at the time of retirement or separation from the Armed Forces.

(B) A civilian employee of the Department of Defense who had a civilian grade equivalent to a military grade specified in subparagraph (A) at the time of the employee's retirement or separation from service with the Department.

(c) SPECIAL RULE FOR CERTAIN APPOINTEES.—Notwithstanding any other provision of this section, for purposes of applying the prohibitions in subsections (a)(1) and (b)(1) with respect to an individual who is employed at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, the Department of Defense shall be treated as a single component.

(e) (d) DEFINITIONS.—In this section:

(1)(A) The term “lobbying activities contacts with respect to the a Department of Defense component in which such individual served within one year of retirement or separation” means, subject to subparagraph (B), the following:

(A*i*) Lobbying contacts ~~and other lobbying activities~~ with covered executive branch officials with respect to the a Department of Defense component in which such individual served within one year of retirement or separation.

(B*ii*) Lobbying contacts with covered executive branch officials described in subparagraphs (C) through (F) of section 3(3) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602(3)) in the a Department of Defense component in which such individual served within one year of retirement or separation.

(B) Such term does not include communications and appearances described in section 207(j) of title 18, United States Code.

(2) The terms “lobbying activities” and term “lobbying contacts” ~~have~~ has the meaning given such ~~terms~~ term in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602)

(3) The term “covered executive branch official” has the meaning given that term in section 3(3) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602(3)).

(4) The term “Department of Defense component” means—

(A) an agency or bureau of the Department of Defense designated by the Director of the Office of Government Ethics as a separate department or agency under subsection (h) of section 207 of title 18, United States Code, for purposes of subsection (c) of such section; and

(B) an element of the Department of Defense that has not been so designated, except that all such elements shall be collectively treated as a single Department of Defense component.