

§ 2408. Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors

(a) PROHIBITION.—(1) An individual who is convicted of fraud or any other felony arising out of a contract with the Department of Defense shall be prohibited from each of the following:

(A) Working in a management or supervisory capacity on any defense contract or any first tier subcontract of a defense contract.

(B) Serving on the board of directors of any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(C) Serving as a consultant to any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(D) Being involved in any other way, as determined under regulations prescribed by the Secretary of Defense, with a defense contract or first tier subcontract of a defense contract.

(2) Except as provided in paragraph (3), the prohibition in paragraph (1) shall apply for a period, as determined by the Secretary of Defense, of not less than five years after the date of the conviction.

(3) The prohibition in paragraph (1) may apply with respect to an individual for a period of less than five years if the Secretary determines that the five-year period should be waived in the interests of national security.

(4) The prohibition in paragraph (1) does not apply with respect to the following:

(A) A contract referred to in subparagraph (A), (B), (C), or (D) of such paragraph that is not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(B) A contract referred to in such subparagraph that is for the acquisition of commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41).

(C) A subcontract referred to in such subparagraph that is under a contract described in subparagraph (A) or (B).

(b) CRIMINAL PENALTY.—A defense contractor or subcontractor shall be subject to a criminal penalty of not more than \$500,000 if such contractor or subcontractor is convicted of knowingly—

(1) employing a person under a prohibition under subsection (a); or

(2) allowing such a person to serve on the board of directors of such contractor or subcontractor.

(c) SINGLE POINT OF CONTACT FOR INFORMATION.—(1) The Attorney General shall ensure that a single point of contact is established to enable a defense contractor or subcontractor to promptly obtain information regarding whether a person that the contractor or subcontractor proposes to use for an activity covered by paragraph (1) of subsection (a) is under a prohibition under that subsection.

(2) The procedure for obtaining such information shall be specified in regulations prescribed by the Secretary of Defense under subsection (a).

(Added Pub. L. 99-500, §101(c) [title X, §941(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-161, and Pub.

L. 99-591, §101(c) [title X, §941(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-161; Pub. L. 99-661, div. A, title IX, formerly title IV, §941(a)(1), Nov. 14, 1986, 100 Stat. 3941, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100-456, div. A, title VIII, §831(a), Sept. 29, 1988, 102 Stat. 2023; Pub. L. 101-510, div. A, title VIII, §812, Nov. 5, 1990, 104 Stat. 1596; Pub. L. 102-484, div. A, title VIII, §815(a), Oct. 23, 1992, 106 Stat. 2454; Pub. L. 103-355, title IV, §4102(g), title VIII, §8105(h), Oct. 13, 1994, 108 Stat. 3340, 3393; Pub. L. 104-106, div. A, title X, §1062(e), Feb. 10, 1996, 110 Stat. 444; Pub. L. 111-350, §5(b)(26), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 115-232, div. A, title VIII, §836(e)(5), Aug. 13, 2018, 132 Stat. 1870.)

TRANSFER OF SECTION

Pub. L. 116-283, div. A, title XVIII, §§1801(d), 1862(b), Jan. 1, 2021, 134 Stat. 4151, 4277, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 363 of this title, as amended by section 1862(a) of Pub. L. 116-283, inserted after section 4655, and redesignated as section 4656 of this title. See Effective Date of 2021 Amendment note below.

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical sections.

AMENDMENTS

2018—Subsec. (a)(4)(B). Pub. L. 115-232 substituted “commercial products or commercial services (as defined in sections 103 and 103a, respectively, of title 41)” for “commercial items (as defined in section 103 of title 41)”.

2011—Subsec. (a)(4)(A). Pub. L. 111-350, §5(b)(26)(A), substituted “section 134 of title 41” for “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))”.

Subsec. (a)(4)(B). Pub. L. 111-350, §5(b)(26)(B), substituted “section 103 of title 41” for “section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))”.

1996—Subsec. (a)(3). Pub. L. 104-106 struck out at end “If the five-year period is waived, the Secretary shall submit to Congress a report stating the reasons for the waiver.”

1994—Subsec. (a)(4). Pub. L. 103-355, §4102(g), added introductory provisions and subpar. (A).

Subsec. (a)(4)(B). Pub. L. 103-355, §8105(h)(1), added subpar. (B).

Subsec. (a)(4)(C). Pub. L. 103-355, §8105(h)(2), inserted “or (B)” before period at end.

Pub. L. 103-355, §4102(g), added subpar. (C).

1992—Subsec. (c). Pub. L. 102-484 added subsec. (c).

1990—Subsec. (a)(1)(A). Pub. L. 101-510, §812(a)(1), inserted before period at end “or any first tier subcontract of a defense contract”.

Subsec. (a)(1)(B). Pub. L. 101-510, §812(a)(2), inserted before period at end “or any subcontractor awarded a contract directly by a defense contractor”.

Subsec. (a)(1)(C). Pub. L. 101-510, §812(a)(3), inserted before period at end “or any subcontractor awarded a contract directly by a defense contractor”.

Subsec. (a)(1)(D). Pub. L. 101-510, §812(a)(4), inserted before period at end “or first tier subcontract of a defense contract”.

Subsec. (b). Pub. L. 101-510, §812(b), inserted “or subcontractor” after “contractor” wherever appearing.

1988—Subsec. (a). Pub. L. 100-456 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “A person who is convicted of fraud or any other

felony arising out of a contract with the Department of Defense shall be prohibited from working in a management or supervisory capacity on any defense contract, or serving on the board of directors of any defense contractor, for a period, as determined by the Secretary of Defense, of not less than one year from the date of the conviction.”

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-456, div. A, title VIII, §831(b), Sept. 29, 1988, 102 Stat. 2023, provided that: “Section 2408(a) of title 10, United States Code, as amended by subsection (a), shall apply with respect to individuals convicted after the date of the enactment of this Act [Sept. 29, 1988].”

EFFECTIVE DATE

Pub. L. 99-500, §101(c) [title X, §941(c)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-162, Pub. L. 99-591, §101(c) [title X, §941(c)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-162, and Pub. L. 99-661, div. A, title IX, formerly title IV, §941(c), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: “Section 2408 of title 10, United States Code (as added by subsection (a)(1)), shall apply with respect to employment or service on a board of directors after the date of the enactment of this Act [Oct. 18, 1986].”

DEADLINE FOR SINGLE POINT OF CONTACT

Pub. L. 102-484, div. A, title VIII, §815(b), Oct. 23, 1992, 106 Stat. 2454, directed that the single point of contact required by subsec. (c) of this section be established not later than 120 days after Oct. 23, 1992.

§ 2409. Contractor employees: protection from reprisal for disclosure of certain information

(a) PROHIBITION OF REPRISALS.—(1) An employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of the following:

(A) Gross mismanagement of a Department of Defense contract or grant, a gross waste of Department funds, an abuse of authority relating to a Department contract or grant, or a violation of law, rule, or regulation related to a Department contract (including the competition for or negotiation of a contract) or grant.

(B) Gross mismanagement of a National Aeronautics and Space Administration contract or grant, a gross waste of Administration funds, an abuse of authority relating to an Ad-

ministration contract or grant, or a violation of law, rule, or regulation related to an Administration contract (including the competition for or negotiation of a contract) or grant.

(C) A substantial and specific danger to public health or safety.

(2) The persons and bodies described in this paragraph are the persons and bodies as follows:

(A) A Member of Congress or a representative of a committee of Congress.

(B) An Inspector General.

(C) The Government Accountability Office.

(D) An employee of the Department of Defense or the National Aeronautics and Space Administration, as applicable, responsible for contract oversight or management.

(E) An authorized official of the Department of Justice or other law enforcement agency.

(F) A court or grand jury.

(G) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(3) For the purposes of paragraph (1)—

(A) an employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Department of Defense or National Aeronautics and Space Administration contract or grant shall be deemed to have made a disclosure covered by such paragraph; and

(B) a reprisal described in paragraph (1) is prohibited even if it is undertaken at the request of a Department or Administration official, unless the request takes the form of a nondiscretionary directive and is within the authority of the Department or Administration official making the request.

(b) INVESTIGATION OF COMPLAINTS.—(1) A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of the Department of Defense, or the Inspector General of the National Aeronautics and Space Administration in the case of a complaint regarding the National Aeronautics and Space Administration. Unless the Inspector General determines that the complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor concerned, and the head of the agency.

(2)(A) Except as provided under subparagraph (B), the Inspector General shall make a determination that a complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant or submit a report under paragraph (1) within 180 days after receiving the complaint.

(B) If the Inspector General is unable to complete an investigation in time to submit a report within the 180-day period specified in subpara-