

December 2011

COAST GUARD

Communication of Post-Government Employment Restrictions Can Be Strengthened

U.S. Government Accountability Office

GAO 90

YEARS

1921-2011

ACCOUNTABILITY ★ INTEGRITY ★ RELIABILITY

Why GAO Did This Study

The Coast Guard has over \$27 billion in acquisitions with hundreds of millions of dollars going to major contractors each year. High-ranking officials leave the Coast Guard each year and may go to work for these contractors. To avoid conflicts of interest and promote public trust, these officials must comply with restrictions on their post-government employment activities. These restrictions do not necessarily prohibit them from working for a contractor. In response to the Coast Guard Authorization Act of 2010, which directed GAO to examine Coast Guard contractor compensation of former high-ranking officials, GAO identified (1) the extent such former officials were compensated by Coast Guard contractors and assigned to programs for which they previously had official responsibility, and (2) Coast Guard and contractor practices to help ensure compliance with post-government employment restrictions. GAO analyzed Coast Guard, contractor, and Internal Revenue Service data on former officials, and interviewed officials from the Coast Guard and 11 major contractors representing over 40 percent of Coast Guard obligations in calendar year 2010 to identify practices used regarding these restrictions.

What GAO Recommends

GAO makes one recommendation that the Commandant of the Coast Guard require its ethics officials to provide guidance on post-government employment restrictions to all high-ranking officials, at a minimum, as the officials enter into those senior positions and as they transition out of the Coast Guard. DHS concurred with GAO's recommendation.

View [GAO-12-174](#). For more information, contact John Hutton at (202) 512-4841 or huttonj@gao.gov.

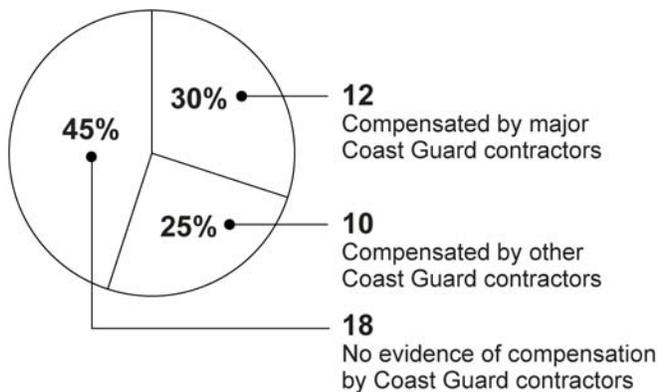
COAST GUARD

Communication of Post-Government Employment Restrictions Can Be Strengthened

What GAO Found

Of the 40 former high-ranking Coast Guard officials (Admirals or Senior Executive Service members) who separated from the Coast Guard from 2005 through 2009, 22 have been compensated by Coast Guard contractors. Twelve of these officials were compensated in 2010 by major Coast Guard contractors—contractors that received at least \$10 million in Coast Guard contracts in 2010. One of the 12 officials was assigned by a major Coast Guard contractor to work on a program for which the individual previously had official responsibility. According to a Coast Guard ethics opinion, this individual was permitted to work for the contractor. Coast Guard and contractor documentation does not specifically indicate whether any of the other 11 officials were assigned to work on programs for which they previously had official responsibility. Based on the information provided on official roles and responsibilities, we did not find any evidence these former officials represented themselves to the government in violation of post-government employment restrictions.

Compensation of 40 Former High-Ranking Coast Guard Officials by Coast Guard Contractors from 2005 through 2010



Source: GAO analysis of Coast Guard and IRS data.

The Coast Guard and contractors employ a variety of practices to help ensure compliance with post-government employment restrictions. The Coast Guard provides training, counseling, and ethics opinions to inform high-ranking officials of post-government employment restrictions. However, the practices are not designed to ensure these officials are fully aware of the restrictions before negotiating with potential employers or separating from the government. Training on the topic is only mandatory for new employees and both counseling and ethics opinions are optional. Most major Coast Guard contractors GAO interviewed described a variety of voluntary practices in use—including guidance on restrictions, controls during the hiring process, training, and monitoring mechanisms—to help ensure compliance with post-government employment restrictions.

Contents

Letter		1
	Background	4
	About Half of Former High-Ranking Coast Guard Officials Were Compensated by Coast Guard Contractors	6
	Practices to Help Ensure Individuals Comply with Post- Government Employment Restrictions	11
	Conclusions	16
	Recommendation for Executive Action	17
	Agency Comments	17
Appendix I	Scope and Methodology	19
Appendix II	Comments from the Department of Homeland Security	22
Appendix III	GAO Contact and Staff Acknowledgments	24
Table		
	Table 1: Contractor Reported Practices to Help Ensure Compliance with Post-Government Employment Restrictions	15
Figures		
	Figure 1: Compensation of 40 Former High-ranking Coast Guard Officials by Coast Guard Contractors from 2005 through 2010	7
	Figure 2: Timing of Twelve Former High-ranking Officials' Separation from the Coast Guard and Employment by Major Coast Guard Contractors	9

Abbreviations

DOD	Department of Defense
DHS	Department of Homeland Security
FPDS-NG	Federal Procurement Data System-Next Generation
GAO	Government Accountability Office
IRS	Internal Revenue Service
SES	Senior Executive Service

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G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

December 15, 2011

The Honorable John D. Rockefeller IV
Chairman
The Honorable Kay Bailey Hutchison
Ranking Member
Committee on Commerce, Science and Transportation
United States Senate

The Honorable John L. Mica
Chairman
The Honorable Nick J. Rahall
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

The Coast Guard, a component of the Department of Homeland Security (DHS), manages over \$27 billion in its acquisition portfolios. These portfolios include major acquisitions to modernize ships, aircraft, command and control systems, and other capabilities used to perform its missions. As a result of these acquisitions and other purchases, contractors receive significant funding from Coast Guard contracts—last year the largest recipients received hundreds of millions of dollars in Coast Guard contracts.

Our prior work has found that, each year, some government officials leave their agencies and go to work for contractors that do business with their agencies—potentially the same contractors whose contracts they oversaw or were otherwise involved with prior to leaving.¹ Government officials who serve in senior positions and leave for jobs with contractors are subject to laws restricting their post-government employment activities. These laws seek in part to protect against conflicts of interest—such as former officials using their government contacts to the improper benefit of the contractor and to the detriment of the government. The laws also seek to promote public trust in the integrity of the government's decision-making process, but do not explicitly require the contractor to

¹GAO, *Defense Contracting: Post-Government Employment of Former DOD Officials Needs Greater Transparency*, [GAO-08-485](#) (Washington, D.C.: May 21, 2008).

maintain comprehensive policies and procedures to prevent violations of post government employment restrictions.² Violation of these laws may result in criminal, administrative, or civil penalties for former officials and, in some circumstances, the contractors that employ them.

Section 402 (a) of the Coast Guard Authorization Act of 2010, Pub. L. No. 111-281, as amended, added section 569 to title 14 of the United States Code mandating that GAO report, no later than December 31, 2011, and annually thereafter, on the extent to which former Coast Guard officials have been compensated by Coast Guard contractors. Section 569 defines the term “Coast Guard contractors” to be any person that received at least \$10 million in contractor awards from the Coast Guard in the calendar year covered by the report. For the purposes of this report, we refer to these contractors as major Coast Guard contractors. Section 569 defines “Coast Guard officials” as Rear Admirals, Vice Admirals, and Admirals (the rank of O-7 and above) and members of the Senior Executive Service (SES). For the purposes of this report, we refer to them as high-ranking officials. This report examines: (1) to what extent former high-ranking Coast Guard officials have been compensated by Coast Guard contractors and assigned to work on programs for which they previously had decision-making authority or oversight responsibility, and (2) what practices the Coast Guard and its contractors have in place to help ensure individuals comply with post-government employment restrictions.

To address these objectives, we identified which former high-ranking officials departed from the Coast Guard from 2005 through 2009 based on Coast Guard personnel data. We obtained and analyzed information from the Coast Guard, Coast Guard contractors, the Federal Procurement Data System-Next Generation (FPDS-NG), USA Spending, and the Internal Revenue Service (IRS) Information Returns Master File to (1) determine the number of former officials who were compensated by Coast Guard contractors and (2) identify which, if any, of the former high-ranking officials who separated from the Coast Guard were compensated by a major Coast Guard contractor from 2005 through 2010 and their compensation amounts. Due to the lack of data on government subcontractors in the FPDS-NG and USA Spending, we did not assess

²Federal Acquisition Regulation clause 52.203-13 (c) does require contractors to establish a business ethics awareness program and internal control system for this program.

whether the former officials were compensated by Coast Guard contractors via subcontracts. To assess the reliability of our data sources, we compared the data we obtained from the Coast Guard and Coast Guard contractors to IRS data and conducted interviews with knowledgeable agency officials to identify any outliers or obvious errors that could reflect inaccuracies. Based on the results, we found the data to be sufficiently reliable to meet our reporting objectives.

To determine whether the former officials were assigned to work on programs or projects for which they previously had official responsibility,³ we obtained and compared information from contractors and the Coast Guard on the individuals' responsibilities to identify any overlap. We did not assess whether the actual duties performed by the former employees were in compliance with post-government employment restrictions; however, we asked Coast Guard officials whether they had documentation of any of these former officials meeting with the Coast Guard on behalf of the contractor that compensated them. We also contacted the DHS Hotline, the Coast Guard Investigative Service, and GAO's FraudNet regarding whether they had received any allegations of violations of post-government employment restrictions by the former officials in our analysis.

To describe practices the Coast Guard and contractors use to help ensure compliance with post-government employment restrictions, we reviewed Coast Guard and 11 major contractors' policies, interviewed Coast Guard and contractor officials, and analyzed contractor documentation on hiring, training, and monitoring practices. The 11 contractors we interviewed represented over 40 percent of the dollar value of Coast Guard obligations in calendar year 2010, including the top 6 recipients of Coast Guard obligations. For a detailed description of our scope and methodology, see appendix I.

We conducted this performance audit from March 2011 through December 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable

³For the purpose of this report, we use "official responsibility" for the terms "oversight responsibility" and "decision-making authority," which include program oversight and direct authority exercisable alone, with others, or through subordinates, to direct government action.

basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Congress has long been concerned about the hiring of former federal employees by private contractors who do business with their former government agencies and has passed laws subjecting federal personnel to certain conflict of interest restrictions. Executive branch employees, including Coast Guard officers and civilian employees, are subject to federal (felony) criminal conflict-of-interest statutes. More specifically:

- 18 U.S.C. § 207 (a)(1): lifetime ban—All former officers and employees of the executive branch and certain other agencies are permanently barred from knowingly making, “with the intent to influence,” a communication to or appearance before a U.S. employee on behalf of any other person (i.e., business entity or individual) on the same particular matter involving specific parties in which the former employees participated personally and substantially when working for the federal government (e.g., specific contract, legal investigation, etc.).
- 18 U.S.C. § 207 (a)(2): 2-year ban—All former officers and employees are barred for 2 years from knowingly making, “with the intent to influence,” a communication to or appearance before a U.S. employee on behalf of another person (i.e., business entity or individual) on a particular matter involving specific parties, in which (1) the U.S. is a party or has a direct and substantial interest, and (2) the person knows or should know this particular matter was actually pending under the “official responsibility” of the employee during the last year of government service.
- 18 U.S.C. § 207 (c): 1-year ban—Former officers and senior employees are barred for 1-year (cooling off period) after leaving their senior positions, from knowingly making, “with intent to influence,” a communication to or appearance before an employee of an agency in which they served during the last year of government service, if that communication or appearance is made on behalf of a person (i.e.,

business entity or individual) on a matter on which the former senior employees seek official action from the agency's employee.⁴

The Procurement Integrity Act (41 U.S.C. §§ 2101-2107) imposes a further bar on certain former government officials from accepting compensation from a contractor for one year after having served in specific positions or made certain decisions for contracts exceeding \$10 million. However, former government officials can work in the contractor's divisions or affiliates that do not produce the same or similar products or services that were produced under the contract.⁵ Violation of these laws may result in criminal, administrative or civil penalties for former government officials and, in some circumstances, the contractors that employ them.

The Office of Government Ethics oversees ethics standards across the executive branch and specifies appropriate regulations for the executive branch. Individual agencies, such as DHS, are responsible for implementing ethics programs and have discretion regarding whether and how to help ensure compliance with post-government employment restrictions. With the Office of Government Ethics' concurrence, agencies may supplement executive branch ethics regulations with their own policies to include additional restrictions or specific procedures to help ensure compliance with the restrictions. For example, Securities and Exchange Commission employees, within 2 years of separating from the agency, must submit a statement to request approval to appear before the Securities and Exchange Commission for purposes of representational activity.

DOD has also adopted additional requirements to help ensure compliance with post-government restrictions. According to a Department of Defense (DOD) memorandum, DOD employees shall avoid any activity that would affect the public's confidence in the integrity of the federal government, even if it is not an actual violation of the law. Further, DOD

⁴Regarding the one-year ban, the Coast Guard ethics attorney explained that former senior coast Guard officials are prohibited from representing any company to any part of DHS in connection with any matter whatsoever. In effect, the entire DHS is off limits for 1 year for all former senior Coast Guard officials with respect to company representational activities.

⁵Compensation from subcontractors of the involved prime contractor is not barred under the Procurement Integrity Act.

added several procedures to help ensure compliance with post-government employment restrictions, including:

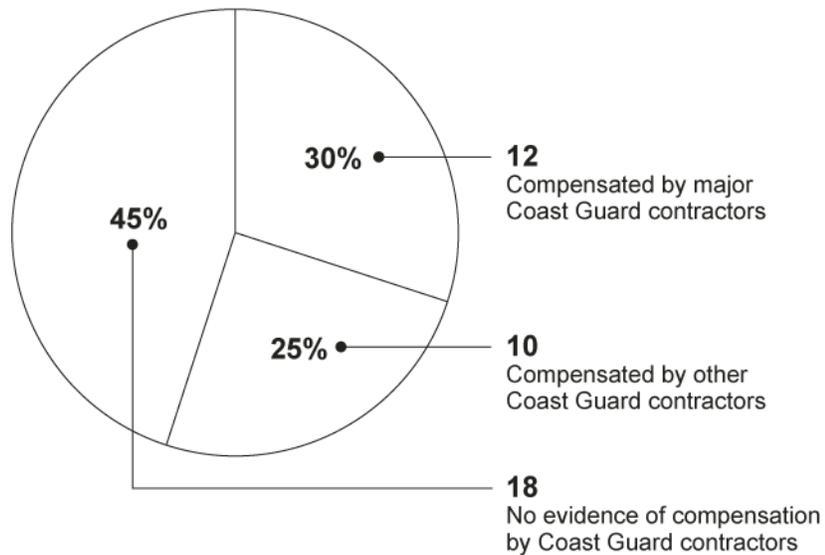
- components are required to provide annual training that addresses relevant federal and DOD post-government employment restrictions;
- components must also provide guidance on relevant federal and DOD post-government employment restrictions, as part of out-processing procedures, to all DOD personnel who are leaving federal service; and
- personnel who file Public Financial Disclosure Reports are required to certify annually that they are aware of the disqualification and employment restrictions of 18 U.S.C. § 207 and § 208, and 41 U.S.C. §§ 2101-2107, and that they have not violated those restrictions.

DHS and Coast Guard policies do not add to restrictions included in post-government employment-related laws or specify procedures to help ensure compliance. Commandant Instruction M5370.8B reiterates how federal laws on post-government employment restrictions apply to the Coast Guard and does not add policies specific to the Coast Guard.

About Half of Former High-Ranking Coast Guard Officials Were Compensated by Coast Guard Contractors

Of the 40 former officials who were admiral-level or members of the SES and separated from the Coast Guard from 2005 through 2009, 22 were compensated at some point from 2005 through 2010 by contractors to which the Coast Guard obligated funding in calendar year 2010. We found that 12 of the 22 were compensated at some point during that time frame by major Coast Guard contractors—those contractors that received at least \$10 million in Coast Guard contracts in 2010. Furthermore, all 12 former officials were compensated by a major contractor in 2010.

Figure 1: Compensation of 40 Former High-ranking Coast Guard Officials by Coast Guard Contractors from 2005 through 2010



Source: GAO analysis of Coast Guard and IRS data.

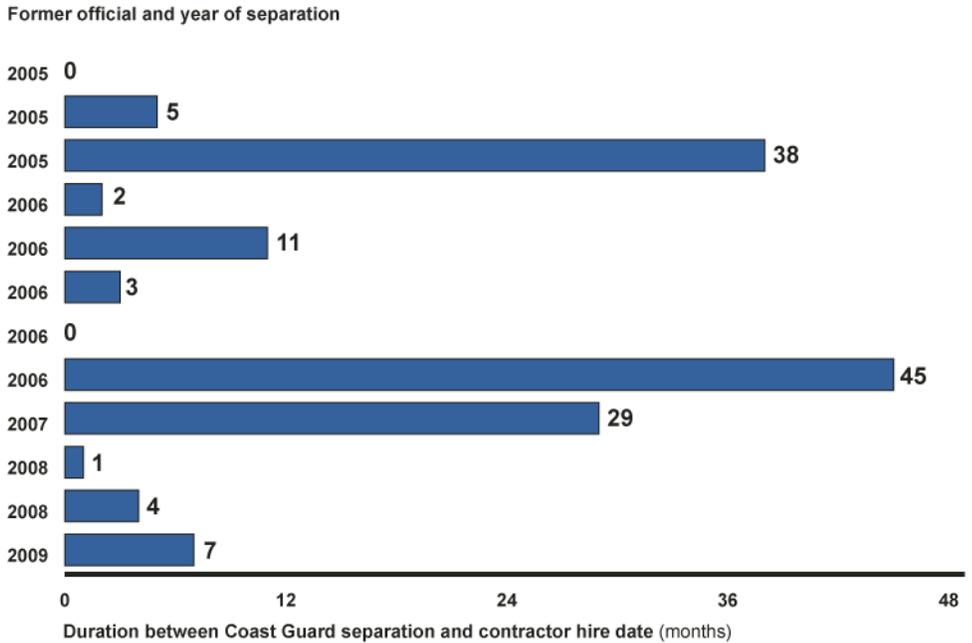
Coast Guard ethics officials advised over half of the 12 former officials who were compensated by major Coast Guard contractors that they were permitted to work for these contractors. At least 7 obtained an ethics opinion from the Coast Guard regarding employment with the respective contractor, although an ethics opinion is not required by the Coast Guard.⁶ For the other five officials, it is unclear whether an opinion was obtained. In no cases were the 7 individuals barred from receiving compensation from the contractor. However, the opinions identified restrictions on certain representational activities. For example, because the former officials held senior positions, all had a 1-year cooling off period, during which they were barred from representing their new employers to any person in the Coast Guard on any matter for which the new employer was seeking official action. According to the ethics

⁶For the 12 former officials who were compensated by major contractors, we received 7 ethics opinions specific to the respective contractor. The Coast Guard provided copies of 2 of the 7 opinions; the contractors provided copies of the 7 ethics opinions. For the 40 former officials in our analysis, the Coast Guard only had records of providing ethics opinions to 6 individuals.

opinions, the former officials were not to appear before, or to have any communication or contact with, any person in the Coast Guard on behalf of the company with the intent to influence a government decision. Most opinions stated that individuals were not prohibited from social contacts or factual communication. In addition, the opinions explained that for the first 2 years after leaving the Coast Guard, they were barred from representing their respective company to any part of the executive or judicial branches of the federal government with intent to influence on any particular matter that they were officially responsible for during their last year of Coast Guard service. Further, the opinions stated that the former officials were permanently barred from representing their employer to any part of the executive or judicial branch of the federal government on any of the same particular matters that they participated in personally and substantially while in the Coast Guard. However, 6 of the 7 of the ethics opinions did not specify what particular matters were barred.

At least 9 of the 12 former officials compensated began working for a major Coast Guard contractor within one year of separating from the Coast Guard. The other 3 former officials began work from over 2 to almost 4 years after separating. Employment with a contractor after leaving government employment is not necessarily a violation of post-government employment statutes. Figure 2 reflects the timing of the former officials' separation from the Coast Guard and employment by major contractors.

Figure 2: Timing of Twelve Former High-ranking Officials' Separation from the Coast Guard and Employment by Major Coast Guard Contractors



Source: GAO analysis of Coast Guard and contractor data.

Major contractors assigned business development responsibilities to at least 9 of the 12 former Coast Guard officials. Business development roles encompass a broad range of activities, which are generally permitted, but could be limited by representational restrictions in statute. Examples of business development responsibilities described in the former officials' position descriptions include: creating strategies and plans and developing business in the homeland security market, developing and maintaining strong relationships with key decision-makers in relevant markets, and staying actively informed of business and management developments affecting present and potential customers. Based on the information provided by contractors and the Coast Guard about official roles and responsibilities, we did not find any evidence these former officials represented themselves to the government in violation of post-government employment restrictions. For some of the former officials who were compensated by major contractors, business development roles entailed maintaining or increasing the employers' business with the Coast Guard and DHS.

In one case, a major Coast Guard contractor assigned a former high-ranking official, 3 months after retirement, to work on a program for which the official previously had official responsibility. As one of their business development duties, the person was assigned to sustain or increase the funding levels for the acquisition of an item, according to the contractor's position description. Prior to retiring, that individual had broad official responsibility for the Coast Guard program that was acquiring the item.⁷ According to a Coast Guard ethics opinion, this individual was permitted to work for the contractor; however, the Coast Guard was off-limits to the individual during the first year of retirement for all contractor representation, communications, and contacts. For the other 11 officials, documentation provided by the Coast Guard and major Coast Guard contractors does not specifically indicate whether major contractors assigned them to work on programs for which they previously had official responsibility. In most cases, the documentation did not provide details or insight into specific programs former officials were assigned to or which programs they were to include in their business development roles. Further, the Department's Office of Inspector General and Coast Guard Investigative Service officials told us that they had not received allegations of violations of post-government employment restrictions for any of the officials.

The 12 former high-ranking officials who were compensated by major Coast Guard contractors received varying compensation levels from those contractors from 2005 through 2010. During this period the 12 former high-ranking officials were compensated by a total of 7 major Coast Guard contractors. In addition, some of the former officials were employed full-time, while others were employed part-time or as consultants. In 2010, all 12 officials were compensated, with amounts ranging from a low of \$4,015 to a high of \$296,839. Contractors reported that 10 had compensation levels of at least \$100,000, with six of the officials compensated at levels greater than \$200,000.

⁷We did not determine whether the individual participated personally and substantially with the specific acquisition to determine compliance with section 207 of title 18 of the U.S. Code.

Practices to Help Ensure Individuals Comply with Post-Government Employment Restrictions

The Coast Guard and most of the 11 major Coast Guard contractors we examined employ practices such as training to help ensure awareness of and compliance with post-government employment restrictions. The Coast Guard uses multiple approaches to inform its service members and civilian employees of post-government employment restrictions, such as training, counseling, and ethics opinions. However, because training on this topic is only mandatory for new employees, the Coast Guard has no assurance that high-ranking officials are well-informed of the restrictions prior to separating from the Coast Guard. In addition, Coast Guard service members and civilian employees can report potential violations of post-government employment restrictions to the DHS Hotline and the Coast Guard Investigative Service. However, the Coast Guard does not have its own hotline number and the Coast Guard Investigative Service only recently began to publicize the DHS Hotline number. Nine of the 11 major contractors reported having voluntary practices to help ensure compliance, such as guidance on post-government employment restrictions, controls during the hiring process, training for employees, and monitoring mechanisms. However, two major contractors had no formal practices.

Coast Guard Provides Training, Advice, and Reporting Mechanism on Restrictions

Although the DHS General Counsel has the authority to plan, direct, implement, and coordinate the ethics program and policies within DHS, the agency has given the Coast Guard and other components flexibility in developing their ethics programs, including discretion over procedures to help ensure compliance with post-government employment restrictions.⁸ The Coast Guard in turn delegates to its ethics officials the responsibility to implement training and provide advice regarding post-government employment restrictions.

Training

The Coast Guard provides ethics training to new service members and civilian employees and provides optional training to outgoing officials. However, there is no certainty that high-ranking Coast Guard officials are informed of the relevant post-government employment restrictions prior to negotiating employment with a contractor or separating from the Coast Guard. The Coast Guard addresses the restrictions in a mandatory training course for new hires within 90 days of employment and during a

⁸Components are given flexibility through DHS Management Directive 0480.1, Ethics of Standard Conduct, March 1, 2003.

1-hour presentation by the ethics attorney at a voluntary pre-retirement course available to high-ranking officials. The Coast Guard also provides annual ethics training, but the ethics training does not usually cover post-government employment restrictions. Of the 11 high-ranking officials who separated from the Coast Guard between July 2008 and December 2010, the Coast Guard indicated that 5 participated in the pre-retirement course. Depending on an official's length of service, there is likely to be a considerable amount of time between new hire training, when an official is first exposed to the post-government employment restrictions, and retirement. In contrast, DOD policy requires that its annual ethics training address post-government employment restrictions.

Ethics Advice

The Coast Guard's ethics attorney provides ethics advice, including counseling and ethics opinions, to personnel who request it, but personnel are not required to obtain advice nor are they required to inform the ethics attorney if they plan to leave the Coast Guard. According to the Coast Guard's Office of General Counsel, the Coast Guard headquarters ethics attorney provides oversight and overall management of the Coast Guard's ethics program, including aspects related to post-government employment restrictions. The Coast Guard ethics attorney explained that, while legal staff in district offices execute day-to-day ethics functions for field personnel, SES officials and admirals typically work with the headquarters ethics office and consult with the headquarters ethics attorney, who is the designated agency contact for that office. Coast Guard officials may request counseling and ethics opinions, which, according to the attorney, are developed with input from a questionnaire about an official's job description during the previous two years, types of contracting positions held, and prospective employers. Ethics opinions may detail the applicant's previous government work experience and specify whether employment with a prospective company is permitted under the post-government employment laws. In other cases, the opinions provide more generalized advice, including a reiteration of potential restrictions.

To help ensure that high-ranking officials are aware that such services are available, the Coast Guard ethics attorney distributes annual email reminders that request officials to notify the attorney if they plan to leave the Coast Guard. If officials indicate to the attorney that they plan to separate, the attorney provides to them a memorandum describing post-government employment restrictions. However, unless individuals inform the ethics attorney that they plan to separate, or request counseling or an ethics opinion, the official may not necessarily receive a communication about the restrictions. During the course of our review, the Coast Guard

provided documentation of ethics opinions for 6 of the 40 former officials in our analysis.⁹ DHS requires headquarters senior employees to certify that they are aware of their restrictions as part of their out-processing procedures; however this does not apply to the Coast Guard. In contrast, DOD components are required under DOD policy to provide guidance on relevant federal and DOD post-government employment restrictions, as part of out-processing procedures, to all DOD personnel who are leaving federal service.

Reporting Mechanisms

Coast Guard service members and civilian employees may report suspected violations of post-government employment restrictions to the DHS Hotline or to the Coast Guard Investigative Service. Allegations related to post-government employment could be investigated by the DHS Office of the Inspector General or the Coast Guard Investigative Service depending on the circumstances. The Coast Guard does not have its own hotline dedicated to fraud, waste, and abuse. The lack of such a hotline was cited as a deficiency in an independent audit of the Coast Guard's ethics program, although, according to the ethics attorney, there are no federal requirements that the Coast Guard maintain a hotline because the DHS hotline is applicable to all DHS employees. During the course of our review, the Coast Guard Investigative Service added information about the hotline to its website.

Contractor Practices

The 11 contractors we examined stated they have a variety of voluntary practices to help ensure individuals comply with the post-government employment restrictions. Nine of the contractors had relatively formal processes in place, including specific guidance tailored to the restrictions, controls during the hiring process, training for employees, and monitoring mechanisms. Several of these contractors told us they choose to implement such processes and procedures to avoid the risk of ethical misconduct and costly civil and criminal penalties. The remaining 2 appeared to have fewer practices in place to help ensure compliance with the restrictions.

⁹According to the Coast Guard ethics attorney, he generally maintains ethics opinions for 2 years.

As shown below, 9 of the 11 contractors told us they use a variety of practices to help ensure compliance with post-government employment restrictions. These practices include:

- Addressing post-government employment restrictions in company policy or guidance to heighten employee awareness of restrictions. Two of the contractors provided electronic links in their ethics policies to detailed guidance on the restrictions.
- Using safeguards to avoid conflicts of interest in hiring and assigning former government officials to certain roles and responsibilities. For example, to identify applicants that previously worked for the government, some contractors tailored their hiring process to identify them by including specific detailed screening questions in their employment applications that ask applicants to disclose prior government employment.
- Providing training to human resources or other employees to help ensure they are aware of restrictions and do not inappropriately hire, assign, or contact government officials. The type of training, frequency of training, and processes to monitor employee compliance with post-government employment training requirements varied among contractors. Approaches include testing employees on the restrictions, reviewing restrictions with new employees, and providing detailed briefings to staff with specific case examples on the application of the post-government employment restrictions.
- Monitoring current employees' compliance with restrictions. Two contractors told us they require a review of an employee's ethics opinion by human resources or legal staff before approving reassignments. Nine contractors reported having ethics hotlines for employees to anonymously report conflicts of interest or potential violations of the post employment laws.

Table 1 provides more details on the range of practices reported by the contractors.

Table 1: Contractor Reported Practices to Help Ensure Compliance with Post-Government Employment Restrictions

Practice	Contractor responses										
	1	2	3	4	5	6	7	8	9	10	11
Policy/Guidance											
Has policy/guidance addressing restrictions	x	x	x	x	x	x	x	x			x
Hiring											
Application screens for restrictions	x	x	x	x	x	x	x	x			x
Requests ethics opinions ^a	x	x	x	x	x	x	x	x			x
Training											
Regular training for all employees that addresses restrictions	x	x						x			
Regular training is tracked	x	x						x			
Training for Human Resource staff on restrictions	x		x	x	x	x	x	x			x
Human Resource staff training is tracked				x	x	x	x				x
Monitoring											
Process to check restrictions when responsibilities change	x	x	x	x	x			x	x		x
Has ethics hotline	x	x	x	x	x	x	x	x			x
Has had audits in this area											

Source: GAO analysis of contractor responses and documentation.

^aRequires government ethics opinions of applicants who identify themselves as former government officials and who the company determines could potentially have post-government employment restrictions.

As is indicated in table 1, most contractors we examined appear to have relatively formal processes to help ensure they do not hire and assign former government officials to perform prohibited tasks. For example, the Associate General Counsel and Manager of Corporate Ethics and Compliance at one major contractor indicated the company had particularly thorough processes and described several controls it put in place to promote employee awareness of post-government employment restrictions. The company provides an overview of post-government employment restrictions in its code of conduct. In addition, the company requires all employees to take an annual test on the code of conduct and its senior vice presidents receive a list of all employees who have not taken the test. To help ensure that the human resources department identifies any restrictions an applicant might have, the Associate General Counsel said it had a rigorous screening process. For example, its employment application includes a series of detailed screening questions to help identify restrictions and requires the applicant to certify that they will report any restrictions they may have. The company has also developed a screening matrix for its recruiters to use, including details

regarding what policies and practices apply, depending on the applicant's position and responsibilities. All recruiters are required to take an annual test covering post-government employment restrictions. To help ensure former officials are not assigned to perform prohibited tasks when they are assigned a new role in the company, the employee's career manager is expected to review the transfer and check for any restrictions which would be included in the ethics opinion that the company maintains in the official's personnel files. The company also has an anonymous hotline that may be used to report potential violations of restrictions. Its code of conduct includes a non-retaliation policy for people who report potential misconduct.

In contrast, two contractors did not appear to have any of the practices employed by the other nine contractors.¹⁰ For example, one company's policies do not address post-government employment restrictions and the company does not include any steps in its hiring process to help identify former government officials and potential restrictions. However, the head of human resources indicated that the company would ask an applicant to obtain an ethics opinion from the Coast Guard depending on what the applicant discloses in the application, but that situation has not yet arisen. The same company does not provide training that addresses post-government employment restrictions for relevant new hires. In addition, it does not have a hotline for employees to report potential misconduct. Company officials indicated that their processes are not tailored to address restrictions in part because most of its employees work in manufacturing and fabricating-related positions which do not typically include activities that are restricted.

Conclusions

Just over half of the 40 former high-ranking officials who left the Coast Guard from 2005 through 2009 have been compensated by Coast Guard contractors. Many of these former officials were assigned to business development roles and responsibilities, which may entail increasing the employer's business with the Coast Guard and DHS. In order to avoid possible conflicts of interests and to promote public trust, former high ranking officials must comply with restrictions on their post-government employment activities. Currently, the training the Coast Guard provides

¹⁰None of the former high-ranking officials in our analysis were compensated by these two contractors at the time of our review.

on post-government employment restrictions is mandatory only for new personnel. Ethics advice and training are optional for officials leaving the Coast Guard. As a result, high-ranking officials may not be fully aware of restrictions before they negotiate with potential employers or separate from the government. In contrast, Department of Defense policy requires that its components provide their personnel with annual training and pre-separation guidance on relevant post-government employment restrictions. Given the gaps we identified in the Coast Guard procedures, the Coast Guard could do more to help ensure its employees are fully informed of post-government employment restrictions.

Recommendation for Executive Action

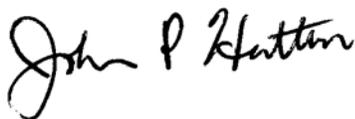
In order to help ensure high-ranking officials receive timely and relevant information on post-government employment restrictions, we recommend that the Commandant of the Coast Guard require Coast Guard ethics officials to provide guidance on restrictions to all admirals and members of the SES, at a minimum, as the officials enter into those senior positions and as they transition out of Coast Guard service.

Agency Comments

DHS provided us with written comments on a draft of this report. DHS agreed with our recommendation that Coast Guard ethics officials provide guidance on restrictions to all admirals and members of the SES, at a minimum, as the officials enter into those senior positions and as they transition out of Coast Guard service. DHS noted that the Coast Guard plans to amend the Commandant's Instruction Manual for Standards of Ethical Conduct (CIM 5370.8B) to require this practice. DHS explained that, in the interim, the Coast Guard's Chief Counsel will sign a memorandum that will immediately implement our recommendation. DHS's response is reprinted in appendix II. DHS also provided technical comments, which we have incorporated, as appropriate.

We are sending copies of this report to the Coast Guard and the Department of Homeland Security. In addition, the report is also available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4841 or huttonj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

A handwritten signature in black ink that reads "John P. Hutton". The signature is written in a cursive style with a large initial "J" and a distinct "P".

John P. Hutton
Director, Acquisition and Sourcing Management

Appendix I: Scope and Methodology

To determine to what extent former high-ranking Coast Guard officials have been compensated by Coast Guard contractors, we identified which former high-ranking officials to include in our analysis by using Coast Guard data on former Coast Guard officials who were of rank O-7 and above (Admiral) or in the Senior Executive Service (SES) and departed from the Coast Guard from January 1, 2005, through December 31, 2009, as mandated in section 402 (a) of the Coast Guard Authorization Act of 2010, Pub. L. No. 111-281, as amended, which added section 569 to title 14 of the United States Code.

To determine the number of former officials who were compensated by Coast Guard contractors; which, if any, of the former high-ranking officials who separated from the Coast Guard were compensated by a major Coast Guard contractor from 2005 through 2010, and were assigned to programs for which they previously had official responsibility; and their compensation amounts, we obtained and analyzed information from the Coast Guard, Coast Guard contractors, the Federal Procurement Data System-Next Generation (FPDS-NG), the Internal Revenue Service (IRS) Information Returns Master File, USA Spending, and other publicly available information sources. Due to the lack of data on government subcontractors in the FPDS-NG, we did not assess whether the former officials were compensated by Coast Guard contractors via subcontracts. For major Coast Guard contractors—contractors that received at least \$10 million in obligations from the Coast Guard in 2010—we provided our list of former officials to the 39 major Coast Guard contractors and asked them to inform us whether they compensated any of the individuals from January 1, 2005, through December 31, 2010.¹ We also asked the companies to identify any additional individuals meeting the same criteria who were not on the list. We cross-checked this against information regarding individuals' employers, which we obtained from the Coast Guard and other publicly available sources.

To assess the reliability of our data sources, we conducted interviews with knowledgeable agency officials and examined data for outliers and obvious errors. We also compared the data we obtained from the Coast

¹This methodology was used due to restrictions associated with use of IRS data. To ensure we did not act on IRS data, it was only used at the end of our audit work. Instead, we identified major contractors that compensated former officials using the above approaches, followed up regarding the officials' roles and responsibilities, and only afterwards verified our list of former officials using IRS data.

Guard and Coast Guard contractors to the IRS data. Based on the results, we found the data to be sufficiently reliable to meet our reporting objectives.

To determine whether the 12 former Coast Guard officials compensated by major Coast Guard contractors were assigned to work on programs or projects for which they previously had oversight authority or decision-making responsibility, we obtained information from:

- contractors on the roles and responsibilities assigned to the former officials they compensated;
- the Coast Guard on the former officials' roles and responsibilities for the five years prior to their separation from the Coast Guard; and
- contractors and the Coast Guard documenting ethics opinions which, in some cases, identified Coast Guard experience with programs or contracts.

We then compared the information regarding Coast Guard responsibilities with responsibilities assigned by the contractors to identify any overlap. We did not assess whether the actual duties performed by the former employees were in compliance with post-government employment restrictions; however, we asked Coast Guard officials whether they had documentation of any of these former officials meeting with the Coast Guard on behalf of the contractor that compensated them. Coast Guard officials could not provide us with evidence of former senior officials having attended meetings. Also, we queried the Department of Homeland Security (DHS) Hotline, the Coast Guard Investigative Service, and GAO's FraudNet regarding whether they had received any allegations of violations of post-government employment restrictions by the former officials in our analysis during the 2005 to 2010 time period.

To determine what practices the Coast Guard uses to help ensure individuals comply with post-government employment restrictions, we interviewed Coast Guard officials, reviewed policies, analyzed training documents, and reviewed procedures for providing ethics counseling and advice, reporting misconduct, and monitoring compliance. In addition, we interviewed Office of Government Ethics officials to identify federal government policies and recommended practices. We also reviewed DOD and Security and Exchange Commission policies related to post-government employment restrictions to compare them with the Coast Guard's. We interviewed the Coast Guard's designated agency ethics official in headquarters because we were told SES officials and Flag officers typically work with the headquarters ethics office and consult with

the headquarters ethics attorney, who is the designated agency contact for that office. We also interviewed officials in the Coast Guard Investigative Service and DHS-Office of the Inspector General to determine the roles and responsibilities of these offices in ensuring Coast Guard service members and civilians are aware of mechanisms to report potential misconduct. In addition, we spoke to Coast Guard officials in contracting administration to determine if they monitor contractor ethics programs and compliance with post-government employment restrictions.

To describe the practices contractors told us they use to help ensure individuals comply with post-government employment restrictions, we interviewed contractors about hiring, training, and monitoring policies and practices, and we reviewed documentation from 11 contractors that represented over 40 percent of the dollar value of Coast Guard obligations in calendar year 2010, including the top 6 recipients of Coast Guard obligations. We did not assess contractor compliance with the restrictions but conducted our review to identify ways contractors may help ensure compliance with the post-government employment restrictions.

We conducted this performance audit from March 2011 through December 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

December 2, 2011

John Hutton
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Draft Report GAO-12-174, "COAST GUARD: Communication of Post-Government Employment Restrictions Can Be Strengthened"

Dear Mr. Hutton:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO's) work in planning and conducting its review and issuing this report.

It is DHS policy that all employees will maintain especially high standards of honesty, impartiality, integrity, and conduct to ensure the proper performance of government business and the continual trust and confidence of the citizens of the United States. DHS has also long imposed the strictest requirements on its senior officials to avoid even the appearance of impropriety in connection with their post-employment activities.

In 2007, Secretary Chertoff expressly caused DHS to implement the strictest post-employment standard for former DHS senior officials. Specifically, he exercised discretion available under governing authorities to effect a change to the existing DHS designation of separate Components for purposes of Section 207(c) of the post-employment statute¹, thereby expanding the communication bar to prohibit communications across the entire Department. Previously, the 1-year communication bar was limited so that only representation to the former employee's Component was prohibited.

As a consequence of this continuing DHS policy of the strictest possible standard, all senior DHS officials (military and civilian) are prohibited from representing their new employers to any part of DHS for 1 year after they have left their senior positions with the Department. The Department is pleased to note that GAO found no evidence of former high-ranking U.S. Coast Guard officials (admirals or Senior Executive Service members) representing their employers in violation of post-government employment restrictions.

The draft report contained one recommendation to strengthen the process for ensuring that high-ranking officials receive timely and relevant information on post-government

¹ 18 U.S.C. § 207(c).

**Appendix II: Comments from the Department
of Homeland Security**

restrictions, with which the Department concurs. Specifically, GAO recommended that the Commandant of the Coast Guard:

Recommendation: Require Coast Guard ethics officials to provide guidance on restrictions to all admirals and members of the SES, at a minimum, as the officials enter into those senior positions and as they transition out of Coast Guard service.

Response: Concur. The Coast Guard plans to amend the *Commandant's Instruction Manual for Standards of Ethical Conduct* (CIM 5370.8B) to reflect this recommendation. In the interim, the Coast Guard's Chief Counsel will sign a memorandum that will immediately implement GAO's recommendation.

Again, thank you for the opportunity to review and comment on this draft report. We look forward to working with you on future Homeland Security engagements.

Sincerely,



Jim H. Crumpacker
Director
Departmental GAO-OIG Liaison Office

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

John P. Hutton, (202) 512-4841 or huttonj@gao.gov

Acknowledgments

In addition to the contact named above, Penny Berrier, Assistant Director; Steve Caldwell; Jenny Chanley; Maria Durant; Laura Holliday; Julia Kennon; James Lager; Sylvia Schatz; Bob Swierczek, and James Ungvarsky made key contributions to this report.

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