

ALERT

Reintroduced Bill Would Automatically Propose for Debarment Any Person That Violates the Foreign Corrupt Practices Act

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Rep. Peter Welch (D-VT) recently reintroduced a bill that would require any person that violates the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA) to be proposed for debarment from all federal contracts and grant awards. Those individuals would then be prohibited from receiving any federal contracts or grants unless and until they persuade government contracting officials that they are currently responsible contractors despite the FCPA violation. The proposed debarment would occur regardless of whether the FCPA violation occurred in relation to a government contract or grant, or a purely commercial business transaction. The bill is co-sponsored by Rep. Jason Chaffetz (R-UT).

The legislation, the Overseas Contractor Reform Act (H.R. 3588) is similar to Rep. Welch's proposed amendment to the House version of the National Defense Authorization Act (NDAA) for Fiscal Year 2012. See "Proposed Amendment Would Automatically Propose for Debarment Any Contractor That Violates the Foreign Corrupt Practices Act." That amendment was not included in the final bill. H.R. 3588 is also similar to the Overseas Contractor Reform Act of 2010, which Rep. Welch introduced in the previous session of Congress. Although that bill passed the House on Sept. 15, 2010, the Senate did not address it before Congress adjourned for the year.

The FCPA contains two distinct areas of focus and corresponding enforcement schemes: (1) anti-bribery provisions and (2) record-keeping and internal accounting provisions. The anti-bribery provisions prohibit corrupt payments to foreign government officials by U.S. citizens and companies seeking to influence foreign

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governments and obtain or retain business or secure an advantage in business dealings in the foreign country. The FCPA also contains extensive record-keeping and accounting practices requirements that apply to any company whose securities are listed in the United States. Individuals and companies that violate the FCPA can receive significant civil and criminal fines for each violation, and individuals can also face imprisonment. In addition, agencies already can suspend or debar individuals and companies from government contracting based on an FCPA violation. H.R. 3588 requires a proposed debarment for violations of the FCPA's anti-bribery provisions, but not for violations of the record-keeping and internal accounting provisions.

H.R. 3588 includes two revisions from Rep. Welch's previous proposals in this area. First, the new bill does not define "person," whereas both the 2010 bill and the proposed amendment to the NDAA, defined "person" to include an individual, partnership or corporation. In addition, H.R. 3588 also includes the possibility for exemption for self-reported violations.

As in Rep. Welch's previous proposals, H.R. 3588 would permit the head of a government agency to waive the proposed debarment for a specific contract or grant. In addition, it would permit the head of a government agency to exempt a person from the applicability of the act if the agency head determined that the person voluntarily reported a violation of the FCPA to the federal Government. Despite this change, the discretionary standard for exemption and the possibility of such a severe penalty as debarment could discourage individuals from voluntarily disclosing FCPA violations and cooperating with enforcement agencies to improve FCPA compliance.

Wiley Rein's International Trade and Government Contracts practices will continue to monitor developments related to the FCPA and other legislation affecting government contractors.