

December 13, 2022

The Honorable Lloyd J. Austin III  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Secretary Austin:

I write to express concerns and request additional information about recent reports alleging that Eric Schmidt used his positions on the Defense Innovation Board (DIB) and the National Security Commission on Artificial Intelligence (NSCAI) to further his own personal financial interests.<sup>1</sup>

Federal advisory boards can provide valuable advice and insights to federal agencies, but without strong oversight and clear guardrails they can also provide their board members an unfair competitive advantage in winning government contracts and influencing agency policy. The *Federal Advisory Committee Act* (FACA) was created in part due to concerns that these boards lack “adequate oversight” and to require their operations be open and transparent to the public.<sup>2</sup> These boards can exert significant influence in shaping government research and procurement priorities, making it essential that agencies prevent and mitigate conflicts of interest.

The DIB was established under the *Federal Advisory Committee Act* (FACA)<sup>3</sup> and both the DIB and the NSCAI are subject to FACA rules.<sup>4</sup> Under FACA you are “responsible for ensuring that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes and other Federal ethics rules.”<sup>5</sup> The Department of Defense (DoD or the Department) designates all committee members as special government

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<sup>1</sup> CNBC, “How Google’s former CEO Eric Schmidt helped write A.I. laws in Washington without publicly disclosing investments in A.I. startups,” Eamon Javers, October 24, 2022, <https://www.cnbc.com/2022/10/24/how-googles-former-ceo-eric-schmidt-helped-write-ai-laws-in-washington-without-publicly-disclosing-investments-in-ai-start-ups.html>; Protocol, “Inside Eric Schmidt’s push to profit from an AI cold war with China,” Kate Kaye, October 31, 2022, <https://www.protocol.com/enterprise/eric-schmidt-ai-china>.

<sup>2</sup> Congressional Research Service, “Federal Advisory Committees: An Introduction and Overview,” Wendy Ginsberg and Casey Burgat, October 27, 2016, <https://sgp.fas.org/crs/secretcy/R44253.pdf>.

<sup>3</sup> Defense Innovation Board, “About,” <https://innovation.defense.gov/About1/>.

<sup>4</sup> *Electronic Privacy Information Center v. National Security Commission on Artificial Intelligence*, Case No. 1:19-cv-02906, June 1, 2020, <https://epic.org/wp-content/uploads/foia/epic-v-ai-commission/EPIC-v-AI-Commission-19-2906-Memorandum-Opinion-060120.pdf>; National Security Commission on Artificial Intelligence, “Charter,” <https://www.nscai.gov/about/charter/>; Defense Innovation Board, “About,” <https://innovation.defense.gov/About1/>.

<sup>5</sup> 41 CFR 102-3, Subpart. C, App. A.

employees<sup>6</sup> and requires them to “sign a written statement disqualifying them from participation in particular matters that may affect any financial interest disclosed on their report.”<sup>7</sup> Special government employees are also subject to criminal statutes, which prohibit them “from participating personally and substantially in any particular matter that affects [their] financial interests,”<sup>8</sup> subjecting them to penalties that could include imprisonment up to five years or civil penalties of not more than \$110,107 for each infraction.<sup>9</sup>

In the case of Mr. Schmidt, I am concerned by press reports indicating the Department may not have adequately followed FACA conflict of interest rules and therefore failed to protect the public interest.<sup>10</sup>

Mr. Schmidt and the NSCAI have argued the U.S. government should significantly increase spending on artificial intelligence (AI), including “doubling Federal investments in AI R&D to reach \$32 billion annually by 2026.”<sup>11</sup> NSCAI’s final report also argued, “the federal government must partner with U.S. companies to preserve American leadership and to support development of diverse AI applications that advance the national interest in the broadest sense. If anything, this report underplays the investments America will need to make.”<sup>12</sup> In response to the NSCAI report the Senate version of the *National Defense Authorization Act* provided an additional \$75 million “for implementing the National Security Commission on Artificial Intelligence recommendations.”<sup>13</sup> Mr. Schmidt said that the Commission helped get one bill “modified by \$200 billion” and that “there’s an analogous team that worked on the secret stuff that went through the secret process that has had similar impact” on federal spending priorities.<sup>14</sup>

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<sup>6</sup> Department of Defense General Counsel Standards of Conduct Office, “Keeping Committees Clear of Ethical Problems: An Ethics Guide for Designated Federal Officials of DoD Advisory Committees,” p. 2, [https://dodsoco.ogc.osd.mil/Portals/102/dfo\\_coi\\_guide.pdf](https://dodsoco.ogc.osd.mil/Portals/102/dfo_coi_guide.pdf).

<sup>7</sup> *Id.*, p. 4.

<sup>8</sup> Department of Defense Standards of Conduct Office, “AN ETHICS GUIDE FOR SPECIAL GOVERNMENT EMPLOYEES, INCLUDING CONSULTANTS AND EXPERTS (SUCH AS ADVISORY COMMITTEE MEMBERS),” p. 2, <https://disa.mil/-/media/Files/DISA/About/GC/ethics-sge.ashx>.

<sup>9</sup> 18 U.S.C. § 216(a) and (b) (penalties and injunctions); Federal Register, U.S. Department of Justice Notice, “Civil Monetary Penalties Inflation Adjustments for 2022,” May 9, 2022, <https://www.govinfo.gov/content/pkg/FR-2022-05-09/pdf/2022-09928.pdf>.

<sup>10</sup> CNBC, “How Google’s former CEO Eric Schmidt helped write A.I. laws in Washington without publicly disclosing investments in A.I. startups,” Eamon Javers, October 24, 2022, <https://www.cnbc.com/2022/10/24/how-googles-former-ceo-eric-schmidt-helped-write-ai-laws-in-washington-without-publicly-disclosing-investments-in-ai-start-ups.html>; Protocol, “Inside Eric Schmidt’s push to profit from an AI cold war with China,” Kate Kaye, October 31, 2022, <https://www.protocol.com/enterprise/eric-schmidt-ai-china>.

<sup>11</sup> National Security Commission on Artificial Intelligence, “NSCAI Releases Final Report to Congress and the President,” press release, March 1, 2021, <https://www.nscai.gov/2021/03/01/nscai-releases-final-report-to-congress-and-the-president/>.

<sup>12</sup> National Security Commission on Artificial Intelligence, “Final Report,” March 1, 2021, p. 4, <https://www.nscai.gov/wp-content/uploads/2021/03/Full-Report-Digital-1.pdf>.

<sup>13</sup> James H. Inhofe National Defense Authorization Act for fiscal year 2023 Report to Accompany S. 4543, July 18, 2022, <https://www.govinfo.gov/content/pkg/CRPT-117srpt130/html/CRPT-117srpt130.htm>.

<sup>14</sup> CNBC, “How Google’s former CEO Eric Schmidt helped write A.I. laws in Washington without publicly disclosing investments in A.I. startups,” Eamon Javers, October 24, 2022, <https://www.cnbc.com/2022/10/24/how-googles-former-ceo-eric-schmidt-helped-write-ai-laws-in-washington-without-publicly-disclosing-investments-in-ai-start-ups.html>.

But Mr. Schmidt has a clear conflict of interest in this issue: the NSCAI recommendations could direct funds to Mr. Schmidt and his business partners, who have invested more than \$2 billion in companies focused on artificial intelligence.<sup>15</sup> *Protocol* revealed that Mr. Schmidt’s venture capital firm, Innovation Endeavors, “invested in companies that have received multimillion-dollar contracts from federal agencies,” including investments and contract awards while he chaired the NSCAI and DIB boards.<sup>16</sup> Innovation Endeavors investments in defense contractors included Rebellion Defense, which was selected “to receive up to \$950 million in contracts from the U.S. Air Force to help construct its Advanced Battle Management System, a system that incorporates cloud AI and advanced data analytics to deliver tailored information to forces on the battlefield.”<sup>17</sup> Duality Technologies, another company that received Innovation Endeavors funds, won contracts with the Defense Advanced Research Projects Agency while Schmidt was still the chair of the NSCAI.<sup>18</sup> *CNBC* reported Mr. Schmidt personally invested in Beacon, a company that “uses AI in the company’s supply chain products for shippers who manage freight logistics.”<sup>19</sup> While he did disclose this investment to the government it was only recently publicly connected to his work on the boards.<sup>20</sup>

This is not the first time potential conflicts between Mr. Schmidt’s business interests and his advisory services to DoD have raised concerns. In 2019, *ProPublica* reported Mr. Schmidt’s company at the time, Google, secured a \$17 million DoD image recognition software subcontract a year after his role on the DIB made him privy to how those services were used by DoD.<sup>21</sup> On the DIB, Schmidt reportedly had “carte blanche” travel privileges at DoD and was given “permission to travel anywhere they wanted and to talk to anyone at the DOD on all but the most secret programs.”<sup>22</sup>

Mr. Schmidt’s investment activities, and the lack of public disclosure, create the appearance that these boards are yet another tool for influence-peddling and profiteering at DoD, raising concerns about the ethics of their members and the utility of their recommendations. In 2021, I wrote to commend your decision to suspend DoD advisory boards pending a “zero-based review.”<sup>23</sup> As part of that review I urged you to “ensure that board members are complying with

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<sup>15</sup> Protocol, “Inside Eric Schmidt’s push to profit from an AI cold war with China,” Kate Kaye, October 31, 2022, <https://www.protocol.com/enterprise/eric-schmidt-ai-china>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> CNBC, “How Google’s former CEO Eric Schmidt helped write A.I. laws in Washington without publicly disclosing investments in A.I. startups,” Eamon Javers, October 24, 2022, <https://www.cnn.com/2022/10/24/how-googles-former-ceo-eric-schmidt-helped-write-ai-laws-in-washington-without-publicly-disclosing-investments-in-ai-start-ups.html>.

<sup>20</sup> *Id.*

<sup>21</sup> ProPublica, “How Amazon and Silicon Valley Seduced the Pentagon,” James Bandler, Anjali Tsui, and Doris Burke, August 22, 2019, <https://www.propublica.org/article/how-amazon-and-silicon-valley-seduced-the-pentagon>.

<sup>22</sup> *Id.*

<sup>23</sup> Letter from Senator Warren to Secretary Austin, March 22, 2021, [https://www.warren.senate.gov/imo/media/doc/2021\\_03\\_22%20Letter%20to%20Secretary%20Austin%20on%20Suspension%20of%20Defense%20Advisory%20Boards.pdf](https://www.warren.senate.gov/imo/media/doc/2021_03_22%20Letter%20to%20Secretary%20Austin%20on%20Suspension%20of%20Defense%20Advisory%20Boards.pdf); Secretary of Defense, “DoD Advisory Committees – Zero-Based Review,” January 30, 2021, <https://media.defense.gov/2021/Feb/02/2002574747/-1/-1/0/DOD-ADVISORY-COMMITTEES-ZERO-BASED-REVIEW.PDF>.

all government ethics rules,”<sup>24</sup> particularly given the past history of these boards being used as an avenue for profiteering.<sup>25</sup> In March 2021, shortly after you were confirmed,<sup>26</sup> you made clear that you support President Biden’s “commitment to restoring and maintaining public interest in government,”<sup>27</sup> including “liv[ing] up to our core values and the expectations of our fellow citizens...in the most stringent—indeed, the most ethical—of ways.”<sup>28</sup>

My *Anti-Corruption and Public Integrity Act* would help prevent these conflicts of interest by requiring all agencies to post federal advisory committee information, including ethics and recusal information for members.<sup>29</sup> It would also require all special government employees to be subject to the same ethics laws as other federal employees.<sup>30</sup>

The public deserves to know that members of DoD’s advisory boards are providing the department with the best and most appropriate advice to support national security, and are not abusing their authority to advance their own financial interests.

To address my concerns about potential conflicts of interest on these boards, I ask that you please answer the following questions by January 17:

1. What is DoD’s policy to review and determine whether advisory board members’ investments prevent a conflict of interest with their board duties?
2. Has DoD referred any conflict of interest concerns about advisory boards to agency ethics officials or the DoD Inspector General? If so, what were the outcomes of these referrals?
3. Was Mr. Schmidt issued any waivers from government ethics rules? Please provide any waivers issued.

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<sup>24</sup> Letter from Senator Warren to Secretary Austin, March 22, 2021, [https://www.warren.senate.gov/imo/media/doc/2021\\_03\\_22%20Letter%20to%20Secretary%20Austin%20on%20Suspension%20of%20Defense%20Advisory%20Boards.pdf](https://www.warren.senate.gov/imo/media/doc/2021_03_22%20Letter%20to%20Secretary%20Austin%20on%20Suspension%20of%20Defense%20Advisory%20Boards.pdf).

<sup>25</sup> ProPublica, “How Amazon and Silicon Valley Seduced the Pentagon,” James Bandler, Anjali Tsui, and Doris Burke, August 22, 2019, <https://www.propublica.org/article/how-amazon-and-silicon-valley-seduced-the-pentagon>; Letter from the Project On Government Oversight to Food and Drug Administration Commissioner Margaret Hamburg, January 11, 2012, <https://www.pogo.org/letter/2012/01/pogo-letter-fda-advisors-on-yaz-and-yasmin-have-industry-ties>.

<sup>26</sup> New York Times, “Lloyd Austin is confirmed, becoming the first Black defense secretary in U.S. history,” Catie Edmondson, September 29, 2021, <https://www.nytimes.com/2021/01/22/us/lloyd-austin-confirmed.html>.

<sup>27</sup> Secretary of Defense Memorandum for all Department of Defense Personnel, “Reaffirming Our Values and Ethical Conduct,” March 1, 2021, p. 1, [https://dodsoco.ogc.osd.mil/Portals/102/Documents/Senior%20Leader%20Messages/Reaffirming%20Our%20Values%20and%20Ethical%20Conduct%20Austin%20mar%201%202021.pdf?ver=kToLb4Nvy0Sf\\_xF4u-JvVQ%3d%3d](https://dodsoco.ogc.osd.mil/Portals/102/Documents/Senior%20Leader%20Messages/Reaffirming%20Our%20Values%20and%20Ethical%20Conduct%20Austin%20mar%201%202021.pdf?ver=kToLb4Nvy0Sf_xF4u-JvVQ%3d%3d).

<sup>28</sup> *Id.*, p. 2.

<sup>29</sup> *Anti-Corruption and Public Integrity*, S. 5070 (116th Congress), Section 624, <https://www.congress.gov/bill/116th-congress/senate-bill/5070/text>.

<sup>30</sup> *Id.*, Section 108(c).

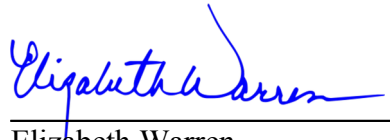
4. Were any other members of the DIB or NSCAI issued waivers from government ethics rules? Please provide any waivers issued.
5. Were any members of the DIB or NSCAI asked to make any divestments to avoid conflicts of interest? Please provide any requests and the members' response to the request.
6. Did DoD receive information or any disclosures of Innovation Endeavors' investments into current or prospective DoD contractors?
7. Was DoD aware of Mr. Schmidt's investment in Beacon while he was chair of the NSCAI board?
  - a. If yes, was he advised to recuse himself or divest the investment?
8. Has DoD required any advisory board members to recuse themselves from matters or meetings that would create a financial conflict of interest or the appearance of a financial conflict of interest?
9. *ProPublica* reported former DIB board employee Roma Laster raised concerns about Mr. Schmidt and former Amazon chief executive officer Jeff Bezos having an inappropriately close relationship with DoD.<sup>31</sup> Did DoD receive any other complaints or concerns that members of the DIB and ASCAI may be violating federal conflict of interest laws?
  - a. Please provide the complaints (if any) and a description of actions taken by DoD in response.
10. Did DoD's zero-based review lead to any changes in policy, oversight procedures, or guidance to advisory board members?
  - a. Please provide information on any outcomes of the zero-based review.

Thank you for your attention to this matter.

Sincerely,

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<sup>31</sup> ProPublica, "How Amazon and Silicon Valley Seduced the Pentagon," James Bandler, Anjali Tsui, and Doris Burke, August 22, 2019, <https://www.propublica.org/article/how-amazon-and-silicon-valley-seduced-the-pentagon>.



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Elizabeth Warren  
United States Senator