

September 27, 2023

Ms. Heidi Shyu  
Under Secretary of Defense for Research and Engineering  
Department of Defense  
The Pentagon  
Washington, DC 20301

Dear Under Secretary Shyu:

I write regarding my continued concerns that the Department of Defense (DoD) lacks sufficient guardrails to prevent special government employees (SGEs) employed by the Office of Strategic Capital (OSC) from using their position for personal profit.

DoD established OSC last year “to integrate efforts across the Department of Defense and to partner with other U.S. Government Departments and Agencies to develop, integrate, and implement proven partnered capital strategies to shape and scale investment in critical technologies.”<sup>1</sup> That includes DoD “funding investments”<sup>2</sup> directly and “informing and encouraging private sector investment” in specific technology areas.<sup>3</sup> This provides DoD and OSC SGEs with access to sensitive business information and influence over DoD research and contracting decisions that could be extraordinarily lucrative for the firms and corporations that they work for.

On July 9, 2023, I sent a letter to your office raising concerns that OSC’s use of SGEs who simultaneously work for defense consulting and investment firms creates clear conflicts of interest.<sup>4</sup> One SGE works at WestExec Advisors, which is an “ultra- connected Washington consultancy that works with tech and defense companies.”<sup>5</sup> The other works at New Vista Capital, a venture capital firm<sup>6</sup> “focused on supporting emerging companies in aerospace, defense, and

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<sup>1</sup>Department of Defense, “Establishment of the Office of Strategic Capital,” December 1, 2022, p. 1, <https://media.defense.gov/2022/Dec/01/2003123982/-1/-1/1/ESTABLISHMENT-OF-THE-OFFICE-OFSTRATEGIC-CAPITAL.PDF>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Office of Senator Elizabeth Warren, Letter to Ms. Heidi Shyu, Under Secretary of Defense for Research and Engineering, July 9, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.07.09%20Letter%20to%20DoD%20on%20Strategic%20Capital%20Office%20Conflict%20of%20Interest%20Concerns.pdf>.

<sup>5</sup> Vox, “The thorny ethical issues of the Pentagon partnering with the private sector,” Jonathan Guyer, April 28, 2023, <https://www.vox.com/politics/2023/4/28/23698006/pentagon-investing-capital-ethical-gray-areas-consulting>

<sup>6</sup> Bloomberg, “New Vista Capital LLC,” <https://www.bloomberg.com/profile/company/0518379D:US#xj4y7vzkg>.

logistics and transportation.”<sup>7</sup> Both of these firms could use information gathered by their SGEs to benefit their investments.

In your response you wrote that “[t]hese SGEs are assigned duties that are limited to providing expertise and guidance in conducting legal and market research and reviewing and crafting internal policies”<sup>8</sup> but “do[es] not include participation in any matters affecting the financial interests of non-federal entities”<sup>9</sup> so “no waivers or divestitures under the ethics laws are required.”<sup>10</sup>

While I appreciate your response, I remain concerned that DoD has not taken sufficient steps to prevent profiteering by OSC SGEs. Your response indicates that these SGEs may help establish selection criteria or other policies. As you note, OSC will use “loans and loan guarantees,”<sup>11</sup> determine “trusted private capital” sources,<sup>12</sup> align investments “into the current Department of Defense research and engineering enterprise,”<sup>13</sup> and develop “administrative practices in preparation for OSC investment activities”<sup>14</sup> that will influence which types of companies are eligible for investment. This creates a direct and predictable effect for companies, which is likely to include WestExec clients and New Vista Capital investments. The ability to monitor and prevent these conflicts of interest is further undermined since their financial disclosure forms are not made available to the public.<sup>15</sup> Federal law makes clear that it’s illegal for employees to participate “personally and substantially” if there would be a “direct and predictable effect” on their financial interests<sup>16</sup> – a standard that you do not appear to be applying to OSC SGEs.

I am also concerned that DoD’s interpretation of current ethics law restrictions is overly narrow, creating a massive – and absurd - ethics loophole. These SGEs continue to be employed by outside firms. In your response you wrote that SGEs are prevented from participating in matters involving their former employer,<sup>17</sup> but the law clearly restricts DoD employees from participating in particular matters involving organizations where they’ve served as employees “in the past two years,” which obviously should include organizations where they’re *currently* employed as well.<sup>18</sup> Given OSC’s mandate to engage with the private sector as part of its market research,<sup>19</sup> this loophole creates obvious opportunities for SGEs to “provid[e] expertise and guidance in

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<sup>7</sup> Export-Import Bank, “Kristen Bartok Touw,” <https://www.exim.gov/leadership-governance/advisory-committees/exim-chairs-council-china-competition/kirsten-bartok-touw>.

<sup>8</sup> Letter from Under Secretary of Defense for Research and Engineering Heidi Shyu to Senator Elizabeth Warren, July 28, 2023, p. 1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*, p. 3.

<sup>12</sup> *Id.*, p. 2.

<sup>13</sup> *Id.*, p. 3.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, p. 2.

<sup>16</sup> 18 U.S.C. § 208; 5 CFR § 2635.402 (a)

<sup>17</sup> Letter from Under Secretary of Defense for Research and Engineering Heidi Shyu to Senator Elizabeth Warren, July 28, 2023, p. 2.

<sup>18</sup> Section 1117 of the fiscal year 2022 National Defense Authorization Act (Public Law 117-81), <https://www.congress.gov/117/plaws/publ81/PLAW-117publ81.pdf>; 18 U.S.C. § 208.

<sup>19</sup> Letter from Under Secretary of Defense for Research and Engineering Heidi Shyu to Senator Elizabeth Warren, July 28, 2023, p. 2.

conducting legal and market research and reviewing crafting internal policies” that benefit their full time employers.

Former Google chief executive officer Eric Schmidt described this exact dynamic when he described the role of how he used “connections from the National Security Commission on AI and his other initiatives to expand his reach.” Schmidt noted how he relied on special insider connections to commission members:

“The people who work in the commission and then go into the government, they are your emissaries,” Schmidt told a Capitol Hill cyber policy event in June. “A rule of business is that if you could put your person in the company, they’re likely to buy from you. It’s the same principle.”<sup>20</sup>

This is exactly the type of influence-peddling that your current rules are failing to prevent.

My *Anti-Corruption and Public Integrity Act* would require most executive branch employees, including SGEs, to recuse themselves from matters that are likely to financially benefit a current or previous employer, or current or previous client from the preceding four years.<sup>21</sup>

Both the Senate<sup>22</sup> and House versions of the National Defense Authorization Act<sup>23</sup> authorize \$99 million for OSC. However, the Senate appropriations committee did not provide funding<sup>24</sup> and instead expressed support for DoD using existing loan authorities since “the Administration has not formally requested new authorities for OSC that would allow for the requested funds to be executed.”<sup>25</sup> While Congress continues to consider DoD’s request to fund and authorize this office we need more evidence that the responsible use of any new authorities will include meaningful checks on self-dealing and revolving door influence-peddling.

DoD has made an important commitment to accountability and transparency in promising to publicly release OSC’s investment strategy,<sup>26</sup> but further action is necessary. I urge DoD to tighten its rules, make these SGEs financial disclosure forms public, and require these SGEs to publicly list all of their firms’ clients and investments that could stand to benefit from OSC’s activities.

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<sup>20</sup> Bloomberg, “Google’s Former CEO is Leveraging His \$27 Billion Fortune to Shape AI Policy,” Blake Schmidt and Anna Edgerton, September 8, 2023, <https://www.bloomberg.com/news/articles/2023-09-08/google-ex-ceo-eric-schmidt-influences-ai-policy-with-27-billion-fortune?sref=6OyUvLUJ>.

<sup>21</sup> Anti-Corruption and Public Integrity Act, S. 5070, Sections 103 and 108(c), <https://www.congress.gov/bill/116thcongress/senate-bill/5070>.

<sup>22</sup> “Summary of National Defense Authorizations for Fiscal Year 2024,” p. 32, [https://www.armed-services.senate.gov/imo/media/doc/fy24\\_ndaa\\_funding\\_tables.pdf](https://www.armed-services.senate.gov/imo/media/doc/fy24_ndaa_funding_tables.pdf).

<sup>23</sup> House Armed Services Committee, “National Defense Authorization Act for fiscal year 2024 report on H.R. 2670,” p. 513, <https://www.congress.gov/118/crpt/hrpt125/CRPT-118hrpt125.pdf>.

<sup>24</sup> Senate Defense Appropriations Subcommittee, “Department of Defense Appropriations Bill, 2024,” July 27, 2023, p. 246, <https://www.congress.gov/118/crpt/srpt81/CRPT-118srpt81.pdf>.


<sup>25</sup> Senate Defense Appropriations Subcommittee, “Department of Defense Appropriations Bill, 2024,” July 27, 2023, p. 17, <https://www.congress.gov/118/crpt/srpt81/CRPT-118srpt81.pdf>.

<sup>26</sup> Letter from Under Secretary of Defense for Research and Engineering Heidi Shyu to Senator Elizabeth Warren, July 28, 2023, p. 3.

In order to address these concerns please answer these questions no later than October 20, 2023:

1. Has DoD reviewed whether any clients or companies that receive funds from the firms employing the SGEs would be impacted by OSC's activities? What were the findings of that review?
2. Please provide OSC personnel's financial disclosure forms and any information known about clients, investment interests.
3. You wrote that each SGE is required to provide a "signed disqualification statement."<sup>27</sup> Please provide those statements.
4. Disqualification statements must include recusal from a "recent employer or client." Does this include clients of the firms employing the SGE or only apply to clients of the SGE?
5. You wrote the Strategic Capital Advisory Council "provides guidance for OSC strategy, policy, and operations."<sup>28</sup> Please provide any ethics guidance provided to date.

Sincerely,



Elizabeth Warren  
United States Senator

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<sup>27</sup> *Id.*, p. 1.

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