



RESEARCH  
AND ENGINEERING

## UNDER SECRETARY OF DEFENSE

3030 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3030

28 JUL 2023

The Honorable Elizabeth Warren  
United States Senate  
Washington, DC 20510

Dear Senator Warren,

Thank you for your letter regarding the Office of Strategic Capital (OSC). Per the Secretary's Establishment Memorandum,<sup>1</sup> OSC is tasked to "develop, integrate, and implement proven partnered capital strategies to shape and scale investment in critical technologies." We share your vision of having clear ethical standards across the Department of Defense (DoD) and are building those standards into the administration of OSC. The office is currently in an initial stand-up phase and has not enacted any investment activities. DoD is building OSC with proven competitive and transparent processes. These processes adhere to the Department's established safeguards regarding conflicts of interest. We appreciate the continued interest in the stand-up and execution of OSC's mission.

Regarding your questions pertaining to OSC employees and Special Government Employees (SGEs), DoD is committed to preventing conflicts of interest and upholding Federal ethics laws and regulations, including preventing potential conflicts of interest. All OSC personnel are subject to the same government ethics laws, including representational and lobbying restrictions, that apply to their counterparts in other DoD components. These include applicable representational restrictions in 18 U.S.C. § 203,<sup>2</sup> 205,<sup>3</sup> and 207<sup>4</sup> and Section 1045 of the Fiscal Year (FY) 2018 National Defense Authorization Act (NDAA).<sup>5</sup> In accordance with Federal ethics laws and regulations, no OSC personnel have been issued conflict of interest waivers, nor been required to divest of financial holdings.

As part of its research and analysis responsibilities, OSC appointed two SGE consultants. Neither serves in a leadership or supervisory capacity. In accordance with 18 U.S.C. § 202,<sup>6</sup> SGEs are expected to work no more than 130 days in any 365-day period. These SGEs are assigned duties that are limited to providing expertise and guidance in conducting legal and market research and reviewing and crafting internal policies. Their duties do not include participation in any matters affecting the financial interests of non-federal entities; therefore, no waivers or divestitures under the ethics laws have been required for these individuals.

Notwithstanding the limited nature of their duties, as an additional precaution, all SGEs are required to comply with standard requirements for identifying and preventing potential conflicts of interest. Prior to appointment and each annual renewal thereof, each SGE is required to submit a current Office of Government Ethics (OGE) 450 Confidential Financial Disclosure Report, resume (or similar document), and signed disqualification statement (DQ). The DQ that each SGE submits specifies that the SGE is recused from participating in any matters involving an entity in which they have an actual or imputed financial interest or relationship, including

<sup>1</sup> Office of the Secretary of Defense, 2022. *Establishment of the Office of Strategic Capital* (December 1, 2022).

<sup>2</sup> 18 U.S. Code § 203. *Compensation to Members of Congress, officers, and others in matters affecting the Government.*

<sup>3</sup> 18 U.S. Code § 205. *Activities of officers and employees in claims against and other matters affecting the Government.*

<sup>4</sup> 18 U.S. Code § 207. *Restrictions on former officers, employees, and elected officials of the executive and legislative branches.*

<sup>5</sup> H.R.2810. *National Defense Authorization Act for Fiscal Year 2018.*

<sup>6</sup> 18 U.S. Code 202. *Definitions.*

those involving a current or recent employer or client. These documents are reviewed by each SGE's sponsor or supervisor and ethics officials.

Additionally, like all DoD personnel, SGEs are subject to a two-year "cooling off" period. In Section 1117 of the FY 2022 NDAA, Congress created an extended two-year cooling off period, beyond the one-year regulatory period that applies to all executive branch employees, that prevents all DoD personnel, including SGEs, from participating in a matter involving their former employer for two years.

In addition, and specific to OSC, the Secretary of Defense established additional guardrails through the Strategic Capital Advisory Council, which provides dedicated, robust governance for OSC strategy, policy, and operations.<sup>7</sup> Standing members of the council include the Under Secretary of Defense for Research and Engineering (co-chair); Under Secretary of Defense for Acquisition and Sustainment (co-chair); Under Secretary of Defense for Policy; Under Secretary of Defense (Comptroller)/Chief Financial Officer; Director of Cost Assessment and Program Evaluation; General Counsel of the Department of Defense; the Service Acquisition Executives; and the Joint Staff Director of Force Structure, Resources, and Assessment.

OSC is still in its initial phases of work, given its recent establishment; therefore, some activities of interest to you have not been undertaken by OSC or are not yet the purview of OSC. For example, OSC has not made any investments in critical technology companies or investors. Currently, OSC's primary role is organizational stand-up, as well as providing updates to senior defense leadership on issues related to capital markets. For example, following the Silicon Valley Bank (SVB) collapse, OSC personnel engaged with private sector experts to understand the implications of the situation as it related DoD's ability to access critical technologies. Any contact was a part of OSC's responsibility to research and understand the financial, technological, and operational impacts, the results of which were communicated to the Strategic Capital Advisory Council leadership such that they could make an informed assessment of the situation. No other actions were taken by OSC in relation to Silicon Valley Bank.

Soon, the Strategic Capital Advisory Council will review and assess the initial investment strategy for OSC, which will prioritize areas of interest based on rigorous analysis of the industries supporting DoD's critical technology areas, including measures of U.S. competitiveness, capital availability, and defense application. Once approved by the Secretary, the investment strategy for OSC will be released publicly to ensure maximum transparency and enable OSC to openly engage with the private sector to create partnerships for an enduring advantage. As our National Defense Strategy makes clear, the Department must develop and rapidly scale technologies critical to our defense. As today's private sector capital is the dominant funding resource for technology development, we can build enduring advantages through engagement with trusted private capital that is focused on critical technology areas for the Department of Defense.

The establishment of OSC is in alignment with Section 1711 of the FY 2018 NDAA,<sup>8</sup> as amended, and Section 230 of the NDAA for FY 2019.<sup>9</sup> Per Section 1711, Congress directs the Secretary to consider "incentives, including purchase commitments and cost sharing with nongovernmental sources, for the private sector to develop capabilities in areas of national security interest, issuing loans or providing loan guarantees to small- and medium-sized companies to support manufacturing and production capabilities in areas of national security

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<sup>7</sup> Office of the Secretary of Defense, 2022. *Establishment of the Office of Strategic Capital* (December 1, 2022).

<sup>8</sup> H.R.2810. *National Defense Authorization Act for Fiscal Year 2018*.

<sup>9</sup> H.R.5515. *John S. McCain National Defense Authorization Act for Fiscal Year 2019*.

interest, and giving awards to third party entities to support investments in small and medium sized companies working in areas of national security interest, including debt and equity investments that would benefit missions of the Department of Defense.” Per Section 230, Congress directs the Under Secretary for Research and Engineering to engage in activities “informing and encouraging private investment.” This includes “plans for private fund-matching and investment mechanisms” and “plans for attracting the participation of the commercial technology industry and academia and how those plans fit into the current Department of Defense research and engineering enterprise.”

Since the establishment of OSC in December 2022, DoD has been working diligently to develop the policies and procedures that will achieve the objectives as directed by Congress. As directed by the FY 2023 NDAA Joint Explanatory Statement,<sup>10</sup> and as briefed to the House and Senate Armed Services Committees in March 2023, we have determined that the most practical approach in the near-term is to initiate program activities in collaboration with federal partners that currently employ federal credit programs in contexts where missions and mandates overlap with the objectives of the DoD. By using financial tools such as loans and loan guarantees, and by working with interagency partners who have extensive experience with these tools, DoD can act on congressional direction sooner and ensure that DoD develops the appropriate administrative practices in preparation for OSC investment activities. Federal credit programs are common across the U.S. government and have established policies and practices that meet regulatory standards and expectations. In the current fiscal year, the U.S. government administers more than 100 federal credit programs,<sup>11</sup> each of which is subject to congressionally mandated guardrails prescribed in the Federal Credit Reform Act (1990)<sup>12</sup> and 18 U.S.C. § 202.<sup>13</sup>

By working with interagency partners with established federal credit programs, DoD is establishing OSC with proven competitive and transparent processes. Federal credit programs often make use loans and loan guarantees to increase private sector participation in achieving U.S. government policy objectives, including instances that have directly supported national security. Because federal credit programs are primarily debt-based programs, they present a low-cost, efficient way to achieve national security objectives, which include expanding investments in production, infrastructure, and manufacturing related to critical technologies. Investors and companies that receive loans and loan guarantees are required to return funds to the taxpayer, minimizing both appropriations and program costs. These types of tools will allow DoD to expand the U.S. industrial base by working with companies that may be new to government partnerships but that have extensive knowledge of critical technology areas. As a result, new entrants can effectively and efficiently increase competition for the resilient and diverse industrial base needed to support the National Security Strategy and National Defense Strategy.

Thank you for your interest in the mission of OSC. We are honored to fulfill a congressional mandate to advance national security.

Sincerely,



Heidi Shyu

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<sup>10</sup> United States House and Senate Armed Services Committees, 2022. *Joint Explanatory Statement to Accompany the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023*.

<sup>11</sup> Congressional Budget Office, 2022. *Estimates of the Cost of Federal Credit Programs in 2023*.

<sup>12</sup> Federal Credit Reform Act of 1990.

<sup>13</sup> U.S. Office of Government Ethics. *Public Financial Disclosure Guide, Special Government Employee (SGE)*.