

United States Senate  
WASHINGTON, DC 20510

October 25, 2024

**VIA ELECTRONIC TRANSMISSION**

The Honorable Lloyd J. Austin III  
Secretary  
Department of Defense

Dear Secretary Austin:

Last year, I continued my longstanding oversight of the category of federal employees known as Special Government Employees (SGEs).<sup>1</sup> These employees present unique ethics challenges to the federal government, since they're allowed to have concurrent federal and private-sector employment. In fact, the expertise an SGE gains in outside employment or business is likely the reason they are chosen as an SGE.<sup>2</sup> Because of the likelihood of conflicts, and the potential that business and policy may be inappropriately steered for the private interest of particular companies or sectors rather than the public interest, Congress set guidelines on the employment category. It made these employees subject to many ethics requirements regular employees must abide by, and limited the SGE term of service to 130 days in any one-year period.<sup>3</sup> Nonetheless, prominent examples exist of this designation being misused.<sup>4</sup> That's why I've conducted ongoing oversight of this federal employment category for over a decade.<sup>5</sup>

Despite some cooperation from agencies with my inquiry, the information provided wasn't sufficient and needs to be regularly supplemented, so Congress can determine whether agencies are properly managing this employment category. In particular, the Department of Defense's (DOD) letter of June 21, 2023, failed to fully respond to any of my requests.<sup>6</sup> Given the critical nature of DOD's work and the possibility some of these SGEs have access to sensitive information that may require security clearance, it's imperative DOD cooperate with

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<sup>1</sup>Letter from the Hon. Charles E. Grassley, Ranking Member, Senate Comm. on the Budget, to the Hon. Lloyd J. Austin, III, Secretary, Dep't of Defense (March 16, 2023), [https://www.grassley.senate.gov/imo/media/doc/grassley\\_to\\_dod\\_-\\_sge\\_follow\\_up.pdf](https://www.grassley.senate.gov/imo/media/doc/grassley_to_dod_-_sge_follow_up.pdf); 18 U.S.C. § 202(a) (definition of Special Government Employee).

<sup>2</sup> See U.S. Gov't Accountability Off., GAO-16-548, Report to Chairman, Comm. on the Judiciary, U.S. Senate, *Opportunities Exist to Improve Data on Selected Groups of Special Government Employees* (2016) at 32-33 (showing the SGE employee category was created to enable the government to hire temporary employees with specialized knowledge and skills, advisers to provide counsel, and highly skilled technicians, without these employees having to resign their outside employment), <https://www.gao.gov/assets/gao-16-548.pdf>.

<sup>3</sup> 18 U.S.C. § 202 (2014), *et seq.*; see also Office of Government Ethics, *Ethics Laws Applicable to Special Government Employees* (last accessed on October 23, 2024), <https://extapps2.oge.gov/Training/OGETTraining.nsf/xsp/.ibmmodes/domino/OpenAttachment/training/ogetraining.nsf/D006291C1FEC02448525869C005BD4B8/Body/EthicsLawsApplicabletoSGEs.pdf>.

<sup>4</sup> See, e.g., Rachael Bade, *Emails show Huma Abedin's ties to private consulting firm*, Politico (September 23, 2015), <https://www.politico.com/story/2015/09/huma-abedin-tenco-clinton-foundation-email-213965>.

<sup>5</sup> Memorandum, Office of Senator Charles E. Grassley, *State Department on "Special Government Employees"* (July 25, 2013), <https://www.grassley.senate.gov/news/news-releases/state-department-special-government-employees>.

<sup>6</sup> Letter from Michael B. Donley, Director of Administration and Management, Dep't of Defense, to the Hon. Charles E. Grassley, Ranking Member, Senate Comm. on the Budget (June 21, 2023), [https://www.grassley.senate.gov/imo/media/doc/dod\\_to\\_grassley\\_-\\_sge\\_follow\\_up.pdf](https://www.grassley.senate.gov/imo/media/doc/dod_to_grassley_-_sge_follow_up.pdf).

congressional oversight.

There's good reason to question how agencies are handling SGEs. In 2016, the GAO, at my request, conducted a study of SGEs not serving on federal advisory committees, commissions, or boards.<sup>7</sup> The findings were telling. GAO reported most agencies surveyed had challenges reporting reliable data on SGEs, including trouble distinguishing between those employees who served on federal boards and those who didn't.<sup>8</sup> The report likewise found, "weak internal coordination and misunderstanding about the SGE designation," and that stronger data would better position agencies to report on SGEs and provide required ethics training.<sup>9</sup> Without more information from DOD, perhaps this explains DOD's failure to provide the information I requested regarding DOD's ethics training. I again ask DOD to remedy this and other defects in its response.

DOD has a number of advisory boards that employ SGEs, including the Defense Innovation Board, Defense Business Board, Defense Policy Board, and others.<sup>10</sup> In their respective charters, SGEs on these boards may be appointed for a term of one to four years, with annual renewals.<sup>11</sup> This raises questions as to how DOD tracks the days of service and how it analyzes for ethical conflicts, as well as whether these employees have security clearances, whether board members offer advice on specific contracts or policies relevant to their outside industries, and what factors DOD considers in its annual renewals for these employees.

My concerns about DOD's use of SGEs is illustrated well by the DOD's decision to appoint Ms. Sally Donnelly as an SGE on the Defense Business Board, advising the Defense Department on issues related to business with outside entities.<sup>12</sup> This is a questionable choice to say the least given that during her tenure as Senior Advisor to Defense Secretary James Mattis, Ms. Donnelly at a minimum created the appearance of a conflict of interest by advancing the interests of her former consulting client, Amazon, in its efforts to gain a massive cloud contract with DOD.<sup>13</sup> I've repeatedly outlined areas where Ms. Donnelly failed to disclose information that may have enabled DOD ethics officials to identify potential conflicts from payments she received from the sale of her consulting firm, which she reportedly divested herself of before

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<sup>7</sup> GAO Report, *supra* n. 2.

<sup>8</sup> *Id.*

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

<sup>10</sup> U.S. Gen. Serv. Admin., FACADatabase.gov: Committees, Department of Defense (last accessed Oct. 22, 2024), <https://www.facadatabase.gov/FACA/s/account/001t000000DCAooAAH/departement-of-defense>.

<sup>11</sup> U.S. Dep't of Def., Charter, Def. Innovation Bd. (Apr. 15, 2024), [https://innovation.defense.gov/Portals/63/documents/Defense%20Innovation%20Board\\_2024-2026%20Charter.pdf?ver=FUxb9EzcBs2wNXfz2\\_J6ug%3D%3D](https://innovation.defense.gov/Portals/63/documents/Defense%20Innovation%20Board_2024-2026%20Charter.pdf?ver=FUxb9EzcBs2wNXfz2_J6ug%3D%3D); U.S. Dep't of Def., Charter, Def. Bus. Bd. (July 3, 2022), [https://dbb.defense.gov/Portals/35/Documents/Misc\\_Documents/FACA%20Documents/DBB%202022-2024%20Charter%20\(3%20Jul%2022\).pdf?ver=lhaeh07pT9iFkJDGVnzlhA%3D%3D](https://dbb.defense.gov/Portals/35/Documents/Misc_Documents/FACA%20Documents/DBB%202022-2024%20Charter%20(3%20Jul%2022).pdf?ver=lhaeh07pT9iFkJDGVnzlhA%3D%3D); U.S. Dep't of Def., Charter, Def. Policy Bd. (Sept. 3, 2022), [https://policy.defense.gov/Portals/11/Documents/DPB\\_Docs/DPB%20Charter%202024.pdf](https://policy.defense.gov/Portals/11/Documents/DPB_Docs/DPB%20Charter%202024.pdf).

<sup>12</sup> U.S. Dep't of Defense, Defense Business Board, Board Members, "Sally Donnelly, Founding Partner, Pallas Advisors" (last accessed on October 25, 2024), <https://dbb.defense.gov/Board-Members/>.

<sup>13</sup> See, e.g., Sen. Charles E. Grassley, Address on the floor of the U.S. Senate, *During Sunshine Week, Grassley Discusses Lessons Learned from the JEDI Cloud Procurement* (March 14, 2024), <https://www.youtube.com/watch?v=DPF8-kXa7G0>; Letter from Sen. Charles E. Grassley, Ranking Member, Senate Comm. on the Budget, and Rep. Nancy Mace, Member of Congress, House Comm. on Oversight and Accountability, to Ms. Sally B. Donnelly, Pallas Advisors (July 13, 2023), [https://www.grassley.senate.gov/imo/media/doc/grassley-mace\\_to\\_sbd\\_-\\_jedi.pdf](https://www.grassley.senate.gov/imo/media/doc/grassley-mace_to_sbd_-_jedi.pdf); Letter from Sen. Charles E. Grassley, Ranking Member, Senate Comm. on the Budget, to Mr. Michael Levy, Attorney for Ms. Sally B. Donnelly (October 10, 2023), [https://www.grassley.senate.gov/imo/media/doc/grassley\\_mace\\_to\\_michael\\_levy\\_sally\\_donnelly\\_-\\_jedi\\_oversight.pdf](https://www.grassley.senate.gov/imo/media/doc/grassley_mace_to_michael_levy_sally_donnelly_-_jedi_oversight.pdf). Ms. Donnelly through counsel has continued to refuse to cooperate following these letters.

starting at DOD.<sup>14</sup> Ms. Donnelly has also flat-out refused to cooperate with my oversight, and that of other members of Congress, going back years. DOD's use of SGEs with backgrounds like this gives me reason to question its process for ensuring conflicts are handled appropriately and oversight of SGEs on the Defense Business Board and other boards employing SGEs is done the right way.

So that Congress can conduct thorough and independent oversight of DOD's use of SGEs, I once again request a full response to all requests in my March 16, 2023, letter, with each request updated to include all responsive records from the time of last year's letter to the present.<sup>15</sup> In addition, please respond to the following additional requests, producing records in digital and searchable format, no later than November 8, 2024:

1. For all SGEs identified in your production who had concurrent employment, name the employees' outside employers or businesses during their term at DOD, and note whether those employers or businesses have had any contracts, business, or lobbying with DOD or any of its components during the SGE's tenure or within the five years preceding the SGE's appointment;
2. For all SGEs identified in your production, note the number of days counted toward their SGE service for each one-year period;
3. Please describe the DOD's annual renewal process for SGEs in detail and provide all written policies related to SGE annual renewals, and the number of SGEs DOD did not renew during the annual renewal process for the past five years, along with the name of the employees not renewed and the reasons for the non-renewal;
4. Identify all SGEs whose outside employers or businesses were awarded any sole source contract by the DOD within the past ten years, whether or not the contract was awarded during the SGE's term of service at DOD;
5. List all DOD boards where security clearances are required or where any member has a security clearance, along with the names and titles of the employees with clearances. For each employee, note whether they are an SGE and describe the reason the clearance is needed; and
6. For each DOD board utilizing SGEs, specify whether the board provides advice on specific DOD contracts or otherwise has any input into DOD procurement and contracting, along with details.

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<sup>14</sup> Senator Grassley Address on the Senate floor, *supra* n. 12; July 13, 2023, letter to Sally B. Donnelly, *supra* n. 12; October 10, 2023, letter to Michael Levy, *supra* n. 12; *see also* Letter from Sen. Charles E. Grassley, Ranking Member, Senate Comm. on the Judiciary, to the Hon. Lloyd J. Austin, Sec. of Defense, and the Hon. Sean O'Donnell, Acting Inspector General, Dep't of Defense, Office of the Inspector General (October 24, 2022), [https://www.grassley.senate.gov/imo/media/doc/grassley\\_to\\_defense\\_deptdefenseinspectorgeneralsbdadvisorsllcconflictsofintreview1.pdf](https://www.grassley.senate.gov/imo/media/doc/grassley_to_defense_deptdefenseinspectorgeneralsbdadvisorsllcconflictsofintreview1.pdf).

<sup>15</sup> "Records" include any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (e-mails, email attachments, and any other electronically-created or stored information), calendar entries, inter-office communications, meeting minutes, phone/voice mail or recordings/records of verbal communications, and drafts (whether or not they resulted in final documents).

Thank you for your cooperation with this ongoing congressional oversight. If you have any questions, please contact James Layne on my committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Budget

cc: The Hon. Robert P. Storch  
Inspector General  
Department of Defense