



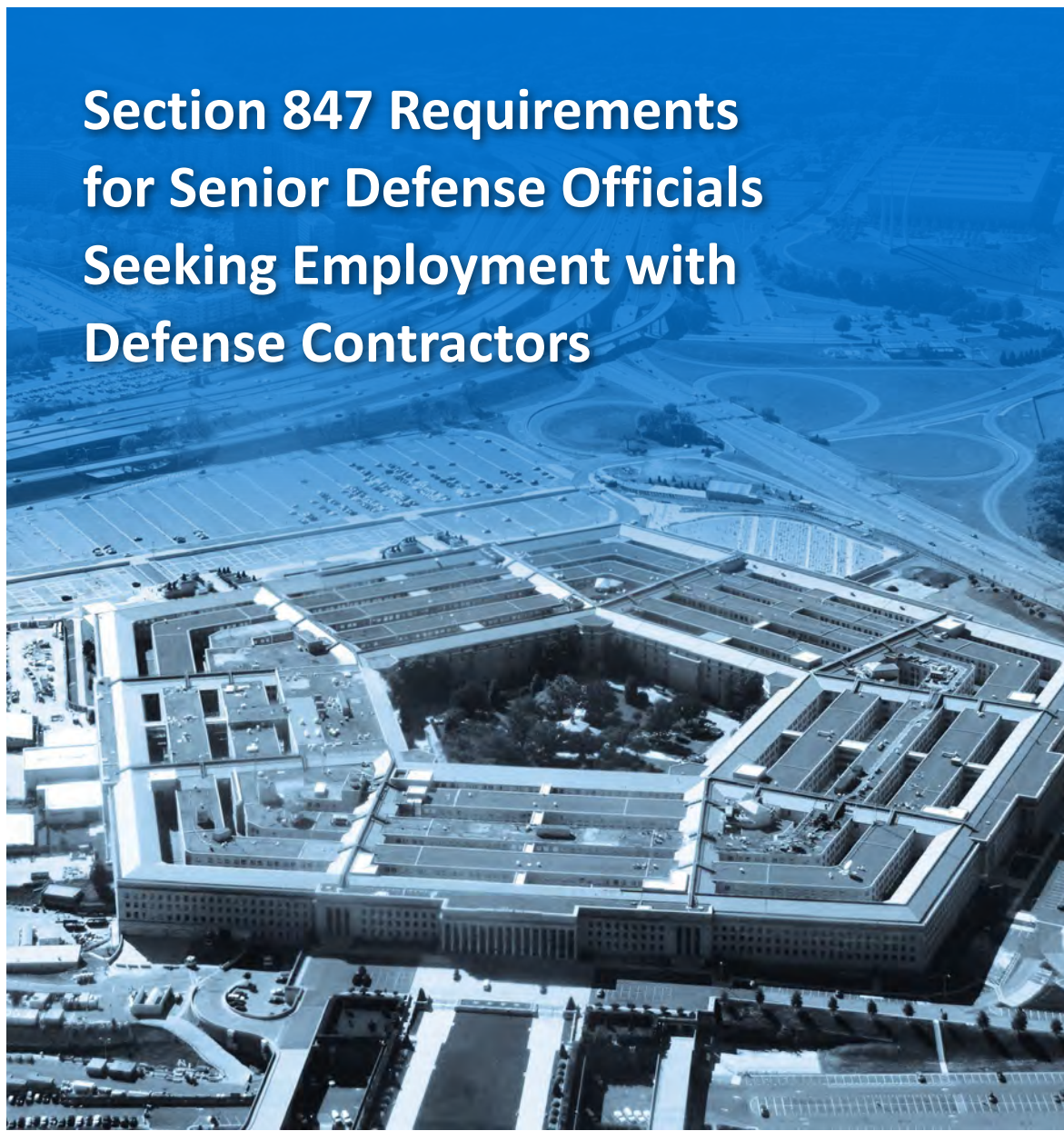
# INSPECTOR GENERAL

*U.S. Department of Defense*

MARCH 31, 2016



## Section 847 Requirements for Senior Defense Officials Seeking Employment with Defense Contractors



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# Results in Brief

## Section 847 Requirements for Senior Defense Officials Seeking Employment with Defense Contractors

March 31, 2016

### Objectives

The objectives of our project are aligned with the House Report 114-102 to accompany H.R. 1735, the National Defense Authorization Act for FY 2016, which directed the DoD IG to submit a report by December 31, 2015 (subsequently extended to March 31, 2016), to the congressional defense committees with the following information:

- (1) The findings of any previous IG reviews to assess whether written opinions are being provided and retained in accordance with Section 847 (*provided in Part I of this report*).
- (2) A review of the written ethics opinions that have been requested and provided pursuant to Section 847 and a determination as to whether they comply with Section 847 (*provided in Part II of this report*).
- (3) A summary, by Department of Defense organization, of the total number of opinions issued and total number of opinions retained pursuant to Section 847 (*provided in Part III of this report*).
- (4) A summary of any referrals to, and complaints received by, the IG or the Department of Justice regarding potential violations of post-employment restrictions, including the final disposition of such cases (*provided in Part IV of this report*).

### Objectives (cont'd)

- (5) The status of any pre-2012 records established pursuant to Section 847 of Public Law 110-181 (*provided in Part V of this report*).
- (6) Any other matters the IG deems relevant to a comprehensive assessment of compliance with Section 847 (*provided in Part VI of this report, which includes Findings, Discussions, and Recommendations*).

### Findings

We identified two findings. First, not all DoD organizations and subordinate organizations and their agency ethics officials complied with the Deputy Secretary of Defense (DEPSECDEF) Memorandum of September 19, 2011, and Army Office of General Council (OGC) guidance on issuing Section 847 opinion letters and processing the necessary documents in the After Government Employment Advice Repository (AGEAR) system. Specific issues were:

- Some ethics officials received and processed requests for Section 847 opinion letters outside the AGEAR system after January 1, 2012.
- Some ethics officials did not upload all the request information into the AGEAR system along with the opinion letters.
- Some ethics officials did not enter all the various critical dates accurately in the Audit Trail for requests received and processed outside the AGEAR.
- Some ethics officials issued Section 847 opinion letters to requestors even though the requestor did not provide a copy of an offer of employment or a description of future duties from a Defense contractor.
- Some ethics officials issued nonspecific post-Government employment guidance as a Section 847 opinion letter instead of an opinion letter tailored to the requestor's prospective future duties with the Defense contractor.





# Results in Brief

## *Section 847 Requirements for Senior Defense Officials Seeking Employment with Defense Contractors*

### **Findings (cont'd)**

This occurred because Section 847 request processing procedures differ among agencies and ethics officials. Furthermore, the AGEAR system is not capable of ensuring the accuracy and completeness of the material submitted by ethics officials.

As a result, the AGEAR database was unreliable, was missing opinion letters and associated opinion request information, and contained nonqualifying opinion letters. Because of the unreliability of the data, the DoD IG team was unable to generate reliable quantitative information requested in the House Report 114-102 and to independently verify compliance with the 30-day clock for some of the requests that were received and processed outside the AGEAR.

Additionally, we found that the dates recorded in the "request submittal date" field of the Audit Trail for all 49 non-AGEAR processed opinion letters in our statistical sample were actually the opinion upload dates. For most of them, the request submittal date was incorrect.

This happened because the AGEAR software program automatically recorded the real-time stamp of the upload date and time as the request submittal date.

As a result, we believe that the Audit Trail request submittal date for all non-AGEAR-processed opinion letters may be unreliable.

### **Recommendations**

We recommend that the Deputy Secretary of Defense:

- mandate the use of the online AGEAR system by all covered officials submitting requests for a Section 847 opinion letter and prohibit accepting requests or processing requests by ethics officials outside the AGEAR system, and

### **Recommendations (cont'd)**

- take steps to enforce other Section 847 requirements and SOCO guidance either directly or through direction to the Service and agency heads.

We also recommend that the SOCO and the AGEAR administrator:

- change the case status to "rejected" for those requests where the requestor is not eligible to receive the Section 847 opinion letters;
- develop quality control procedures to ensure that all the critical dates are accurately entered in the Audit Trail by the ethics officials when processing requests for Section 847 opinion letters;
- require ethics officials to provide, in the AGEAR Audit Trail, documentation of all activities between the request submittal date and opinion in progress date to justify any delay in starting the 30-day clock; and
- correct the Audit Trail for all past non-AGEAR opinion letters by relabeling the "request submittal date" field to "opinion upload date" and ensure that Audit Trails for any future non-AGEAR opinion letters are properly labeled.

### **Management Comments and Our Response**

Separate comments from the General Counsel of the Department of Defense, on behalf of the Deputy Secretary of Defense; from the Office of General Counsel for the Director, Department of Defense Standards of Conduct Office; and from the Deputy General Counsel for the Army Office of General Counsel addressed all specifics of the recommendations and no further comments are required. Please see the Recommendations Table on page iii.

## ***Recommendations Table***

Management	Recommendations Requiring Comment	No Additional Comments Required
Deputy Secretary of Defense		1.a, 1.b
Department of Defense, Office of General Counsel, Standards of Conduct Office		1.c, 1.d, 1.e, 2
Department of the Army, Office of General Counsel, AGEAR administrator		1.c, 1.d, 1.e, 2

If you have additional comments on this report, please provide them by May 2, 2016.





**INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
4800 MARK CENTER DRIVE  
ALEXANDRIA, VIRGINIA 22350-1500**

March 31, 2016

MEMORANDUM FOR DEPUTY SECRETARY OF DEFENSE  
DIRECTOR, DEPARTMENT OF DEFENSE STANDARDS  
OF CONDUCT OFFICE  
DEPUTY GENERAL COUNSEL, U.S. ARMY OFFICE OF  
GENERAL COUNSEL

SUBJECT: Section 847 Requirements for Senior Defense Officials Seeking Employment  
with Defense Contractors (Project No. D2015-D00SPO-0212.000)

We are providing this report for information and use. We conducted this assessment from July 2015 to March 2016 in accordance with the "Quality Standards for Inspections and Evaluations," published in January 2012 by the Council of Inspectors General on Integrity and Efficiency.

We considered management comments on a draft to this report when preparing the final report. DoD Instruction 7650.3 requires that the recommendations be resolved promptly. Comments from the General Counsel of the Department of Defense, on behalf of the Deputy Secretary of Defense; from the Office of General Counsel for the Director, Department of Defense Standards of Conduct Office; and from the Deputy General Counsel for the Army Office of General Counsel addressed all the specifics of the recommendations, and no further comments are required.

Should you have further comments to this report, however, please send them in a PDF file to [SPO@dodig.mil](mailto:SPO@dodig.mil). Copies of your comments must have the actual signature of the authorizing official for your organization. We are unable to accept the /Signed/ symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to [REDACTED]  
at [REDACTED] or [REDACTED]  
[REDACTED]

A handwritten signature in black ink, reading "K. P. Moorefield", is positioned above the printed name.

Kenneth P. Moorefield  
Deputy Inspector General  
Special Plans and Operations





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## Introduction

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Section 847 of Public Law 110-181, January 28, 2008, as amended by Public Law 113-291, December 2014, establishes ethics requirements for certain current and former senior Defense officials seeking post-Government employment with Defense contractors. It also outlines the responsibilities of DoD ethics officials advising them. Furthermore, Defense contractors hiring such individuals must adhere to stipulations defined in Section 847 (see Appendix C for details regarding statutory requirements related to Section 847).

Finally, Section 847 requires that the DoD Office of Inspector General (OIG) conduct periodic reviews to ensure that written opinions are being provided and retained in accordance with the requirements of the section. This is the fourth report issued by the DoD Inspector General (IG) related to Section 847.

This report is organized as follows:

- Part I discusses the results of the past DoD IG reviews in further detail.
- Part II details a review of sampled records from the After Government Employment Advice Repository (AGEAR) to determine whether selected opinions were issued and retained in accordance with Section 847.
- Part III reviews the overall number of opinion letters issued and retained pursuant to Section 847.
- Part IV summarizes the referrals to and complaints received by the DoD IG and Department of Justice (DOJ) regarding potential violations of post-employment restrictions.
- Part V discusses the status of pre-2012 records established pursuant to Section 847 of Public Law 110-181.
- Part VI summarizes other matters the IG deems relevant to a comprehensive assessment of compliance with Section 847 and provides our findings and recommendations.

## Objectives

In response to House Report 114-102 to accompany H.R. 1735, the National Defense Authorization Act for FY 2016, the DoD IG initiated this periodic review of the Section 847 program on July 6, 2015.

The objectives of our project are aligned with the House Report 114-102 to accompany H.R. 1735, the National Defense Authorization Act for FY 2016, which directed the DoD IG to submit a report by December 31, 2015 (subsequently extended to March 31, 2016), to the congressional defense committees.

The objectives for this review project are to:

- Summarize the findings of any previous IG reviews to assess whether written opinions are being provided and retained in accordance with Section 847.
- Perform a review of a statistical random sample of the written ethics opinions that have been requested and provided pursuant to Section 847 and a determination as to whether they comply with Section 847.
- Summarize, by Department of Defense organization, the total number of opinions issued and total number of opinions retained pursuant to Section 847.
- Summarize any referrals to, and complaints received by, the IG or the Department of Justice regarding potential violations of post-employment restrictions, including the final disposition of such cases.
- Determine and report status of pre-2012 records established pursuant to Section 847 of Public Law 110-181.
- Identify and report any other matters the IG deems relevant to a comprehensive assessment of compliance with Section 847.

Please refer to Appendix A for a detailed discussion on the methodology used to meet the above listed objectives.

## Background

### ***Section 847 only Applies to Covered Officials***

The Section 847 requirements discussed in this report apply only to a particular subset of senior Defense officials who are referred to as “covered” officials in the law (Public Law 110-181). Under Section 847, covered officials are those DoD officials who have participated personally and substantially in an acquisition with a value in excess of \$10 million while serving in:

- an Executive Schedule position,
- a Senior Executive Service position,
- a general or flag officer position, or
- in the position of program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection evaluation board, or chief of a financial or technical evaluation team.

The Standards of Conduct Office (SOCO) within the DoD Office of the General Counsel (OGC) and the AGEAR administrator emphasized to our team that very few of the Defense officials listed in the above four categories actually satisfy the criteria of having participated personally and substantially in an acquisition with a value in excess of \$10 million.

Public Law 110-181, Section 847, January 28, 2008, as amended by Public Law 113 291, December 2014, places the following requirements on covered officials:

(a) Requirement to Seek and Obtain Written Opinion –

(1) Request – An official or former official of the Department of Defense, described in subsection (c) who, within two years after leaving service in the Department of Defense, expects to receive compensation from a Department of Defense contractor, shall, prior to accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

(2) Submission of request – A request for a written opinion under paragraph (1) shall be submitted in writing to an ethics official of the Department of Defense having responsibility for the organization in which the official or former official serves or served and shall set forth all information relevant to the request, including information relating to government positions held and major duties in those positions, actions taken concerning future employment, positions sought, and future job descriptions, if applicable.

AGEAR Business Rules, issued by the Army OGC as the executive agent for AGEAR on September 6, 2013 (see Appendix D), and SOCO's guidance to Ethics Counselors (Appendix D Flowchart) state that in order to trigger a Section 847 opinion letter processing “the requestor must have an actual offer of employment or compensation from a Defense contractor.” The AGEAR Business Rules were updated on July 29, 2015, and state:

The requestor must describe the activities that he/she is expected to undertake on behalf of the contractor within the two-year period after leaving DoD service. This generally means the requestor must have an actual offer of employment or consulting for compensation tied to performing specific duties for that contractor. The offer may be contingent upon ethics and procurement rules compliance.

If an ethics counselor issues an opinion letter to a “covered” official pursuant to Section 847, he or she must also retain the requests and corresponding opinion letters in a central repository: The After Government Employment Advice Repository (AGEAR).

### ***AGEAR – A Repository Created for Section 847 Requests and Opinion Letters***

SOCO, which is a part of the DoD Office of the General Counsel (OGC), provides guidance for Section 847 compliance and post-employment ethics opinions and communicates policy to DoD component ethics offices. The Army OGC developed



AGEAR as the centralized database for requesting and storing ethics opinion letters issued pursuant to Section 847. On September 19, 2011, the Deputy Secretary of Defense (DEPSECDEF) designated the Secretary of the Army as the executive agent to operate, maintain, manage, and fund AGEAR. In the same memorandum, the DEPSECDEF mandated DoD-wide use of AGEAR effective January 1, 2012. AGEAR enables DoD ethics officers to create a case for each request for post-employment ethics opinions in the database, track that case, upload documentation and final opinions, and to maintain those opinions in accordance with Section 847. (See Appendix E for the historical phases of Section 847 implementation with regard to introduction and mandatory use of AGEAR.)

### ***Responsibilities of Defense Contractors Prior to Providing Compensation to Covered Officials***

Prior to providing compensation, Defense contractors must ensure that covered officials have sought and received (or have not received after 30 days of seeking) a written opinion from the appropriate ethics official regarding the applicability of post-Government employment (PGE) restrictions to the activities that the former official is expected to undertake on behalf of the contractor.

### ***AGEAR Business Rules***

On September 6, 2013, the Army OGC, as the executive agent for AGEAR, issued Business Rules in response to previous DoD IG findings regarding the improper use of AGEAR. A copy of this set of AGEAR Business Rules is included in Appendix D of this report. Army OGC addresses two broad categories of improper use of AGEAR in this business rules memorandum:

- Ethics officials were processing requests in AGEAR that did not meet the criteria for a Section 847 opinion (e.g., the requestor did not meet the definition of a covered official or the requestor did not identify any specific Defense contractor from whom the official expected to receive compensation).
- Ethics officials were not using AGEAR functionality properly (e.g., activating the “prepare opinion” function in AGEAR on the same day they issued the opinion) in processing Section 847 requests, resulting in a missing or incomplete Audit Trail. Without a complete Audit Trail, the DoD IG could not accurately determine if the opinions were being issued in compliance with the 30-day statutory deadline.

In the AGEAR Business Rules, the Army OGC provided the procedures to ensure proper use of AGEAR, such as:

- reject requests that do not meet the Section 847 criteria,
- do not post non-Section 847 opinion letters (routine PGE advice) in AGEAR,
- document in the AGEAR Audit Trail requests for more information (from the covered official) when such requests are made,
- immediately click the “prepare opinion” button to begin the 30-day clock as soon as the needed information is received,
- close request immediately once the opinion has been issued, and
- as a best practice, upload the transmittal document and, when applicable, evidence of receipt by the requestor.

For detailed information on the September 6, 2013, AGEAR Business Rules for Ethics Officials, please refer to Appendix D.

### ***DoD IG Definition of Different Categories of Opinion Letters***

The DoD IG team differentiated between different categories of opinion letters on the basis of:

- how the request for the opinion letter was submitted (i.e., online via the AGEAR system or outside the AGEAR system),
- when the request was submitted (before January 1, 2012, or on/after January 1, 2012), and
- when the post-2012 opinion letter was uploaded into the AGEAR database (on the day it was issued or NOT on the day it was issued).

Details about each category of opinion letter follow.

#### ***AGEAR Opinion Letter***

For the purposes of our assessment, we defined an AGEAR opinion letter as an opinion letter for which all the following procedures were followed:

- the request was submitted online via the AGEAR website,
- the request was processed completely within AGEAR, and
- the opinion letter was issued through AGEAR electronically.

For this category of opinion letters, all the information submitted by the requestor via the online AGEAR system was automatically saved in the AGEAR database. Additionally, the request submittal date and opinion letter issue date were automatically saved in the AGEAR database.

### *Non-AGEAR Opinion Letter*

We defined a non-AGEAR opinion letter as an opinion letter that was submitted outside the AGEAR website (and, as a result, was processed outside the AGEAR, with the opinion letter being issued outside AGEAR via e-mail to the requestor.) For these cases, no information would be present in the AGEAR system unless uploaded by the ethics official manually. For this report, a “non-AGEAR opinion letter” is always a non-AGEAR opinion letter, even after it has been uploaded into the AGEAR database.

The phrase “outside the AGEAR website” can include transmission of printed paper copies of requests and opinions, transmission of electronic documents (PDF or Word) through e-mail, or other means of informally requesting ethics advice.

Per the AGEAR Business Rules (September 6, 2013), ethics officials are supposed to upload the opinion letter, information submitted by the requestor, and information about activities (for Audit Trail) and corresponding dates into the AGEAR system. For non-AGEAR opinion letters, nothing is automatically recorded in the AGEAR database except the upload date and subsequent actions (such as closing the request) in AGEAR. They are recorded only in the Audit Trail of the AGEAR system. All non-AGEAR opinion letters, when uploaded into the AGEAR database, were assigned AGEAR confirmation identifiers with the suffix “H” to differentiate them from the opinion letters for which requests were received online via the AGEAR system. Non-AGEAR opinion letters were further differentiated on the basis of when the requests for them were submitted:

- Pre-2012 non-AGEAR opinion letter: a non-AGEAR opinion letter for which the request was submitted prior to January 1, 2012 (before AGEAR use was mandatory).
- Post-2012 non-AGEAR opinion letter: a non-AGEAR opinion letter for which the request was submitted on or after January 1, 2012 (after AGEAR use was mandatory). These were further sub-categorized on the basis of the date of upload into AGEAR:
  - Post-2012 non-AGEAR **current** opinion letter: a post-2012 non-AGEAR opinion letter that was uploaded into the AGEAR database on the same date the letter was issued (e-mailed) to the requestor.
  - Post-2012 non-AGEAR **delayed** opinion letter: a post-2012 non-AGEAR opinion letter that was uploaded into the AGEAR database on a day different from the date of issuance of the opinion letter or was never uploaded at all.

# Part I

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*The Findings of Previous IG Reviews to Assess Whether Written  
Opinions are Provided and Retained in Accordance with Section 847*





## The Findings of Previous IG Reviews to Assess Whether Written Opinions were Provided and Retained in Accordance with Section 847

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The DoD IG has issued three previous reports pursuant to Section 847. This part of the report provides an overview of all past DoD IG reports and their significant findings.

### 2010 – DoD Office of Inspector General Report on Section 847

On June 18, 2010, in accordance with Section 847 requirements, the DoD IG issued a report entitled, “Review of Department of Defense Compliance with Section 847 of the National Defense Authorization Act for Fiscal Year 2008,” (Report No. SPO-2010-003).

The report found that, although DoD disseminated information on Section 847 to promote compliance with requirements, the Department had initiated, but not completed, development and implementation of a central DoD repository to store requests and written opinions. As a result, Section 847 record-keeping was not centralized.

Therefore, the DoD OIG recommended that the OGC-SOCO:

- Continue the development and implementation of a central DoD repository in an expeditious manner in order to meet the statutory requirement.
- Ensure that all component Ethics Offices are informed regarding SOCO’s development of a centralized database application and their roles and responsibilities for meeting the statutory requirement for a DoD-wide central repository.
- Implement procedures to obtain from component Ethics Offices copies of requests for written opinions pursuant to Section 847, as well as each written opinion provided pursuant to such a request until AGEAR is operational.
- Ensure that existing requests for written opinions and copies of written opinions issued are transferred into AGEAR when AGEAR is operational.

The DoD OGC concurred with the recommendations and stated that:

- The DoD had multiple Designated Agency Ethics Officials (DAEOs), each with “separate, independent authority and responsibility.”
- In 2008, DoD OGC advised all component DAEOs to retain all written requests and opinions for at least 5 years to permit timely retrieval for periodic IG reviews.
- To facilitate the OIG review, DoD SOCO sent a data call to all DoD components and asked that the components forward all existing Section 847 records to the DoD SOCO.
- DoD OGC was working with information technology experts to fashion a viable mechanism for transferring and retaining existing requests for written opinions and copies of written opinions upon completion of AGEAR operational tests and rollout.

## **2013 – DoD IG Report on Defense Advanced Research Projects Agency’s Ethics Program**

On January 24, 2013, DoD IG released “Defense Advanced Research Projects Agency’s Ethics Program Met Federal Government Standards” (DoD IG Report No. DODIG-2013-039). The audit determined that the Defense Advanced Research Projects Agency’s (DARPA’s) ethics program met Federal Government standards. It also concluded that DARPA was in compliance with Section 847 because DARPA’s ethics personnel ensured employees were aware of post-employment restrictions.

## **2014 – DoD Office of Inspector General Report on Section 847**

On March 31, 2014, the DoD IG issued a report, “Section 847 Ethics Requirements for Senior Defense Officials Seeking Employment with Defense Contractors,” (Report No. DODIG-2014-050) in response to direction from the House Armed Services Committee and in accordance with reporting requirements stipulated in the law.

The report found that the DoD did not retain all required Section 847 records in AGEAR. Instead, Section 847 records were located in multiple or decentralized locations because the Department did not centrally supervise Section 847 activities by its decentralized components.

In the final report, the DoD IG recommended that:

(a) The Deputy Secretary of Defense seek clarification regarding the intent of Public Law 110-181 Section 847 with respect to the requirement to retain ethics opinions in a “centralized database or repository,” specifically whether the law intended a single central database or “multiple ‘central’ databases.”

On February 12, 2014, the DoD OGC nonconcurred with the recommendation, stating that “There is no need to seek clarification of the law” because “it is clear that the law mandates a central database or repository across DoD.”

On February 26, 2014, prior to the publication of the DoD IG report, the SOCO Director issued a memorandum asking the DAEOs to upload into AGEAR “historical Section 847 documents, meaning those requests and opinions collected from the date of enactment of Section 847 (January 28, 2008) until deployment of AGEAR on January 1, 2012.”

Additionally, despite a DEPSECDEF Memorandum making the use of AGEAR mandatory beginning January 1, 2012, two agencies (Defense Logistics Agency [DLA] and the National Security Agency [NSA]) did not use AGEAR. The DLA Deputy DAEO explained that DLA was under the false impression that SOCO had placed AGEAR on hold indefinitely. They subsequently agreed to immediately begin using AGEAR. The NSA DAEO stated that the NSA did not store its opinions in AGEAR because of the following statute:

50 USC § 3605. Disclosure of Agency’s organization, function, activities, or personnel—“...nothing in this act or any other law... shall be construed to require the disclosure of the organization or any function of the National Security Agency, or any information with respect to the activities thereof, or of the names, titles, salaries, or number of persons employed by such agency.”

Finally, the DoD IG also recommended that:

(b) Deputy Secretary of Defense delegate to an appropriate DoD official/office the responsibility and authority to centrally supervise Departmental Section 847 compliance sufficient to meet the intent of the law, and determine and assign the needed resources.

DoD OGC partially concurred with the DoD IG recommendation and explained that since the law was enacted, the DoD SOCO had been providing leadership, education, training, legal interpretation, and guidance regarding Section 847 compliance.

On February 26, 2014, DoD SOCO Director sent a memorandum to DoD agencies reminding them that the DEPSECDEF mandated the use of AGEAR to receive and process requests for Section 847 opinions.

DoD OGC also explained that SOCO would continue to exercise this leadership role in the future, and asserted that delegating supervisory responsibility to another Defense official or office was unnecessary. However, DoD OGC qualified SOCO's leadership role and explained that SOCO was "not equipped, nor should it be tasked with, discharging the ethics program responsibilities of the separate DAEO components."

## Part II

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*Review of Written Ethics Opinions Requested and Provided Pursuant  
to Section 847 and Determination of Compliance*





## Review of Written Ethics Opinions Requested and Provided Pursuant to Section 847 and Determination of Compliance

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We reviewed a statistically valid random sample of AGEAR records to determine whether DoD ethics officials were in compliance with Section 847 requirements (see Appendix F for information regarding the statistical method used). Our sample did not include any records from the NSA because it did not post any records in AGEAR (50 U.S.C. Section 3605). The scope of this review, which began on July 10, 2015, was limited to opinion letters that were requested by the covered officials on or before June 30, 2015.

These records consisted of various documents and electronically stored attachments, including opinion letters, requests, and information regarding prospective defense contractor employment opportunities. We sought to determine two things: whether the opinion letters and corresponding request information were properly retained in AGEAR, and whether the opinion letters were issued in accordance with Section 847.

There were two distinct problem areas we encountered during the review of AGEAR records:

- **Record Retention Requirement:** Some ethics officials did not upload pertinent request information into the AGEAR system that was necessary to determine compliance with Section 847.
- **Issuance of Opinion Letters:** Some ethics officials did not issue opinion letters in compliance with Section 847.

### Compliance with Record Retention Requirement

Section 847 (b)(1) states:

Each request for a written opinion made pursuant to this section, and each written opinion provided pursuant to such a request, shall be retained by the Department of Defense in a central database or repository maintained by the General Counsel of the Department for not less than five years beginning on the date on which the written opinion was provided.

During the review, we found that some ethics officials did not upload relevant request information with the corresponding opinion letters.

## **Results**

Of the 149 records we reviewed, 27 records (18 percent of the records) lacked pertinent request information (either a request was not uploaded in its entirety or the record was missing information required to make a determination regarding its compliance with Section 847). For example, in some instances, we were unable to determine whether the requestor was a covered official because the record did not contain details regarding the requestor's government employment activities. In other cases, we were unable to determine whether the requestor made the request prior to receiving compensation from a DoD contractor because there was incomplete requestor information. This limited our ability to determine some of the sampled opinions' compliance with Section 847.

In the sample of these 149 records, there were 100 AGEAR-processed cases and 49 non-AGEAR cases (processed outside the AGEAR system). Of the 49 non-AGEAR records, 25 (or 51 percent ) were missing pertinent request information. On the other hand, of the 100 AGEAR-processed records only 2 records (2 percent) were missing pertinent request information. This demonstrated that, regarding missing request information, non-AGEAR records had a much higher rate of noncompliance than the AGEAR-processed records.

## **Compliance with Issuance of Opinion Letter Requirement**

### ***Relevant Section 847 Provisions Used to Develop Compliance Criteria***

The language in Section 847(a)(2) states that a request for a written opinion

“shall set forth all information relevant to the request, including information relating to government positions held and major duties in those positions, actions taken concerning future employment, positions sought, and future job descriptions, if applicable.”

Provisions (a)(1), (a)(3), and (a)(4) of the law state that the written opinion include “the applicability of post-employment restrictions to activities that the” official or former official may undertake on behalf of a contractor.

Section 847 also requires that covered officials who, within 2 years of leaving DoD, “expect to receive compensation” from a Defense contractor, request and receive a written opinion regarding the applicability of post-employment restrictions to activities that official may undertake on behalf of a Defense contractor prior to receiving any compensation.

### ***Criteria Used to Determine Compliance with Section 847 Requirements for Issuance of Opinion Letters***

To determine compliance, the team developed four main questions (referred to as elements) derived from the provisions of Section 847.

1. Was the requestor a covered official as defined by Section 847?
2. Was the request timely and did it contain sufficient information?  
More specifically:
  - 2a. Did the individual submit the request within two years after leaving the DoD?
  - 2b. Did the individual submit the request prior to accepting compensation from a Defense contractor?
  - 2c. Did the request contain a minimum amount of information regarding the requestor’s future employment with a defense contractor?
3. Did the covered official receive an ethics opinion within 30 days after he/she provided the complete request to the ethics official?
4. Did the opinion letter address PGE restrictions?

### ***Results***

Table II-a illustrates the number of opinion letters that satisfy each of the six elements (including sub-elements). The table also shows the number of cases for each element when we could not ascertain compliance with Section 847 because there was not sufficient information uploaded into the AGEAR system. The noncompliance information is described below the table.

*Table II-a. Breakdown of Compliance and Issues by Various Criteria*

	Element 1: Covered official?	Element 2a: Within 2 years?	Element 2b: New employer a Defense contractor?	Element 2c: Necessary information provided?	Element 3: Within 30 days?	Element 4: Restrictions discussed?
Number of Opinion letters satisfying element	119	140	117	133	135	141
Unable to determine due to insufficient information <sup>1</sup>	18	0	15	1	0	0
Records that could not be opened due to technical error <sup>2</sup>	2	2	2	2	2	2
Duplicated records	1	1	1	1	1	1
Records that were deleted during review or a test record	5	5	5	5	5	5

<sup>1</sup> “Unable to determine” means compliance with an element could not be ascertained due to insufficient information in the AGEAR system (e.g., missing requestor information concerning potential post-Government employment duties, information about a specific contractor, missing date for issuance of opinion letter). This does not include damaged files, files that were deleted prior to the review, duplicates, or test records.

<sup>2</sup> “Could not be opened due to a technical error” refers to instances in which a record in the sample could be located in AGEAR, but its contents could not be reviewed because it would not open in the system.

Source: DoD OIG

If all of the above elements were satisfied, then the letter was issued in compliance with Section 847. If one of the elements was not satisfied, the letter was not issued in compliance with Section 847 (see table II-b for a summary of results).

The following are some of the noncompliance instances we observed:

- There were four opinion letters issued to requestors who did not meet the criteria of a covered official.
- One of the opinion letters was issued to a requestor who sought the opinion more than two years after leaving the DoD.



- There were eight opinion letters issued to requestors who were seeking post-Government employment with organizations that were not Defense contractors.
- There were seven opinion letters issued to requestors who did not provide the minimum amount of information about post-Government employment.
- Six of the opinion letters were issued more than 30 days after all the necessary information was provided to the ethics official.

*Table II-b. Results of Review of the 149 Closed Cases Randomly Selected From the Population of 904 Closed Cases*

Item Description	QTY
Total number of records retrieved for review	149
Total number of records not reviewed from the sample (record was deleted, a test record <sup>1</sup> , a duplicate, or there was a technical error) <sup>2,3</sup>	8
Total number of AGEAR opinion letters issued in compliance with Section 847 (i.e., compliance with all of the above elements)	97
Total number of AGEAR opinion letters NOT issued in compliance with Section 847 (i.e., at least one element not satisfied)	20
Total number of AGEAR records for which compliance could not be ascertained (i.e., records where compliance with at least one element could not be determined and the rest of the elements are satisfied)	24

<sup>1</sup> Test records were control entries into the AGEAR, created by the AGEAR administrator to check for proper operation of the program.

<sup>2</sup> Five were deleted during the course of the review, but AGEAR administrator sent information concerning one of those deleted records.

<sup>3</sup> Initially three records could not be opened but one was subsequently deleted from the AGEAR database.

Source: DoD OIG

Out of the random sample of 149 records, the assessment team discovered the following:

- Two records (1.34 percent) could not be reviewed due to a technical error in the AGEAR system.
- One record (0.67 percent) was a duplicate.
- Five records (3.35 percent) could not be reviewed. The AGEAR administrator deleted four of the five records from AGEAR as a normal course of business to purge records more than five years old. The fifth record was a test record which was closed in order to check the process flow of the Request and Production functionality of AGEAR.
- 97 opinion letters (65.1 percent) were issued in compliance with Section 847.

- 20 opinion letters (13.4 percent) of the letters retrieved for review were not issued in compliance with Section 847.
- For 24 records (16.1 percent) compliance could not be determined.

In the 2014 DoD IG report, "Section 847 Ethics Requirements for Senior Defense Officials Seeking Employment with Defense Contractors," we identified that the AGEAR system contained opinion letters that should not have been issued or retained in AGEAR because the requests `did not meet the criteria for a Section 847 opinion. This included instances when the requestor did not meet the definition of a covered Defense official, or the requestor did not identify any specific DoD contractor from whom the official expected to receive compensation. Although the current assessment revealed similar problems, a majority of letters were issued in compliance with Section 847.

## Part III

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*Summary by Department of Defense Organizations – Number of  
Opinion Letters Issued and Retained Pursuant to Section 847*



## Number of Opinion Letters Issued and Retained Pursuant to Section 847

### Number of Opinion Letters Issued and Retained

The DoD IG team examined the AGEAR database on August 26, 2015, to determine the number of opinion letters (with request submittal dates no later than June 30, 2015) in the database. We found 903 opinion letters and one closed record of a test case in the AGEAR database. Breakdown by each of the 17 DAEO offices is given in the table below.

DoD Organizations	Number of Opinions in the AGEAR database	Notes
AIR FORCE	43	
ARMY	331	One of the closed cases was a test record
ASBCA	0	
DCAA	0	
DeCA	0	
DSS	0	
DFAS	1	
DIA	7	DIA uploaded 5 more pre-June 30, 2015 non-AGEAR opinion letters into the AGEAR database on November 23, 2015
DISA	20	
DLA	28	
DOD IG	0	
DTRA	46	
NAVY	229	
NGA	24	NGA indicated they have uploaded 8 more pre-June 30, 2015 non AGEAR opinion letters into the AGEAR database on December 1, 2015
NSA	0	NSA did not post any records in AGEAR (50 U.S.C. § 3605)
OSD	173	
USUHS	2	USUHS informed us that the 2 opinion letters in AGEAR database did not meet the criteria of Section 847 opinion letters.
<b>TOTAL from Database:</b>	<b>904</b>	

Source: DoD OIG

#### LEGEND

ASBCA - Armed Services Board of Contract Appeals  
DCAA - Defense Contract Audit Agency  
DeCA - Defense Commissary Agency  
DSS - Defense Security Service  
DFAS - Defense Finance and Accounting Service

DIA - Defense Intelligence Agency  
DISA - Defense Information Systems Agency  
DTRA - Defense Threat Reduction Agency  
USUHS - Uniformed Services University of the Health Sciences

The DoD IG sent out data calls to all the DAEOs in the DoD to obtain the information directly from them. There are 17 DAEOs in the DoD for the following major organizations: Air Force, Army, Armed Services Board of Contract Appeals (ASBCA), Defense Contract Audit Agency (DCAA), Defense Commissary Agency (DeCa), Defense Security Service (DSS), Defense Finance and Accounting Service, Defense Intelligence Agency (DIA), Defense Information Systems Agency (DISA), DLA, DoD IG, Defense Threat Reduction Agency, Navy, National Geospatial-Intelligence Agency (NGA), NSA, Office of the Secretary of Defense (OSD), and Uniformed Services University of the Health Sciences (USUHS). All other DoD organizations are subordinate organizations under one of the above-listed DAEOs.

In response to the data call, most of the organizations provided all the quantitative data quickly. However, some of the larger organizations (OSD, Army, Navy, and Air Force) with numerous geographically dispersed subordinate organizations had difficulty obtaining the quantitative data on opinion letters that were purged from the AGEAR database. Our initial plan to compare the total number of opinion letters (issued since the enactment of the law) in the AGEAR database with the total numbers reported by the DAEO offices, could not be implemented due to unavailability of comparable data.

As reported in the 2014 DoD IG report, NSA did not upload any records in AGEAR (50 U.S.C. § 3605). Hence, there was no entry from the NSA into the AGEAR database even though they had issued a total of 25 opinion letters. In addition, the following opinion letters that were supposed to be in the AGEAR database prior to August 26, 2015, were uploaded into the AGEAR database after we notified the DAEO offices:

- Eight opinion letters from NGA (uploaded on December 1, 2015), and
- Five opinion letters from the Defense Intelligence Agency (uploaded on November 23, 2015).

## Part IV

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*Summary of Referrals to, and/or Complaints Received by, the  
DoD IG or DOJ Regarding Potential Violations and Final Disposition  
of the Cases*





## Summary of Referrals to, and/or Complaints Received by, the DoD IG or DOJ Regarding Potential Violations and Final Disposition of the Cases

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House Report 114-102 to accompany H.R. 1735, the National Defense Authorization Act for FY 2016, directed the DoD IG to compile a summary of referrals to, and complaints received by, the DoD IG or DOJ regarding potential violations of post-Government employment restrictions. To comply with the directive in the House Report, we contacted the DOJ, the DoD IG Hotline office, the DoD IG Administrative Investigations office (AI-ISO), and the DoD IG Defense Criminal Investigations Service (DCIS) regarding all complaints about potential violations of PGE restrictions.

The following summarizes, by organization, the numbers and types of complaints, including the final disposition or status of the cases.

### DoD IG Hotline

The DoD IG Hotline office reported that it had a record of 49 cases related to “revolving door” complaints. It explained that they sometimes refer cases to other offices for action, meaning that other offices were required to report the final disposition or status of the specified cases to the DoD IG Hotline after conducting their internal assessment or investigation.

The DoD IG Hotline office reviewed the 49 cases and determined the following:

- For 11 of the 49 cases, the subject of the complaint met the definition of a covered official as defined by Section 847. However, none of the 11 cases were related to a failure to request an ethics opinion letter. Of the 11, the DoD IG Hotline only referred 8 for action by outside agencies and closed the other 3 cases. Of the 8 referred:
  - Five were determined to be not substantiated.
  - One was determined to be not credible.
  - One was determined to require no action.
  - One was still open at the time DoD IG Hotline compiled results.

- For 13 of the 49 cases, the DoD IG Hotline personnel could not conclude whether the subject of the complaint met the definition of a Section 847 covered official. Eleven of these 13 cases were referred to other offices for action. The status of the 11 cases follows:
  - Three were determined to be not substantiated.
  - Four were determined to be not credible.
  - One was referred to another agency.
  - Three were still open at the time DoD IG Hotline compiled results.
- For 25 of the 49 cases, the subject of the complaint clearly did not meet the definition of Section 847 covered official.

In conclusion, for the 11 covered officials and the 9 officials who may or may not have been covered officials, no allegations have been substantiated.

### **DoD IG Defense Criminal Investigative Service**

Between December 2007 and September 2015, DCIS reported that it investigated 38 complaints related to cases concerning PGE conflicts of interest. DoD IG DCIS was unable to determine from its records whether the subjects of the complaints met the Section 847 definition of covered official. The status of the 38 cases follows:

- 3 cases resulted in adjudication (i.e., criminal convictions, suspension/debarment from contracts).
- For 20 of the cases, DCIS was able to establish culpability for ethics violations, but prosecution was declined.
- For 13 of the cases, DCIS determined that the allegations were unfounded and therefore, did not refer the cases for prosecution or administrative action.
- DCIS deemed 2 of the cases as unresolved, meaning the investigation did not establish culpability and, therefore, did not refer the matters for prosecution or administrative action.

## **DoD IG Administrative Investigations-Investigations of Senior Officials**

DoD IG AI-ISO investigated one complaint related to potential violation of PGE restrictions. It reported that the case was not substantiated.

## **Department of Justice**

The Bureau of Justice Assistance Office in the Department of Justice reported that it did not retain PGE restriction violation information in its debarment database. Rather, the debarment database only included information pertaining to organizations debarred for defense contracting fraud. The Bureau of Justice Assistance Office could not verify whether its database retained records concerning cases of PGE restriction violations, including Section 847 covered officials. DOJ personnel were not aware of any Section 847 referral or any criminal investigation pursued against any Defense official after Section 847 referral.



## Part V

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### *Status of Pre-2012 Section 847 Records*



## Status of Pre-2012 Section 847 Records

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On February 26, 2014, SOCO issued a memorandum in alignment with the DoD IG recommendations (Recommendation 2(b) from Report No. SPO-2010-003 and Recommendation (a) from Report No. DODIG-2014-050), requiring DAEOs to upload into AGEAR all requests and opinions issued from the date of enactment of Section 847 (January 28, 2008) until the date that AGEAR became mandatory (January 1, 2012).

In the House Report 114-102 to accompany H.R. 1735, the National Defense Authorization Act for FY 2016, the committee directed the DoD IG to report on the status of the pre-2012 opinions.

While conducting our FY 2016 assessment, SOCO and the AGEAR administrator reported that AGEAR records that were more than five years old were deleted from the system. Section 847 requires that documents be retained for “no less than 5 years;” thus, the AGEAR administrator deleted the requests in accordance with proper practices and procedures. However, this administrative action meant that AGEAR no longer contained records of opinion letters that were issued earlier than May 1, 2010.

Upon examining the AGEAR database on August 26, 2015, we identified 146 pre-2012 records in the AGEAR. A breakdown by each DoD DAEO office is given in Table V-a.

In their responses to the DoD IG data call, all of the DAEOs except NGA reported to have already complied with the February 26, 2014, SOCO Director Memorandum. NGA initially notified that they had identified an additional 25 pre-2012 non-AGEAR opinion letters that they had not uploaded into AGEAR as of their date of response (October 13, 2015). Upon receiving instructions from the DoD OIG, NGA officials stated that NGA would promptly upload the pre-2012 non-AGEAR opinion letters into the AGEAR database. On December 1, 2015, however, the NGA official notified the DoD IG team that only 8 of the 25 opinion letters met the strict criteria of Section 847; these they subsequently uploaded them into the AGEAR database.

*Table V-a. Number of Pre-2012 Opinion Letters in the AGEAR Database for Each DAEO Office*

DoD Organizations	Number of Opinions In the AGEAR database	Notes
AIR FORCE	4	
ARMY	69	
ASBCA	0	
DCAA	0	
DeCA	0	
DSS	0	
DFAS	1	
DIA	1	
DISA	2	
DLA	2	
DOD IG	0	
DTRA	17	
NAVY	4	
NGA	7	NGA uploaded 8 more pre-2012 non-AGEAR opinion letters on December 1, 2015
NSA	0	NSA had 11 pre-2012 non-AGEAR opinion letters that were not uploaded (50 U.S.C. § 3605)
OSD	39	
USUHS	0	
<b>TOTAL from Database:</b>	<b>146</b>	

Source: DoD OIG

**LEGEND**

ASBCA - Armed Services Board of Contract Appeals  
DCAA - Defense Contract Audit Agency  
DeCA - Defense Commissary Agency  
DSS - Defense Security Service  
DFAS - Defense Finance and Accounting Service

DIA - Defense Intelligence Agency  
DISA - Defense Information Systems Agency  
DTRA - Defense Threat Reduction Agency  
USUHS - Uniformed Services University of the Health Sciences



## Part VI

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### *Findings/Observations and Recommendations*



## Finding 1

### **A Number of DoD Organizations/Subordinate Organizations and Ethics Officials Did Not Comply with SOCO Guidance in Processing 847 Opinion Letters**

Not all DoD organizations, subordinate organizations, and ethics officials complied with the DEPSECDEF Memorandum of September 19, 2011, and SOCO guidance on issuing Section 847 opinion letters and preserving the necessary documents in the AGEAR system. Specific issues were:

- Some ethics officials received and processed requests for Section 847 opinion letters outside the AGEAR system after January 1, 2012.
- Some ethics officials did not upload all the request information into the AGEAR system along with the opinion letters.
- Some ethics officials did not enter all the various critical dates accurately in the Audit Trail for requests received and processed outside AGEAR.
- Some ethics officials issued Section 847 opinion letters to requestors even though the requestor did not provide a copy of an offer of employment or a description of future duties from a Defense contractor.
- Some ethics officials issued nonspecific PGE guidance as a Section 847 opinion letter instead of an opinion letter tailored to the requestor's prospective future duties with the Defense contractor.

This occurred because Section 847 request processing procedures differ among agencies and ethics officials. Furthermore, the AGEAR system is not capable of ensuring the accuracy and completeness of the material submitted by ethics officials.

As a result, the AGEAR database was unreliable. For instance, some entries lacked request information and others contained non-Section 847 opinion letters. Because of the unreliability of the data, the DoD IG team was not able to generate reliable quantitative data requested by the House Report 114-102 to accompany H.R. 1735, the National Defense Authorization Act for FY 2016. The team was also unable to independently verify compliance with the 30-day requirement for some of the non-AGEAR opinion letters.

## Discussion

### ***Legislative Intent and Policy Guidance***

The House Armed Services Committee described the intent of implementing Section 847 in House Report 110-652, stating that:

The committee notes that Section 847 deals with post-employment restrictions previously imposed by law and applies to senior Department of Defense officials previously covered by these restrictions. The committee believes that Section 847 will ensure that the benefits of the written ethics opinion clarifying post-employment restrictions are shared by both former defense officials and defense contractors. The committee expects the Department of Defense, in implementing this section, to minimize the administrative burden of this requirement while facilitating the ability of senior defense officials to quickly obtain written ethics opinions.

Moreover, the Army Office of General Counsel, as the executive agent for AGEAR, provided guidance to ethics officials indicating the purpose of using AGEAR to process Section 847 requests.

The Army OGC in their presentation on AGEAR to ethics officials stated that:

AGEAR is an Office of Management and Budget approved, DoD SOCO-coordinated, secure, web-based application that automates and improves the post-Government employment restriction opinion process for certain filers. It:

- guides requestor through questions gathering information on potential PGE restrictions;
- provides confirmation of submission of request;
- provides standard opinion template covering PGE restrictions;
- stores all requests, opinions and related documentation in a central location for 5 years;
- reduces common errors and potential emissions; and
- facilitates DoD IG Congressional reporting requirement.

Furthermore, the Army OGC, in training materials provided to ethics officials throughout DoD, indicated that they expected eventual DoD-wide use of AGEAR. This would eliminate the need for DoD IG to request data from these organizations and would also result in improved and consistent opinion letter processing.

The Army OGC also issued AGEAR Business Rules to ethics officials to promote consistency of Section 847 request processing, stating that:

“adherence to these rules will help ECs [ethics counselors] establish appropriate Audit Trails that will assist Army OGC and the DoD Inspector General in determining whether ECs are complying with Section 847.”

### ***Consequences of Inconsistent Processing of Requests***

Despite efforts to streamline processing of Section 847 requests, the DoD IG discovered that AGEAR was not being used consistently across DoD agencies. SOCO did not have authority to enforce Section 847 request processing guidance. Any recommendation from SOCO to DAEOs concerning processing of Section 847 requests is considered suggested guidance and is not binding on ethics officials in the 16 other DoD organizations that have their own DAEOs (see Appendix D, DAEO Structure).

### ***Receiving and Processing Requests outside the AGEAR system***

Section 847 does not explicitly require covered officials to submit Section 847 opinion letter requests through the AGEAR system. Thus, some of the DoD ethics officials we queried during this assessment reported having received request information via other means, such as email, DD Form 2945, or discussions, and subsequently uploaded the required documents into the AGEAR system.

Although Section 847 does not stipulate how requests should be processed, the SOCO Director, in the February 26, 2014, Memorandum and accompanying Information Paper stated that the DEPSECDEF’s directive to use AGEAR for Section 847 documents implied that all DoD agencies must use the web-based online process (AGEAR) to receive, process, and retain the requests and corresponding opinion letters.

In addition, the Army Judge Advocate General’s Legal Center and School states that “[a]ll 847 opinions must be done through AGEAR.” Furthermore, Army OGC disseminated guidance on September 6, 2013, reiterating to DAEOs the significance of using AGEAR in order to create a credible Audit Trail.

Requests received and processed completely outside the AGEAR system led to a variety of problems with the data, such as omission of pertinent request information, and failure to upload the post-2012 non-AGEAR opinion letters into the AGEAR database on the date of issuance. These resulted in an Audit Trail that was incomplete and not credible.

### *Failure to Upload the Requestor Information into AGEAR*

We discovered that many records, stored in the AGEAR repository, were missing pertinent requestor information, which includes:

- positions sought,
- position descriptions, or
- name(s) of defense contractor(s) with which the requestor has had employment negotiations.

Out of the sampled 149 records, 27 (18 percent) of the records did not contain the pertinent requestor information necessary to determine compliance with Section 847. Some had no requestor information, in direct noncompliance with Section 847, which dictates that the opinion letter and the corresponding request must be retained in the system.

As previously stated in Part II of this report, non-AGEAR records have a much higher rate of noncompliance (regarding missing requestor information) than the AGEAR-processed records. When a requestor initiates a request through the AGEAR system, the system automatically prompts the requestor to enter relevant information concerning his or her Government-related employment duties and anticipated PGE activities. All the responses are automatically recorded on the AGEAR system and the ethics official does not have to attach any uploads.

For cases in which the request is submitted to the ethics official outside the AGEAR online system, it is the responsibility of the ethics official to upload all the information and documents about the requestor when he or she independently uploads the opinion letter. In many cases, ethics officials failed to upload the request information, resulting in a high rate of noncompliance.

### *Failure to Upload Post-2012 Non-AGEAR Opinion Letters into the AGEAR Database on the Date of Issuance*

Our team found that some ethics officials were not uploading post-2012 non-AGEAR opinion letters on the date they were issued to the requestors. More specifically, five DoD organizations: the Air Force, Army, Navy, OSD, and Defense Intelligence Agency did not upload most of their post-2012 non-AGEAR opinion letters (and the corresponding requests) into the AGEAR database on the day the opinion letter was sent to the covered official. Not uploading opinion letters into AGEAR the day they are provided to clients affects the accuracy of the AGEAR database.

Because some ethics officials failed to upload the post-2012 non-AGEAR opinion letters on the day the opinion was issued, the AGEAR database was not current. The AGEAR repository did not reflect the actual number of opinion letters that

ethics officials had issued pursuant to Section 847. Hence, our count of the opinion letters from the AGEAR database was lower than the actual number. We had to rely on additional input from the DoD organizations to identify the number of missing opinion letters. In addition, the responses from some DoD organizations were also of questionable reliability, particularly from the larger organizations, because many of their subordinate organizations were receiving and processing requests and issuing opinion letters outside the AGEAR system without keeping reliable record of the yet-to-be uploaded opinion letters.

### ***Retention of Nonqualifying Section 847 Opinion Letters and Supporting Documentation***

During the review of AGEAR records, we found that only 65.1 percent of the sampled records contained opinion letters that were issued and retained in compliance with Section 847 requirements. We found that AGEAR also housed miscellaneous documents, routine ethics advice, and other materials that did not warrant retention in AGEAR.

SOCO disseminated guidance stating that “AGEAR is not for routine post-Government employment opinions.” Moreover, the Army OGC issued business rules for the use of AGEAR, explicitly stating that:

AGEAR should not be used to process requests for routine (non-Section 847) PGE opinions, or retain routine PGE requests and opinions, including letters addressing the inapplicability of Section 847 to the requestor. Only complete requests that establish eligibility for a Section 847 opinion in AGEAR should be accepted and processed in AGEAR.

SOCO and the Army OGC issued multiple guidance documents and training materials detailing the proper use of AGEAR. Despite this guidance, ethics officials were still processing nonqualifying Section 847 requests and storing nonqualifying Section 847 opinion letters in AGEAR. Some requests were processed even though the requestor did not meet the definition of a Section 847 covered official. Additionally, some requests were processed despite the requestor not identifying any specific DoD contractor from whom the official expected to receive compensation. These irregularities were contrary to AGEAR Business Rules, the ethics handbook, and the requirements stipulated in Section 847.

### ***Limitations Impacting the Utility of AGEAR***

We discovered several limitations associated with the use of the AGEAR system, including an unreliable Audit Trail, faulty data, technical issues, and the allowance of editable document formats.

### *The AGEAR Audit Trail Function is Not Credible*

The 2014 DoD IG assessment revealed that ethics officials were not using AGEAR functionality properly in processing Section 847 requests. On September 6, 2013, Army OGC issued business rules in an effort to address issues affecting the credibility of the AGEAR Audit Trail.

When a Section 847 request is processed within AGEAR, requestors initiate the process by completing a standardized questionnaire regarding employment activities. After the requestor submits the questionnaire, an ethics official reviews the information and can either accept, reject<sup>1</sup>, forward<sup>2</sup> the request to the appropriate ethics counselor, or request more information<sup>3</sup> from the requestor. The 30-day processing clock only begins after the ethics official decides there is sufficient information to prepare the opinion and activates the “opinion in progress” function. All of these actions are tracked in the Audit Trail. In some cases, the ethics official did not record description of any activities between the request submittal date and opinion in progress date as required by paragraph 4(b) of the AGEAR Business Rules.

Despite Army OGC issuing business rules to streamline processing of Section 847 requests, our assessment determined that some ethics officials continued to process requests outside of AGEAR, or were using AGEAR improperly to process requests. Thus, the Audit Trail remains unreliable.

During interviews with DoD agencies, some ethics officials stated that they did not require individuals to submit 847 requests through AGEAR. Rather, they would receive request information via other avenues, such as e-mail, DD Form 2945, or discussions. After the ethics officials issued the opinion letter, they would subsequently upload the relevant request documents into AGEAR. When this happens, the Audit Trail only records the date the ethics official uploaded the request documents into AGEAR. It neither records the actual date that an individual initiated the request for an opinion letter, nor does it record the date that the ethics official received all required request information to begin writing the opinion letter.

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<sup>1</sup> “Reject” immediately ends the request process because the requestor is not considered to meet Section 847 criteria.

<sup>2</sup> “Forward” is used to send the request to a different ethics official for action.

<sup>3</sup> “Request More Information” is used if the ethics official needs to contact the individual via e-mail or telephone to gather further information to write the opinion.



## Recommendations, Management Comments, and Our Response

### ***Recommendation 1.a***

The Deputy Secretary of Defense mandate the use of the online After Government Ethics Advice Repository system by all covered officials submitting requests for the Section 847 opinion letter and prohibit accepting requests or processing requests by ethics officials outside the After Government Ethics Advice Repository system.

#### *Deputy Secretary of Defense Comments*

The General Counsel of the Department of Defense, responding for the Deputy Secretary of Defense, agreed, stating that the DoD Standards of Conduct Office will initiate issuance of appropriate Deputy Secretary of Defense direction regarding covered officials' requirement to seek opinion letters that meet the Section 847 criteria by submitting requests electronically within the AGEAR system.

#### *Our Response*

Comments from the General Counsel addressed all specifics of the recommendation and no further comments are required. We will follow up in six months to determine the status of the updated guidance.

### ***Recommendation 1.b***

The Deputy Secretary of Defense take steps to enforce other Section 847 requirements and Standards of Conduct Office guidance either directly, or through direction to the Service/agency heads, to include:

- Ensuring covered officials provide the necessary information in their request,
- Ensuring ethics officials record the activities between the request submittal date and opinion in progress date to justify any delay in starting the 30-day clock, and
- Ensuring ethics officials do not issue Section 847 opinion letters to requestors who do not meet all the criteria to trigger Section 847 or who do not provide all the necessary information.

### *Deputy Secretary of Defense Comments*

The General Counsel of the Department of Defense, responding for the Deputy Secretary of Defense, agreed, stating that the DoD Standards of Conduct Office will initiate issuance of appropriate Deputy Secretary of Defense direction to reinforce the requirements in current business rules that all officials seeking opinion letters include necessary information. The General Counsel also stated that the guidance will further require that ethics officials enhance the information retained in AGEAR by providing opinion progress status and will direct that non-AGEAR opinions (PGE advice not meeting the narrow Section 847 criteria) not be added to the database.

The General Counsel noted with concern that a result of better ensuring that nonqualifying Section 847 requests are not processed through the AGEAR system and that nonqualifying Section 847 opinion letters not be stored in AGEAR could be to diminish access to ethics advice. He noted that his office would monitor the results of implementing this recommendation and make adjustments or develop proposals for change, including legislative change, as might be necessary.

### *Our Response*

Comments from the General Counsel addressed all specifics of the recommendation, and no further comments are required. We will follow up in six months to determine the status of the updated guidance.

We acknowledge the concern expressed as to the potential impact of removing unnecessary opinion letters from the AGEAR system that do not meet all the criteria of a Section 847 request and, while we do not believe that this action itself will diminish access to ethics advice, we agree that it would be prudent to monitor the results of implementing this recommendation and make adjustments should the need arise.

### ***Recommendation 1.c***

**Standards of Conduct Office and the After Government Ethics Advice Repository administrator change the case status to “rejected” for those requests when the requestor was not eligible to receive the Section 847 opinion letters (including cases when requestors did not provide the description of future duties with the Defense contractor).**

### *Army Office of General Counsel Comments*

The Army Deputy General Counsel (Ethics & Fiscal), responding for the Army General Counsel, partially agreed to this recommendation, stating that appropriate ethics officials will review the documentation for opinions under their jurisdiction in AGEAR and identify current entries not meeting the Section 847 criteria, after

which the AGEAR administrator will collect the information and update records identified as not meeting the standard for inclusion in the database. The Deputy General Counsel noted that for cases in which existing documentation is unclear as to whether the request meets Section 847, the request will be retained with appropriate comment, as the requestor may have provided information not captured in AGEAR that establishes Section 847 coverage.

### *Director, OGC Standards of Conduct Office Comments*

The Director of the Office of General Counsel Standards of Conduct Office concurred with and adopted the response made by the Army Office of General Counsel.

### *Our Response*

Comments from the Army Deputy General Counsel (Ethics & Fiscal), and concurred with by the Director of the OGC Standards of Conduct Office, addressed all specifics of the recommendation and no further comments are required. We agree that requests in which the documentation is unclear as to whether the request meets Section 847 may be retained in the repository with appropriate comment. Management comments are fully responsive and meet the intent of the recommendation.

## **Recommendation 1.d**

**Standards of Conduct Office and the After Government Ethics Advice Repository administrator develop quality control procedures to ensure that all the critical dates are accurately entered in the Audit Trail by the ethics officials when processing the requests for Section 847 opinion letters.**

### *Army Office of General Counsel Comments*

The Army Deputy General Counsel (Ethics & Fiscal) agreed to this recommendation, noting that they will make modifications to the AGEAR application to ensure ethics officials capture critical dates when processing Section 847 opinions.

### *Director, OGC Standards of Conduct Office Comments*

The Director of the Office of General Counsel Standards of Conduct Office concurred with and adopted the response made by the Army Office of General Counsel.

### *Our Response*

Comments from the Army Deputy General Counsel (Ethics & Fiscal), and concurred with by the Director of the OGC Standards of Conduct Office, addressed all specifics of the recommendation, and no further comments are required.

***Recommendation 1.e***

**Standards of Conduct Office and the After Government Ethics Advice Repository administrator require the ethics officials to provide, in the After Government Ethics Advice Repository Audit Trail, documentation of all activities between the request submittal date and opinion in progress date to justify the delay in starting the 30-day clock.**

***Army Office of General Counsel Comments***

The Army Deputy General Counsel (Ethics & Fiscal) agreed to this recommendation, stating that Army OGC will modify AGEAR to create a new button to start the 30-day clock with an additional text box to require the ethics official to explain any delays between the date the requestor submitted the request in AGEAR and the start of the 30-day clock.

***Director, OGC Standards of Conduct Office Comments***

The Director of the Office of General Counsel Standards of Conduct Office concurred with and adopted the response made by the Army Office of General Counsel.

***Our Response***

Comments from the Army Deputy General Counsel (Ethics & Fiscal), and concurred with by the Director of the OGC Standards of Conduct Office, addressed all specifics of the recommendation, and no further comments are required.

## Finding 2

### Technical Issues with AGEAR Need Refinement

In all but one of the 49 non-AGEAR opinion letters in the sample, we found that the dates recorded in the “request submittal date” field of the Audit Trail were actually the opinion upload dates. The request submittal dates in the Audit Trail differed from the manually recorded values of request submittal dates in other parts of the AGEAR system for most of these opinion letters.

This happened because the AGEAR software program automatically recorded into the Audit Trail the real time stamp of the upload date and time into the request submittal date field.

As a result, the Audit Trail data for non-AGEAR-processed opinion letters were unreliable.

### Discussion

Prior to January 1, 2012, use of AGEAR was not mandatory. Therefore, many requests during this period were submitted and processed outside the AGEAR system. Even after January 1, 2012, some of the DoD organizations continued to receive and process requests outside the AGEAR system. Most of these non-AGEAR opinion letters were uploaded into AGEAR on dates different from the letter issue dates. The uploading dates were automatically entered into the request submittal date field in the Audit Trail. Also, any subsequent actions (including closing the case) were recorded with a real time stamp rather than the true opinion issue date. Incorrect information in the Audit Trail created another layer of uncertainty in verifying the true value of opinion days.

### Recommendations, Management Comments, and Our Response

#### ***Recommendation 2***

**Standards of Conduct Office and the After Government Ethics Advice Repository Administrator correct the Audit Trails for all past non-After Government Ethics Advice Repository opinion letters by relabeling the “request submittal date” field to “opinion upload date” field, and ensure that the Audit Trail for any future non-After Government Ethics Advice Repository opinion letters are properly labeled.**

### *Army Office of General Counsel Comments*

The Army Deputy General Counsel (Ethics & Fiscal) partially concurred with this recommendation, agreeing that with respect to non-AGEAR opinions, ethics officials may have incorrectly entered dates in the request submission date field. To correct this issue, Army OGC will modify AGEAR to require manual entry of the request submission date field and remove any default dates.

### *Director, OGC Standards of Conduct Office Comments*

The Director of the Office of General Counsel Standards of Conduct Office concurred with and adopted the response made by the Army Office of General Counsel.

### *Our Response*

Comments from the Army Deputy General Counsel (Ethics & Fiscal), and concurred with by the Director of the OGC Standards of Conduct Office, addressed all specifics of the recommendation and no further comments are required. We agree to the proposed solution. Management comments are fully responsive and meet the intent of the recommendation.

## Appendix A

### Scope and Methodology

We conducted this assessment from July 2015 to March 2016 in accordance with the Council of Inspectors General on Integrity and Efficiency, “Quality Standards for Inspections and Evaluations,” January 2012. We planned and performed the assessment to obtain sufficient and appropriate evidence to provide a reasonable basis for our observations and conclusions, based on our assessment objectives.

To achieve the assessment objectives, the DoD IG team:

- Analyzed relevant provisions of the law, congressional guidance, DoD policies and guidance, and professional standards.
- Coordinated with GAO, DOJ, DoD IG Hotline, DoD IG DCIS, DoD IG AI-ISO, and DoD IG Audit to identify other ongoing related assessment projects.
- Performed a literature search to identify recent reports on relevant topics.
- Conducted discussion meetings with stakeholders including the Acting Director of the SOCO, Army OGC, congressional staff, agency DAEs, and others.
- Examined Section 847 records that the Department retained both inside and outside of AGEAR.
- Obtained data from the 17 DoD organizations to assess data reliability and completeness to address the quantitative data the House Report 114-102 requested.

Results of the literature search are presented in Appendix B.

### ***Review of the AGEAR Database***

On July 11, 2015, SOCO and the AGEAR administrator purged the AGEAR database to delete all entries for which the opinion letter issue dates were more than five years old. The statute does not require records retention for more than five years.

On August 26, 2015, the DoD IG team made a copy of the data from the AGEAR database into an Excel spreadsheet to sort the data in various ways and to extract quantitative information. We also used this data set to determine the count of opinion letters retained in the AGEAR database as well as to select a statistically random sample for opinion letter review.

### ***Issuance of Data Call to the 17 DoD Organizations***

We requested the following quantitative information from the DAEOs of the 17 DoD organizations:

- Total number of Section 847 opinion letters issued by each organization since January 1, 2008.
- Number of total pre-2012 non-AGEAR opinion letters issued along with the number uploaded into the AGEAR.
- Number of post-2012 non-AGEAR opinion letters uploaded into AGEAR on the day they were issued to the covered official (also called CURRENT post-2012 non-AGEAR opinion letters).
- Number of post-2012 non-AGEAR opinion letters not uploaded into AGEAR or uploaded on a day different from the day of issuance (also called DELAYED post-2012 non-AGEAR opinion letters).
- Number of opinion letters that were issued beyond the 30-day period.

The purpose of requesting the above information was to:

- Verify completeness of the AGEAR database by cross-checking the total numbers of opinion letters in the database with the agency reported total number of opinion letters.
- Determine if any organization failed to upload any pre-2012 non-AGEAR opinion letters into the AGEAR database and notify the organization to comply with the SOCO Director Memorandum of February 26, 2014.
- Determine if all organizations were uploading the post-2012 non-AGEAR opinion letters into the AGEAR database on the day of issuance of the letter.

In addition, the DoD IG team requested qualitative feedback from the agency DAEO offices on the various aspects of the request processing and opinion letter preservation as well as their opinion about the AGEAR database.

### ***Review of Opinion Letters for Compliance***

We reviewed a statistically valid random sample of closed AGEAR records from the spreadsheet that was prepared on August 26, 2015. As mentioned earlier, our scope was limited to opinion letters for which the requests were submitted on or before June 30, 2015. Details of statistical methods and procedures used in selecting the required sample size and in evaluating the results are provided in Appendix F.



The August 26, 2015, spreadsheet did not include any opinion letters issued prior to May 1, 2010. There were a total of 904 closed<sup>4</sup> records in the AGEAR database: 903 opinion letters and one test record. It was impracticable for our team to review all records for compliance; thus, we decided to take a random sample of 141 records from the total number of closed records in AGEAR. Our review did not involve substantive legal review of any ethics official's written opinions or final decisions regarding post-employment restrictions applicable to the requestor.

Eight records out of the 141 records initially selected could not be reviewed because they were either a test record, a duplicate record<sup>5</sup>, a record that was deleted before it was reviewed, or a record that could not be opened due to a technical error in the AGEAR system. Therefore, 8 additional records were retrieved from the random sequence of records to be reviewed.

In our review of the AGEAR records, we checked for two distinct issues:

- Record Retention Requirement: Did the ethics official upload into the AGEAR system the pertinent request information necessary to determine compliance with Section 847?
- Issuance of Opinion Letters: Did the ethics official issue opinion letters in compliance with Section 847?

The DoD IG team reviewed the testable 141 records for compliance with Section 847 using a checklist extrapolated from criteria listed in Section 847.

There were four main elements required for an opinion letter to be considered Section 847 qualifying:

1. The request was made by a current or former "covered" DoD senior official.
2. The covered official made a timely request (see Section 847(a) (1) and (2)). In particular, did the requestor:
  - a. Within 2 years after leaving DoD service and prior to accepting compensation from a DoD contractor, request a written opinion regarding the applicability of post-employment restrictions to activities that the requestor may undertake on behalf of a contractor?
  - b. Submit written request to the DoD ethics official of his or her present or former organization?

<sup>4</sup> "Closed" record refers to a record in which an ethics official has completed and finalized a request by submitting an ethics opinion to the Section 847 requestor.

<sup>5</sup> A "duplicate record" was a record that was completely identical to another record in the AGEAR system (same requestor, same job description, and same opinion letter).

- c. Include any information relating to:
  - i. government positions held,
  - ii. major duties in those positions,
  - iii. actions taken concerning future employment,
  - iv. positions sought, and
  - v. future job descriptions, if applicable?
3. The covered official received a timely ethics opinion. In particular, did they receive it from the appropriate ethics official within 30 days after the ethics official received the request?
4. The ethics opinion covered one or more of the appropriate post-employment restrictions stipulated in Section 847?

If an opinion letter did not satisfy all four elements, the ethics official should not have processed or retained the request/opinion in AGEAR.

### ***Site Visits to Selected DoD DAEO Offices***

We visited the Standards of Conduct Office and the Army DAEO office (executive agent responsible for the operation of AGEAR) to learn about the Section 847 program and the AGEAR system as well as to review their process for completing requests for opinion letters. SOCO is responsible for the coordination of the overall Section 847 program in the Department of Defense as well as the Section 847 program at the 27 subordinate organizations within the OSD. The AGEAR administrator from the Army is also responsible for the Section 847 program at all the subordinate organizations within the Army. The OSD and the Army are two of the top five generators of Section 847 opinion letters.

We also conducted site visits to DAEOs of three other DoD organizations that ranked in the top five in number of opinion letters issued: Navy, Air Force, and Defense Threat Reduction Agency. We also visited the DAEO offices at the National Security Agency and the DLA for the reasons described in Part I of this report.

### ***Search for Complaints and Referrals to Oversight and Investigative Organizations***

We contacted the multiple offices in the Department of Justice as well as the DoD IG Hotline office, DoD IG Administrative Investigations office, and DoD IG DCIS regarding complaints about potential violations of post-employment restrictions.

We compiled a summary of the numbers and types of complaints, including the final disposition of the cases. The summary is provided in Part IV of this report.

## Limitations

The following areas were outside the scope of this project:

- **Defense Contractors.** To meet the publication deadline and because of the resources that would have been required, we elected not to engage major Defense contractors on their hiring activities within this project. As such, we did not verify whether Defense contractors have determined whether potential and current employees have filed a request for post-employment ethics opinions as required.
- **DoD Contracting Activity.** We did not assess DoD contracting activities in relation to Section 847 compliance for similar reasons as stated above.
- **The total number of former covered Defense officials who should have requested a Section 847 opinion letter is an unknown quantity.** Determining that number was outside the scope of this project as it would require the assessment team to:
  - collect information from all Defense contractors on their employees who were former Defense officials,
  - gather information on Government and contractor employment activities of Section 847-eligible former Defense officials, and
  - obtain DoD Ethics official opinions on whether each of these former Defense officials were required to submit a request for opinion letter.

Therefore, we cannot independently validate the compliance by all former Defense officials with Section 847 requirements to request post-employment ethics opinions.

## Use of Computer-Processed Data

We used computer-processed data to perform this assessment. The DoD OIG Assessment Team relied on information from SOCO and the AGEAR administrator, who created an IG View screen of the AGEAR database. Although called a database, AGEAR only contains source documents and there is no source-to-electronic records trail that establishes the trustworthiness of these documents, such as when and how they were created. In our assessment, we reviewed a random sample of opinion letters/AGEAR entries (for further information, see Use of Technical Assistance section).

While conducting our assessment, we determined that the electronic records were not sufficiently reliable because there were significant errors including incompleteness of records in AGEAR. For example, pertinent request information was missing, technical errors (such as upload failure or inability to open

attachments) were found, requests and opinion letters were duplicated, and non-qualifying Section 847 opinion letters were being improperly retained in AGEAR. All of these deficiencies prevented us from being reasonably assured of accuracy of the data entries and from independently verifying compliance with Section 847.

Moreover, using data from AGEAR for purposes of this assessment would lead to incorrect or unintentional conclusions. For instance, because the opinion days entries in AGEAR are not accurate, an evaluator may wrongly assume compliance with Section 847, despite the opinion letter being issued after the 30-day timeline. Additionally, because request information is missing from some records in AGEAR, the DoD IG team could not determine if the opinion letters were written in compliance with Section 847. The technical errors discovered in AGEAR (e.g., upload errors or inability to open the record), prevented the DoD IG team from determining the actual count of the letters issued to covered officials. Similarly, because AGEAR contained letters that did not meet Section 847 requirements, there was no way to determine the actual count of Section 847 letters.

## Use of Technical Assistance

To understand how to request an ethics advisory opinion letter and how the AGEAR database works, we met with and received a technical demonstration from SOCO and the AGEAR administrator.

A senior statistician from the DoD Inspector General's Quantitative Methods Division assisted us in selecting a statistical random sample of Section 847 opinion letters/records from the AGEAR database for evaluation. Details of statistical methods and procedures used in selecting the required sample size and in evaluating the results are provided in Appendix F.

## Appendix B

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### Prior Coverage

During the last seven years, the Government Accountability Office (GAO) and the DoD IG have issued five reports on DoD's post-Government employment of former Defense officials, ethics programs, and compliance with Section 847. Unrestricted GAO reports can be accessed at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/pubs/index.cfm>. In addition, during the past seven years, the Congressional Research Service, the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD [AT&L]), and the National Academy of Public Administration have issued six reports discussing PGE laws and restrictions.

#### **GAO**

GAO Report No. GAO-09-591, "Defense Contracting Integrity: Opportunities Exist to Improve DoD's Oversight of Contractor Ethics Programs," September 22, 2009

GAO Report No. GAO-08-485, "Defense Contracting: Post-Government Employment of Former DoD Officials Needs Greater Transparency," May 21, 2008

#### **DoD IG**

DoD IG Report No. DODIG-2014-050, "Section 847 Ethics Requirements for Senior Defense Officials Seeking Employment with Defense Contractors," March 31, 2014

DoD IG Report No. DODIG-2013-039, "Defense Advanced Research Projects Agency's Ethics Program Met Federal Government Standards," January 24, 2013

DoD IG Report No. SPO-2010-003, "Review of DoD Compliance with Section 847 of the NDAA for FY 2008," June 18, 2010

#### **Congressional Research Service**

Congressional Research Service Report No. R42728, "Post-Employment, 'Revolving Door,' Laws for Federal Personnel," January 7, 2014

***Under Secretary of Defense for Acquisition, Technology,  
and Logistics***

USD (AT&L) Report, DoD Panel on Contracting Integrity, "Review of Post-Employment Restrictions Applicable to the DoD," May 9, 2011

USD (AT&L) Report, "Panel on Contracting Integrity 2010 Report to Congress," January 28, 2011

USD (AT&L) Report, "Panel on Contracting Integrity 2008 Report to Congress," January 5, 2009

USD (AT&L) Report, "Panel on Contracting Integrity 2009 Report to Congress," Undated

***National Academy of Public Administration***

National Academy of Public Administration Report, "Independent Assessment of the Department of Defense Review of Post-Employment Restrictions," February 2012

## Appendix C

### Relevant Statutory Requirements

#### ***Public Law 110-181***

Public Law 110-181, Section 847, January 28, 2008, as amended by Public Law 113-291, December 2014, places the following requirements on certain senior Defense officials (described in subsection [c]), ethics officials in the Department of Defense, and Department of Defense contractors:

(a) Requirement to Seek and Obtain Written Opinion –

(1) Request – An official or former official of the Department of Defense, described in subsection (c) who, within two years after leaving service in the Department of Defense, expects to receive compensation from a Department of Defense contractor, shall, prior to accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

(2) Submission of request – A request for a written opinion under paragraph (1) shall be submitted in writing to an ethics official of the Department of Defense having responsibility for the organization in which the official or former official serves or served and shall set forth all information relevant to the request, including information relating to government positions held and major duties in those positions, actions taken concerning future employment, positions sought, and future job descriptions, if applicable.

(3) Written opinion – Not later than 30 days after receiving a request by an official or former official of the Department of Defense described in subsection (c), the appropriate ethics counselor shall provide such official or former official a written opinion regarding the applicability or inapplicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

(4) Contractor requirement – A Department of Defense contractor may not knowingly provide compensation to a former Department of Defense official described in subsection (c) within two years after such former official leaves service in the Department of Defense, without first determining that the former official has sought and received (or has not received after 30 days of seeking) a written opinion from the appropriate ethics counselor regarding the applicability of post-employment restrictions to the activities that the former official is expected to undertake on behalf of the contractor.

Further, Paragraph “(b) Recordkeeping Requirement” of Section 847 describes retention and oversight requirements for the opinion letters. It states the following:

- (1) Database – Each request for a written opinion made pursuant to this section, and each written opinion provided pursuant to such a request, shall be retained by the Department of Defense in a central database or repository maintained by the General Counsel of the Department for not less than five years beginning on the date on which the written opinion was provided.
- (2) Inspector General review – The Inspector General of the Department of Defense shall conduct periodic reviews to ensure that written opinions are being provided and retained in accordance with the requirements of this section. The first such review shall be conducted no later than two years after the date of the enactment of this Act [Jan. 28, 2008].

### ***House Report 114-102 to accompany H.R. 1735***

In House Report 114-102 to accompany H.R. 1735, the National Defense Authorization Act for FY 2016 committee posed a series of questions to DoD IG with respect to Section 847:

The committee wishes to be apprised of the Department of Defense’s record of compliance with Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181), regarding the requirement for certain senior officials of the Department of Defense to obtain written opinion regarding the applicability of post-employment restrictions. Therefore, the committee directs the Inspector General (IG) of the Department of Defense to conduct a review of the database, or other electronic or paper records, created pursuant to Section 847 and to submit a report to the congressional defense committees, in a manner that ensures protection of confidential, personal, or proprietary information, by December 31, 2015, on the findings of that review. The report should include the following:

- (1) The findings of any previous IG reviews to assess whether written opinions are being provided and retained in accordance with Section 847;
- (2) A review of the written ethics opinions that have been requested and provided pursuant to Section 847 and a determination as to whether they comply with Section 847;
- (3) A summary, by Department of Defense organization, of the total number of opinions issued and total number of opinions retained pursuant to Section 847;



(4) A summary of any referrals to, and/or complaints received by, the IG or the Department of Justice regarding potential violations of post-employment restrictions, including the final disposition of such cases;

(5) The status of any pre-2012 records established pursuant to Section 847 of Public Law 110-181; and

(6) Any other matters the IG deems relevant to a comprehensive assessment of compliance with Section 847.

## Appendix D

### AGEAR Administrator Guidance Documents

#### 2013 AGEAR Business Rules



DEPARTMENT OF THE ARMY  
OFFICE OF THE GENERAL COUNSEL  
104 ARMY PENTAGON  
WASHINGTON, DC 20310-0104

SAGC-EF

6 September 2013

MEMORANDUM FOR Ethics Officials in the Department of Defense

SUBJECT: Business Rules for Use of the After Government Employment Advice Repository (AGEAR) System

1. References:

- a. National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, Section 847 (Requirements For Senior Department Of Defense Officials Seeking Employment With Defense Contractors.)
- b. Memorandum, Deputy Secretary of Defense, 19 September 2011, Subject: Mandatory DoD-Wide Use of After Government Employment Advice Repository (AGEAR) and Designation of Secretary of the Army as DoD Executive Agent for Operation of AGEAR
- c. Code of Federal Regulations (CFR), Chapter 48, Part 252, Subparts 203.171-1 and 252.203-7000 (Requirements Relating to Compensation of Former DoD Officials.)

2. Purpose. In our capacity as Department of Defense (DoD) Executive Agent for AGEAR, we have developed the following "business rules" to assist EOs in properly processing requests for Section 847 opinions in AGEAR.

3. Background.

a. Section 847 requires a "covered DoD official"<sup>1</sup> of the Department of Defense, who, within two years after leaving government service in the DoD, expects to receive compensation from a DoD contractor, to, prior to accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor. Ethics officials are

<sup>1</sup> Section 847 defines a "covered DoD official" as an official or former official of the DoD that:

(1) participated personally and substantially in an acquisition as defined in section 4(16) of the Office of Federal Procurement Policy Act with a value in excess of \$10,000,000 and serves or served--

(A) in an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code;

(B) in a position in the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code; or

(C) in a general or flag officer position, compensated at a rate of pay for grade O-7 or above under section 201 of title 37, United States Code; or

(2) serves or served as a program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract in an amount in excess of \$10,000,000.

## 2013 AGEAR Business Rules (cont'd)

SAGC-EF

SUBJECT: Business Rules for Use of the After Government Employment Advice Repository (AGEAR) System

required to issue a written opinion to the requestor not later than 30 days after receiving the request. The statute and implementing regulation<sup>2</sup> also prohibit DoD contractors from knowingly providing compensation to a former "covered DoD official" within two years after such former official leaves service in the DoD, without first determining that the former official has sought and received (or has not received after 30 days of seeking) a written opinion from the appropriate ethics counselor regarding the applicability of post-employment restrictions to activities that the former official is expected to undertake on behalf of the contractor.

b. Reading Section 847 and DFAR 252.203-7000 together, it seems clear that a request must meet the following criteria to qualify for processing in AGEAR: 1) the requestor must be a "covered DoD official" as defined by References a and c; and 2) the requestor must have an actual offer of employment or compensation from a defense contractor to perform specific duties for that contractor within the two year period after leaving DoD service.

c. In a recent DoD/IG assessment of DoD's compliance with Section 847<sup>3</sup>, which included a review of AGEAR, we discovered numerous instances where AGEAR was being used improperly. Generally, they fell into two broad categories.

(i) The first category involved requests that should not have been processed or retained in AGEAR because they clearly did not meet the criteria for a Section 847 opinion. For example, the requestor clearly did not meet the definition of a "covered DoD official," or the requestor did not identify any specific DoD contractor from whom the official expected to receive compensation.

(ii) The second category involved the failure of Ethics Officials (EOs) to use AGEAR functionality properly in processing proper Section 847 requests. For example, EOs frequently failed to record when they requested and/or when they received additional information necessary to prepare a Section 847 opinion. With missing or incomplete audit trails, the DoD/IG could not determine whether PGE opinions were being issued in compliance with the 30-day statutory deadline. Many opinions in AGEAR were issued well beyond 30 days of the initial request, but without an audit trail, it appeared that EOs were responsible for the delay. The DoD/IG also observed that often EOs hit the "Prepare Opinion" button in AGEAR on the same day they issued the opinion. Without a complete audit trail in AGEAR, the perception exists that EOs may be "gaming the system" to avoid responsibility for late opinions.

<sup>2</sup> Defense Supplement to the Federal Acquisition Regulation (DFAR), Subpart 252.203-7000

<sup>3</sup> Section 847 requires the DoD Office of the Inspector General to conduct periodic reviews to ensure that written opinions are being provided and retained in accordance with the law.

## 2013 AGEAR Business Rules (cont'd)

SAGC-EF

SUBJECT: Business Rules for Use of the After Government Employment Advice Repository (AGEAR) System

d. In our capacity as DoD Executive Agent for AGEAR, we have developed the following "business rules" to assist EOs in properly processing requests for Section 847 opinions in AGEAR. Adherence to these rules will help EOs establish appropriate audit trails which will give DoD/IG better insight into whether DoD EOs are complying with Section 847, and should cast DoD in a more favorable light in future DoD/IG assessments.

4. Business Rules. In processing requests for Section 847 opinions in AGEAR, EOs should:

a. Reject requests that do not meet Section 847 criteria. AGEAR should not be used to process requests for routine (non-Section 847) PGE opinions, or retain routine PGE requests and opinions, including letters addressing the inapplicability of Section 847 to the requestor. Only complete requests that establish eligibility for a Section 847 opinion in AGEAR should be accepted and processed in AGEAR. If, on its face, a request form submitted in AGEAR is incomplete or contains information demonstrating the request does not meet Section 847 criteria, then the cognizant AGEAR Manager and/or EO should promptly reject the request. If, once a request is accepted and forwarded to the EO, additional information is obtained indicating that the requestor does not meet the criteria for a Section 847 opinion, the EO should reject the request from AGEAR and process it as a routine request for PGE advice outside of AGEAR. Procedures for rejecting a request follow:

(1) To reject a request, the EO must log into AGEAR and click on the "View" button next to the requestor's name. After the request is opened, click on the "Request Detail" tab at the top of the request. Then, click on the "Reject" button. When rejecting a request, AGEAR requires the EO to provide an explanation for the rejection. It is not necessary to upload supporting documentation. As a best practice, the EO should download and save the completed request questionnaire elsewhere before clicking the "Reject" button so that it can be used in issuing a routine PGE opinion outside of AGEAR.

(2) After clicking the "Reject" button, a dialogue box will appear. Insert a written explanation (e.g., "Requestor is not a covered official" or "Requestor does not have an offer of employment or compensation from a specific DoD contractor"), then click on the "Save" button. Once the "Save" button has been clicked, the status of the request will change to "Rejected." The "Reject" button is always available to the EO regardless of the status of the request. No further action in AGEAR is necessary. The EO should inform the requestor of the rejection, and discuss other available options for routine PGE advice.

b. Use the "Request More Info" button when requesting additional information from the requestor. If, after reviewing a request that initially appears to meet the eligibility criteria for a Section 847 opinion, the EO determines that additional information is required, the EO should promptly contact the requestor and request the missing information, e.g.,

## 2013 AGEAR Business Rules (cont'd)

SAGC-EF

SUBJECT: Business Rules for Use of the After Government Employment Advice Repository (AGEAR) System

copy of resume, description of current or anticipated duties, and any other supporting information needed to write the opinion. (Additional information is typically required because AGEAR does not permit requestors to attach documents to their requests, primarily due to information technology system security concerns.) The EO must document the request by clicking the "Request More Info" button in AGEAR, and entering a comment in the dialogue box. This will create an audit trail to document that the EO has not yet received a complete request with sufficient information to permit issuance of the Section 847 opinion to the requestor, thereby demonstrating to any reviewing authority that the EO is not responsible for any delay.

c. Use the "Prepare Opinion" button once sufficient information has been provided for the EO to draft the opinion. Upon receipt of any necessary additional information and clarifications, the EO should *immediately* review them to determine if there is sufficient information to write an opinion. If sufficient information has been received, the EO *must* immediately click the "Prepare Opinion" button to begin the 30-day clock. EOs may *not* delay this action to avoid triggering the statutory 30-day clock. The EO has 30 days from receipt of a completed request with any required additional information to prepare and issue the opinion.

d. Close requests in AGEAR once the opinion has been issued.

(1) To ensure the statutory 30-day clock is stopped in AGEAR and demonstrate to reviewers that the opinion was issued timely, EOs must take action to close the request in AGEAR once the opinion is issued.

(2) Procedures to Close a Request in AGEAR. To close a request, the EO must click on the "Attachments" tab at the top of the request in AGEAR. The EO then clicks on the "Add Attachment" button. Next, the EO must identify the attachment as the written opinion by clicking on "Opinion" from the four types of attachments that are displayed on the screen. Only by selecting the "Opinion" button will AGEAR allow the EO to close the request in AGEAR. The EO clicks on the "Upload" button to attach the opinion to the request in AGEAR. Finally, the EO clicks on the "Send Opinion and Close" button at the top of the request. This allows the EO to send the opinion to the requestor and close the request in AGEAR simultaneously. After the opinion has been sent, the status of the request will change to "Closed" in AGEAR.

(3) As a best practice, the EO may wish to also upload the transmittal document and, where available, evidence of receipt by the requestor (e.g., e-mail exchange, cover letter, etc.) into AGEAR in addition to the opinion. This will provide evidence that the opinion was actually provided to and received by the requestor in the event of a subsequent investigation or legal action for violation of post-Government employment restrictions.

## 2013 AGEAR Business Rules (cont'd)

SAGC-EF

SUBJECT: Business Rules for Use of the After Government Employment Advice Repository (AGEAR) System

### 5. Additional Information.

a. FAQs are available to assist EOs in determining whether a request falls within Section 847 and is required to be processed and retained in AGEAR. Just click the "Help" link at the very bottom of the Login screen.

b. When viewing a request under the "Request Detail" tab in AGEAR, links along the right side of the screen allow you to skip directly to specific sections of the questionnaire. For example, if the EO needs to locate the requestor's responses concerning whether they have participated in acquisitions/contracts in excess of \$10 million, the EO can click on the "DoD Procurement Information" link to go directly to that information.

c. Note that the DD 2945 has been revised and the new version will be uploaded into AGEAR shortly. In Section IV, Question 19 explicitly states that the look back period for positions and duties is five years. While not explicitly stated in Question 20, DoD SOCO has indicated that the look back period for participation in acquisitions and contracts is also five years.

d. Section 847 opinions that were issued outside of AGEAR after January 1, 2012 may be uploaded into AGEAR. These are referred to in AGEAR as "Historical Requests." When the EO logs into AGEAR, a button that says "Add Completed Opinion" can be seen. The EO can click this button, complete the required information, upload the opinion and any corresponding DD 2945, questionnaire, and/or other relevant attachments, and then enter an "Opinion Sent and Closed Date."

6. Contact. Please contact me at [REDACTED] if you have questions regarding the above guidance. For assistance in operating the AGEAR system, please contact the AGEAR Program Manager at [REDACTED] or [REDACTED]



Susan D. Tigner  
Deputy General Counsel  
(Ethics & Fiscal)

## **DAEO Structure**

### *Program Administration*

In addition to the Office of the Secretary of Defense (also known as the DoD Remainder Component), there are 16 other separate DAEO components in DoD:

- Armed Services Board of Contract Appeals
- Department of the Navy
- Defense Commissary Agency
- Defense Finance and Accounting Service
- Defense Intelligence Agency
- Defense Security Service
- National Imagery and Mapping Agency
- Office of the Inspector General
- Department of the Army
- Department of the Air Force
- Defense Contract Audit Agency
- Defense Information Systems Agency
- Defense Logistics Agency
- Defense Threat Reduction Agency
- National Security Agency
- Uniformed Services University of the Health Sciences

Under the Office of the Secretary of Defense/DoD Remainder DAEO component, there are multiple subordinate components (Deputy DAEOs):

- Defense Media Activity
- Army-Air Force Exchange Service
- Defense Advanced Research Projects Agency
- Defense Acquisition University
- Defense Contract Management Agency
- Defense Health Agency
- Defense Human Resources Activity
- Defense Micro Electronics Activity
- Defense POW/MP Office
- Defense Security Cooperation Agency
- Defense Technology Security Agency
- DoD Education Activity
- Joint Improvised Explosive Device Defeating Organization
- Missile Defense Agency
- National Defense University
- Washington Headquarters Services
- White House Military Office
- Joint Chiefs of Staff:
  - Africa Command
  - Central Command
  - European Command
  - Northern Command
  - Pacific Command
  - Southern Command
  - Special Operations Command
  - Strategic Command
  - Transportation Command
  - U.S. Forces-Afghanistan/Iraq



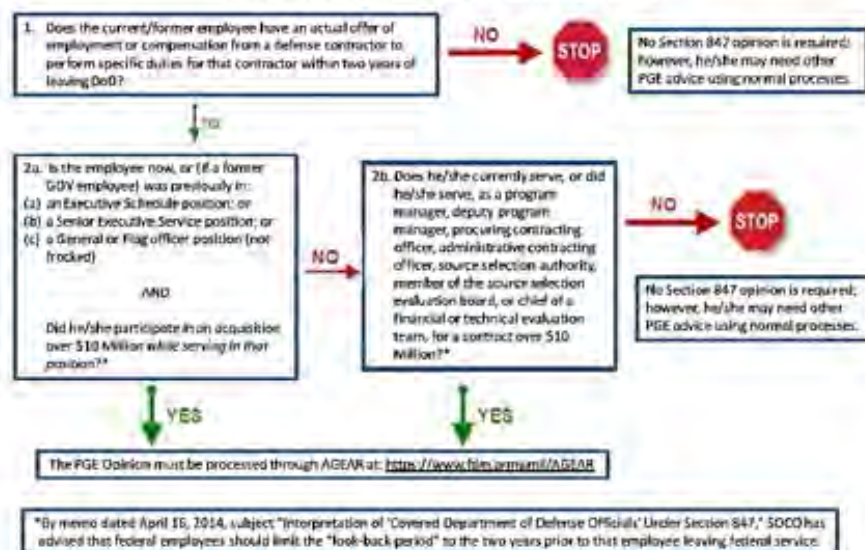
## SOCO Flowchart on Processing Section 847 Opinions

### FAQs for DoD Ethics Counselors

#### 1. Under what conditions does special handling of Post-Government Employment (PGE) advice apply?

Answer: Most Ethics Counselors prepare written PGE advisory opinions and file them locally. Pursuant to Section 847 of the National Defense Authorization Act for Fiscal Year 2008, [https://www.fdm.army.mil/PM\\_Reference\\_Docs/Section847.pdf](https://www.fdm.army.mil/PM_Reference_Docs/Section847.pdf), certain "covered officials" require special processing of their PGE opinions. Ethics Counselors should use the following matrix to determine if "special processing required" is required:

#### Ethics Official's Decision Flowchart for Section 847 Opinions



#### 2. What should I do if a Questionnaire is assigned to me and I have no knowledge of the employee's last assignment or duties?

The AGEAR Agency Manager will attempt to properly identify the employee's last organization where they were assigned and, in the case of an employee that filed an OGE 278 or OGE 450 financial report, use the FDM application to identify the responsible legal reviewer that reviewed their report. However, if a request is erroneously transferred to you, contact the AGEAR Agency Manager immediately and work with him/her to determine the appropriate DoD Ethics Counselor for re-assignment to write the letter. It is expected that there may be some confusion as to the appropriate Counselor when a DoD employee has been detailed or assigned outside his regular agency. Do not delay, as the 30-day clock may be ticking.

Updated: July 2014

## ***SOCO Flowchart on Processing Section 847 Opinions (cont'd)***

### **3. Do I have to use the model letter?**

If you are an Army Ethics Counselor, yes, you must. If you are not an Army Ethics Counselor, the model letter is not mandatory and is provided for your convenience. Your DoD Agency Designated Agency Ethics Official, however, may provide specific guidance for your agency on its use. It does provide an accurate synopsis of every facet of post-employment law, including Section 847. You should delete the parts that are not relevant to the individual employee and adapt other sections to the specific circumstances. Of course you will need to develop the specific advice based on the unique facts provided. Feel free to use the model for other post-employment advice, just delete Section 847 and other non-relevant parts.

### **4. What should I do if the submitted information is not complete?**

Employees cannot attach documents to their request due to internet security concerns. Since the application provides very limited space to summarize duties and responsibilities you may need to contact the individual employee and explain what you need. Remind him or her that the 30-day clock does not start until complete information is received. It is recommended that the employee provide you a copy of his or her resume that was submitted to the employer and the company's position description. The employee should provide it to you in electronic format. If the information is received via e-mail, save the data to a Word document and then you may attach it to the request. If the information is received in hard copy, scan the document and attach it to the request. The application provides you with the opportunity to upload any documents necessary while specifically allowing for resumes, position descriptions and the legal opinion provided. All format types are accepted (Word, WordPerfect, Adobe Acrobat, etc.).

### **5. When does service in a covered position trigger Section 847 requirements?**

The DoD Section 847 guidance, SOCO Advisory 08-03, April 28, 2008, located on the DoD SOCO webpage, <http://www.dod.mil/dodgc-defense-ethics/>, requires only that covered personnel hold a covered position either at the time of the request or at the time they left. The statute is silent as to when such positions are held. By memorandum dated 16 April 2014, SOCO advised that covered officials should limit the look-back period to the two years prior to leaving federal service.

### **6. What should I do if I am not sure that section 847 applies?**

Contact the next higher ethics official in your legal chain of command and discuss it with them. Do not contact the system administrator, Agency Manager or DoD SOCO (unless it is your next higher level).

### **7. Where can I find additional assistance with using the AGEAR application?**

Answer: Use the AGEAR Quick Start:

<https://www.fdm.army.mil/PM-Reference-Docs/EO-QuickStart.pdf> or contact the AGEAR Process Owner: Phone 703-695-4296 or e-mail [usarmy.pentagon.hqda-oge.mbx.agear-manager@mail.mil](mailto:usarmy.pentagon.hqda-oge.mbx.agear-manager@mail.mil) for assistance using the application.

Updated: July 2014

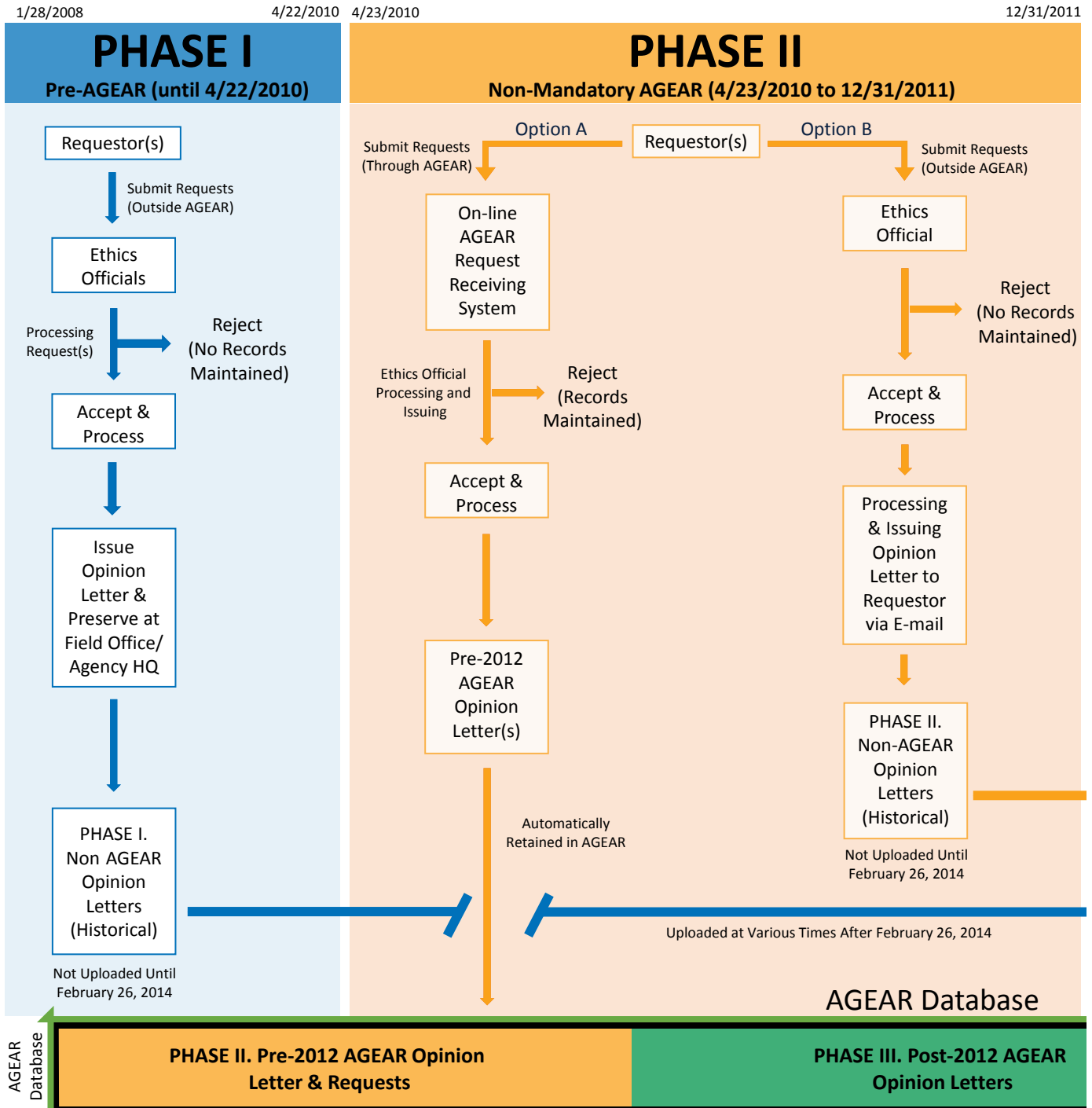
## Appendix E

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### **Section 847 Procedures & Recordkeeping Activities for the Three Phases of AGEAR Evolution**

See graphic on the following page.

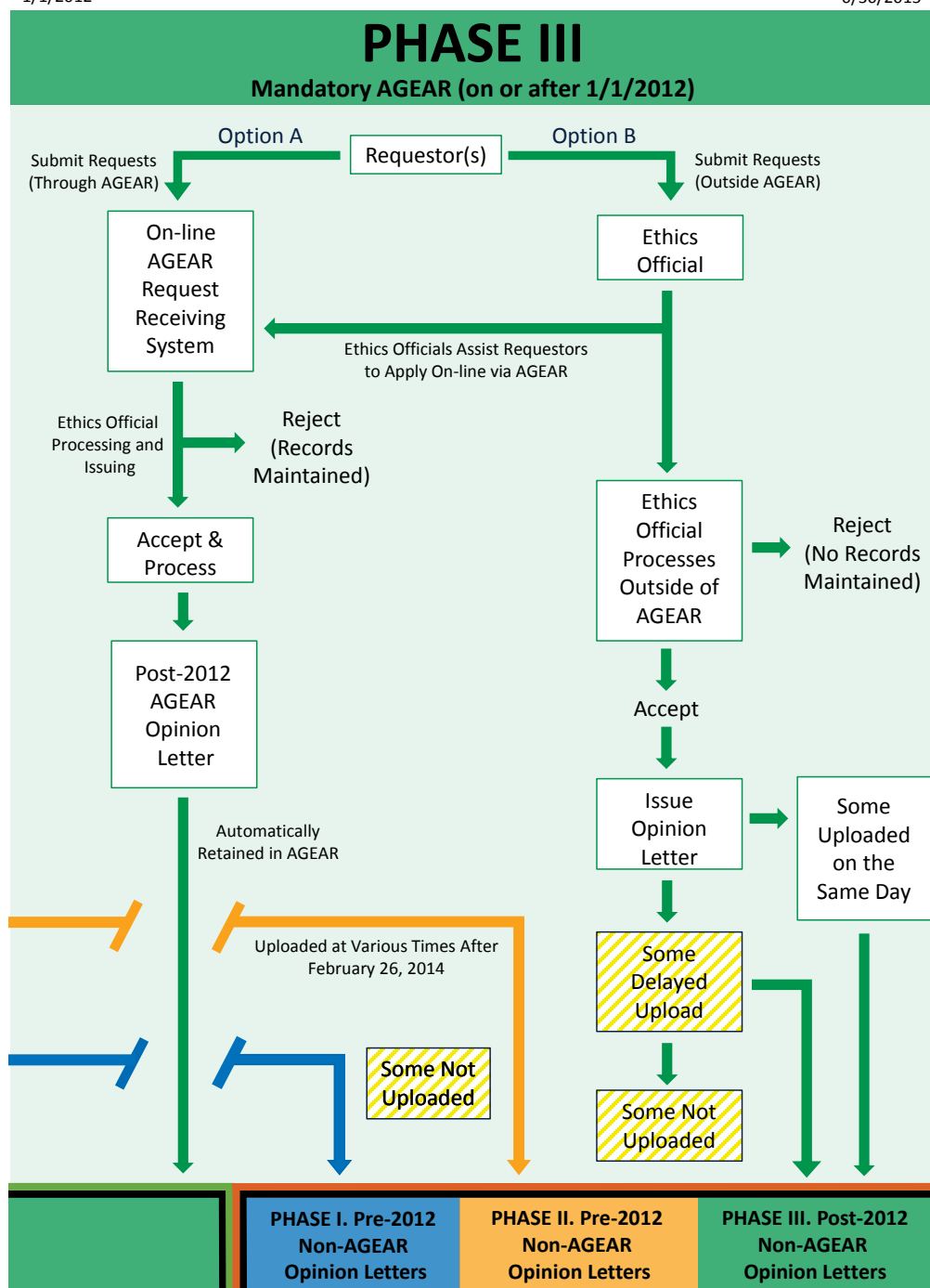
## Details of Section 847 Procedures & Recordkeeping Activities for the Three Phases of AGEAR Evolution



## Details of Section 847 Procedures & Recordkeeping Activities for the Three Phases of AGEAR Evolution (cont'd)

1/1/2012

6/30/2015



## Appendix F

### Statistical Methods and Procedures Used in Selecting the Required Sample Size and in Evaluating the Results

March 25, 2016

To: [REDACTED], Program Director

From: [REDACTED], Operations Research Analyst, QMD [REDACTED]

Through: [REDACTED], Technical Director, QMD [REDACTED]

Subject: Assessment of Compliance with Section 847 Requirements for Senior Defense Officials Seeking Employment with Defense Contractors (Project No. D2015-D00SPO-0212.000)

This memorandum documents the quantitative support that we provided for your audit. In it, we provide details of the quantitative plan that we developed in support of your objective. Also, we include the results we calculated based on the data you provided by executing this plan.

#### QUANTITATIVE PLAN

**Objective:** The review complies with Public Law 110-181, Section 847, as amended, which requires the OIG to conduct periodic reviews to ensure that written opinions are being provided and retained in accordance with the statutory requirements.

**Population:** On August 26, 2015, we extracted data from the AGEAR system to obtain a sample population of opinions for review. We limited the population of opinion letters to exclude those with request submittal dates after June 30, 2015, because the system is not static in nature. There was a total count of 904 opinion letters at the time we extracted the data. It is important to note that from July 11-12, 2015 SOCO and the AGEAR Administrator deleted all issued opinion letters which were retained for more than five years in the system. As of August 26, 2015, the total count of opinion letters for review was 904. These 904 form the assessment population.

We sorted the 904 opinion letters by request submittal date and found that the earliest request submittal date for this truncated database was May 01, 2010. The earliest opinion letter issue date was also May 01, 2010. Therefore the sample population of 904 opinion letters was comprised of opinions with request submittal dates ranging from May 1, 2010 to June 30 2015.

**Measures:** The sample is designed to measure two aspects of the AGEAR system: compliance with record retention requirement and compliance with opinion letter issuance requirements. The project staff, in conjunction with the OGC, identified four elements which were essential in determining opinion letter issuance compliance with Section 847. In order to measure compliance, SPO requested support from Quantitative Methods Division in designing and drawing a statistical sample from the 904 letters that comprise the project population.

**Parameters:** Based on discussion with QMD of assessment goals, measures, time frame and resources, the team requested a simple random sample based on a 99 percent confidence level and a 10 percent margin of error. Using these parameters, QMD determined the sample size, 141 letters<sup>1</sup>.

<sup>1</sup> QMD made the conservative assumption of a 50 percent attribute rate of occurrence to ensure attaining the desired margin of error.

## Statistical Methods and Procedures Used in Selecting the Required Sample Size and in Evaluating the Results (cont'd)

### SAMPLE PLAN

During its assessment of the opinion letters compliance the team found that eight of the initial 141 letters could not be assessed for compliance for several reasons<sup>2</sup>. In order to obtain 141 letters that could be tested the team ultimately selected an additional eight letters, based on their random selection sequence. This resulted in a total sample size of 149. The statistical estimates which follow are based on the sample of 149 letters randomly selected from the list of the 904 records obtained from AGEAR.

### RESULTS AND INTERPRETATION

The analysis focusses on two assessment areas: (1) compliance with AGEAR record retention requirements and (2) compliance with opinion letter issuance requirements, specifically how many opinion letters satisfied the four critical areas of section 847.

The first three tables present the results for the first area, records retention.

Table 1  
Estimated Number of Opinion Letters Which Were Uploaded

	Lower Bound	Point Estimate	Upper Bound	Precision (+/-)
Percent of Letters	68.0	76.5	85.2	8.5
Number of Letters	614	692	769	77

The table is interpreted in the following way. Based on the sample 149 Letters from the 904 obtained from AGEAR, we estimate that 76.5 percent (692 Letters) meet the first test. We are 99 percent confident that the actual number falls somewhere in the range between 614 letters and 769 letters. The same reasoning applies to the following tables.

Table 2  
Estimated Number of Opinion Letters Which Were Not Uploaded

	Lower Bound	Point Estimate	Upper Bound	Precision (+/-)
Percent of Letters	7.8	18.2	26.1	7.8
Number of Letters	94	165	236	71

Table 3  
Estimated Number of Opinion Letters Which Could Not Be Tested

	Lower Bound	Point Estimate	Upper Bound	Precision (+/-)
Percent of Letters	0.7	5.4	10.1	4.7
Number of Letters	6	49	91	42

<sup>2</sup> Two records could not be opened because of a technical error in the AGEAR system; one was a duplicate of a letter already drawn; and five could not be opened for review (four had been removed during the normal aging cut-off of five years and one was a test record the AGEAR administrator erroneously included among the 904 instead of rejecting it).

## Statistical Methods and Procedures Used in Selecting the Required Sample Size and in Evaluating the Results (cont'd)

The second four tables present the results for issuance of the opinion letters.

Table 4  
Estimated Number of Opinion Letters Where All Test Elements  
Met the Section 847 Requirements

	Lower Bound	Point Estimate	Upper Bound	Precision (+/-)
Percent of Letters	55.5	65.1	74.7	9.6
Number of Letters	502	589	675	86

Table 5  
Estimated Number of Opinion Letters with with One or More Elements  
Which Failed to Meet the Section 847 Requirements

	Lower Bound	Point Estimate	Upper Bound	Precision (+/-)
Percent of Letters	6.5	13.4	20.4	6.9
Number of Letters	59	121	184	63

Table 6  
Estimated Number of Opinion Letters with No Failures But Which Had One or More Elements  
Which Could Not Be Determined to Meet the Section 847 Requirements

	Lower Bound	Point Estimate	Upper Bound	Precision (+/-)
Percent of Letters	8.7	16.1	23.6	7.4
Number of Letters	78	146	213	67

Table 7  
Estimated Number of Opinion Letters Which Could Not Be Tested

	Lower Bound	Point Estimate	Upper Bound	Precision (+/-)
Percent of Letters	0.7	5.4	10.1	4.7
Number of Letters	6	49	91	42

### Documentation, Presentation, and Defense of Results

This memorandum with its attachments constitutes QMD's documentation of our quantitative support for your working papers. As needed, we will respond to questions or challenges concerning the quantitative plan, analysis or results.



# Management Comments

## Comments from DoD OGC



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
1600 DEFENSE PENTAGON  
WASHINGTON, D. C. 20301-1600

MAR 21 2016

MEMORANDUM FOR ACTING INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: Response to Department of Defense Office of the Inspector General Draft Report, Section 847 Requirements for Senior Defense Officials Seeking Employment with Defense Contractors (Project No. D2015-D00SPO-0212.000), dated March 9, 2016

This memorandum responds to the two recommendations in the subject draft report for which you requested Deputy Secretary of Defense comment. The Deputy Secretary of Defense's office directed that I provide management comments on his behalf.

**DODIG Draft Report Recommendation 1.a.:** "The Deputy Secretary of Defense mandate the use of the online After Government Ethics Advice Repository system by all covered officials submitting requests for a Section 847 opinion letter and prohibit accepting requests or processing requests by ethics officials outside the AGEAR system."

**DoD Response:** Concur. In order to enhance auditability of information, the DoD Standards of Conduct Office will initiate issuance of appropriate Deputy Secretary of Defense direction regarding covered officials' requirement to seek opinion letters meeting the Section 847 criteria by submitting requests electronically within the AGEAR system.

**DODIG Draft Report Recommendation 1.b.:** "The Deputy Secretary of Defense take steps to enforce other Section 847 requirements and Standards of Conduct Office guidance either directly, or through direction to the service/agency heads, to include:

- Ensuring covered officials provide the necessary information in their request,
- Ensuring ethics officials record the activities between the request submittal date [and opinion in progress date], and
- Ensuring ethics officials do not issue Section 847 opinion letters to requestors who do not meet all the criteria to trigger Section 847 or who do not provide all the necessary information."

**DoD Response:** Concur, with comment. Again, the DoD Standards of Conduct Office will initiate issuance of appropriate Deputy Secretary of Defense direction to reinforce the requirements in current business rules that all officials seeking opinion letters include necessary information. Further, the guidance will require that ethics officials enhance the information retained in AGEAR by providing opinion progress status and will direct that non-AGEAR opinions (post-Government employment advice not meeting the narrow Section 847 criteria) not be added to the database.

The draft report suggests, "Despite adequate guidance from SOCO and the Army OGC regarding the proper use of AGEAR, ethics officials were still processing nonqualifying Section 847 requests and storing nonqualifying Section 847 opinion letters in AGEAR." While that assessment may not account for the improvement in practices over time, the authority and



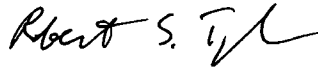
## Comments from DoD OGC (cont'd)

emphasis associated with Deputy Secretary of Defense guidance should assist in remedying any continued shortcomings.

We note with concern that the result of better ensuring that nonqualifying Section 847 requests are not processed through the AGEAR system and that nonqualifying Section 847 opinion letters not be stored in AGEAR could be to diminish access to ethics advice. We will monitor the results of implementing this recommendation, and we will make adjustments or develop proposals for change, including legislative change, as might be necessary.

In accord with the table accompanying the draft report, I understand that the DoD Standards of Conduct Office and the AGEAR Administrator in the Department of the Army Office of General Counsel will provide Management Comments for the remaining recommendations.

We appreciate the opportunity to comment on the draft report. For questions or concerns, please contact [REDACTED] in the Standards of Conduct Office. You may reach him at [REDACTED]



Robert S. Taylor  
Acting

## Comments from SOCO and Army Administrator



DEPARTMENT OF DEFENSE  
OFFICE OF THE GENERAL COUNSEL  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

MAR 21 2016

MEMORANDUM FOR ACTING INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: Response to Department of Defense Office of the Inspector General Draft Report, Section 847 Requirements for Senior Defense Officials Seeking Employment with Defense Contractors (Project No. D2015-D00SPO-0212.000), dated March 9, 2016

This memorandum responds to the four recommendations in connection with the referenced matter for which you requested comments from the Director, Department of Defense Standards of Conduct Office. In order to provide a practical response, my office coordinated with the After Government Employment Advice Repository administrator in the Department of the Army Office of General Counsel with regard to responses for Recommendations 1.e. through 1.e. and Recommendation 2. SOCO concurs with and adopts the attached Army responses.


While not specifically included in the request for Management Comments, I would like to emphasize a few broader points regarding the report:

- While only a small fraction of departing officials meets the strict statutory criteria for “Section 847” post-Government advice, ethics counselors have been diligent in providing beneficial legal guidance regarding post-Government employment restrictions to thousands of departing or former officials across the Department of Defense.
- We have also observed that the prospect for contractor debarment resulting from noncompliance with Section 847 has provided a strong “market” incentive for defense contractors to ensure potential employees receive an advice letter. In practice, ethics officials have found that defense contractors will not hire former DoD personnel without written ethics advice, whether or not the official triggers the Section 847 requirement.
- There have also been significant improvements made to the request process through AGEAR over the past several years. The draft report acknowledges in background discussion that DoD officials have made advances. This includes action taken in response to prior IG reviews—such as mandated use of AGEAR, uploading pre-AGEAR opinions, issuance of business rules, and provision of clarifying guidance. The statistical sample for the database review, however, draws from actions that may have occurred before implementation of these important improvements.
- Finally, it might be helpful for the report to address the underlying utility of the database. Practical experience indicates defense contractors have incorporated receipt of written post-Government employment advice into their hiring practices (on a broader basis than Section 847). The report implies there has not been a significant demand to retrieve opinions directly from AGEAR for criminal investigations or debarment actions. This suggests the benefit of mandating, modifying, maintaining, and monitoring a separate electronic storage system for these particular requests and opinions may not be as significant as originally envisioned.



## Comments from SOCO and Army Administrator (cont'd)

I appreciate the opportunity to comment on the draft report. For questions or concerns, please contact me or [REDACTED]



Ruth M. S. Vetter  
Director, Standards of Conduct Office

Attachment:  
As stated.

## Comments from SOCO and Army Administrator (cont'd)

SAGC-EF

18 March 2016

MEMORANDUM FOR Director, Standards of Conduct Office (ATTN: Ruth Vetter)

SUBJECT: Army OGC Input to Response to Draft DOD/IG Assessment of AGEAR

1. Army OGC provides the following input for your consideration in responding to the draft DoD/IG Assessment of the After Government Ethics Advice Repository (AGEAR), Project No. D2015-D000SPO-0212.000

2. Recommendations 1.c, 1.d, 1.e, and 2 require action by the AGEAR administrator and are addressed below.

3. **Recommendation 1.c**

a. Recommendation: Standards of Conduct Office and the After Government Ethics Advice Repository administrator change the case status to "rejected" for those requests when the requestor was not eligible to receive the Section 847 opinion letters (including cases when requestors did not provide the description of future duties with the Defense contractor).

b. Response: Partially concur. Appropriate ethics officials will review the documentation for opinions under their jurisdiction in AGEAR and identify current entries not meeting the Section 847 criteria. The AGEAR Administrator will collect the information and update records identified as not meeting the standard for inclusion in the database. AGEAR opinions that do not clearly fall within Section 847 will be marked "rejected". In cases where the existing documentation is unclear as to whether the request meets Section 847, the request will be retained with appropriate comment, as the requestor may have provided information not captured in AGEAR that establishes Section 847 coverage.

4. **Recommendation 1.d**

a. Recommendation: Standards of Conduct Office and the After Government Ethics Advice Repository administrator develop quality control procedures to ensure that all the critical dates are accurately entered in the Audit Trail by the ethics officials when processing the requests for Section 847 opinion letters.

b. Response: Concur. Army OGC will make modifications to the AGEAR application to ensure ethics officials capture critical dates when processing Section 847 opinions.

## Comments from SOCO and Army Administrator (cont'd)

SAGC-EF  
SUBJECT: Army OGC Input to Response to Draft DOD/IG Assessment of AGEAR

5. **Recommendation 1.e**

a. Recommendation: Standards of Conduct Office and the After Government Ethics Advice Repository administrator require the ethics officials to provide, in the After Government Ethics Advice Repository Audit Trail, documentation of all activities between request submittal date and opinion in progress date to justify the delay in starting the 30-day clock.

b. Response: Concur. Army OGC will modify AGEAR to create a new button to start the 30-day clock and an additional mandatory text box to require the ethics official to explain any delays between the date the requestor submitted the request in AGEAR and the start of the 30-day clock.

6. **Recommendation 2**

a. Recommendation: Standards of Conduct Office and the After Government Ethics Advice Repository administrator correct the Audit Trails for all past non-After Government Ethics Advice Repository opinion letters by relabeling the request submittal date field to opinion upload date and ensure that the Audit Trail for any future non-After Government Ethics Advice Repository opinion letters are properly labeled.

b. Response: Partially concur. With respect to non-AGEAR opinions, concur that ethics officials may have mis-entered dates in the "Request Submission Date" field. To correct this issue, Army OGC will modify AGEAR to require manual entry of the "Request Submission Date" field and remove any default dates.

7. Please let me know if you have any questions or if we may be of further assistance.

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Date: 2016.03.18 13:59:37 -0400

Susan D. Tigner  
Deputy General Counsel  
(Ethics & Fiscal)



## Acronyms and Abbreviations

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<b>AGEAR</b>	After Government Employment Advice Repository
<b>DAEO</b>	Designated Agency Ethics Official
<b>DCIS</b>	Defense Criminal Investigative Services
<b>DEPSECDEF</b>	Deputy Secretary of Defense
<b>DLA</b>	Defense Logistics Agency
<b>DOJ</b>	Department of Justice
<b>GAO</b>	Government Accountability Office
<b>NDAA</b>	National Defense Authorization Act
<b>NGA</b>	National Geospatial-Intelligence Agency
<b>NSA</b>	National Security Agency
<b>OGC</b>	Office of General Counsel
<b>OSD</b>	Office of the Secretary of Defense
<b>PGE</b>	Post-Government Employment
<b>SOCO</b>	Standards of Conduct Office
<b>USD [AT&amp;L]</b>	Under Secretary of Defense for Acquisition, Technology, and Logistics





# **Whistleblower Protection**

## **U.S. DEPARTMENT OF DEFENSE**

*The Whistleblower Protection Enhancement Act of 2012 requires the Inspector General to designate a Whistleblower Protection Ombudsman to educate agency employees about prohibitions on retaliation, and rights and remedies against retaliation for protected disclosures. The designated ombudsman is the DoD Hotline Director. For more information on your rights and remedies against retaliation, visit [www.dodig.mil/programs/whistleblower](http://www.dodig.mil/programs/whistleblower).*

## **For more information about DoD IG reports or activities, please contact us:**

### **Congressional Liaison**

[congressional@dodig.mil](mailto:congressional@dodig.mil); 703.604.8324

### **Media Contact**

[public.affairs@dodig.mil](mailto:public.affairs@dodig.mil); 703.604.8324

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