

March 13, 2019

Glenn A. Fine
Acting Inspector General
U.S. Department of Defense
4800 Mark Center Drive
Alexandria, VA 22350-1500

Re: Request for Investigation of Acting Defense Secretary Patrick Shanahan

Dear Acting Inspector General Fine:

According to news reports, during his tenure at the Department of Defense (“DoD”) Acting Defense Secretary Patrick Shanahan has made numerous statements promoting his former employer Boeing and has disparaged the company’s competitors before subordinates at the agency. Citizens for Responsibility and Ethics in Washington (“CREW”) therefore respectfully requests that the Office of Inspector General investigate these allegations to determine whether Acting Secretary Shanahan violated ethics rules, including the Standards of Ethical Conduct for Employees of the Executive Branch (“Standards of Conduct”) and the Ethics Pledge he signed as a condition of his appointment.

Mr. Shanahan worked for Boeing for more than 30 years before joining DoD in 2017. In private remarks he made since then at DoD, Mr. Shanahan reportedly praised Boeing in discussions about government contracts, said that Boeing would have done much better than its competitor Lockheed Martin had it been awarded a fighter jet contract, and repeatedly “dumped on” the jet Lockheed produced. News reports also asserted Mr. Shanahan prodded DoD to include funding for more Boeing-produced fighter jets in next year’s budget. His conduct and comments reportedly were perceived by DoD employees as “boosting” Boeing.

The Standards of Conduct, however, prohibit Mr. Shanahan from using his office for private gain, including by endorsing Boeing products. The Standards of Conduct also prohibit Mr. Shanahan from participating in particular matters involving Boeing as a party when doing so would create the appearance of a lack of impartiality, and the Ethics Pledge he signed similarly prohibits him from participating in those matters. Through his conduct and comments, Acting Secretary Shanahan may have violated these ethics rules.

Factual Background

Before joining DoD, Patrick Shanahan worked for more than 30 years at Boeing, one of the nation’s largest defense contractors.¹ In July 2017, Mr. Shanahan was confirmed as Deputy

¹ Eliana Johnson and David Brown, New Pentagon Chief Under Scrutiny Over Perceived Boeing Bias, *Politico*, Jan. 9, 2019, available at <https://politi.co/2Clm1mj>; see also Boeing, Executive Biography of Patrick Shanahan,

Secretary of Defense, the second highest position at DoD.² The Deputy Secretary of Defense oversees DoD's day-to-day business and is primarily responsible for managing DoD's budget and executing the Secretary of Defense's priorities.³

On June 7, 2017, in anticipation of his confirmation, Mr. Shanahan signed an ethics agreement with the Department of Defense describing the steps that he would take "to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Deputy Secretary of Defense."⁴ Mr. Shanahan's ethics agreement included the following commitment regarding Boeing:

My employment with the Boeing Company will end on June 7, 2017. I will not participate personally and substantially in any particular matter involving specific parties in which I know the Boeing Company is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d), in a writing that describes the circumstances necessitating the authorization.⁵

In his ethics agreement, Mr. Shanahan also committed that he would comply with the additional requirements of the Ethics Pledge.⁶

On October 16, 2017, Mr. Shanahan filed a certification of compliance with his ethics agreement.⁷ In it, he certified that he was recusing from particular matters involving his former employer and that he had signed the Ethics Pledge.⁸ Mr. Shanahan also confirmed that he had not received any authorization under 5 C.F.R. § 2635.502(d) or any waiver under Executive Order No. 13770 excusing him from compliance with his recusal obligation.⁹ There is no evidence that Mr. Shanahan has received a waiver or authorization since then. The Office of Government Ethics website lists the Trump administration appointees who have received ethics waivers or authorizations and, as of this writing, Mr. Shanahan's name is not among them.¹⁰

In January 2019, President Trump appointed Mr. Shanahan to be Acting Secretary of Defense following the departure of his predecessor, Secretary James Mattis.¹¹ Public reporting suggests that despite his various ethics obligations Mr. Shanahan has taken an active role in

available at <https://web.archive.org/web/20170616095047/http://www.boeing.com:80/company/bios/patrick-shanahan.page>.

² U.S. Department of Defense, Performing the Duties of the Secretary of Defense, available at <https://bit.ly/2sYkf6i>.

³ U.S. Department of Defense, Performing the Duties of Deputy Secretary of Defense, available at <https://bit.ly/2DLcQ0d>.

⁴ Letter from Patrick Shanahan to Ms. Ruth M.S. Vetter, Alternate Designated Agency Ethics Official, Office of the General Counsel, U.S. Department of Defense, June 7, 2017, available at <https://bit.ly/2UnQSWu>.

⁵ *Id.*

⁶ *Id.*; see also Executive Order No. 13770, Ethics Commitments by Executive Branch Appointees, Jan. 28, 2017.

⁷ Patrick Shanahan, Certification of Ethics Agreement Compliance, Oct. 23, 2017 ("Shanahan Ethics Agreement Certification"), available at <https://bit.ly/2NIYMaI>.

⁸ *Id.*

⁹ *Id.*

¹⁰ U.S. Office of Government Ethics, Agency Ethics Pledge Waivers (EO 13770), available at [https://www.oge.gov/web/oge.nsf/Agency+Ethics+Pledge+Waivers+\(EO+13770\)](https://www.oge.gov/web/oge.nsf/Agency+Ethics+Pledge+Waivers+(EO+13770)) (accessed Mar. 12, 2019).

¹¹ U.S. Department of Defense, Acting Secretary of Defense, available at <https://bit.ly/2sYkf6i>.

promoting Boeing products during his tenure at DoD. According to *Politico*, people who have witnessed Mr. Shanahan's private remarks at the Pentagon believe that "he is boosting his former employer Boeing."¹² Two former government officials indicated that Shanahan was "praising Boeing" in meetings about government contracts, and his comments have raised concerns about "whether Shanahan, intentionally or not, is putting his finger on the scale when it comes to Pentagon priorities."¹³

One prominent example raised in news reports is DoD's apparent recent decision to request new fighter planes from Boeing.¹⁴ According to *Bloomberg*, DoD made plans to request \$1.2 billion for 12 Boeing F-15X fighter aircraft in its fiscal year 2020 budget request, a decision that reportedly was made "with some prodding" by Mr. Shanahan.¹⁵ *Bloomberg* subsequently reported that DoD would request eight F-15Xs in the 2020 budget request as part of a potential purchase of 80 F-15Xs over the next five years.¹⁶ However, "the Air Force has said it does not want" the aircraft, and "military experts seemed baffled by the F-15X decision," arguing that the jet, unlike the F-35 fighter produced by Boeing competitor Lockheed Martin, "is ineffective against enemies like Russia and China" who have "sophisticated air defense technologies."¹⁷ DoD's fiscal year 2020 budget proposal ultimately included a request for eight updated models of Boeing's older F-15 fighter jet at a cost of \$1.1 billion.¹⁸

In addition to allegations that Mr. Shanahan advocated for his former employer Boeing, his "private remarks" at DoD have raised concerns that he may "harbor[] an unfair bias against other big military contractors" competing with Boeing for lucrative government contracts.¹⁹ In particular, Mr. Shanahan allegedly criticized Lockheed Martin's handling of the production of the F-35 fighter jet in meetings with subordinates. According to public reports, Mr. Shanahan "repeatedly 'dumped' on the F-35 in meetings," stated that the plane was "f---ed up," and argued that Lockheed, which won the contract to build the plane over Boeing, "doesn't know how to run a program."²⁰ Mr. Shanahan also allegedly stated that if Lockheed's contract "had gone to

¹² Johnson and Brown, *Politico*, Jan. 9, 2019.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* (citing Roxana Tiron, [Pentagon to Seek \\$1.2 Billion for New Boeing F-15 Fighters \(1\)](https://about.bgov.com/blog/pentagon-billion-new-boeing-fighters/), *Bloomberg Government*, Dec. 21, 2018, available at <https://about.bgov.com/blog/pentagon-billion-new-boeing-fighters/>); see also Tyler Rogoway, [USAF's Next Budget Request Will Include New F-15X Advanced Eagle Fighter Jets: Report](http://www.thedrive.com/the-war-zone/25636/usafs-next-budget-request-will-include-new-f-15x-advanced-eagle-fighter-jets-report), *The Drive*, Dec. 21, 2018, available at <http://www.thedrive.com/the-war-zone/25636/usafs-next-budget-request-will-include-new-f-15x-advanced-eagle-fighter-jets-report>.

¹⁶ Anthony Capaccio, [Air Force Wants Eight Upgrade Boeing Fighters Along With F-35s](https://www.bloomberg.com/news/articles/2019-02-19/air-force-wants-eight-upgraded-boeing-fighters-along-with-f-35s), *Bloomberg*, Feb. 19, 2019, available at <https://www.bloomberg.com/news/articles/2019-02-19/air-force-wants-eight-upgraded-boeing-fighters-along-with-f-35s>.

¹⁷ Johnson and Brown, *Politico*, Jan. 9, 2019.

¹⁸ U.S. Department of Defense, [DOD Releases Fiscal Year 2020 Budget Proposal](https://dod.defense.gov/News/News-Releases/News-Release-View/Article/1782623/dod-releases-fiscal-year-2020-budget-proposal/), Mar. 12, 2019, available at <https://dod.defense.gov/News/News-Releases/News-Release-View/Article/1782623/dod-releases-fiscal-year-2020-budget-proposal/>; see also Paul Sonne, [Pentagon Takes Aim at China and Russia in Proposed \\$750 Billion Budget](https://www.washingtonpost.com/world/national-security/pentagon-takes-aim-at-china-and-russia-in-proposed-750-billion-budget/2019/03/12/d6179058-44ea-11e9-9726-50f151ab44b9_story.html?utm_term=.596d738e5efc), *Washington Post*, Mar. 12, 2019, available at https://www.washingtonpost.com/world/national-security/pentagon-takes-aim-at-china-and-russia-in-proposed-750-billion-budget/2019/03/12/d6179058-44ea-11e9-9726-50f151ab44b9_story.html?utm_term=.596d738e5efc.

¹⁹ Johnson and Brown, *Politico*, Jan. 9, 2019.

²⁰ *Id.*

Boeing, it would be done much better,” and “slammed” Lockheed CEO Marillyn Hewson.²¹ As one former official described Shanahan’s comments: “He would complain about Lockheed’s timing and their inability to deliver, and from a Boeing point of view, say things like, ‘We would never do that.’”²²

Acting Secretary Shanahan is the first person to lead DoD since the 1950’s to “come purely from the private sector” and with “virtually no government or policy experience.”²³ At Boeing, Mr. Shanahan was integral in helping the company win defense contracts and oversaw military programs including Boeing Missile Defense Systems and Boeing Rotorcraft Systems.²⁴ Since Mr. Shanahan’s arrival at DoD, Boeing has been very successful in winning government contracts. For example, in December 2018, public reporting suggested a Boeing “takeover” at DoD, noting that “in the last six months, Boeing has won three multibillion-dollar competitions for major Department of Defense aircraft programs, despite massive delays in delivering a new tanker fleet to the U.S. Air Force.”²⁵ Those Boeing contracts with the government included a \$2.4 billion agreement with DoD to build Huey helicopters with another company, and beating out Lockheed Martin to win a \$9.2 billion contract building training jets for the Air Force.²⁶ Boeing also secured an \$805 million deal to build aerial-refueling drones for the Navy.²⁷ In early 2019, Boeing shares increased in value by 6.2 percent after the company beat quarterly earnings expectations and posted annual revenue of more than \$100 billion for the first time ever.²⁸

Potential Violations

Use of Public Office for Private Gain – 5 C.F.R. § 2635.702

Federal ethics regulations concerning the “use of office for private gain” prohibit any federal employee from endorsing “any product, service or enterprise.”²⁹ Specifically, the regulations provide that “[a]n employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise” except in circumstances clearly inapplicable here.³⁰ These regulations also prohibit an employee from using or permitting the use of their government position or authority to coerce or induce a subordinate to provide any financial benefit to anyone with whom the employee is

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ William Hartung and Mandy Smithberger, [A Former Boeing Executive is Now Running the Pentagon](https://www.thenation.com/article/a-former-boeing-executive-is-now-running-the-pentagon/), *The Nation*, Jan. 29, 2019, available at <https://www.thenation.com/article/a-former-boeing-executive-is-now-running-the-pentagon/>; see also Johnson and Brown, *Politico*, Jan. 9, 2019.

²⁵ Lara Seligman, [Boeing’s Pentagon Takeover](https://bit.ly/2PX2mha), *Foreign Policy*, Dec. 23, 2018, available at <https://bit.ly/2PX2mha>.

²⁶ Tony Capaccio and Julie Johnsson, [Boeing Beats Lockheed for \\$9.2 Billion Air Force Trainer Program](https://www.latimes.com/business/la-fi-boeing-air-force-trainer-20180927-story.html), *Los Angeles Times*, Sep. 27, 2018, available at <https://www.latimes.com/business/la-fi-boeing-air-force-trainer-20180927-story.html>.

²⁷ Hartung and Smithberger, *The Nation*, Jan. 29, 2019.

²⁸ Michael Sheetz and Amanda Macias, [Boeing Shares Surge after Monster Earnings Beat and a Record \\$101 Billion in Annual Revenue](https://cnb.cx/2RWrdxD), *CNBC*, Jan. 30, 2019, available at <https://cnb.cx/2RWrdxD>.

²⁹ 5 C.F.R. § 2635.702.

³⁰ 5 C.F.R. § 2635.702(c).

affiliated in a nongovernmental capacity.³¹ In addition, these provisions refer back to the appearance provisions of the Standards of Conduct discussed in detail below, noting that to avoid appearance problems, an employee whose duties would affect the financial interests of a person with whom he is affiliated in a nongovernmental capacity must comply with the requirements of 5 C.F.R. § 2635.502.³²

If the statements attributed to Acting Secretary Shanahan are accurate, he appears to have violated the prohibition on using public office for private gain by using his position or official authority to explicitly endorse Boeing. According to public reports, Mr. Shanahan “prais[ed] Boeing” in meetings about government contracts, was “prodding” subordinates to take official action that would inure significant financial benefits to the company, said that if Lockheed’s F-35 contract “had gone to Boeing, it would be done much better,” and speaking “from a Boeing point of view,” suggested to DoD staff that “we” – meaning Boeing – “would never do” what Lockheed did. Mr. Shanahan’s endorsement of Boeing was so strong and clear that DoD employees saw Mr. Shanahan’s private remarks as “boosting his former employer Boeing” and believed that he may “harbor[] an unfair bias against other big military contractors.”

Mr. Shanahan also appears to have used his position or official authority to coerce or induce subordinates to provide financial benefits to Boeing. Several of his statements promoting Boeing and disparaging Lockheed apparently occurred in discussions regarding funding for Boeing’s F-15X jet and other federal procurement contracts, all of which are particular matters involving specific parties that have a demonstrable impact on the financial fortunes of Boeing and its competitors. Moreover, Mr. Shanahan’s alleged statements suggest to other DoD employees that providing benefits to Boeing is consistent with successful job performance, effectively coercing or inducing subordinates to favor Boeing. For instance, his alleged statement to DoD staff “from a Boeing point of view” that “[w]e would never do that” eviscerated any distinction for subordinates between Mr. Shanahan’s official role at DoD and his former role as a Boeing executive.

Mr. Shanahan’s statements must also be considered in light of the fact that Boeing has recently won several multi-billion-dollar contracts from DoD and could lead a reasonable person with knowledge of the relevant facts to question not only Mr. Shanahan’s impartiality but also the integrity of the procurement process.

Accordingly, it appears Mr. Shanahan violated 5 C.F.R. § 2635.702’s prohibition on using public office for private gain.

Appearance of Lack of Impartiality from Business Relationship - 5 C.F.R. § 2635.502

The Standards of Conduct also govern the ethical obligations arising from the intersection of an employee’s personal and business relationships with his or her official duties, including the appearance of a lack of impartiality. Under 5 C.F.R. § 2635.502, where an employee knows that

³¹ 5 C.F.R. § 2635.702(a).

³² 5 C.F.R. § 2635.702(d).

a person with whom he has a covered relationship is a party to a particular matter involving specific parties, and where that employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee consistent with the regulations.³³

An employee has a “covered relationship” with any corporation or company with which “the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.”³⁴ Accordingly, Mr. Shanahan had a covered relationship with Boeing through June 7, 2018, one year after he left the company.

A “particular matter involving specific parties” encompasses matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons.³⁵ These matters involve a wide range of government actions, including government contracts and grants.³⁶ Defense contracts and procurement issues, such as those involving the F-15X and the F-35, are particular matters involving specific parties.

One of the examples included in the regulations directly addresses the situation in which a former executive in a private company is involved in procurement matters impacting his or her former employer. It explains:

Example 4:

An engineer has just resigned from her position as vice president of an electronics company in order to accept employment with the Federal Aviation Administration in a position involving procurement responsibilities. Although the employee did not receive an extraordinary payment in connection with her resignation and has severed all financial ties with the firm, under the circumstances she would be correct in concluding that her former service as an officer of the company would be likely to cause a reasonable person to question her impartiality if she were to participate in the administration of a DOT contract for which the firm is a first-tier subcontractor.³⁷

Acting Secretary Shanahan’s conduct regarding Boeing and its competitors including Lockheed Martin, if true, raise significant concerns of an appearance of a lack of impartiality in violation 5 C.F.R. § 2635.502. Based on public reporting, Mr. Shanahan “prodded” DoD to include more than \$1 billion in federal funds in the 2020 budget cycle to purchase a Boeing

³³ 5 C.F.R. § 2635.502(a).

³⁴ 5 C.F.R. § 2635.502(b)(1)(iv); 5 C.F.R. § 2635.102(k).

³⁵ OGE Legal Advisory 06 x 9, Memorandum from Robert I. Cusick, OGE Director, to Designated Agency Ethics Officials Regarding “Particular Matter involving Specific Parties,” “Particular Matter,” and “Matter”, Oct. 4, 2006 (quoting 5 C.F.R. § 2635.103(a)(1)), available at <https://bit.ly/2mnN5JL>.

³⁶ *Id.* at 3.

³⁷ 5 C.F.R. § 2635.502(b)(3) (Example 4).

product, the F-15X fighter aircraft. Mr. Shanahan's "prodding" acted to establish the government's requirements for this program, which is tantamount to participating in a particular matter involving his former employer Boeing as a party since it is the sole producer of the F-15X fighter jets. Mr. Shanahan's conduct would cause a reasonable person with knowledge of the relevant facts to question his impartiality in this matter, and it does not appear Mr. Shanahan received an authorization to participate in it. As a result, if his conduct occurred within one year of Mr. Shanahan leaving Boeing, he likely violated 5 C.F.R. § 2635.502.

Executive Order No. 13770 – the Ethics Pledge

Under Executive Order No. 13770, signed by President Trump on January 28, 2017, all executive branch appointees must sign an Ethics Pledge obligating them to certain ethical requirements and prohibitions.³⁸ Paragraph 6 of the Ethics Pledge restricts appointees' interactions with prior employers, requiring them to pledge:

I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.³⁹

A "former employer" is defined as "any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner,"⁴⁰ and for Mr. Shanahan clearly includes Boeing. A "particular matter involving specific parties" under the pledge specifically includes contracts and incorporates the interpretation of that term as reflected in the Standards of Conduct and discussed above.⁴¹

Acting Secretary Shanahan's conduct regarding Boeing and its competitors indicate that he may have violated his Ethics Pledge for the same reasons that they raise significant concerns of an appearance of a lack of impartiality. Mr. Shanahan appears to have participated in the decision to include more than \$1 billion in federal funds in the 2020 budget cycle for the F-15X fighter aircraft. Mr. Shanahan's "prodding" acted to establish the government's requirements for this program, which is tantamount to participating in a particular matter involving his former employer Boeing as a party since it is the sole producer of the F-15X aircraft. Mr. Shanahan's conduct occurred within two years of his appointment in July 2017, and he does not appear to have received any waiver that would enable him to work on DoD projects involving Boeing. As a result, Mr. Shanahan appears to have violated his Ethics Pledge.

Conclusion

Federal law prohibits Acting Secretary Shanahan from using his office for the private gain of others. Government resources should be used for public purposes, not to promote or

³⁸ Executive Order No. 13770, sec. 1.

³⁹ *Id.*, sec. 1, para. 6.

⁴⁰ *Id.*, sec. 2(j).

⁴¹ *Id.*, sec. 2(s).

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denigrate any private business. Furthermore, as Mr. Shanahan's ethical commitments make clear, he cannot and should not be involved with any DoD matters involving his former employer Boeing without an authorization or waiver. Mr. Shanahan's reported conduct and comments appear to violate federal regulations and his Ethics Pledge, and CREW therefore requests that you investigate his alleged conduct.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a stylized flourish at the end.

Noah Bookbinder
Executive Director

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