

**A REPORT TO THE  
CHAIRMAN AND BOARD OF DIRECTORS OF  
THE BOEING COMPANY  
CONCERNING THE COMPANY'S POLICIES AND PRACTICES  
FOR THE HIRING OF GOVERNMENT  
AND FORMER GOVERNMENT EMPLOYEES**

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## **I. OVERVIEW OF OUR INVESTIGATION**

In November 2003, the Board of Directors of The Boeing Company (“Boeing”) asked us to assess Boeing’s policies and practices regarding the hiring of government and former government employees. This investigation was triggered by allegations that Boeing’s Chief Financial Officer had engaged in employment discussions with a high-level Air Force procurement official who had not, at the time the discussions began, disqualified herself from Boeing-related matters. Boeing’s Board of Directors enlisted our team to identify any weaknesses in Boeing’s hiring policies and practices and to make recommendations that would reduce the likelihood that significant problems would recur.

In our investigation, we considered both the quality of Boeing’s written policies and procedures and the extent to which those policies and procedures are followed by Boeing’s employees. In order to evaluate Boeing’s hiring process, we sought to understand the recruitment and hiring process both for senior executives and for other employees.

We conducted in-person and telephone interviews with dozens of Boeing employees who had been hired from jobs in the government. These interviewees included almost every U.S. government (“USG”) employee hired by the company at the level of vice president or above over the past five years, as well as a cross-section of USG employees hired for a variety of other positions throughout the company during this period. We also reviewed the pre-hire personnel files for numerous other employees who had served in the USG, as well as Boeing’s on-line hiring and personnel systems, its personnel organization and division of hiring responsibilities, its conflict of interest

review procedures, its record-keeping and data-gathering procedures, its training programs and its audit practices.

This review is a companion to our earlier review of Boeing's policies and practices relating to the treatment of competitors' proprietary information, which was dated November 3, 2003.<sup>1</sup> Where appropriate, readers are referred to that report for a more detailed explanation of Boeing's organization and policies.

## **A. Document Review**

### **1. Policies and Procedures**

We examined all of Boeing's policy ("POL") and procedure ("PRO") documents that relate to hiring government and former government employees.<sup>2</sup> We also reviewed draft changes to policies and procedures that have undergone consideration within Boeing since our investigation began.

POLs-2 and 3 provide the foundation for Boeing's Ethics program and describe the company's corporate structure, including Boeing's broadly distributed People organization (*i.e.*, its HR personnel), its Law Department, and its Employee Services organization (which carries out centralized HR functions and is part of Boeing's Shared Services Group ("SSG")).<sup>3</sup> Boeing's hiring procedures for government and

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<sup>1</sup> See Warren B. Rudman *et al.*, Paul, Weiss, Rifkind, Wharton & Garrison LLP, *A Report to the Chairman and Board of Directors of The Boeing Company Concerning the Company's Ethics Program and Its Rules and Procedures for the Treatment of Competitors' Proprietary Information* (Nov. 3, 2003) ("*Report I*"), available at <http://www.boeing.com/news/releases/2003/q4/rudman.pdf>.

<sup>2</sup> Boeing's POLs and PROs, including several POLs and PROs of general application, are discussed in *Report I* at 14 and 74-77.

<sup>3</sup> For a full discussion of Boeing's corporate structure, see *Report I* at 34-44.

former government officials are set forth in PROs-11 and 4825.<sup>4</sup> PRO-11 discusses the legal requirements applicable to USG employee hires, while PRO-4825 outlines the process each department involved in a government hire is to follow.

## **2. Employee Files**

We reviewed numerous employee files, including those of every USG employee hired by the company in the last five years at the vice president level or above. The employee documents we reviewed generally were received from the Employee Services organization in SSG. We also received documents on senior executive hires from HR personnel files at World Headquarters (“WHQ”), and, in some instances, we received additional employee documentation from business unit files and from employees themselves.

Boeing has a document retention policy that requires numerous employee documents to be stored in a centralized file managed by SSG. The relevant pre-hire documents that should be retained include an employment application, a conflict of interest (“COI”) questionnaire completed by the employee, and the Law Department’s written COI review.<sup>5</sup>

The documentation actually contained in the SSG files that we reviewed varied from file to file. Most (though not all) files for USG hires contained at least the employment application, the COI questionnaire, and the COI review. The files

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<sup>4</sup> Copies of PROs-11 and 4825 appear in the Appendix at Tabs 1 and 2.

<sup>5</sup> Copies of Boeing’s current employment application and its COI questionnaire appear in the Appendix at Tab 3.

sometimes contained USG agency memoranda on post-employment restrictions,<sup>6</sup> while the presence of disqualification statements<sup>7</sup> was rare (even though, in many instances, employees told us that Boeing had requested copies of these documents and/or that they had supplied copies of these documents to Boeing). SSG is currently conducting a review of all of its files for government and former government hires between January 1, 2002 and September 30, 2003, with a view to identifying all files that should contain COI reviews, and, where COI reviews are lacking, locating copies elsewhere within Boeing.

The COI reviews contained in the SSG files that we reviewed were not consistent in their format, and ranged from in-depth memoranda to handwritten notes scribbled on the employee's COI questionnaire. In addition, the files revealed that the COI paperwork for government and former government hires was not always completed at the appropriate stage of the hiring process. In fact, in some cases (and often in the case of senior executive hires), the employee filled out an employment application and a COI questionnaire, and the COI review was conducted, only after Boeing had issued an offer of employment.

### **3. Training Resources**

Boeing's training on hiring government employees is located on its intranet. There are two different modules available to Boeing employees that discuss

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<sup>6</sup> Once a USG employee has determined to seek or accept employment with a private entity, the employee may ask for a memorandum from an ethics/legal official in the agency from which the employee is retiring, setting forth any restrictions on the employee's activities on behalf of his or her proposed employer.

<sup>7</sup> The requirement that certain USG employees file a disqualification statement before they engage in employment discussions with a private entity is discussed below.

hiring restrictions under the Procurement Integrity Act: the basic procurement integrity course and a separate procurement integrity course accessible through Boeing's eLegal website. The basic procurement integrity course is mandatory for all Boeing employees involved in government procurement activities, including contract bids and proposals and contract management. The eLegal course is offered on a voluntary basis to those Boeing employees whose job duties would make the material relevant.

These Procurement Integrity Act modules provide a basic description of the process that must be followed in order to conduct employment discussions with a U.S. contracting official. They also explain that the U.S. official may be subject to post-hire restrictions. The basic procurement integrity course takes approximately 30 minutes to complete, while the eLegal training takes about 10 minutes. Both courses include scenarios at the conclusion of the training in which the Boeing employee must determine if there is a legal violation. Both courses are primarily concerned with the Procurement Integrity Act, and are therefore oriented toward Boeing employees who are involved in government procurement activities.

A new voluntary training program that is less focused on government procurement personnel was launched by Boeing's People organization in July 2003. It is directed to hiring managers and HR personnel, and it covers the legal issues that arise under both the Procurement Integrity Act and other conflict of interest statutes. The training consists of a Power Point presentation describing Boeing's hiring procedures and each participant's responsibilities. The presentation also poses questions concerning a number of hiring scenarios, followed by right and wrong answers and explanations.

#### **4. On-Line Application Process**

We examined the company's on-line application system, the Boeing Enterprise Search Service ("BESS"), and completed a mock employment application to assess the system's content and process. Boeing posts almost all of its non-executive positions on this external website, which accepts applications and resumes and allows applicants to be notified when other jobs within their skill set are posted. The BESS system asks several background questions as part of the on-line application, including whether the applicant is a current or former government employee and whether the applicant has acted as a key acquisition or program official in the previous year.

If the applicant answers yes to any of these questions, the application is "flagged." Once the hiring manager selects a short list of people that he or she is interested in interviewing, the HR employee responsible for filling the position sends out a full application package, including the full COI questionnaire to any "flagged" applicant. The applicant is asked to fill out and submit these documents prior to interviews; in practice, however, it appears that these documents are sometimes returned by the applicant on the day of his or her interview.

Although the questions contained in the BESS on-line application do ask for some of the information needed to determine whether a USG applicant presents COI issues, they do not ask if an applicant has been involved in Boeing-related activities or has filed a disqualification statement covering Boeing (nor do they ask for a copy of any such disqualification statement).

This omission creates a potential gap during which a USG employee has applied for a position with Boeing but may not have disqualified himself or herself from

duties related to Boeing. Under current procedures, Boeing personnel may not become aware that the applicant continued to work on Boeing matters while his or her application was pending with Boeing, so long as the applicant files for disqualification immediately prior to filling out Boeing's full COI questionnaire (*i.e.*, just prior to interviews at Boeing). We understand that the company is planning to address this issue by expanding the list of COI questions contained in the BESS on-line application, drawing upon Boeing's full COI questionnaire.

## **B. Interviews**

In addition to reviewing numerous employee files and on-line hiring procedures, we conducted dozens of in-person and telephone interviews. As noted above, we interviewed almost every individual identified as a Boeing senior executive with a USG background who was hired during the past five years, as well as a cross-section of former USG officials hired at other levels in a variety of Boeing business units. We also interviewed a number of Boeing HR and legal personnel who are involved in hiring government employees, including the Boeing attorneys identified to us as having the broadest experience with COI reviews.

The interviews typically lasted approximately one hour, although some were longer. Former government employees were questioned regarding a number of topics, including (1) the process by which the employee first engaged with Boeing concerning possible employment; (2) what types of documents they were asked to submit and when; (3) the level and nature of their interaction with agency ethics/legal officials and Boeing HR and legal personnel; (4) training they received on COI issues associated with post-government employment, both while in the government and at Boeing;

(5) whether they had been involved in hiring government officials since joining Boeing; and (6) any changes they believed should be made to the Boeing hiring process.

**C. Board of Directors Briefing and Executive Review**

On February 14, 2004, we provided an oral summary of our findings and recommendations to the company's Board of Directors. We also briefed the Company's General Counsel on our findings and recommendations during the first week of February 2004, and subsequently provided him with a draft of our Report for a factual review.

As a result of these discussions, one of our recommendations was modified slightly to ensure that it would be readily understood and implemented. In addition, clarifications were made to our descriptions of certain factual matters. But we did not change any of our findings as a result of these discussions, nor did the substance of our recommendations change.

**D. Laws Relevant to Hiring Government and Former Government Employees**

In order to understand Boeing's legal obligations when hiring a government employee, we considered the statutes that govern employment negotiations and post-employment restrictions. A general understanding of these statutes is necessary to evaluate Boeing's hiring policy and procedures.<sup>8</sup>

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<sup>8</sup> The summaries in the text are intended only as a brief overview of these statutes and should not be relied upon as a complete description of the relevant statutory provisions. Copies of the Procurement Integrity Act and 18 U.S.C. §§ 207 and 208 appear in the Appendix at Tabs 4, 5 and 6. Relevant USG regulations can be found as part of the Federal Acquisition Regulation, 48 C.F.R. Chapter 1, the Office of Government Ethics regulations, 5 C.F.R. Chapter XVI, and individual agency regulations (*e.g.*, the Defense Department's Joint Ethics Regulation, DoD 5500.7-R, available at [http://www.defenselink.mil/dodgc/defense\\_ethics](http://www.defenselink.mil/dodgc/defense_ethics)).

## **1. Procurement Integrity Act**

The Procurement Integrity Act<sup>9</sup> (“PIA”) imposes two types of obligations on U.S. officials seeking non-government employment who have been involved in procurement-related activities. First, it defines a process that every USG employee who participates “personally and substantially in a Federal agency procurement for a contract in excess of [\$100,000]” must follow when he or she inquires or is contacted about possible employment by a company involved in the procurement. Second, USG employees involved in certain key acquisition or program functions are prohibited from accepting compensation from contractors for one year after their last involvement in the acquisition or program activity. Violations of these provisions can result in civil penalties for both the government official and the private employer.<sup>10</sup>

As to the first obligation, the PIA requires any covered USG employee who has contacted or been contacted by a bidder concerning possible employment to report the contact to his or her supervisor and to the employee’s ethics official. The employee then must either reject the potential employment immediately or seek disqualification from “further personal and substantial participation” in the procurement until the employee’s agency authorizes him or her to participate. The disqualification will be lifted only when the private entity is no longer a bidder on the contract, or when all discussions with the bidder regarding employment have ceased without an agreement.

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<sup>9</sup> 41 U.S.C. § 423.

<sup>10</sup> 41 U.S.C. § 423(c), (d), (e).

Under USG regulations, a “contact” is defined to include any situation in which the USG employee has (1) received an unsolicited communication or an offer regarding employment; (2) made an unsolicited communication to any person regarding possible employment; (3) made a response other than rejection to an unsolicited communication from any person regarding possible employment; or (4) engaged in negotiations for employment with any person.<sup>11</sup> Negotiations are defined to include communications “mutually conducted with a view toward reaching an agreement regarding possible employment,” but are not limited to discussions of specific terms of employment or a specific position.<sup>12</sup>

As to the PIA’s second obligation – the one year ban on employment – the statute prohibits a covered USG employee who is leaving USG service from accepting any compensation from a contractor for one year after he or she acted in awarding or managing a contract exceeding \$10,000,000 that involved that contractor. Despite this prohibition, the official may work for an affiliate or division of the contractor that does not produce the same types of products or services as the part of the contractor involved in the contract activity.<sup>13</sup>

Both the USG employee and the contractor involved in recruiting and hiring the employee are subject to significant penalties should the employee fail to comply with the PIA’s requirements. The official may be fined up to \$50,000 for each

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<sup>11</sup> 48 C.F.R. § 3.104-3 (referencing 5 C.F.R. § 2635.603).

<sup>12</sup> 5 C.F.R. § 2635.603(b)(1)(i).

<sup>13</sup> 41 U.S.C. § 423(d).

offense and twice the amount of compensation he or she was offered or received. The contractor, where it has knowledge of a violation, may be fined up to \$500,000 per offense plus twice the amount of compensation it offered or paid to the employee. In addition, the federal agency responsible for the contract may rescind it and may initiate suspension or disbarment proceedings against the contractor.<sup>14</sup>

## **2. 18 U.S.C. § 208**

A USG employee also faces possible criminal and civil liability under 18 U.S.C. § 208 if the employee “participates personally and substantially as a Government officer or employee” in any particular matter that will benefit an entity with which he or she is negotiating employment.<sup>15</sup> Whereas the PIA applies only to government employees involved in awarding and managing certain USG contracts, all USG employees are subject to Section 208. Under the Office of Government Ethics’ regulations, a USG employee can trigger Section 208 by (1) soliciting non-government employment; (2) providing a response (other than rejection) to any unsolicited offer of employment; or (3) engaging in employment negotiations. As under the PIA, the term “negotiations” is defined to include communications “mutually conducted with a view toward reaching an agreement regarding possible employment.”<sup>16</sup>

If Section 208 is triggered by the employee or a private entity, then the USG employee must disqualify himself or herself from the particular matter involving

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<sup>14</sup> 41 U.S.C. § 423(d), (e).

<sup>15</sup> 18 U.S.C. § 208(a).

<sup>16</sup> 5 C.F.R. § 2635.603(b).

that entity, absent a written determination from a superior official that the financial interest is “not so substantial as to be deemed likely to affect the integrity” of the activity.<sup>17</sup> If the USG employee continues to act on the particular matter without an appropriate written determination, he or she may face up to five years in prison and a fine of up to \$50,000.<sup>18</sup> While the private entity does not face direct liability for the USG employee’s violation, agencies have wide latitude to protect the integrity of USG contracting, which can include suspension or disqualification of a bidder in order to avoid the appearance of impropriety.<sup>19</sup>

### **3. 18 U.S.C. § 207**

18 U.S.C. § 207 creates a multi-tiered system of restrictions on executive branch employees after leaving government service. The most extensive restrictions are placed on senior executive branch personnel. Members of Congress and their staffs also face post-employment restrictions, but these are less stringent than those applied to executive branch employees. Because the restrictions are rather complicated, the Office of Government Ethics recommends that USG employees contemplating non-government employment consult with their agency ethics officials regarding post-employment restrictions.<sup>20</sup>

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<sup>17</sup> 18 U.S.C. § 208(b).

<sup>18</sup> 18 U.S.C. § 216.

<sup>19</sup> *See, e.g., NFK Engineering, Inc. v. United States*, 805 F.2d 372 (Fed. Cir. 1985).

<sup>20</sup> 5 C.F.R. § 2635.602(a)(2); *see* note 6, above.

Section 207 imposes a life-time ban on an executive branch employee's attempting to influence any U.S. agency on a particular matter in which (1) the USG has a "direct and substantial interest"; (2) the employee participated "personally and substantially" while working for the USG; and (3) the same parties are involved. In addition, Section 207 imposes a two-year ban on attempts to influence any U.S. agency with respect to particular matters in which the executive branch employee had not participated personally and substantially, but where the matter was pending under his or her official responsibility during the one-year period prior to leaving USG service. In addition to these restrictions, senior executive branch employees face a one-year "cooling off" period in which they are precluded from attempting to influence employees in the agency where they worked during the year prior to leaving government service.<sup>21</sup> Senior personnel include government employees who receive a base salary, without consideration of locality pay, of \$127,300 or higher.<sup>22</sup>

Each of these restrictions under Section 207 is representational in nature – *i.e.*, it focuses on communications with and appearances before employees of the USG on behalf of the former U.S. official's new private sector employer.<sup>23</sup> These restrictions do

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<sup>21</sup> 18 U.S.C. § 207(c), (d).

<sup>22</sup> 5 C.F.R. §101. *See also* Office of Personnel Management web site at <http://www.opm.gov/oca/04tables/html/ex.asp>.

<sup>23</sup> Certain other representational restrictions can apply to USG employees who begin work for a private entity while they are on "terminal leave" (*i.e.*, while they are using accumulated leave and have not yet reached their official USG retirement date). For example, 18 U.S.C. § 205 imposes broad restrictions on the ability of USG employees to appear before USG agencies on behalf of a private entity while they are on terminal leave.

not prevent former U.S. officials from providing background advice to fellow employees on matters they were involved with during government service, provided that classified, proprietary and other nonpublic information is not disclosed.

Former Members of Congress, their personal staffs, and Congressional committee staff are subject to a one-year ban on attempting to influence individuals with whom they served in Congress. Members may not attempt to influence any other Member or any employee in either House of Congress. Personal staff may not attempt to influence the Members for whom they worked or the staff of those members, while committee staff may not attempt to influence Members or employees of their former committees.<sup>24</sup>

USG employees who violate Section 207 face the same penalties as those who violate Section 208.<sup>25</sup> Like Section 208, the private entity that hires the former government employee is not directly liable for the employee's violations, but faces risks as a USG contractor if it overlooks serious violations.

#### **E. The Darleen Druyun Incident**

Our investigation was prompted by a recent situation in which Boeing's Chief Financial Officer ("CFO") allegedly discussed employment with a senior Air Force acquisition official who was in a position to influence procurement matters in which Boeing was engaged, but who had not yet disqualified herself from Boeing-related matters. This senior Air Force official (Darleen Druyun) was subsequently hired by

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<sup>24</sup> 18 U.S.C. § 207(e).

<sup>25</sup> 18 U.S.C. § 216.

Boeing, and she served for 11 months as the company's Vice President and Deputy General Manager of its Missile Defense Systems unit.

Prior to working for Boeing, Ms. Druyun was Air Force Principal Deputy Assistant Secretary (Acquisition and Management). During her time in that position, her responsibilities included decision-making and oversight on Air Force procurements in which Boeing had a substantial interest.

In November 2002, Ms. Druyun retired from the Air Force and received a job offer from Boeing. In early January 2003, she began working for the Company. Several months later, the Defense Department ("DoD") Inspector General reportedly initiated an investigation into Ms. Druyun's activities as an acquisition official, focused initially on allegations that she had provided Boeing employees access to a competitor's data during procurement negotiations involving tankers for mid-air refueling.<sup>26</sup> This DoD investigation led Boeing to begin its own internal investigation during the summer of 2003, with the assistance of an outside law firm.

Boeing's investigation reportedly revealed that Michael Sears, the company's then-CFO, had initiated employment discussions with Ms. Druyun before she had disqualified herself from matters involving Boeing. The investigation also reportedly

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<sup>26</sup> See, e.g., *Rumsfeld Orders Wider Boeing Probe*, MSNBC Business, Jan. 20, 2004, available at <http://www.msnbc.msn.com/Default.aspx?id=4011466&p1=0>.

concluded that, when questioned about these matters, Mr. Sears and Ms. Druyun had not been forthcoming about their pre-disqualification discussions.<sup>27</sup>

On November 24, 2003, Boeing announced that both Mr. Sears and Ms. Druyun had been fired for violating the company's hiring policies. The firings reportedly prompted DoD to expand the ongoing Inspector General's investigation to include other procurement activities in which Ms. Druyun had been involved.<sup>28</sup> In addition, the Department of Justice has reportedly launched an investigation into possible violations of the conflict of interest statutes in connection with Boeing's recruitment and hiring of Ms. Druyun.<sup>29</sup>

One week after Mr. Sears and Ms. Druyun were fired, Boeing's Chief Executive Officer, Phil Condit, resigned. Although Boeing made no public connection between Mr. Condit's resignation and the events surrounding Ms. Druyun's hiring, Mr. Condit reportedly acknowledged that the results of the investigation concerning Ms. Druyun's hiring and the firings that followed the investigation had contributed to his departure.<sup>30</sup>

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<sup>27</sup> See, e.g., Boeing press release dated November 24, 2003, available at <http://www.boeing.com/news/releases/archive2003.html>, and Renae Merle, *Boeing Fires 2 Top Officials in Hiring Probe*, Washington Post, at A1, Nov. 25, 2003.

<sup>28</sup> See, e.g., Vago Muradian and William Matthews, *DoD Expands Druyun Probe*, Defense News, Jan. 19, 2004.

<sup>29</sup> See, e.g., *Rumsfeld Orders Wider Boeing Probe*, MSNBC Business, Jan. 20, 2004, available at <http://www.msnbc.msn.com/Default.aspx?id=4011466&p1=0>.

<sup>30</sup> See, e.g., *Boeing Chairman, CEO Phil Condit Resigns*, The Seattle Times, Dec. 2, 2003.

## **II. BOEING PROCEDURAL DOCUMENTS RELATING TO THE HIRING OF GOVERNMENT EMPLOYEES**

Boeing's materials relating to the hiring of government and former government employees include documents that set forth Boeing's policies and procedures, as well as informal templates and reference material that are shared among the Law Department personnel responsible for conducting COI reviews.

### **A. Formal Procedure Documents**

Boeing's policies and procedures for hiring government and former government employees are outlined in PROs-11 and 4825. Although all Boeing POLs and PROs are accessible to employees through Boeing's intranet, most of the employees with whom we spoke were not very familiar with either PRO-11 or 4825, and had only a general sense of the limits these documents place on hiring government employees.

PRO-11 outlines the restrictions imposed by federal law on recruitment of USG employees and the types of assignments they may undertake at Boeing. PRO-11 directs the reader to PRO-4825 for the specific procedures that are used to review and approve contacts with, and employment of, U.S. officials. PRO-11 instructs Boeing hiring managers not to discuss possible employment with a USG employee until they receive clearance from the People organization (*i.e.*, HR). PRO-11 also notes that HR personnel will seek a COI review from the Law Department prior to extending an offer of employment to a USG employee, and that managers are responsible for ensuring that former USG employees are not given job assignments that would conflict with COI requirements.

PRO-4825 sets forth the procedures that are to be followed in recruiting and hiring government and former government employees (state as well as federal).

Under PRO-4825, the hiring process begins with the hiring manager's contacting HR regarding a current or projected job opening. HR is then to ensure that an applicant who is a current or former government official fills out the company's COI questionnaire, and that the Law Department performs a written COI review "before interviews or job offers may be made." In addition to the COI questionnaire, HR is to provide the Boeing attorney who is to conduct the COI review with a copy of the employment application, the Boeing job description, and "additional information as requested by the Law Department." HR is also to ensure that, when a government employee has been hired and identified by the Law Department as requiring ongoing COI monitoring, a further COI review is conducted before the employee changes job assignments within the company.

PRO-4825 acknowledges that Boeing "must take every precaution to ensure that its actions do not violate conflict of interest laws and regulations," and generally refers issues relating to the hiring of government employees to the Law Department for resolution. It prohibits any employee from "undertak[ing] an assignment that would violate federal or state laws and regulations on conflict of interest."

PRO-4825 places a strong emphasis on the need for COI reviews and careful coordination between HR and the Law Department. Although PRO-4825 provides a detailed outline of the hiring procedure, it does not clearly (i) address the possibility of pre-interview employment discussions, (ii) indicate whether separate COI reviews are required pre-interview and pre-hire, or (iii) distinguish between the types of COI issues that logically should be considered before employment discussions begin (and, in particular, disqualification for a U.S. official) and those that would logically need

to be considered before an offer letter is issued (such as representational bans and other post-employment restrictions). Under the process established by PRO-4825, these issues would be addressed initially when the matter is reviewed by HR personnel, with matters requiring further review directed to the Law Department.

An applicant's COI status is determined using Boeing's COI questionnaire, which asks the applicant if he or she (i) is a current or former USG employee, (ii) currently serves as an adviser, consultant, or "special Government employee" to any USG agency, or (iii) has served in state government with duties involving Boeing. If the applicant answers "yes" to any of these questions, the questionnaire takes him or her through a series of questions regarding government activities over the past five years, including identification of the government agency (or agencies), dates of service, job title and grade or rank, duties performed, and specific responsibilities for matters in any related to Boeing.

In some situations, the COI questionnaire asks the applicant to provide further documentation. For example, current USG employees who indicate that they have had responsibilities in any way related to Boeing are asked if they have filed a disqualification statement and, if so, are requested to provide a copy along with the questionnaire. In addition, an applicant who indicates that he or she has served within the past year as an acquisition or program official on a major USG contract involving Boeing is asked to provide a copy of any COI advisory opinion received from his or her agency ethics officer; and any applicant who indicates that he or she may be on terminal leave

when commencing employment with Boeing is asked to provide a copy of any authorization received from his or her agency.

**B. Informal Materials**

Boeing attorneys that perform COI reviews share among themselves from time to time sample COI reviews, COI checklists and flow charts, and related government and Boeing reference material. Certain attorneys have also sought to assemble a central repository of such material, some of which is accessible on the Boeing intranet.

**III. BOEING'S HIRING PROCESS FOR GOVERNMENT EMPLOYEES**

**A. The Roles of Key Organizations within Boeing**

**1. SSG**

SSG's Employee Services organization provides enterprise-wide support services during the hiring process to a majority of Boeing's business units. These services include the maintenance of several important HR systems. (Employee Services carries out central HR functions and, like the "HR generalists" who represent the People organization throughout the many business units, its personnel were commonly referred to simply as "HR" during our employee interviews.) Among other things, Employee Services supports BESS, the on-line job posting and application system through which the vast majority of non-executive hires (from both government and private sources) are brought into the company.

Both for historical reasons (including acquisitions) and cost reasons (since SSG assesses intra-company charges for its services), a number of Boeing business units and subsidiaries do not use SSG's package of services. Although the company has been

moving, and continues to move, additional business units and subsidiaries under SSG's package of services, we understand that approximately 25% of all Boeing employees still work at locations that are not covered by those services. For those business units that do not use SSG's package of services, job openings are still posted on BESS, but the local HR representative is typically responsible for collecting applicant information, coordinating COI reviews with the Law Department, and more generally managing the hiring process (as more fully described below).

For those business units that use SSG's services, members of the Employee Services organization perform much of the administrative work that goes into hiring below the executive level. Employee Services representatives work closely with hiring managers to establish hiring criteria for new positions, determine whether the position is one that needs to be open to competition, and then post the job opening on BESS.

Employee Services personnel gather information about prospective hires during the application process that is needed for the hiring manager to make a hiring decision and for an attorney to perform a COI review. They also make the initial determination, based on information provided by the applicant, as to whether a COI review is needed at all.

When a COI review is needed, Employee Services passes the relevant information to the appropriate attorney. Employee Services is responsible for ensuring that hiring action is deferred until the COI review is obtained and reviewed; that the COI review for successful hires is centrally stored in SSG, with copies to the new employee

and the employee's manager; and, for government hires who are identified by the COI review as needing ongoing monitoring, that the appropriate "COI flag" is entered into the central HR database. Employee Services also handles the key functions of drafting and issuing the offer letter, as well as the various administrative elements of the pre-hire process through the new employee's first day on the job.

The BESS system is rarely used for executive hires, and Employee Services is less involved in the identification and hiring of candidates for those positions. But Employee Services is still responsible for drafting and sending out offer letters for less senior executive hires.<sup>31</sup> In addition, we understand that the company is moving in the direction of giving SSG control over the issuance of offer letters even for the most senior executives – as well as ensuring that SSG handles issuance of offer letters even for business units that do not presently use SSG's package of services.

SSG is also responsible for drafting and distributing all company-wide hiring forms, including the Boeing employment application and COI questionnaire. Where changes to those forms require evaluation in terms of Boeing's HR policies, the changes are made only after coordination and consultation with the People Process Council.<sup>32</sup>

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<sup>31</sup> Boeing's executives are placed within the company's "E series," which ranks executives from E-1 (the highest level) to E-6 (the lowest level). Employee Services is responsible for the offer letters for persons hired at the E-4 to E-6 levels.

<sup>32</sup> For a general description of Boeing's Process Councils, see *Report I* at 67.

In addition, SSG is responsible for maintaining central records relating to all hiring activities. Once the hiring process has been completed, the records relating to that process are forwarded to, and retained in accordance with Boeing policy by, SSG.

## **2. People**

As noted above, there are a number of business units and subsidiaries that do not use the full package of SSG services. For these units and subsidiaries, local HR personnel typically handle most administrative elements of the hiring process (aside from using BESS to post non-executive openings and generate on-line applications).

The hiring process is supposed to work in a fashion similar to the process administered by SSG, however, with local HR personnel gathering the necessary information from applicants and, where a COI review is needed, coordinating that COI review with the Law Department and processing the results of the COI review. In addition, local HR personnel are supposed to ensure that copies of the key pre-hire documentation are routed to SSG for central storage, including the COI review (with its indication as to whether ongoing COI monitoring is needed). They are also supposed to ensure that, when a hire is successfully completed, the new employee and his or her manager receive a copy of the COI review.

Business unit and World Headquarters HR personnel are also involved in executive hires (which, as noted, generally do not entail use of BESS). World Headquarters (“WHQ”) is particularly engaged on senior executive hires (at the E-1 to E-3 levels), each of whom must have his or her compensation and benefits package approved by an HR vice president at WHQ.

### 3. The Law Department

The Law Department has responsibility for conducting COI reviews for government and former government employees. It appears that a relatively small group of attorneys within the Law Department has historically performed a large percentage of the COI reviews, and this group represents the company's primary knowledge base in this area. A significantly broader group of Boeing attorneys currently conduct COI reviews, however, as the process has become more decentralized and COI responsibilities have been assigned to various attorneys in the relevant business units.

Boeing's COI attorneys are typically program attorneys that directly support the business units into which the applicants would be hired. In addition to distributing the burden of conducting COI reviews, this permits COI reviews to be conducted by "on the ground" attorneys who should have a particularly good appreciation of the Boeing tasks and responsibilities that would be assigned to the applicant. Boeing's functional attorneys (*e.g.*, litigation, labor and employment) generally do not handle COI reviews.<sup>33</sup>

As noted above, significant variations in the handling and content of COI reviews exist across the Law Department. These variations appear to be attributable to the dispersion of COI review responsibilities, to the lack of a standard COI review format, and to the natural differences that arise between easier COI reviews and more complex ones. In any event, as suggested above, COI reviews vary substantially, from

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<sup>33</sup> The organization of Boeing's Law Department and the distinctions between program and functional attorneys are discussed in *Report I* at 38-39.

in-depth memoranda precisely addressing a particular applicant's COI situation to short, conclusory statements hand-written on the applicant's COI questionnaire (with other COI reviews between these two extremes).

The attorneys with more COI experience informally share their accumulated knowledge and documentation. In the past, a discussion of COI issues and developments reportedly took place on a regular basis, particularly in connection with the annual Law Department meeting. This sharing process appears to have become more *ad hoc*, although a small working group of experienced COI attorneys is presently trying to identify ways in which standardized documents or procedures can be used to improve the COI review process. Experienced COI attorneys also provide training on this subject to others at Boeing, including paralegals in the Law Department (who often assist in performing COI reviews) and HR personnel involved in the hiring process.

Boeing attorneys involved in performing COI reviews commonly report having little knowledge as to (i) what stage of the hiring process the applicant has reached or (ii) what happens to their COI reviews after they send them to HR. In addition, while some attorneys report that they are asked occasionally to do new COI reviews for former USG employees who are to be reassigned within Boeing, a number of attorneys can recall no instances in which they have been asked to conduct such a review. None of the Boeing attorneys to whom we spoke recalled any instance in recent years in which a COI review concluded that there were insurmountable problems with a proposed USG hire – and none could recall ever encountering a situation in which the applicant's handling of the disqualification process had presented major problems.

## **B. The Process for International Hires**

While Boeing has been a leading U.S. exporter for many years, it has traditionally had few employees located outside the United States. This has begun to change in recent years, and Boeing now has approximately 4,000 employees overseas, many of whom are foreign nationals, and some of whom were recruited out of foreign government positions. A number of these overseas employees are part of the company's International Relations organization, whose mission is to provide the company with an understanding of local business environments around the world and better access to decision-makers in Boeing's major foreign markets.

Until very recently, no formal process existed within Boeing for addressing COI issues that might be raised by the foreign government backgrounds of international hires. At least in some instances, we are informed that COI reviews addressing foreign law and practice were conducted within Boeing on an *ad hoc* basis. However, no PRO outlined this review process, no COI application asked about foreign government background, and no guidelines existed for retaining local counsel or other assistance overseas to participate in the COI review process.

As of the beginning of 2004, Boeing has in place a new COI questionnaire for international hires that does ask questions concerning foreign government experience. Although this new questionnaire is not tailored to collect the kinds of information that would necessarily be needed to ensure compliance with any particular country's COI laws, it appears to be a useful device for collecting important information on foreign government backgrounds. What has not yet been specified is the exact process by which this new questionnaire will be used, including how responsibility for conducting COI

reviews in this area will be assigned and how decisions concerning the retention of local counsel overseas will be made.

#### **IV. FINDINGS**

In conducting our latest investigation for Boeing, we were once again looking at a changing landscape, in that the company has already made or has in process a number of changes that are intended to address perceived weaknesses in its procedures for hiring government and former government officials. While time will be needed to determine the degree to which these changes have met expectations, we believe that they move the company's policies and procedures in a positive direction.

Overall, it is apparent that Boeing has adopted written procedures that, while not without some areas of weakness, clearly address the company's obligations with respect to the hiring of ex-USG employees. The company is knowledgeable about its legal obligations and, although weaknesses have existed in Boeing's internal procedures, in our view it would be a mistake to conclude that the Darleen Druyun incident reflects a lack of knowledge or concern regarding the company's obligations in this area.

During the course of our investigation (as noted above), we reviewed the pre-hire records for every senior executive hired by Boeing out of the USG over the past five years, and interviewed the vast majority of these employees. We also selectively reviewed pre-hire files for a number of other USG or former USG hires by Boeing over this same time period, covering employees at a variety of levels, functions, business areas, and locations. In many instances, we interviewed these employees as well, particularly if their files indicated that they had procurement functions or Boeing-related

responsibilities while in the USG. We also spoke to a number of Boeing attorneys who regularly perform or have performed COI reviews in a variety of business units within the company, as well as a number of Boeing personnel involved in HR functions.

Although we were not asked to conduct, and did not conduct, an exhaustive audit of Boeing's hundreds of government and former government hires over the past five years, we did endeavor to look carefully at senior level hires (where the greatest risks appear to lie), and to examine a cross-section of hires at other levels. During this review, we did not find other situations similar to the Darleen Druyun incident – nor did we find, more broadly, other situations involving government or former government hires that appeared to present significant risks to the company or its employees under the PIA or other federal conflict of interest laws.

What we did find was excessive reliance by the company on government and former government employees to monitor their own compliance with relevant laws, both during the hiring process and after being employed by Boeing. This was the result not of any overt policy or procedure, but rather of sporadic adherence to the written policies and procedures that were in place. As noted above, this was especially true for senior executive hires out of the USG, where it was not at all uncommon for Boeing's COI review to be conducted after the employee had already been offered a job.

This reliance on government employees and former government employees to “do the right thing” is not wholly misplaced. It is hard to dispute the proposition that primary responsibility for complying with disqualification requirements, as well as for many of the post-employment restrictions, rests with the person who is

leaving government service. Moreover, we found that most of the ex-USG employees to whom we spoke at Boeing had an understanding of the basic rules in this area, a high sensitivity to the need for compliance, and a ready willingness to turn to USG ethics/legal personnel for advice on disqualification and post-employment issues while still in government service. Most of Boeing's senior executive hires out of the USG (and especially DoD) appear to have had considerable access to U.S. agency ethics/legal resources while in government service, and to have drawn upon those resources for disqualification and post-employment advice well before departing their agency.

Nonetheless, as recent events demonstrate, there can be considerable risk associated with placing too much faith in government employees and former employees to "do the right thing" in this area. These risks are associated not only with willful misconduct, but also with failure to understand rather technical rules whose application can be complicated, even for knowledgeable agency ethics/legal personnel. It is therefore important to have a careful review process within Boeing during the hire process. This concept seems to be well understood within Boeing – but, until recent events, not applied with sufficient consistency and uniformity across the company.

It is therefore of considerable importance that Boeing maintain and follow internal procedures that will limit the opportunities for error. In our view, however, aspects of Boeing's systems and procedures have presented unnecessary COI risks for the company and its employees. In some cases, these involved gaps in the procedures themselves. In others, they involved a failure to follow the company's internal guidelines, thereby increasing the potential for problems to arise.

Prior to the Darleen Druyun incident, our sense is that Boeing's hiring of government and former government officials was not perceived within the company as a high risk area. As a consequence, although the company had written policies and procedures addressing both disqualification and post-employment restrictions, those policies and procedures were often not followed in practice. It is noteworthy in this regard that the divergence between written policies and procedures and actual hiring practices was greater for senior executive hires (vice presidents and above) than for other employees of the company.

Moreover, the company's ability to detect and address these discrepancies has been hampered by several important factors. These included (1) the absence of a single focal point for managing the hiring process within the company; (2) erratic maintenance of pre-hire records for new employees; (3) the lack of data-gathering and auditing with respect to the handling of COI reviews; and (4) the absence of effective mechanisms for ensuring that government and former government hires undergo appropriate COI reviews for changes in position.

This should not be interpreted as a broad criticism of Boeing's ethics or compliance programs. On the contrary, as noted in our previous report, the company's ethics and compliance programs have many excellent features, and the company has committed substantial time and resources to improving those programs over time – both generally and in response to specific problem situations as they arise. We have also found the company to be unusually receptive to outside review – in terms of access to documents and personnel; in terms of open discussion of issues, problems, and ways of

doing business; and in terms of receptivity to the comments and suggestions that invariably flow from outside assessments.

While recognizing the positive elements of Boeing's broad ethics and compliance programs, as well as the time and effort that Boeing personnel have committed to devising policies and procedures to govern the hiring of government and former government personnel, we have identified the following weaknesses in the company's practices and structure in this area:

**1. Management of the hiring process has been too decentralized.**

- The responsibilities and functions associated with the recruitment and hiring of employees have been dispersed among WHQ, SSG, and HR personnel and managers in the business units.
- The company's procedures for the recruitment and hiring of government officials have lacked a single point of oversight and control.
- This dispersion of responsibilities has made it difficult for the company to accomplish uniform procedures, effective central monitoring, thorough record-keeping, and consistent pre-employment and post-employment COI reviews for government and former government hires.

**2. The company has had no formal mechanism for ensuring that disqualification issues are addressed at the outset of the hiring process.**

- Until the Darleen Druyun incident, attention paid to disqualification issues as part of COI reviews for government hires appears to have been decidedly less than attention paid to post-employment restrictions.
- In practice, Boeing procedures do not effectively require the USG applicant to provide Boeing with a copy of a disqualification statement at an early stage in the hiring process, and no meaningful review of disqualification has generally occurred until just before an offer letter is issued – or, in the case of senior executive hires, often after the offer letter has been issued.
- Boeing's current on-line employment application, by not asking a full set of COI questions, could permit a situation to arise in which, unbeknownst to Boeing personnel, a USG employee with Boeing-related responsibilities

has applied for a job with the company but has not disqualified himself or herself from Boeing matters.

- Although the company's COI questionnaire asks the applicant for a copy of his or her disqualification statement, and ex-USG employees often told us that they provided one to Boeing, the company's central employee records rarely contain a copy of a disqualification statement.

**3. There has been a lack of uniformity in the way COI reviews are conducted by the Boeing Law Department during the hiring process.**

- Boeing's written procedures suggest that at least a preliminary COI review is to be conducted before the interview process begins for prospective USG hires. In many instances, however, this has not been the practice.
- In a significant number of cases (especially for senior executive hires), the COI review has not been conducted until after issuance of an offer letter; and, in a few cases, there is no indication in the central records that a COI review was done at all.
- It appears that attorneys assigned to conduct COI reviews have commonly been provided with incomplete documentation or information – and, in fact, often lack an accurate sense as to the prospective employee's status in the hiring process.
- These attorneys also commonly lack information as to what happens with the COI reviews that they generate, including confirmation that copies have been provided to the hiring manager and the new employee.
- COI reviews vary in their content and thoroughness, and not necessarily in direct proportion to the potential seriousness of the issues raised.

**4. There has been no single point in the recruitment and hiring process – notably including issuance of the offer letter – that has operated as a point of control for COI issues throughout the company.**

- This is particularly true for senior executive hires out of the government, where it has often been the case that requisite documents – including the employment application and COI questionnaire – were not demanded, and COI reviews were not conducted, until after offer letters were issued.

**5. Ongoing monitoring of COI issues for existing employees has been erratic.**

- Boeing's procedures provide that, when employees hired out of the government who raise COI issues change positions or responsibilities within the company, a new COI review should be conducted.
- As a practical matter, the new COI review is supposed to be triggered by a "COI flag" in the company's employee database. But, in many cases, it appears that employees who should have been flagged were not, due to failure to enter the appropriate "flag" when the employee was hired.
- Even when the "flags" have been properly entered, there appear to be no systemic procedures for ensuring that HR personnel or business managers actually look for the "flags" when reassigning personnel.
- As a result, post-employment COI reviews are conducted sporadically, and do not appear to occur at all in some parts of the company.

**6. Record-keeping and data-gathering with respect to COI reviews has been inadequate.**

- At least until very recently, the company's central employee files can at best be described as haphazard in terms of the pre-hire documents they contain, and (as noted above) HR's employee database has often failed to contain the appropriate "COI flags."
- Current procedures do not gather meaningful data on COI reviews being conducted, either company-wide or within a specific business division.

**7. International hires have lacked COI review procedures that address foreign government backgrounds.**

- Particularly in its International Relations organization, the company has in recent years hired a number of foreign nationals who have served in their own governments. Although *ad hoc* COI reviews to address issues relating to these foreign government connections were conducted in some instances, there has, until very recently, been no formal process for addressing foreign government experience.
- A COI application specific to international hires has just been introduced, but the modalities of the COI review process in this area still appear to be in flux.

**8. The company’s practices in hiring government and former government officials have not been subjected to internal audits.**

- The hiring of government and former government personnel is an identified risk area for purposes of Boeing’s annual Compliance Assessment Process (“CAP”).<sup>34</sup> But the company has not committed audit resources to this risk area within the past five years, either by means of an internal audit of the CAP reports submitted by the individual business divisions or by means of an internal audit outside the annual CAP.

**9. Training in the area of hiring government and former government officials has not received sufficient emphasis.**

- The company’s training programs with respect to the hiring of government and former government officials do not appear to be well-publicized within the company, and, with narrow exceptions, do not appear to be mandatory for HR personnel or business managers.

**10. HR operations at WHQ lacks a senior, unified head of HR functions.**

- Although WHQ is in many respects treated as a business division within Boeing, it appears to lack a senior, unified head of HR functions similar to that found in the company’s other business divisions.
- Given the sensitivity of HR operations within WHQ (which includes the Washington, DC and International Relations organizations), and given WHQ’s importance to HR policy throughout the company, we believe that more centralized HR management within the WHQ organization is needed.

**V. RECOMMENDATIONS**

Before setting forth our recommendations, it is important to acknowledge that there is no “magic bullet” that will prevent the core problem allegedly associated with the Darleen Druyun situation from recurring – namely, a senior officer of the company discussing possible employment with a high level government procurement official before that official has properly disqualified himself or herself from all Boeing-

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<sup>34</sup> The company’s Compliance Assessment Process is described in *Report I* at 68.

related responsibilities. One can only endeavor, through additional training, safeguards, and centralized oversight and control, to substantially reduce the chances of a recurrence – and to substantially increase the chances of detecting any recurrence that nonetheless arises before Boeing commits to the employment.

As with our previous internal investigation, we have sought to avoid recommendations that micro-manage Boeing's internal processes and procedures. Boeing is a large, complicated, and ever-evolving business entity, and the company's personnel know best how to take particular recommendations and implement them in ways that will fit the company's structure and business objectives. We believe that Boeing is strongly committed to minimizing the chances of similar problems occurring in the future, and to having in place methods to detect and remedy any problems that do occur as swiftly as feasible.

This commitment is reflected in the fact that Boeing has already started addressing a number of the weaknesses described above. In fact, a number of our recommendations below are similar to, or build upon, changes that the company has either adopted or plans to adopt. Although our recommendations may go further in some areas, it would not be fair to assume that the company has failed to detect or act upon deficiencies in its hiring and COI review processes in the face of the Darleen Druyun incident.

Based on the above, our recommendations are as follows:

### **Recommendation 1**

**Boeing should establish a system for central oversight and monitoring of the recruitment and hiring of government and former government officials, including executive hires.**

- Although the company has made progress in this direction through the SSG Employee Services organization, important work still remains to be done, especially in the areas of (i) executive hires, (ii) international hires, and (iii) hires by business units and subsidiaries that do not use SSG's package of hiring services.
- It is particularly important that a central organization have control over the offer letter process, including with respect to executive hires.

### **Recommendation 2**

**Further safeguards are needed early in the hiring process to ensure that USG officials under consideration for employment have filed appropriate disqualification statements.**

- For hires handled through BESS (i.e., non-executive hires), the USG applicant should be required to answer a full list of COI questions in the initial on-line application – including a question as to whether the applicant has any Boeing-related responsibilities and, if so, whether the applicant has disqualified himself or herself (with a request for a copy of the applicant's disqualification statement).
- A mechanism should be devised (perhaps electronically, if possible) to prevent potential USG hires – including executive hires – from being scheduled for interviews until (i) the applicant has produced a disqualification statement or (ii) the Law Department has advised that, given the applicant's position and functions, no disqualification is needed.
- The company should consider certifications as a means of reducing risk – for example, (i) requiring that a USG applicant who indicates Boeing-related responsibilities on the COI application certify not only that he or she has filed a disqualification statement (with a copy supplied), but also that he or she did not engage in any employment discussions with Boeing personnel prior to the disqualification; and (ii) requiring HR and/or the relevant hiring manager to certify, at the time the COI package is forwarded to the Law Department for review, that no employment

discussions occurred with such a USG applicant prior to the date on the disqualification statement.

### **Recommendation 3**

**The COI review process conducted by the Boeing Law Department needs to be based on more complete information, conducted in a more uniform manner, and integrated more fully into the hiring process.**

- A Boeing lawyer who is to perform a COI review on a USG applicant should expect to receive from HR a package that includes, at a minimum, an employment application, a COI questionnaire, a Boeing position description, and – if the applicant indicates procurement functions or Boeing-related responsibilities – a copy of the applicant’s disqualification statement and the agency memo addressing his or her post-employment restrictions (assuming such an agency memo has been prepared).
- Equally important, if these items are not part of the COI package or if they are incomplete, the Boeing lawyer should object and, where necessary to obtain documents or answers to COI questions, the lawyer should contact the applicant directly.
- The reviewing attorney should be informed of where the applicant stands in the hiring process, and should receive a copy of any earlier application materials (including any earlier on-line application).
- There is much to be said for creating greater uniformity for simpler COI reviews (as is already in process), while drawing upon the experience of Boeing’s COI experts for more complicated COI reviews.
- All COI reviews should be documented (even if simpler reviews merit only a short memo); a copy of the Law Department memo should go to the hiring manager and to the applicant if he or she is hired (as well as to SSG’s central employee files); and an attorney (preferably the one who conducted the COI review) should discuss with the applicant any post-employment restrictions very soon after he or she starts working at Boeing.

### **Recommendation 4**

**The Boeing offer letter to prospective government and former government hires should be used as a central point of control, and no offer letter should be issued until all of the COI documentation needed to support the hire has been compiled and reviewed.**

- As noted above, there should be a central point of control for the offer letter process throughout the company.
- That central control should be designed so as to enable a simple rule to be followed for USG and ex-USG applicants: except for individuals who held low-level positions or whose USG service was more than five years old, no offer letter should be issued until the Law Department has conducted a COI review and issued a COI memo clearing the hire.
- Unlike current procedures, the COI review memo should express a view with respect to disqualification – i.e., (i) no disqualification was needed, (ii) disqualification was done properly, or (iii) there were disqualification issues, but they have been satisfactorily addressed.

### **Recommendation 5**

**Company-wide procedures should be introduced to ensure that appropriate COI reviews are conducted before former government employees change position or responsibilities within Boeing.**

- SSG should receive the necessary pre-hire documentation to determine that ongoing COI monitoring is needed; that documentation (and especially the Boeing lawyer’s COI review memo) should clearly and prominently indicate when ongoing COI monitoring is required; and SSG should promptly place the “COI flag” in the HR employee database when ongoing monitoring is required.
- HR procedures should prevent reassignment of personnel until the relevant employee’s electronic record has been checked for a “COI flag” and, where one is present, the Law Department has conducted a COI review for the new position.
- This process should generate a new Law Department COI review memo (which, depending on the nature of COI issues presented, could be very short); and a copy of that COI update should be placed in the same central employee file as the original COI review.

### **Recommendation 6**

**Record-keeping and data-gathering with respect to COI matters should be enhanced.**

- Procedures should be put in place to ensure that important pre-hire documentation for government and former government hires is centrally stored in SSG, and readily obtainable once it is stored. Such

documentation should include (i) the employment application and COI questionnaire, (ii) correspondence with the applicant (including the offer letter and response), (iii) the disqualification statement and agency memo on post-employment restrictions (where required or otherwise obtained), (iv) the COI review memo, (v) the applicant's resume, and (vi) the Boeing job description.

- As suggested above, such files should be promptly processed by SSG personnel, with any necessary "COI flag" entered into the HR employee database shortly after the employee's start date.
- As also suggested above, the central SSG file on each government and former government hire should be updated whenever a new COI review is performed.
- Procedures should be devised so as to permit periodic generation of data – preferably in a form that can be broken down by business division, unit, and site – concerning (i) how many new hires are government or former government, (ii) how many of those hires have undergone COI reviews, (iii) how many of those hires have been assigned "COI flags," (iv) how many "flagged" employees have changed position during the given period, and (v) how many of those "flagged" employees have undergone updated COI reviews by the Law Department.

### **Recommendation 7**

**International hires should be subject to COI review procedures that assess any foreign government experience, including the application of relevant foreign law and practice.**

- International hires should be fully integrated into the company's COI review procedures, with the same types of safeguards and centralized record-keeping described above.
- A clear focal point within the Law Department for handling international hires who have foreign government backgrounds should be identified, with authorization to retain local counsel overseas to aid in the assessment. Except for what are clearly "easy cases," local counsel should normally be retained to assist in these COI reviews and the applicant's central SSG file should contain the output of that local counsel review (along with other normal documentation).

### **Recommendation 8**

**The hiring of government and former government officials should be designated as a compliance risk area that merits periodic internal auditing, at least for the next two years.**

- For at least the next two years, the hiring of government personnel should be designated a risk area meriting inclusion in the annual CAP audit.
- This risk area should be expanded to cover the company's hiring of employees with foreign government backgrounds.
- Either through the annual CAP questionnaire or by some other means, individual business divisions should be asked specific questions in identified problem areas, including questions designed to elicit confirmation that COI reviews (i) are being conducted for persons with foreign government backgrounds, (ii) are being conducted at the correct point in the pre-hire process, and (iii) are being conducted for position changes where an employee has a "COI flag."
- We support the company's present intention (as we understand it) to conduct a special internal audit in this risk area apart from the annual CAP.

### **Recommendation 9**

**Training with respect to hiring government and former government officials should be improved.**

- Training programs in this area should be given a higher profile, and should be made mandatory for SSG and local HR personnel involved in the recruitment and hiring of employees, as well as for managers in business units that tend to hire employees with government backgrounds.
- The training programs should be expanded to address hiring persons with foreign government backgrounds.
- Executive training programs at the Boeing Leadership Center should be expanded to incorporate presentations, role-playing, or other learning devices that address the risks and procedures applicable to hiring government personnel.

- Drawing as appropriate on the Darleen Druyun situation, problem scenarios involving government hires should be incorporated into ethics and compliance training programs.

**Recommendation 10**

**The company should review the sufficiency of its HR management structure within WHQ.**

- We believe the company should consider establishing more centralized oversight of HR functions below the Executive Vice President level, especially with respect to the WHQ organization.

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As with our previous investigation, we would like to conclude by expressing our appreciation to the many Boeing employees who committed significant time and effort to assisting us in our endeavor. We particularly appreciate the patience and openness that we once again encountered, despite our many questions and requests.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

February 26, 2004