Department of Energy
Washington, DC 20585

December 17, 2024

MEMORANDUM FOR THE UNDER SECRETARY OF ENERGY FOR INFRASTRUCTURE

FROM: Teri L. Donaldson
Inspector General

SUBJECT: *Interim Findings – The Department's Loan Programs Office Is Not Managing Organizational Conflicts of Interest in Compliance With Regulations and Contractual Obligations*

The Federal Government prohibits conflicts of interest to safeguard the taxpayers against self-dealing, collusion, and fraud by Government officials and Government contractors. In the private sector, each party has a "baked in" economic incentive to watch, track, and account for its own dollars. That economic incentive does not exist in the public sector, where Federal dollars are more likely to be treated as "monopoly money." For this reason, implementing and overseeing robust conflict of interest protections is a critical role for Federal officials.

The Department of Energy Loan Programs Office (LPO) is administering more than $385 billion in new loan authority without ensuring a regulatory and contractually compliant and effective system to manage organizational conflicts of interest.[1] This poses a significant risk of fraud, waste, and abuse. Congress issued this unprecedented volume of loan authority in the Infrastructure Investment and Jobs Act, Inflation Reduction Act, and related legislation.[2] The projects funded with this authority, which involve innovations in clean energy, advanced transportation, and tribal energy are inherently risky in part because these projects may have struggled to secure funding from traditional sources such as commercial banks and private equity investors.

[1] This memorandum addresses organizational conflicts of interest. All references to conflicts of interest herein should therefore be construed as references to organizational conflicts of interest.

[2] Shortly after the passage of the Infrastructure Investment and Jobs Act, the Department began a series of weekly meetings with the Office of Inspector General (OIG) to identify issues of immediate concern. During these weekly meetings, the Inspector General repeatedly emphasized the importance of implementing a robust conflict of interest program. Given the enormous sums of financial risk, the Inspector General also suggested that the Department consider developing and implementing a conflict of interest program more robust than the minimal protections already commemorated in Department rules. This did not happen. It appears that the LPO did not evaluate its options for improving the existing regulatory framework. The Inspector General has testified before Congress on the risks associated with the LPO. See Statement of The Honorable Teri L. Donaldson, Inspector General, U.S. Department of Energy before the U.S. House of Representatives Committee on Oversight and Accountability, Subcommittee on Economic Growth, Energy, Policy and Regulatory Affairs, April 18, 2023: https://oversight.house.gov/wp-content/uploads/2023/04/IG-Donaldson-Written-Testimony-for-April-18-Hearing.pdf.

BACKGROUND

1. Contractors, Subcontractors, and Third-Party Experts

The LPO contracts with more than 300 contractor and subcontractor personnel to assist with loan application processing. These personnel support the LPO's review of loan applications with expertise in legal, engineering/technical, market analysis, and financial/credit aspects of loan applications as a key component of the LPO loan processing and due diligence. The contractors can be described as follows:

- Prime Contractor and its Subcontractors: The LPO contracts with a prime contractor, Archetype II, LLC, (Archetype) which also contracts with subcontractors to provide the LPO reports analyzing issues such as project eligibility, assessment of project cost, market potential, and technical/engineering issues.

- Support Services Contractors: In addition to Archetype and its subcontractors, the LPO also contracts with seven support services contractors. Five perform legal services, one performs services as special assets collateral agent, and one provides project finance loan services.

- Third-Party Experts: Finally, as part of loan application packages, prospective borrowers provide the LPO with "third-party" expert reports, covering such topics as financial and credit issues and analysis, engineering and technical analysis, and market analysis. Although these third-party experts contract with the LPO, which relies upon their work as essential components of the loan application process, the prospective borrowers pay for the third-party experts' services.

2. Applicable Regulations and Contract Provisions

a. Federal Acquisition Regulations

The Federal Acquisition Regulations (FAR) protect the Government and taxpayers when the Government transacts with contractors. FAR 9.504 requires contracting officers for Government transactions to: (1) identify and evaluate potential conflicts of interest as early as possible; and (2) avoid, neutralize, or mitigate significant conflicts before contract awards. FAR 9.506 requires contracting officers to seek information from within the Government or from other readily available sources of information concerning contractors in order to identify potential conflicts of interest. Once a contract is awarded, the Department's contracting officer designates a contracting officer's representative within the LPO to assist in overseeing and managing potential conflicts of interest.

b. Department of Energy Acquisition Regulations

Department of Energy Acquisition Regulations (DEAR) 909.507-2 and 952.209-72, which implement FAR contract clauses in Department contracts, require contracting officers to insert conflict of interest clauses into contracts. The DEAR requirements mandate that contractors

disclose related party relationships and take steps to avoid, neutralize, or mitigate conflicts of interest. Most importantly here, DEAR 952.209-72(f) requires those who contract with the Department to include all of these same conflict of interest provisions in their subcontracts.

The LPO's contract with Archetype is governed by FAR and DEAR. Archetype's subcontracts are likewise governed by FAR and DEAR.

c. Contract Provisions

While the entire FAR as a whole may not directly apply to contracts with third-party experts because borrowers pay the third-party experts' fees, these third-party expert contracts are nevertheless impacted by specific FAR, DEAR, and contract provisions pertaining to conflicts of interest. All LPO contracts related to administration of the loan authority, including contracts with third-party experts, include a clause: (1) requiring disclosure of apparent or actual conflicts of interest; and (2) imposing a continuing obligation to disclose any circumstances that may create an actual or apparent conflict of interest. Contracts with third-party experts incorporate the FAR definition for organizational conflicts of interest, which states that "organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage."

Collectively, FAR, DEAR, and contract provisions require the following:

Requirement	Applies To	Source
Identify and evaluate conflicts as soon as possible	Contracting Officers	FAR 9.504(a)(1)
Avoid, neutralize, or mitigate potential conflicts before contract award	Contracting Officers	FAR 9.504(a)(2)
Seek information from within the Government or from other readily available sources if information concerning contractors is necessary to identify potential conflicts of interest	Contracting Officers	FAR 9.506(a)
Monitor contracts for evidence of conflicts of interest	Contracting Officers' Representatives	Designation Letter
Disclose related party relationships and take steps to avoid, neutralize or mitigate conflicts of interest	Contractors & Subcontractors	DEAR 952.209-72(c) DEAR 952.209-72(f)
Disclose apparent or actual conflicts of interest, and any circumstances that may create an actual or apparent conflict of interest.	Contractors, Subcontractors, & Third-Party Experts	Contracts

Notwithstanding these regulatory and contractual provisions, an ongoing OIG audit has found that the LPO is not managing organizational conflicts of interest in compliance with regulations or ensuring that Archetype and its subcontractors are implementing effective plans to manage conflicts of interest. Although the audit is not complete, we are issuing this memorandum now because of the risks associated with closing an additional $22 billion in loans and loan guarantees by January 20, 2025,[3] without ensuring compliance with conflicts of interest regulations.

PRELIMINARY OBSERVATIONS

1. **The LPO does not track contractors who may be serving both the LPO and prospective borrowers.**

Despite the risks and conflicts that could arise if the LPO contracts with contractors that also work for prospective borrowers, the OIG audit team was surprised to learn that the LPO does not ensure that contracting officers and contracting officers' representatives track third-party experts. For example, for the 18 projects reviewed by the OIG, the LPO Technical Division was able to provide the OIG with the name of the applicant's third-party engineering experts for only 3 of the 18 projects. Because the full universe of third-party experts supporting the applicants could not be identified, neither the OIG nor the LPO could determine whether an engineer supporting the LPO for a project was also working for one or more prospective borrowers on the same or other projects. Nevertheless, proper management of conflicts of interest requires identifying all parties involved in the process on both sides of the transaction. This is especially true in the LPO process where the Government relies upon the work of third-party experts to inform its decisions.

Indeed, pursuant to FAR 9.504, contracting officers and contracting officers' representatives have an affirmative obligation to identify and evaluate potential conflicts of interest. They cannot effectively meet this obligation without identifying all parties involved, including third-party experts, to ensure that contractors working with the LPO have no conflicts arising from any work with or on behalf of prospective borrowers. As illustrated by an example described in FAR 9.508(i), a conflict could arise if a party that has worked with the LPO to process applications acts as a consultant for a prospective borrower. If contracting officers have a blind spot as to certain parties or categories of parties, or if they are unaware of the identity of certain parties or categories of parties, then these contracting officers cannot deconflict to avoid the LPO hiring these same experts in other roles within the LPO processes.

The LPO may not rely solely upon contractual provisions that require third-party experts and/or other contractors to make disclosures because such reliance creates this blind spot for the LPO. Such reliance would also impermissibly delegate the contracting officer and contracting officer's responsibilities in contravention of FAR 9.504. These oversight obligations may not be passed along wholesale to a contractor without abandoning the meaning of "oversight."

[3] The LPO informed us that it planned to close on an estimated $22 billion of loan and loan guarantee applications before the change in the Presidential administration, January 20, 2025.

Ultimately, because the LPO is not collecting information about and tracking all parties involved in loan administration, it does not currently know whether prospective borrowers have strategically hired the same third-party experts or affiliates that the LPO has retained to assist with loan processing and due diligence. This presents a risk to the taxpayer and disregards FAR 9.504 obligations.

2. The LPO does not track conflicts of interest disclosures or waiver requests for loans and loan guarantees.

The OIG also found that the LPO did not ensure that the contracting officers and contracting officers' representatives adequately track conflict of interest disclosures or waiver requests. For example, in response to our initial request for a listing of all conflict of interest disclosures submitted by contractors, the LPO only produced copies of conflict of interest disclosures for contractors providing legal services. The LPO had no records of disclosures made or waivers requested for the technical/engineering, financial, and other support contractors. The LPO stated on multiple occasions that there were no additional disclosures beyond those it had provided.

Nevertheless, when the OIG team was trying to ascertain whether the contracting officers and contracting officers' representatives were tracking disclosures and waiver requests, an Archetype representative and an LPO contracting officer's representative searched their emails for waivers and disclosures. The search results: (1) identified additional waivers and disclosures beyond those the LPO had provided; and (2) revealed that the waivers and disclosures sent from Archetype to the contracting officer's representative were not provided to the contracting officer.[4]

One example identified during the OIG team's review illustrated that the LPO and its contracting officers' representatives are either: (1) failing to track disclosures; or (2) failing to track parties whose roles must be identified and evaluated as potential conflicts of interest. The team found that one individual, who was identified as an engineering contractor supporting the LPO for two projects, was also working as an Archetype subcontractor on a separate project with a scope overlapping with the individual's work with the LPO. This situation warranted an in-depth review by the contracting officer to determine whether there is a potential conflict of interest. A conflict of interest would exist, for example, if the individual had unequal access to information or a competitive advantage to win another contract or subcontract. Nevertheless, although the individual was contractually obligated to disclose conflicts of interest, we found no evidence that either the individual or the individual's employer made any disclosure.

Finally, when the audit team discussed disclosure and waiver tracking with LPO officials, they informed us that conflict of interest disclosures and waiver requests are kept by each contracting officer's representative and are not shared throughout the LPO. The failure to share and cross-check that information across contracting officers and the LPO contracting officer's representatives is concerning because of the potential for the same third-party experts or contractors to support multiple divisions of the LPO in different roles while representing different interests, including the interests of prospective borrowers.

[4] Pursuant to FAR 1.604, a contracting officer's representative assists in the technical monitoring or administration of a contract.

We concluded that this system cannot be reconciled with FAR 9.504 and 9.506, which require contracting officers to identify and evaluate conflicts of interest as early as possible and to seek information from governmental sources to find information necessary to identify and evaluate potential conflicts of interest.

By failing to track the parties involved in these transactions, as well as the disclosures and waiver requests, the LPO has functionally abandoned any responsibility for identifying, evaluating, avoiding, neutralizing, or mitigating conflicts of interest.

3. Archetype did not implement the organizational conflicts of interest training program required by its own Management Plan.

The contract required Archetype to develop and submit an Organizational Conflict of Interest Management Plan outlining its strategy for identifying, disclosing, and mitigating potential conflicts of interest. The plan specifically states Archetype's intent to comply fully with FAR Subpart 9.5 and DEAR 952.209-72. Although the contractor submitted a plan in October 2017, the OIG audit team found that the LPO's contracting officer's representative, who handled day-to-day oversight of the contract, did not have a copy of this plan and had taken no action to verify implementation. Likely because the LPO failed to ensure that the contracting officer and contracting officer's representative were verifying conflict of interest management, the LPO was unaware that the contractor had not implemented key aspects of the plan, such as the training requirement, which is arguably the foundation of the contractor's organizational conflict of interest strategy. Instead, the contractor's Program Manager told us that as individuals are hired, the contractor holds informal meetings via telephone to discuss the different types of conflicts of interest and the conflict of interest notification process. The Program Manager confirmed that there was no record or documentation of any of these informal meetings.

Without ensuring that the contracting officer and contracting officer's representative are verifying the contractor's implementation of its conflicts of interest program, the LPO cannot assure that valid processes have been established to identify and report conflicts of interest, as required by the contract.

RISKS TO THE TAXPAYER

The Department and the LPO are ultimately responsible for ensuring the integrity of the loan process, including ensuring that decisions about awarding and managing loans are in the Government's and the public's best interest. Responsibility for such a large and inherently risky loan portfolio necessitates ensuring compliance with conflicts of interest regulations and contractual obligations. Fiscal responsibility and program integrity require independence in decisions about loan awards and ongoing monitoring for continued solvency. Lawmakers and the public must trust that those decisions are made for the public good and not for private gain.

Nevertheless, we note that in the absence of these important controls, the LPO has: (1) already closed 15 loans and loan guarantees for over $15 billion since 2021; and (2) is currently planning to close an additional $22 billion in loans and loan guarantees for an additional 13 projects before January 20, 2025.

IMMEDIATE CORRECTIVE ACTIONS NEEDED

The OIG will issue a full report with formal recommendations at the conclusion of our fieldwork. Therefore, this memorandum does not represent the final position of the OIG. However, considering the issues found to date, we identified several corrective actions that the Director of the LPO should take immediately:

1. Put into abeyance all loan and loan guarantee packages until the LPO can ensure that contracting officers and the contracting officers' representatives are complying with conflicts of interest regulations and enforcing conflict of interest contractual obligations.

2. Ensure that contracting officers working on LPO loans and loan guarantees either: (1) establish a centralized tracking mechanism that tracks both (a) contractors for all projects, and also (b) conflict of interest disclosures or waivers; or (2) otherwise implement measures necessary to comply with conflicts of interest regulations and contract provisions.

3. Consider enhancing practices for managing conflicts of interest for contractors.

4. Ensure that the contracting officer and the contracting officer's representative for Archetype review Archetype's plan to ensure all aspects are being implemented as required.

MANAGEMENT RESPONSE

In a response dated December 11, 2024 (attached *verbatim*), management broadly asserted that the LPO is in full compliance with conflicts of interest rules, and in particular stated that:

- The OIG had not identified any actual conflicts of interest;
- FAR does not apply to third-party experts because their fees are paid by the borrower, rather than by the LPO; and
- The LPO addresses the risk of conflicts through contracting and delegates the burden to its contractors to disclose conflicts.

For Interim Corrective Action 1, management asserted that the OIG's corrective action is disproportionate to the finding. As for Corrective Actions 2, 3, and 4, management offered no specific corrective actions to address the weaknesses identified in the memorandum but committed to begin to address these.

AUDITOR COMMENTS[5]

1. Scope and Purpose of the Audit

The Department's assertion that the OIG has not identified any actual conflicts of interests misses the point of the audit. The scope of the OIG audit is to assess the LPO's processes and internal controls to prevent and mitigate potential conflicts of interest. The scope of the audit did not include attempting to audit the entire LPO portfolio for actual conflicts of interest.[6]

Moreover, an audit to identify actual conflicts would be very difficult to perform at this time because the LPO simply does not track the information necessary to identify conflicts of interest.[7] The LPO does not compile, track, update, and/or reconcile relationships that could result in identifying conflicts of interest among the hundreds of personnel working for (1) Archetype, (2) Archetype's subcontractors, (3) the LPO's support service contractors, and (4) third-party experts. The LPO relies upon all of these parties during the application review process. As highlighted by our findings, the contracting officers' and contracting officers' representatives' lack of awareness of the parties involved in the loan process impedes them from identifying and evaluating potential organizational conflicts of interest and doing so as early as possible.

Perhaps the most troubling statement in the Department's response is that the LPO has not experienced a single conflict of interest "for the last 15 years." The LPO seems to be asserting that as long it does not compile, track, update, or reconcile relationships, it maintains a 100 percent compliance rate across the LPO.

2. FAR, Third-Party Experts, and Conflicts of Interest

The Department's assertion that FAR does not apply to third-party experts dodges the issue and fails to account for potential conflicts of interest that may arise elsewhere in the LPO involving those same experts. The Department neglects to address that independent of the FAR, the LPO's contracts with third-party experts: (1) require experts to submit conflict of interest statements

[5] Because of the urgency of this interim report, which is based upon the LPO's stated intention to process $22 billion before January 20, 2025, the Department is reviewing the Auditor's Comments simultaneously with the release of this interim report. If the Department submits additional and substantive written comments, the OIG may supplement this interim report at a later date.

[6] An example illustrates the fallacy in management's comment that the OIG failed to identify conflicts of interest. Suppose a golf tournament has the ability and obligation to track and create a scorecard of a golfer's strokes but fails to do so, relying upon each golfer to truthfully and accurately report his or her own score. Afterward, a golfing oversight body reviews the tournament results and informs the tournament director that the integrity of the results is potentially compromised by the failure to track strokes and create a scorecard. The director responds to the oversight body that it did not identify any errors in the scores reported. The oversight body could not do so, of course, because the tournament failed to create the scorecards. Likewise, the OIG cannot identify conflicts of interest without the information necessary to identify conflicts of interest.

[7] The Department has a long-standing problem in this area. In March 2019, the Government Accountability Office reported that contracting officers at Department of Energy field sites do not even collect much less independently review information on subcontractor ownership despite that fact that such information could alert officials to potential conflicts of interest: https://www.gao.gov/products/gao-19-107.

when they submit statements of capability; and (2) impose a continuing obligation to disclose circumstances that may create an actual or apparent conflict. If the LPO is not conducting some oversight of these disclosures, it has a large blind spot.

Furthermore, regardless of whether FAR applies wholesale to contracts with third-party experts, contracting officers have an affirmative obligation under FAR 9.504 to identify and evaluate conflicts of interest and to do so as early as possible. They cannot effectively meet this obligation if the LPO does not even collect information about third-party experts.

Ultimately, failure to track third-party experts results in a functional blind spot that inhibits detection of an unknown number of potential conflicts and potentially undermines entirely any system for managing—or attempting to manage—conflicts.[8] It also begs the question of whether the existence of this functional blind spot places prospective borrowers in a position to strategically retain experts also being used by the LPO to conduct due diligence.

3. Conflict Management by Delegation With No Oversight

Department management also states that the LPO addresses the risk of conflicts through contracting, delegating the burden to disclose conflicts to Archetype. This is the "trust and don't verify" model that abdicates the responsibility for the Department to oversee Archetype. Here, Archetype submitted a plan pertaining to conflicts in 2017, but that is where the story ends. There is nothing in the LPO records to establish that the contracting officer and contracting officer's representative for Archetype reviewed, assessed, or did anything else to ensure that Archetype was implementing the plan and that it was working. This contractor was not even conducting formal training as required by its own Management Plan. There is no evidence that the contracting officer or the contracting officer's representative were monitoring Archetype's compliance. This lack of actual Departmental oversight likely explains the LPO's view that it is operating a "robust" conflicts program reporting exactly zero conflicts in 15 years.

4. Failure to Address Conflicts Related to Archetype and Its Subcontractors

The Department has failed to comment upon the conflicts of interest that may arise involving Archetype and its subcontractors, which are retained by and paid by the LPO. These entities are not paid by prospective borrowers. Rather, these entities are paid by the LPO with tax dollars. The Department did not dispute—and could not reasonably dispute—that FAR directly applies to these contracts. Our interim finding presented major concerns with these parties, yet the LPO's comments failed to address these entities. The LPO narrowly focused its comments on third-party experts but failed entirely to address its deficient management of conflicts of interest related to the remainder of its contracts and subcontracts.

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[8] The Department's choice to delegate responsibility for reporting conflicts and abdicate responsibility for identifying conflicts continues a pattern identified in a March 2019 Government Accountability Office Report identifying actions the Department should take to increase subcontract oversight. See GAO-19-107, *Department of Energy Contracting: Actions Needed to Strengthen Subcontract Oversight*: https://www.gao.gov/products/gao-19-107. In that report, the Government Accountability Office recommended that the Department of Energy independently review subcontractor ownership to identify potential because relying on contractors to identify conflicts in a "consent review" process had failed to identify conflicts of interest, including some that led to criminal investigations. The Department of Energy rejected the recommendation.

5. Corrective Actions

As for the OIG suggested corrective actions, the Department objects to the OIG's request that the LPO pause its activities pending the LPO establishing an actual oversight plan for the management of conflicts of interest. The OIG, however, reiterates that the basic controls for overseeing the identification of related parties and analyzing possible conflicts of interest should have been in place before a single loan application was approved.

As for management's responses to the OIG's Corrective Actions 2, 3 and 4, we appreciate that management intends to take these actions but also note that time is of the essence.

Attachment

Department of Energy
Washington, DC 20585

December 11, 2024

MEMORANDUM FOR TERI L. DONALDSON
INSPECTOR GENERAL

THROUGH: DAVID CRANE
UNDER SECRETARY FOR INFRASTRUCTURE

DAVID CRANE Digitally signed by DAVID CRANE Date: 2024.12.11 12:04:52 -05'00'

FROM: JIGAR SHAH
DIRECTOR, LOAN PROGRAMS OFFICE

JIGAR SHAH Digitally signed by JIGAR SHAH Date: 2024.12.11 11:45:36 -05'00'

SUBJECT: DEPARTMENT'S RESPONSE TO OIG'S INTERIM FINDINGS – THE DEPARTMENT'S LOAN PROGRAMS OFFICE IS NOT MANAGING ORGANIZATIONAL CONFLICTS OF INTEREST IN COMPLIANCE WITH REGULATIONS AND CONTRACTUAL OBLIGATIONS (A24PT006-IRA)

This memorandum responds to the draft "Interim Findings – The Department's Loan Programs Office Is Not Managing Organizational Conflicts of Interest in Compliance with Regulations and Contractual Obligations (A24PT006-IRA)" (the "Interim Findings"), provided by the Office of the Inspector General ("OIG") to the Loan Programs Office ("LPO") on December 4, 2024. Thank you for the opportunity to comment on your observations prior to the release of your interim report.

LPO is in full compliance with both the Department's conflict of interest rules and the Federal Acquistion Regulation ("FAR"). LPO has a robust system in place for identifying and mitigating organizational conflicts of interest through active communication with its partners and by holding them contractually accountable and financially liable for compliance. This approach has worked for the last 15 years and continues to work – a fact the OIG's Interim Findings effectively confirms. Indeed, despite a months-long audit involving over one hundred contract files, OIG has not identified any organizational conflicts of interest.

The OIG's Interim Findings are based on mistaken facts and a misunderstanding of the law. We attempt to correct those misunderstandings here and to reinforce that the FAR does not apply to LPO's agreements with third party advisors and that DOE has a strong program for managing organizational conflicts of interest. But much of the discussion in the Interim Findings document is so vague or imprecise that we may be unable to get at the root of the confusion without further clarification from the OIG. DOE welcomes the opportunity to review a revised version of the Interim Findings addressing such matters prior to any release by the OIG.

Congress has directed LPO to extend loans and loan guarantees to advance our nation's energy and manufacturing goals. LPO has executed that mission with great success and will continue to

do so without regard to the OIG's remarkable and unprecedented suggestion that LPO "put into abeyance all loan and loan guarantee packages scheduled to be completed by January 20, 2025." Of course, were the OIG to identify an organizational conflict of interest ("OCI") with respect to any of LPO's contracts or agreements, LPO would take immediate corrective action. But, again, despite a lengthy review, OIG has not done so.

Applicability of the FAR

At the heart of the OIG's Interim Findings report is the assertion that LPO has failed to comply with the FAR. But this assertion appears to rest on a misunderstanding of DOE contracting practice. LPO has one main government contract with a prime contractor for support services, and a handful of other, smaller support services contracts. For professional support services, including administrative, engineering, origination, and portfolio management staff, a DOE Contracting Officer ("CO") in the Office of Management ("MA") awards a services contract to a firm that provides full time equivalent staff to LPO. This contract is paid from LPO's budget and is therefore conducted in accordance with the FAR.

LPO also requires the input of third-party advisors including law firms, independent engineers, insurance advisors, financial advisors, market advisors and others for the purposes of conducting due diligence. For these services, LPO issues Requests for Statement of Capability, Availability, and Price to standing lists of advisors who provide advisory services. LPO selects the advisors and enters into agreements with them. These agreements include conflict of interest requirements, as discussed below. But LPO does not pay these third-party advisors. They are paid by the applicants through separate agreements. This arrangement is standard practice in project finance: the borrower contracts with and pays the advisory costs of the lender, who selects the advisors and gets the benefit of their work product. Because these contracts are paid by the applicants, they are not subject to FAR. The confusion between the LPO's support contract and these third-party advisor agreements appears to permeate the OIG's draft analysis.

LPO Successfully Addresses the Risk of OCI Through Contracting

DOE's approach to identifying and mitigating organizational conflicts of interest is effective. By agreement, LPO requires its third-party advisors and its support contractors to continually identify any potential OCIs and disclose any OCIs to LPO. If the third-party advisor or LPO support contractor fails to disclose any OCI issues per their contract requirements, there are penalties and consequences that apply. This approach — putting the burden on its counterparties and making them financially liable for compliance — has worked well over the many years that DOE has pursued it. And, again, OIG has not identified any OCIs within the LPO program.

This approach also complies with the FAR, where applicable. The FAR does not require any tracking mechanism for contractor OCI requirements, much less the burdensome system suggested in the Interim Findings. To the contrary, FAR 9.504(d) states that, "In fulfilling their responsibilities for identifying and resolving potential conflicts, contracting officers *should avoid creating unnecessary delays, burdensome information requirements, and excessive documentation*. The contracting officer's judgment need be formally documented only when a substantive issue concerning potential organizational conflict of interest exists." (emphasis added).

LPO's Primary Support Contractor Has Effectively Managed the Risk of OCI

The OIG's finding that the LPO Primary Support Contractor did not comply with its OCI contract requirements is incorrect. LPO's primary support contractor submitted an OCI Management Plan as required by its contract. To the best of DOE's knowledge, the contractor has closely managed the OCI process and was in regular communication with staff and subcontractors regarding OCI compliance. And to the best of DOE's knowledge, each contractor employee was given training by the contractor upon starting to support LPO, provided documentation specifying the OCI policy, and signed the OCI-NDA (Nondisclosure Agreement) document, as required. In addition, each person was given an onboarding packet which included OCI compliance information. In September 2024, the contractor implemented additional enhancements to its OCI Management Plan.

LPO's Contracting Officer Representative ("COR") will continue to work with the MA CO to ensure that the primary support contractor's organizational conflicts of interest Management Plan is fully implemented and strengthen oversight to seek evidence of the LPO contractor's compliance with contractual requirements on OCI.

Response to Immediate Correction Items

Over 15 years, LPO has disbursed nearly $35 billion in loan funding with losses of slightly over $1 billion, for an overall loss rate of under 3%. As noted in many public sources, this is a loan loss rate comparable to or better than many commercial project finance lenders. **Over that time, there have <u>never</u> been any findings of fraud, waste or abuse in LPO. After reviewing 112 files comprising 100MB of data related to 18 loans, the OIG has again not identified any specific findings of fraud, waste or abuse in this audit.**

The OIG found that one individual advises LPO as both part of the services contract as well as an employee of a TPA, which the OIG alleges could give rise to an unfair advantage in bidding for LPO advisory services. Preliminary indications from LPO are that adequate safeguards, mitigants, and firewalls are in place in this specific instance and that no OCI exists. LPO takes this situation very seriously and is looking into this specific matter further. If this matter is determined to represent a potential advantage in bidding for LPO advisory services, it will take appropriate action. However, as noted before, third-party contracting is paid for by the applicants, therefore federal, i.e., taxpayer, funds are not at risk.

1. **Put into abeyance all loan and loan guarantee packages scheduled to be completed by January 20, 2025, until the LPO can ensure that contracting officers and the contracting officer's representatives are complying with conflicts of interest regulations and enforcing conflict of interest contractual obligations.**

   No organizational conflicts of interest have been identified. This Immediate Correction Item is both baseless and vastly disproportionate even under the OIG's misunderstanding of the facts and applicable law. The Department looks forward to receiving the OIG final report under this audit and will promptly address any organizational conflicts of interest or non-compliance with the FAR, DEAR, or third-party advisor agreement requirements regarding OCI that the OIG may identify.

2. **Ensure that contracting officers working on LPO loans and loan guarantees either (1) establish a centralized tracking mechanism that tracks both (a) contractors for all projects, and also (b) conflict of interest disclosures or waivers or (2) otherwise implement measures necessary to comply with conflict of interest regulations and contract provisions.**

   LPO and MA will continue to comply with the FAR and DEAR requirements where applicable, and with the TPA agreements where applicable, as they currently do.

3. **Consider enhancing practices for managing conflicts of interest for contractors.**

   LPO will work with OGC and DOE MA to enhance practices for managing conflicts of interest for LPO contractors.

4. **Ensure that the contracting officer and the contracting officer's representative for the primary support contractor perform a review of the primary support contractor's Plan to ensure all aspects are being implemented as required.**

   DOE MA will take the lead and ensure all CO's and CORs do primary reviews of the support contractor's OCI Management Plan to ensure all aspects of the plan are being implemented.

We appreciate the opportunity to respond to the draft report. The Department will continue to cooperate with the OIG on this matter, including in connection with any revised findings or a final report. Please let us know if you need any further information or would like to discuss further.