

April 3, 2014

# 4<sup>th</sup> Annual FOCI FSO Conference



Defense Security Service

# STAN SIMS

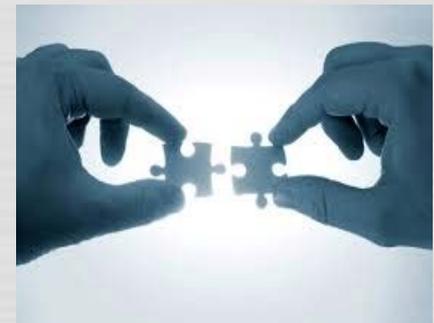
DSS Director





## Key FY14 DSS Challenges

- Changing Security / Risk Environment
- Information Sharing and Reporting
  - Shared responsibility between Government and Industry
  - Counterintelligence Awareness
  - Incident and Suspicious Contact Reporting
- Cyber Domain
  - Unclassified (CUI) and Classified Information Security
  - FY13 NDAA, Sec 941 Implementation
  - Data Vulnerability (New DFAR Clause/Analytical Capability)





## Key FY14 FOCI Challenges

- NID Policy Update
- Outside Director/Proxy Holder Training
- FOCI Mitigation Implementation – more consistency
  - AOPs, FLPs, ECPs, TCPs
- FOCI Mitigation Oversight – more guidance
  - SVAs, Annual Meetings, Annual Reports
- DoD Committee on Foreign Investment in the US (CFIUS) mitigation coordination



# AFFILIATED OPERATIONS PLAN

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# Agenda

- History
- Template Affiliated Operations Plan
- Elements of Affiliated Operations Plans
- Processing of Affiliated Operations Plans
- AOP Considerations
- AOP Keys to Success
- AOP Reasons for Denials
- Items of Note
- Questions





# History

- “Shared Services” and “Administrative Services” addressed in mitigation agreements earlier than 2009
- No clear guidance on what constitutes a “shared service”
- No standardized request form
- No guidance on approvability of services
- Long process with numerous formal draft submissions
- Inconsistent or no DSS review after approval





# Affiliated Operations Plan (AOP) Template

- Provides a standardized template for use by all contractors
- Defines all services DSS expects to approve in advance:
  - Affiliated services (traditional and reverse)
  - Shared third party services
  - Shared persons
  - Cooperative commercial arrangements
- Risk-based - ensures that all FOICI and security risks have been evaluated and addressed
- Provides guidance for review of risk mitigation strategies to the company and DSS
- Available on the DSS.mil Website





# Affiliated Operations Elements

- For each service, the contractor is expected to provide:
  - Description of the service, including
    - Who will provide service to whom and what are the actual benefits  
Will the service affect your IT network or involve any IT systems?
    - What will be the frequency of interaction and how will it take place?
    - Etc...
  - Risks inherent in sharing service and risk mitigation strategies
    - FOCI risks
    - Security risks
  - Risk mitigation strategy reviews
    - How will DSS ensure that the company is complying with the risk mitigation strategies outlined above?
    - Additional documentation? Visit requests and approvals?  
Interviews?





# Affiliated Operations Plan Processing

1. Contractors will submit AOP\* to FOCI HQ directly or through local ISR
2. DSS HQ will negotiate the plan with the company via redlining and comments within the submission to improve processing time
3. DSS will issue interim approval upon acceptance of the AOP and upon approval of any required modifications to the company's ECP
4. Final approval will be granted upon the receipt of certification by the GSC that the services are not circumventing the intent of the mitigation agreement





# AOP Considerations

- Does the affiliated operation place classified or export controlled information at risk?
- Do any of the employees associated with the affiliated operation have access to classified or export controlled information?
- Does the affiliated operation divulge any special OPSEC or government customer concerns?
- Does the affiliated operation affect the performance on classified contracts?
- Does the affiliated operation require the use of any affiliate technology on the classified contract?
- Does the affiliated operation increase the number of interactions between the FOCI company and its affiliated?
- Does the affiliated operation affect the perception of the FOCI Company 's independence from its affiliates?
- Does the affiliated operation affect the Boards ability to make independent decisions?
- Does the affiliated operation involve any IT systems and how is export information being protected?





# AOP Keys to Success

- Survey your Company's relationship with its affiliates
- Use the AOP as a corporate document to capture affiliate relationships and find balance between security and business needs
- "No FOCI concerns" is not the right answer
- Address GSC, FSO, and TCO engagement
- Submit an AOP for approval to DSS
  - Obtain approval of shared services, reverse shared services, shared third-party services, and shared employees prior to implementation
  - Inform DSS of any commercial teaming relations within 10-days of their implementation
  - Treat long-term visits as shared employees
- Engage DSS if you want help developing your AOP





# Common Reasons for Denial

1. Service may impede independent governance at the cleared company.
2. Service may require unacceptable sharing of IT resources.
3. Service cannot be effectively monitored by the FSO and/or the GSC.
4. Service provides an unacceptable level of insight into the cleared company's internal processes or operations.
5. Service may circumvent the requirements of the FOCl mitigation agreement.
6. Service permits affiliate access to employee adverse information.
7. Service permits affiliate access to customer data.
8. Service may conflict with contractually-mandated operational security (OPSEC) requirements.
9. Service may allow undue control or influence over the company's business/management or individual employees.
10. Service may cause cleared company to become overly dependent upon affiliates.





## Affiliated Operations Items of Note

- Implementation of affiliated services are usually unique to each company
- Certain services remain highly unlikely to be approved absent robust risk mitigation measures:
  - IT
  - Internal Audit
  - Legal
- Where affiliated services impact ECPs, or vice versa, DSS is unlikely to approve either until comfortable with the information in both
  - Also true for facilities location plans (FLPs)





# Questions?

The AOP Template and additional information can be found on the  
DSS Website at

<http://www.dss.mil/isp/foci/affiliated-operations-plan.html>



# FACILITIES LOCATION PLAN

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# Agenda

- History
- FOCI Collocation Defined
- Facilities Location Plan (FLP)
- FOCI Collocation Review Process
- FLP Considerations
- Non-Compliance and FLP Denials
- FLP Keys to Success
- Existing Collocation Plans
- Questions





# History

- Pre 2012 - FOCI Collocation Process
  - Defined FOCI Collocation as being in the same building or campus
  - FOCI Collocation was prohibited for Proxy Agreements and Voting Trusts
  - Limited guidance on what DSS expected in a Collocation Plan
  - Collocation Plans were approved by the DSS Field Offices
- New FOCI Collocation Process
  - Definition of FOCI Collocation focuses on compliance with the mitigation agreement
  - The Facilities Location Plan (FLP) standardizes the review process
  - All FLPs are approved/denied by the FOCI Operations Division





# FOCI Collocation Defined

- FOCI Collocation: when a FOCI-mitigated company is located within the proximity of an affiliate, which would reasonably inhibit the company's ability to comply with the FOCI agreement
  - Scenarios may include:
    - location in the same building
    - sharing a campus
    - location in the same office park
- Collocation is not authorized
  - DSS will determine when a FOCI Company located in close proximity to an affiliate is considered collocated





# Facilities Location Plan (FLP)

- DSS developed the FLP Template to assist Industry
- The purpose of the FLP is to:
  - demonstrate the effective mitigation of all risks; and
  - ensure adherence to the FOCI Mitigation Agreement
- The FLP enables the GSC to maintain effective and continuous oversight
- An FLP must demonstrate being located in proximity to an affiliate does not degrade compliance with the FOCI Mitigation Agreement
- FOCI Collocation is not present contingent upon adherence to a DSS approved FLP and FOCI Mitigation Agreement





# FOCI Collocation Review Process

- As a FOCI company it's your responsibility to recognize when your facility will be located in close proximity to an affiliate
- In advance of a potential FOCI Collocation, a Facilities Location Plan (FLP) must be submitted to DSS through your Government Security Committee (GSC)
- DSS will conduct a site review within 30 days to determine the feasibility of the FLP
- After DSS approval, the GSC must certify that the FLP is fully implemented within 45 days of moving into close proximity with an affiliate
- The effectiveness and implementation of the FLP will be reviewed at the Security Vulnerability Assessment





## FLP Considerations

- Could the close proximity create a risk to classified information?
- What is the sensitivity of the classified information at the location?
- Are there any special OPSEC or government customer concerns at the location?
- Could the close proximity create a risk to export controlled information?
- Could the close proximity effect the performance on classified contracts?
- Does the close proximity affect the FOCI Company's ability to comply with requirements of FOCI mitigation agreement?
- Does the close proximity affect the FOCI Company's ability to demonstrate its independence from its parent?





# Non-Compliance and FLP Denials

- Common reasons for FLP Denials:
  - Ineffective controls over interactions (i.e. unfettered access between Affiliate and FOCI Company's spaces)
  - Includes unapproved Affiliated Operations
  - No separation of IT infrastructure
  - Proposed Affiliated Operations and FLP result in significant integration with an Affiliate
- Non-compliance
  - Interactions not being reviewed/approved in accordance with the FOCI Mitigation Agreement
  - Failure to fully implement the FLP or substantive changes made without DSS approval
- FOCI Collocation without an approved FLP or non-compliance with an approved FLP is considered a red-flag item, which may negatively impact a facility's security clearance.





## FLP Keys to Success

- Know when affiliates are in close proximity
- Request FLP approval, if needed, prior to moving a facility
- Meet designated timelines
  - Support DSS onsite review within 30 days
  - GSC certification 45 days after DSS approval
  - Annual review during SVA
- Do not allow an approved FLP to demission requirements of FOCl mitigation agreement
- Resubmit any substantive changes to a FLP to DSS





## Existing FOCI Collocation Plans and FLPs

- Previously approved FOCI Collocation Plans are not required to resubmit a Facilities Location Plan (FLP)
- Substantive changes to an FLP or FOCI Collocation Plan require resubmission and must be approved in advance by DSS
- Examples of substantive changes may include:
  - additional sharing of resources with the affiliates
  - those impacting the Electronic Communications Plan, Visitation Procedures, Affiliated Operations Plan or Technology Control Plan
  - those impacting approved control procedures established by an approved Collocation Plan or FLP





# Questions?

The FLP Template and additional information can be found on the  
DSS Website at  
[http://www.dss.mil/isp/foci/foci\\_collocation.html](http://www.dss.mil/isp/foci/foci_collocation.html)



# FOCI UPDATE

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## Agenda Topics

- General Updates
- Rating Matrix
- Areas of Concern and What's next?





# General Updates

- Issuing FCLs while implementing FOCl
  - In-process Companies
    - FCL will be issued when the FOCl mitigation has been implemented
  - Companies with FCL (change condition, renewal, acquisition)
    - Maintain FCL as long as Companies meet timelines for implementation
- ECP Approval Process
  - Guidance will be coming to submit ECPs to DSS HQ
  - ECPs will be coordinated with Field elements and approved at HQ to ensure consistency across DSS





## General Updates cont.

- DSS has seen an increase in the number of Superior and Commendable ratings at FOICI facilities.
  - The unsatisfactory ratings at FOICI facilities is on par with non-FOICI facilities
  - Over 50% of FOICI facilities are Superior or Commendable vs. less than 25% for non-FOICI facilities
  - DSS attributes this trend to increased engagement by GSCs
- Going forward, more involvement from HQ
  - FOICI Red Flags during SVAs
  - Lead on coordinating Annual Meetings
  - Guidance on Annual Compliance Report
  - Corporate-wide SVAs





## General Updates cont.

- New OD/PH Training available on DSS website
  - Three modules
    - Module 1: Intro to DSS and FOCI
    - Module 2: Managing FOCI Mitigation
    - Module 3: Managing Relationships with FOCI Affiliates
  - Next Steps
    - Work with CDSE on FOCI toolkit
    - FOCI Training for FSOs
    - FOCI Training for Foreign Parents
    - Case study on CDC responsibilities through the acquisition process





# Security Rating Matrix (Enhancements vs. Best Practices)

- Examples of FOCI Enhancements
  - Above and beyond requirements of FOCI mitigation agreement
  - Independent export control audits or self-inspection
  - Effective briefings for foreign visits
  - Appointment of an additional OD/PH with a specific FOCI role
  - Use of trend analysis or automation to enhance monitoring of visits or communications
  - Increased and effective interactions between OD/PHs and cleared personnel
- Examples of FOCI Best Practices
  - Periodic reviews of SF328
  - Implementation of FOCI agreements prior to proscribed timelines
  - Maintaining a list of export controlled information





## Areas of Concern

- FOCI Non-compliance
  - Undue influence on hiring, firing, and performance appraisals
  - Withholding payment to mitigated employees
  - Reporting structures that circumvent the FOCI Company's governing body
  - Lack of Separation/distinction Between Affiliates and the FOCI Company
- Challenges
  - Offshore Funds
    - Sovereign
    - Private Equity
    - Hedge
  - Traditional investors vs. new entrants





## What's Next?

- e-FCL to support ECP, AOP, FLP, NID, etc. submissions and approvals
- Expand support for FSOs and GSCs
  - Training
  - Outreach
  - HQ Action Officer availability
- Simplification of ECP/TCP/VCP/FLP/AOP
- Foreign Parent Guidance/Engagement

